

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 Judiciary

BILL: CS/CS/SB 874

INTRODUCER: Criminal Justice Committee; Regulated Industries Committee; and Senator Galvano

SUBJECT: Open Parties

DATE: April 12, 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>	Fav/CS
3.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 874 amends s. 856.015, F.S., relating to open house parties. The bill expands the places at which a person has duty to take reasonable steps to prevent minors from possessing or consuming drugs or alcoholic beverages. Under existing law, the duty exists at a person's residence. Under the bill, the duty exists at a person's "property," which is defined as "a residence, structure, or open acreage with or without a structure."

The bill provides that a person violates s. 856.015, F.S., if he or she 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. As under existing law, the requirements of the bill apply only if a person has actual knowledge that a 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 for a first offense. A second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding \$500. A subsequent violation is a first degree misdemeanor, punishable by up to 1 year in jail and a fine not exceeding \$1,000.

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. 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 a minor.

“Residence” is defined as a home, apartment, condominium, or other dwelling unit. This definition does not include structures that are not dwelling units or open areas that do not include a structure, such as a field. This has resulted in a loophole whereby the person in control of a property does not technically violate the law if a minor consumes alcohol at a party that takes place in a field, park, or other open area.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. A conviction for a second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding \$500. A first degree misdemeanor is punishable by up to one year in jail and a fine not exceeding \$1,000.²

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 the 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 creates the term “property,” which includes “a residence, structure, or open acreage with or

¹ Rachel Leigh, *Major Loophole with Minors Drinking Alcohol*, WFLX Fox 29, Feb 13, 2013 available at <http://www.treasurecoast.com/index.cfm/news/major-loophole-with-minors-drinking-alcohol>.

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, 915 (Fla. 2004)

without a structure.” The bill replaces “residence” as used in s. 856.015, F.S., with “property,” expanding the locations covered by the section.

The bill provides that a person in control of property violates s. 856.015, F.S., if he or she fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor who is lawfully on the property. Consistent with existing law, a person does not appear to have a duty to prevent the possession or consumption of drugs by a minor who is a trespasser.

Under the bill, a person has a duty to act only if the person has “actual knowledge” that a minor possesses or is consuming drugs or alcoholic beverages. Actual knowledge is defined in Black’s Law Dictionary as “direct and clear knowledge.”⁵ Under existing law, a person has a duty to act only if the person “knows” about the possession or consumption.

The bill takes effect 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 s. 856.015, F.S., may occur.

⁵ BLACK’S LAW DICTIONARY (9th ed. 2009), knowledge (actual knowledge).

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/CS by Criminal Justice on April 1, 2013:

Deletes “vacant” from the definition of “property.”

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.