

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 874

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Open Parties

DATE: March 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Pre-meeting
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 874 amends s. 856.015, F.S., relating to Open House Parties. The bill expands the provisions of the section to include “property” as defined as “a residence, vacant structure, or open acreage with or without a structure.” The bill provides that it is a violation of the section if a person who has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property. The person must have actual knowledge that the minor possesses or is consuming the alcoholic beverages or drugs.

The bill maintains the current penalty for violation of the section as a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500 and a first degree misdemeanor punishable by up to one year in jail and a fine not exceeding \$1,000 for a second and subsequent offense.

The bill provides a July 1, 2013 effective date.

The bill substantially amends section 856.015, Florida Statutes.

II. Present Situation:

Section 856.015, F.S., addresses social gatherings at a residence, defined as “open house” parties at a residence. Residence is defined as a home, apartment, condominium or other dwelling unit. A person 18 years of age or older having control of any residence may not allow an open house party to take place if he or she knows that any alcoholic beverage or drug is possessed or consumed at the residence by any minor not legally permitted by reason of age to possess alcoholic beverages. Actual knowledge is defined as “direct and clear knowledge.”¹

Failure to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug constitutes a second degree misdemeanor, with any subsequent violation treated more severely as a first degree misdemeanor. Conviction of a second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding \$500, and a first degree misdemeanor is punishable by up to one year in jail and a fine not exceeding \$1,000.

A person convicted of a second degree misdemeanor may be sentenced to imprisonment not exceeding 60 days and a \$500 fine; a person convicted of a first degree misdemeanor may be sentenced to imprisonment not exceeding 1 year and or a fine of \$1000.²

In upholding the statute against a constitutional challenge for vagueness, the Florida Supreme Court held that the statute “prohibits an adult, who is in control of the premises, from having a party and knowingly permitting a minor to continue to consume or possess alcoholic beverages or drugs on the premises. That adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.”³

Section 856.015, F.S., does not apply to use of alcoholic beverages at legally protected religious observances or activities.

A prior version of the open house party law was challenged in 1995 on the basis that the phrase “reasonable steps” to be taken by the person in control of the residence was ambiguous. The Florida Supreme Court held that the Legislature has indirectly ceded discretion to the courts by employing language in legislation that commonly requires judicial construction.⁴

III. Effect of Proposed Changes:

The bill deletes the definitions of “open house party” and “residence” in s. 856.015, F.S. The bill broadens the definition of “property” to include “a residence, vacant structure, or open acreage with or without a structure.”

The bill provides that it is a violation of the section if a person who has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property.

¹ Black’s Law Dictionary (9th ed. 2009), knowledge (actual knowledge).

² See s. 775.082 and s. 775.083, F.S.

³ See *State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

⁴ See *Bunkley v. State*, 882 So.2d 890 at 915 (Fla. 2004)

The bill amends the provision concerning control of the property where the party is located and imposes a requirement that a person who has control of the property have “actual knowledge” that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property.

The bill has an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on jails as a result of the expanded locations where a violation of the section may occur.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may give prosecutors clarification of the conduct being regulated, by imposing the standard of “actual knowledge” by the person who has control of a property.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 7, 2013:

The committee substitute provides that a property owner is subject to criminal penalties only when the owner has actual knowledge that a minor is in possession of or consuming alcoholic beverages or drugs on the property, and the minor is lawfully on the property.

- B. **Amendments:**

None.