

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 3, 1998 Revised: _____

Subject: Alcohol and Tobacco Sales

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Rodriguez</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill allows law enforcement officers to employ minors when testing alcoholic beverage vendors and tobacco retailers for compliance with provisions that prohibit the sale of such products to minors. It provides that a new location for on-premises consumption of alcoholic beverages may not be located within 500 feet of a school unless the county or municipal government approves the location under quasi-judicial procedures used for other zoning decisions. It allows a county that already has voted to allow the package sales of alcoholic beverages to hold a local option election on the sole question of also allowing sales for consumption on premises. It provides that community service and fines imposed on minors for possession of tobacco products must be satisfied within a specific time.

This bill substantially amends the following sections of the Florida Statutes: 562.11, 562.45, 567.01, 567.06, 567.07, 569.002, 569.101 and 569.11.

II. Present Situation:

Section 562.11, F.S., makes it unlawful to sell, give, or serve alcoholic beverages to persons under 21 years of age. It also provides that such individuals may not misrepresent their age for the purpose of inducing a licensee to sell, give, serve, or deliver alcoholic beverages. Section 562.111, F.S., prohibits the possession of alcoholic beverages by persons under 21 years of age and provides that a first conviction is punishable as a second degree misdemeanor and that a subsequent conviction is punishable as first degree misdemeanor.

The ADAMHA Reorganization Act, enacted by Congress in 1992, prohibits the dispensing of certain federal block grants unless a state has implemented legislation prohibiting the sale of tobacco products to persons under the age of 18 and the sales prohibition is enforced “in a

manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.” The federal act specifically requires the state to conduct random, unannounced inspections to ensure compliance with the law. For federal FY 1997/98, the Department of Children and Family Services received \$56 million in federal grants. States in non-compliance with these requirements risk up to a 40% reduction in funding.

Section 286.0115, F.S., provides for quasi-judicial proceedings on local government land use matters. Specifically, s. 286.0115, F.S., prohibits a “local public official” from ex parte communication and requires any person at the request of a party or party-intervenor, to be sworn in as a witness, to be subject to cross-examination by other parties or party-intervenors, and to be qualified as an expert witness, if the person is attesting to be an expert. This section outlines procedures that remove the presumption of prejudice arising from ex parte communications and provides that any such communications be noted in a public forum and incorporated as part of the official record of the proceedings.

Currently, the place of location of an alcoholic beverage license is determined by the county or municipal government under s. 562.45, F.S., but no specific procedures are required in state law.

The Article VIII, Sections 5 and 6, of the Florida Constitution, reserves to each county the authority to determine, through a local option election, whether the sale of “intoxicating liquors, wines, or beer” may be allowed in that county. Section 5 requires a petition request signed by 25% of the electors in the county to hold an election and prohibits another election on the same subject for a period of two years. When approved by a county, the Florida Constitution requires the sale of alcoholic beverages to be regulated by state law.

Chapter 567, F.S., sets forth the procedure for petitioning for and holding a local option election to determine whether the sale of alcoholic beverages may be sold in a county. Section 567.001, F.S., defines “intoxicating liquor, wine, or beer” as containing more than 6.243 percent of alcohol by volume. This percentage allows the sale of some types of alcoholic beverages (e.g. beer) in all counties.

Section 567.01, F.S., states legislative intent to avoid the necessity of holding two separate elections by determining in one election whether the sale of alcoholic beverages will be allowed in a county and also whether the sale, if allowed, would be restricted to package sales, or whether sales by the drink for on premise consumption also would be allowed.

Section 567.06, F.S., requires the ballot to pose two, two-part questions to the electorate. The first question is whether to vote “for” or “against” the sale of alcoholic beverages. The second question is to vote whether to allow “sales by the package and drink” or whether to allow “sales by the package only.”

Section 569.101, F.S., makes it unlawful to sell, deliver, barter, furnish or give tobacco products to persons under 18 years of age. Section 569.111, F.S., prohibits the possession of tobacco products by persons under 18 years of age. Pursuant to last year’s legislation, ch. 97-190, L.O.F.,

the penalties and fines for those found guilty of possession of tobacco products were revised. Section 569.111, F.S., also provides that minors may not misrepresent their age for the purpose of inducing a licensee to sell, give, barter, furnish or deliver any tobacco product.

Subsection (7) of s. 569.002, F.S., was amended last year to exempt from the prohibitions against the possession of tobacco products minors who are working in conjunction with law enforcement officers to test the compliance of tobacco retailers.

The Division of Alcoholic Beverages and Tobacco (DABT) of the Department of Business and Professional Regulation, and other law enforcement agencies, routinely use persons under the age of 18 to test dealer compliance with s. 569.101, F.S. They also employ persons under the age of 21 to test vendor compliance with s. 562.11, F.S.

Last year's amendment to ch. 569, F.S., created an unintended loophole whereby if DABT or any other law enforcement agency employs a person under 18 years of age to conduct a test for compliance, the retailer is not committing an illegal act and therefore is not subject to criminal or administrative penalties.

Section 569.11, F.S., provides that it is unlawful for any person under 18 years of age to knowingly possess any tobacco product. Any person who violates this section commits a noncriminal violation which is punishable by mandatory attendance in a school-approved anti-tobacco program, if locally available, and either 16 hours of community service or a \$25 fine. This section does not specify how much time a person has to satisfy these requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 562.11, F.S., to provide that any law enforcement officer may use a person under 21 years of age to test vendor compliance with the prohibition on the sale, gift or delivery of alcoholic beverages to minors. It also immunizes such minors in such circumstances from civil and criminal liability.

Section 2 amends s. 562.45, F.S., to provide that a new location for on-premises consumption of alcoholic beverages may not be located within 500 feet of a public or private elementary, middle or secondary school unless the county or municipal government approves the location under quasi-judicial procedures used for other zoning decisions. The applicant must show that the approval of the location promotes the public health, safety, and general welfare of the community. The provisions in this section apply to any new applicant whose premises are licensed as of July 1, 1998.

Sections 3, 4 and 5 amend ss. 567.01, 567.06, and s. 567.07, F.S., to provide that a county, that already has voted to allow the sale of alcoholic beverages by package only, an additional option of having an election on the sole question of whether to also allow sales of alcoholic beverages for consumption on premises. The county may still elect to provide the voters with both options, the option to allow the sale of alcoholic beverages and the option to allow sales for consumption on

the premises. Regardless of the option presented to the voters, the county is still prohibited from having another election on this same subject for a period of two years.

Section 6 amends s. 569.002, F.S., The bill amends the definition of “any person under the age of 18” to exclude a person working with law enforcement officers.

Section 7 amends s. 569.101, F.S., to provide that any law enforcement officer may use a person under 18 years of age to test vendor compliance with the prohibition on the sale, gift or delivery of tobacco products to minors. It also immunizes such minors in such circumstances from civil and criminal liability.

Section 8 amends s. 569.11, F.S., to provide that a minor found to have been in violation of this section with respect to possession of tobacco products must complete the community service requirements within 60 days or pay the \$25 fine within 30 days. Failure to satisfy these requirements in a timely manner could result in additional penalties, including the suspension or revocation of driving privileges.

Section 9 provides an effective date upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2 of the bill may reduce the number of locations that can be licensed for consumption of alcoholic beverages on the premises.

C. Government Sector Impact:

In clarifying the provisions regarding illegal sales of alcohol or tobacco products to minors, the bill could result in fewer legal expenses to law enforcement agencies for the prosecution of criminal and administrative penalties for vendors in violation of these sections. According to the department, failure to pass legislation, or initiate a less cost efficient surveillance program that the division to meet federal standards, could potentially jeopardize receipt of federal block grants used for the prevention and treatment of substance abuse problems.

The requirement for a county or municipal government to conduct quasi-judicial proceedings will result in increased costs to the local governments in making these determinations, but the amount is undeterminable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

VIII. Amendments:

None.