

STORAGE NAME: h0165.jud

DATE: March 12, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 165

RELATING TO: Beverage Law

SPONSOR(S): Representative Heyman

COMPANION BILL(S): SB 202(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COLLEGES & UNIVERSITIES YEAS 5 NAYS 4
- (2) JUDICIARY
- (3) REGULATED SERVICES
- (4)
- (5)

I. SUMMARY:

This bill provides an exemption to the Beverage Law by allowing an individual to provide an alcoholic beverage to a student who is under 21 years of age but over 17 years of age, if the alcoholic beverage is provided as part of the student's required curriculum at a college that offers a baccalaureate degree and is accredited by one of the six regional accreditation boards recognized by the Department of Education. This bill also stipulates that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition. The alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age. In addition, the college involved must indemnify the state and require each participating student to also indemnify the state.

The bill also addresses the prohibition against the possession of alcoholic beverages by an individual under 21 years of age by providing an exemption to the prohibition for a student who is over 17 years of age, if the student is tasting the alcoholic beverage as part of his/her required curriculum at a college that offers a baccalaureate degree and is accredited by one of the six regional accreditation boards recognized by the Department of Education.

Federal law directs the United States Secretary of Transportation to withhold 10% of certain federal transportation funds from a state in which the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age is lawful. Federal law does not specify whether or not a state jeopardizes these federal transportation funds if it permits the possession and tasting of alcoholic beverages by persons under 21 years of age under circumstances such as part of a required instructional curriculum. Consequently, the fiscal impact on state funds is presently indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

FLORIDA BEVERAGE LAW

Section 562.11, Florida Statutes, provides that "it is unlawful for any person to sell, give, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises." Anyone convicted of violating this provision is guilty of a misdemeanor of the second degree. Anyone convicted of a misdemeanor of the second degree may be sentenced to a term of prison not exceeding 60 days and may be assessed a fine not exceeding \$500. This section also provides that it is unlawful for any person to misrepresent his or her age or the age of another person in order to obtain any alcoholic beverage for a person under 21 years of age. Anyone convicted of violating this provision is also guilty of a misdemeanor of the second degree.

Section 562.111, Florida Statutes, provides that it is unlawful for any person under 21 years of age to possess any alcoholic beverage. However, any person 18 years of age or older can sell, prepare, or serve alcoholic beverages on the premises of an establishment that is licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants. Anyone convicted of violating this provision is also guilty of a misdemeanor of the second degree.

FEDERAL LAW

United States Code: Title 23, Section 158, provides that the Secretary of Transportation shall withhold 10% of the amount required to be apportioned to a state for expenditures on the National Highway System, the Congestion Mitigation and Air Quality Improvement Program, the Interstate System, and the Federal-Aid Urban Systems Program in which the purchase or public possession in such state of any alcoholic beverage by a person who is less than 21 years of age is lawful. The term "purchase" is defined as the acquisition by the payment of money or other consideration. The term "public possession" is defined as the possession of any alcoholic beverage for any reason, including consumption on any street or highway, in any public place, or in any place open to the public. Public possession does not include the possession of alcohol for an established religious purpose; the possession of alcohol when accompanied by a parent, spouse, or legal guardian who is 21 years of age or older; the possession of alcohol for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution; the possession of alcohol in private clubs or establishments; or the possession of alcohol during the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to the lawful employment of a person under 21 years of age by a licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

OTHER STATES' LAWS

NEW YORK - Article 5, Section 65-c, New York State Consolidated Laws, provides that a person under 21 years of age may possess any alcoholic beverage with the intent to consume if the alcoholic beverage is given to a student in a curriculum licensed or registered by the New York Department of Education and the student is required to taste or imbibe alcoholic beverages in courses which are required by the curriculum. The alcoholic beverages can only be used for instructional purposes. In addition, this law permits a person under 21 years of age to possess any alcoholic beverage with the intent to consume if the alcoholic beverage is given to him or her by his or her parent or guardian. The State of New York adopted this law in 1986.

RHODE ISLAND - Title 3, Chapter 3-8, Section 3-8-13, Rhode Island General Laws, provides that a person can give any alcoholic beverage to a student under 21 years of age and a student under 21 years of age can receive any alcoholic beverage if the alcoholic beverage is delivered in a curriculum at an accredited college in which the student is required to taste or imbibe alcoholic beverages in courses which are required by the curriculum. The alcoholic beverages can only be used for instructional purposes. The State of Rhode Island adopted this law in 1987.

SOUTH CAROLINA - Section 20-7-8920, South Carolina Code of Laws, provides that a student that is at least 18 years of age can taste but not consume or imbibe any beer, ale, porter, wine, or other

similar malt or fermented beverage, if he or she is enrolled in both an accredited college or university and in a culinary course. The State Commission on Higher Education has to review and approve the culinary course. The alcoholic beverages can only be used for instructional purposes during classes that are part of the curriculum. The alcoholic beverages must at all times remain in the possession and control of an authorized instructor of the college or university who must be at least 21 years of age.

Section 20-7-8925, South Carolina Code of Laws, provides that a student that is at least 18 years of age can taste but not consume or imbibe any alcoholic liquor, if he or she is enrolled in both an accredited college or university and in a culinary course. The State Commission on Higher Education must review and approve the culinary course. The alcoholic liquors can only be used for instructional purposes during classes that are part of the curriculum. The alcoholic liquors must at all times remain in the possession and control of an authorized instructor of the college or university who must be at least 21 years of age.

Section 59-103-195, South Carolina Code of Laws, provides that the State Commission on Higher Education shall have review authority in order to determine the legitimacy and appropriateness of permitting students under 21 years of age to taste alcoholic beverages. This law also authorizes the State Commission on Higher Education to establish rules and restrictions with regard to any proposed course of instruction in the culinary arts, which requires students under 21 years of age to taste beer, ale, porter, wine, other similar malts or fermented beverages, or alcoholic liquors. In addition, this law provides that the State Commission on Higher Education must approve all proposed courses of instruction in the culinary arts, which require students under 21 years of age to taste beer, ale, porter, wine, other similar malts or fermented beverages, or alcoholic liquors. Finally, this law provides that bartending courses of instruction or similar courses of instruction can not require students under 21 years of age to taste beer, ale, porter, wine, other similar malts or fermented beverages, or alcoholic liquors.

The State of South Carolina adopted the aforementioned laws in 1998.

B. EFFECT OF PROPOSED CHANGES:

This bill allows a student under 21 years of age but over 17 years of age to possess and taste alcoholic beverages if such beverages are delivered as part of the student's required curriculum at a college that offers at least a baccalaureate degree and is accredited by one of the six regional accreditation boards recognized by the Department of Education. The alcoholic beverages can never be offered to a student for the purposes of consumption or imbibition and the alcoholic beverages must always remain in the possession and control of instructional personnel who must be at least 21 years of age. Finally, the college involved and each participating student must indemnify and hold harmless the State of Florida.

ELIGIBLE INSTITUTIONS

In order for a student under 21 years of age but over 17 years of age to possess and taste alcoholic beverages as part of the required curriculum, he or she must attend a regionally accredited college that offers at least a baccalaureate degree. The six regional accreditation boards are the Western Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, and the Southern Association of Colleges and Schools. Presently, there are 10 public universities and 57 independent colleges and universities operating in Florida that meet the aforementioned criteria.

Some programs of study that could require students as part of the curriculum to possess and taste alcoholic beverages include programs in hospitality and culinary arts. Hospitality and culinary arts programs are available not only at four-year institutions, but also at public community colleges; private postsecondary institutions; and private postsecondary career education institutions. These institutions would be excluded from the provisions of this bill because they do not award baccalaureate degrees. In addition, it appears that schools that are nationally accredited rather than regionally accredited would also be excluded from the provisions of this bill even if these institutions offer similar programs of study.

ELIGIBLE PROGRAMS OF STUDY

The bill provides that a student under 21 years of age but over 17 years of age can possess and taste alcoholic beverages if such beverages are "delivered as part of the student's required curriculum" at a regionally accredited college that offers at least a baccalaureate degree. The bill does not limit the Beverage Law exemption to specific programs of study, such as hospitality or culinary arts programs, where requiring students to possess and taste alcoholic beverages could be part of the curriculum. The bill also does not provide for a standardized review process, such as the process implemented in South Carolina, that determines the legitimacy and appropriateness of specific programs of study requiring students under the legal drinking age to possess and taste alcoholic beverages. Therefore, it appears the exemption can apply to any academic program as long as tasting and possessing alcoholic beverages are required by the program's curriculum.

PERMISSIBLE ALCOHOLIC BEVERAGES

The bill provides an exemption to the Beverage Law which permits students under the legal drinking age to possess and taste "alcoholic beverages." The term "alcoholic beverages" as used in chapters 561, 562, 563, 564, 565, 567, and 568, Florida Statutes, is defined by section 561.01, Florida Statutes, as "distilled spirits and all beverages containing one-half of one percent or more alcohol by volume." Much of the discussions between committee staff and representatives of the education community regarding HB 165 centered predominantly around examples involving wine. However, it appears that the provisions of the bill would permit students over 17 years of age to taste and possess any alcoholic beverage as long as it is required by the curriculum.

INDEMNIFICATION

The bill provides that a student under the legal drinking age can possess and taste alcoholic beverages that are delivered as part of the curriculum at a regionally accredited college "if the college indemnifies the state and causes each participating student to execute a waiver and consent in favor of, and indemnifies and holds harmless, the state." To be eligible for the exemption that HB 165 provides, it appears that a college must indemnify the state and require each participating student to also indemnify the state. Provisions contained in section 768.28(18), Florida Statutes, stipulate the following:

"Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence."

When addressing this section in AGO 95-61, the State Attorney General opines that this section prohibits a state or local governmental agency from entering into a contract with another state or local governmental agency if that contract includes an indemnification or hold harmless provision. Therefore, the provision contained in HB 165 that requires the college to indemnify the state appears to exclude any public postsecondary institution from the exemption that the bill creates. Further review of this matter is recommended.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Amends sections 562.11 and 562.111, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 562.11, Florida Statutes, provides an exemption to the Beverage Law by allowing an individual to provide an alcoholic beverage to a student who is under 21 years of age but over 17 years of age, if the alcoholic beverage is provided as part of the student's required curriculum at a college that offers a baccalaureate degree and is accredited by one of the six regional accreditation boards recognized by the Department of Education; provides that a student who is under 21 years of age but over 17 years of age can taste alcoholic beverages that are provided only for instructional purposes; provides that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition; provides that the alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age; and provides that the college involved and each participating student must indemnify the state.

SECTION 2: Amends section 562.111, Florida Statutes, provides an exemption to the prohibition against the under aged possession of alcoholic beverages to a student who is over 17 years of age if the student is tasting the alcoholic beverage as part of his/her required curriculum at a college that offers a baccalaureate degree and is accredited by one of the six regional accreditation boards recognized by the Department of Education; provides that alcoholic beverages can never be offered to a student who is under 21 years of age but over 17 years of age for the purposes of consumption or imbibition; and provides that the alcoholic beverages must remain in the possession and control of instructional personnel who are at least 21 years of age.

SECTION 3: Establishes an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Please see Fiscal Comments.

2. Recurring Effects:

Please see Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

Please see Fiscal Comments.

4. Total Revenues and Expenditures:

Please see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

United States Code: Title 23, Section 158, provides that the Secretary of Transportation shall withhold 10% of the amount required to be apportioned to a state for expenditures on the National Highway System, the Congestion Mitigation and Air Quality Improvement Program, the Interstate System, and the Federal-Aid Urban Systems Program "in which the purchase or public possession in such state of any alcoholic beverage by a person who is less than 21 years of age is lawful." This title does not specify whether or not a state jeopardizes 10% of its federal transportation funds if it permits the possession and tasting of alcoholic beverages by persons under 21 years of age under circumstances such as part of a required instructional curriculum. The United States Department of Transportation is currently unable to conclusively resolve this issue without the request of a legal opinion. Committee staff requested a legal opinion from the United States Department of Transportation on February 17, 1999 in order to resolve the issue. Therefore, the fiscal impact on state funds is currently indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Staff of the Committee on Judiciary researched the question raised in the prior committee regarding indemnification agreements between units of state government. There is no relevant judicial authority on point on this issue, and the question remains whether a promise to indemnify the state constitutes a contract violative of s. 768.28, F.S. Technically speaking, a unilateral promise by a student or public educational institution to indemnify the state would not constitute a contract, since the promise would not be made in exchange for any consideration from the state. The question may be left to the educational institutions that offer programs that would benefit from the bill. These institutions may seek clarification of this issue through declaratory judgment or other legal proceedings.

Staff of the Committee on Judiciary have been advised that Washington, D.C. counsel for the Department of Transportation has verbally indicated to House staff that the bill will not trigger any negative action by the Department under 23 U.S.C. s. 158. Committee Staff have attempted to confirm this informal position with the Department without result.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the House Committee on Colleges & Universities adopted an amendment without objection that is currently traveling with the bill. The amendment provides the exemption to the Beverage Law if a student tastes and possesses an alcoholic beverage that is delivered as part of the student's required curriculum at a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and is either licensed or exempt from licensure by the State Board of Independent Colleges and Universities or licensed by the State Board of Nonpublic Career Education. These two boards only have jurisdiction over private postsecondary institutions. The bill originally provided the exemption if a student tastes and possesses an alcoholic beverage that is delivered as part of the student's required curriculum at a regionally accredited college that offers at least a baccalaureate degree.

VII. SIGNATURES:

COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Daniel Furman

Staff Director:

Betty H. Tilton, Ph.D.

AS REVISED BY THE COMMITTEE ON JUDICIARY:

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