

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Higher Education Committee

BILL: CS/SB 1954

INTRODUCER: Regulated Industries Committee and Senator Hill

SUBJECT: Alcoholic Beverages

DATE: April 6, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Harkey	Matthews	HE	Pre-meeting
3.			CJ	
4.			GA	
5.				
6.				

I. Summary:

The bill prohibits the sale, delivery or service of alcoholic beverages to persons under 21 years of age. The current prohibition is limited to alcoholic beverage licensed premises.

The bill amends s. 322.056, F.S., to provide that all persons under 21 years of age who illegally possess alcohol or who misrepresent their age to illegally obtain alcohol may be subject to the suspension or revocation of their driving privilege.

The bill requires the State Board of Education, in consultation with the Board of Governors, to develop an annual report regarding the extent of alcohol abuse at the state universities. The university boards of trustees, to the extent delegated by the Board of Governors, and the community college boards of trustees must each establish and annually evaluate a plan to reduce and eliminate alcohol abuse, including underage alcohol use.

This bill amends sections 322.056, 562.11, 1001.02, 1001.64, and 1001.74 of the Florida Statutes.

II. Present Situation:

Prohibitions against underage access to alcohol

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve, 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 alcoholic beverages on the licensed premises.¹ Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Section 562.11(1)(b), F.S., prohibits a licensee or her or his agents from providing alcoholic beverages to an employee younger than 21 years of age except as provided in ss. 562.111 and 562.13, F.S., or allowing an underage employee to consume alcoholic beverages on the premises while in the scope of employment. A licensee² or his or her agent convicted of violating this provision is guilty of a misdemeanor of the first degree punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

The prohibition in s. 562.11, F.S., is limited to violations that occur on alcoholic beverage licensed premises, and does not apply to instances in which a person furnishes an alcoholic beverage to a person under legal age at locations that are not licensed to serve alcoholic beverages.

Section 562.11(2), F.S., prohibits a person from misrepresenting or misstating his or her age or the age of another person for the purpose of inducing any alcoholic beverage licensee or his or her agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age. It also prohibits any person under 21 years of age from purchasing or attempting to purchase alcoholic beverages. Any person convicted of violating this provision is guilty of a misdemeanor of the second degree. Any person under the age of 17 is within the jurisdiction of the circuit court and is treated as a juvenile delinquent.

Section 562.111(1), F.S., prohibits a person under 21 years of age from having an alcoholic beverage in his or her possession. Section 562.111, F.S., exempts persons employed under the provisions of s. 562.13, F.S., and acting in the scope of her or his employment. Any person under the age of 21 convicted of violating this section is guilty of a misdemeanor of the second degree. A subsequent conviction is a misdemeanor of the first degree.

Persons 18 years of age or older may be employed by alcoholic beverage licensees. Section 562.13, F.S., prohibits alcoholic beverage vendors from employing any person less than 18 years of age, but this prohibition does not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;

¹ Section 561.01(11), F.S., defines licensed premises to include “not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch . . .”

² Section 561.01(14), F.S., defines licensee as “a legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15.”

- Persons under the age of 18 employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student 17 years of age or older with written permission of his or her principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and the student's duties provide training that may lead to advancement in the food service establishments;
- Persons under the age of 18 employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Persons under the age of 18 employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician; or
- Persons under the age of 18 who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation or service of alcoholic beverages.

A minor subject to s. 562.13, F.S., may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Section 562.111(2), F.S., also permits a student who is at least 18 years of age to possess alcoholic beverages in the tasting of alcoholic beverages as part of the student's required curriculum at a postsecondary educational institution. The student may only taste, but not consume or imbibe, the alcoholic beverages. The alcoholic beverages must at all times remain in the possession and control of authorized instructional personnel of the college who are 21 years of age or older.

Section 856.015, F.S., prohibits open house parties at a residence if any alcoholic beverage or controlled substance is possessed or consumed by any minor and the person in control of the residence knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence. The person in control of the residence must take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug. Anyone convicted of a violation of this provision is guilty of a misdemeanor of the second degree.

The open house party prohibition in s. 856.015, F.S., requires that the person in control of the residence have actual knowledge of the possession by the underage person. It is not sufficient proof that the person should have known of the possession or failed to take reasonable steps to prevent the illegal possession. The provision also requires that the person in control of the residence take reasonable steps to prevent the possession. However, this condition has been interpreted as requiring that the person in control take reasonable steps to prevent the continued possession of the alcohol beverage or drug by the underage person after attaining actual knowledge of the illegal possession.³

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

Driver's License Penalties

Section 562.11(2)(c), F.S., authorizes the courts to impose the following additional penalties if a person uses a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV) in violation of s. 562.11, F.S.:

- The court may order the person to participate in public service or a community work project for a period not to exceed 40 hours; and
- The court shall direct the DHSMV to withhold issuance of, or suspend or revoke, the person's driver's license or driving privilege, as provided in s. 322.056, F.S.

Chapter 2006-203, L.O.F., amended s. 562.11, F.S., to require the courts to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege pursuant to s. 322.057, F.S., of any person who violates the sale to persons under 21 years of age prohibition in s. 562.11(1), F.S. It exempts alcoholic beverage licensees and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her license, employment, or agency.

Chapter 2006-203, L.O.F., provides that the court may order the department to issue a driver's license restricted to business or employment purposes. It provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than three months or more than six months for a first violation and one year for any subsequent violation. Chapter 2006-203, L.O.F., took effect October 1, 2006.

Division of Alcoholic Beverage and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume."

Chapter 563, F.S., relates to the regulation of beer and malt beverages. Chapter 564, F.S., relates to the regulation of wine and fortified wine. Chapter 565, F.S., relates to the regulation of liquor. According to the division, it has 167 sworn law enforcement agents and approximately 70,000 licensees.

Location-Neutral Prohibition Against Delivery of Alcohol to Persons Under 21

In *United Services Automobile Association v. Butler*⁴ (*Butler*), the underage sale, delivery or service prohibition in s. 562.11, F.S., was interpreted as being limited to violations that occur on the licensed premises and not applicable to instances that occur at locations that are not licensed to serve alcoholic beverage.

⁴*United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

Based upon discussions with several State Attorney offices across the state, it appears that s. 562.11(1)(a), F.S., is not being interpreted consistently among the judicial circuits. Some State Attorney offices interpret the provision as applicable to violations that occur *only* on licensed alcoholic beverage premises, while other offices interpret the provision more broadly to include *both* licensed and unlicensed locations. According to the division, this provision is also not interpreted consistently among the agency's district offices.

In instances involving an adult who gives an alcoholic beverage to a child under 18 years of age at an unlicensed location, jurisdictions that follow the *Butler* decision can use s. 827.04, F.S., to charge the adult with a first degree misdemeanor violation of contributing to the delinquency of a child. This is a greater penalty than the second degree misdemeanor offense in s. 562.11(1)(a), F.S.

When an adult serves an alcoholic beverage to another adult who is less than 21 years of age, jurisdictions that follow the *Butler* decision may also rely on s. 777.011, F.S., to charge the adult as a principal in the first degree. This violation charges the person who gives the alcohol to the underage person with aiding and abetting the person to illegally possess the alcoholic beverage. A violation of s. 777.011, F.S., as a principal in the first degree for a violation of underage possession in s. 562.11(1)(a), F.S., constitutes a second degree misdemeanor.

The lack of clarity in s. 562.11(1)(a), F.S., regarding whether a violation of this section is limited to alcoholic beverage licensed premises and the inconsistent interpretation of this provision across the state, may contribute to the inequitable application of criminal penalties. For example, an adult may be charged with a second degree misdemeanor violation of s. 562.11(1)(a), F.S., while another adult in a different jurisdiction, but with the same circumstances, may be charged with a first degree misdemeanor violation of contributing to the delinquency of a child under s. 827.04, F.S.

Driver's License Revocation for 18 to 20 year-old Violators

Persons under 21 years of age who violate s. 562.11(2), F.S., by misrepresenting or misstating their age or the age of another when purchasing, or attempting to purchase, or when inducing a vendor to sell, give, serve, or deliver alcoholic beverages are subject to a driver's license suspension under s. 322.056, F.S. However, the applicability of s. 322.056, F.S., is limited to persons under 18 years of age. Persons who possess alcoholic beverages in violation of s. 562.111, F.S., are also subject to having their driver's license suspended under s. 322.056, F.S., and that penalty is also limited to persons under 18 years of age.

Persons found to have violated ss. 562.11(2) and 562.111, F.S., are subject to disparate treatment based upon their age. For example, a seventeen year-old who misrepresents his or her age to purchase alcohol may have his or her driver's license revoked, but a nineteen year-old person who violates the same provision is not subject to this penalty. Prevention proponents assert that this inequitable age-based penalty structure undermines the seriousness of the prohibition, which proponents argue should be applied consistently to anyone under 21 years of age.

Interim Project 2007-135

The Committee on Regulated Industries studied the issues presented by underage drinking and alcohol abuse on university and college campuses.⁵ The study included a review of current law and surveyed the concerns of the affected interests, including substance abuse and prevention experts, the alcoholic beverage industry, law enforcement, and university representatives. The study reviewed the underage sale prevention efforts of the alcoholic beverage industry, and the laws of other states.

The interim study included a survey to all state universities and selected private colleges and universities and public community colleges. The survey addressed the schools' experiences with alcohol-related incidents and their efforts to prevent underage drinking and irresponsible drinking by students of legal age. All of the state universities⁶ and eight community colleges⁷ responded to the survey. Three independent universities responded to the survey.⁸ The report provides a summary of the responses to the survey questions. The report noted that the colleges and universities do not consistently or uniformly track or maintain records or data on alcohol related issues. For example, the report noted that not all schools investigate the deaths of their students or record whether a student's death is alcohol-related. The report also noted that the universities and community colleges also provide different prevention and enforcement efforts.

The interim project resulted in the following recommendations:

- Amend s. 562.11, F.S., to prohibit the sale, delivery or service of alcoholic beverages to persons under 21 years of age without limiting the prohibition to alcoholic beverage licensed premises.
- Amend s. 562.111, F.S., to prohibit the consumption of alcoholic beverages by persons under 21 years of age.
- Amend s. 322.056, F.S., to provide that violations of ss. 562.11(2) and 562.111, F.S., by all persons under 21 years of age may be subject to the provision's driver's license penalties.
- Amend ss. 322.05 and 322.212, F.S., to permit alcoholic beverage vendors and their employees to confiscate driver's licenses and identification cards believed to be fraudulent, provided that any seized identification be given to the local law enforcement

⁵ See Committee on Regulated Industries, *Underage Drinking and Alcohol Abuse on University and College Campuses*, report no. 2007-135, November 2006.

⁶ The state universities are: Florida A & M University, Florida Atlantic University, Florida Gulf Coast University, Florida International University, Florida State University, New College of Florida, the University of Central Florida, the University of Florida, the University of North Florida, the University of South Florida, and the University of West Florida.

⁷ The survey was submitted to the state's 28 community colleges with the assistance of the Division of Community Colleges and Workforce Education within the Florida Department of Education. The eight community colleges that responded to the survey are: Brevard Community College, Broward Community College, Central Florida Community College, Gulf Coast Community College, Chipola College, North Florida Community College, Okaloosa-Walton College, and Pensacola Junior College.

⁸ The independent universities that responded to the survey are: the University of Tampa, Nova Southeastern University, and the University of Miami.

agency or to the Division of Alcoholic Beverage and Tobacco (division) within 24 hours, or another reasonable period of time. Vendors should also be given protection from civil or criminal liability for seizing a license or identification card they believe to be fraudulent.

- Amend s. 562.45(2)(a), F.S., to provide that counties and municipalities are authorized to enact ordinances regulating drink specials, including the advertisement of drink specials.
- If the legislature decides to require the registration of beer kegs, the legislature should require retailers to affix unique identification tags to beer kegs; vendors to keep a record of the sale of each keg that includes the identification number for the sold keg along with the purchaser's name, address, telephone number, and driver's license number for a specified period; vendors to obtain the signature of the purchaser affirming that the buyer will not permit anyone under 21 years of age to consume the alcohol in the keg; vendors to maintain a record that lists the location where the beer is to be consumed; and sellers to make available the seller's keg registration forms to law enforcement during regular business hours. The keg registration requirement may also require deposits, define the minimum gallonage for kegs subject to these requirements, prohibit the defacing of the keg labels, prohibit the use of false identification in the keg registration process, and prohibit the possession of unlabeled kegs.

If the legislature chooses to regulate the direct shipment of alcoholic beverages to consumers, the legislature should:

- Require age verification procedures for the point of delivery, point of sale, or both, which, at minimum, require an adult to provide proof of age with a valid photographic identification at the time of delivery;
- Require that containers of wine shipped directly to consumers must be conspicuously labeled with words that identify them as containing alcohol and require the signature of a person 21 years of age or older before delivery can be made;
- Impose specific shipping requirements on common carriers, including providing that the common carrier must require the recipient of wine to provide proof of age and the recipient of the wine to sign an acknowledgment of receipt. The common carrier should also be required to refuse delivery if the recipient refuses to provide proof of age.

The report also directed the following recommendations to the state agencies:

- The Office of Drug Control and the Department of Business and Professional Regulation, should, in collaboration with other state agencies, review the benefits and feasibility of initiating a toll-free underage drinking tip line for citizens to anonymously report house parties involving underage drinking, plans to purchase alcohol for underage persons, and retailers who are willing to sell alcohol or drugs to underage persons. This tip line should be available to receive calls after regular business hours and on weekends. This review should include determining the appropriate state agency to operate the tip line and the feasibility of seeking federal funding.

- The division should attempt to obtain federal grant money to provide additional law enforcement agents dedicated to enforcement of underage drinking prohibitions, and to provide additional staffing for the ICARE program. The division should, in its 2007 Budget Request, request additional funding for the ICARE program.
- The division should promote compliance with the Responsible Vendor Act on its website and provide retail vendors with guidance on how to comply with its provisions.

The report recommended that the state universities and community colleges review the enforcement, prevention, and intervention efforts and practices of the other schools in this state and nationally relating to underage and responsible alcohol use in order to determine the best practices for each institution of higher learning.

The report also recommended that the alcoholic beverage industry work with the local coalitions to establish Hospitality Resource Panels in cities and counties around the state, especially in communities where colleges and universities are located.

State University System

The State University System is established by art. IX, s. 7, of the Florida Constitution. The constitution also creates the Board of Governors and provides that the Board of Governors shall “operate, regulate, control, and be fully responsible for the management of the whole university system.” Section 1001.705, F.S., establishes the responsibility of the Board of Governors for the State University System.

Section 1002.02, F.S., sets forth the general powers of the State Board of Education. Sections 1001.64 and 1001.74, F.S., set forth the powers and duties of the boards of the trustees for the state universities and community colleges, respectively.

III. Effect of Proposed Changes:

Location-Neutral Prohibition against Delivery of Alcohol to Persons Under 21

The bill amends s. 562.11(1)(a)1., F.S., to prohibit the sale, delivery or service of alcoholic beverages to persons under 21 years of age without limiting the prohibition to alcoholic beverage licensed premises. It also provides that it is unlawful for any licensee or his or her or its agents, officers, servants, or employees to permit a person under 21 years of age to consume or possess alcoholic beverage on the licensed premises.

Driver’s License Revocation for 18 to 20 year-old Violators

The bill amends s. 322.056, F.S., to delete the provision’s limitation to persons under 18 years of age. The bill would provide that violations of ss. 562.11(2), 562.111, F.S., and ch. 893, F.S., would subject any person to the withholding, suspension, or revocation of his or her driver’s license.

Annual Reporting Requirement for the State Board of Education

The bill amends s. 1001.02, F.S., to require the State Board of Education, in consultation with the Board of Governors, to develop an annual report regarding the extent of students' alcohol and illicit drug abuse, including underage alcohol use, at the state universities.

The report must include a review of the enforcement, prevention and intervention policies and practices of the state universities, including the need for uniform reporting, data collection, and record keeping.

The report must:

- Detail state university policies and practices regarding the use and possession of alcohol including:
 - The extent to which alcohol use and possession is permitted during university sponsored events;
 - Parental notification of an underage student's violation of the university's alcohol policy;
 - Cooperation with community coalitions, non-profit organizations, law enforcement, and the alcoholic beverage industry;
 - Responsible alcoholic beverage service training at on-campus facilities; and
 - The advertisement of alcoholic beverages.
- Identify the education, prevention, intervention, and enforcement efforts designed and implemented to promote responsible student behavior, personal responsibility, and to reduce alcohol abuse and underage alcohol possession and consumption;
- Collect data on the number of alcohol-related deaths of students that are known to the university, the number of on-campus violations and adjudications of state or local laws and school policy, and any university surveys.
- Include information that allows for useful comparative analysis between universities, including the university's total student population, the number and percentages for students who are full-time, part-time, reside on-campus, and are under and over 21 years of age.
- Assess the effectiveness of the education, prevention, intervention, and enforcement efforts, including:
 - Whether existing university resources are sufficient to implement the university's efforts, and whether any additional resources are needed; and
 - Whether progress has been made in reducing alcoholic abuse and underage possession or consumption and whether specific practices or polices need improvement, if any.
- Assess whether the reporting required by this bill assists the determination of the effectiveness of the universities' efforts and whether there is a need for this annual report.
- Assess whether there is a need for uniformity in the reporting, data collection, and recordkeeping of the state universities.

The bill also requires the annual report to be submitted by November 15, 2008, and by November 15 in each successive year, to the Governor, the President of the Senate, and to the Speaker of the House of Representatives.

The bill also requires the State Board of Education to encourage the non-public universities and colleges to contribute to the findings of the annual report and to participate in its preparation.

University and Community College Board of Trustees

The bill amends s. 1001.64, F.S., to require that the boards of trustees for the community colleges establish a plan to reduce and eliminate alcohol abuse, including underage alcohol use. The boards of trustees must conduct an annual evaluation of the effectiveness of the plan.

The bill amends s. 1001.74, F.S., to also require that the university boards of trustees, to the extent delegated by the Board of Governors, develop a plan to reduce and eliminate alcohol abuse and underage alcohol use. It also requires that the boards annually evaluate the effectiveness of the plan.

Effective Date

The bill will take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article IX, s. 7 of the State Constitution provides that the Board of Governors of the State University System shall operate, regulate, control, and be fully responsible for the management of the whole university system. On March 28, 2007, the 2nd judicial circuit ruled that ss. 1001.74 and 1001.75, F.S., relating to the powers and duties of university boards of trustees and university presidents, were unconstitutional as they purport to give the State Board of Education control and authority over the State University System in contravention of Article IX, s. 7 of the State Constitution.⁹ Additionally, the court

⁹ *Floridians for Constitutional Integrity, Inc., v. State Board of Education, and the Board of Governors*, No. 2004 CA 003040 (Fla. 2nd Cir. Ct.), Amended Summary Final Judgment (March 28, 2007). The time for appeal has not run.

invalidated eight other sections of law under the same reasoning.¹⁰ This bill would require the State Board of Education, in consultation with the Board of Governors, to develop an annual report composed of university responses and data. As the report and assessment only relates to the state universities, this provision could be challenged.¹¹

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State Board of Education would incur a cost for the preparation of the report required by this bill. There may also be indeterminate costs associated with the preparation of an alcohol policy by the university and community college boards of trustees.

The Board of Governors of the State University System estimates that the bill would have a fiscal impact on universities because there is a provision in the bill that requires in-depth reporting relating to alcohol and illicit drug users, as well as alcohol use in underage students. The board estimates at least 8.25 FTE would be required across the university system to implement these requirements, with an estimate of \$653,078 in recurring costs for the additional FTEs. However, to the extent that state universities and New College already have staff assigned to gather data concerning alcohol and illicit drug use by students, the cost would be mitigated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Id.*

¹¹ *See id.*

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
