

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 Regulated Industries Committee

BILL: CS/SB 2044

INTRODUCER: Regulated Industries Committee and Senator Posey

SUBJECT: Alcoholic Beverages/Persons Under 21 Years

DATE: April 1, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | | | CJ | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| 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:

The bill amends s. 562.11(1)(a)1., F.S., to provide that a person commits a misdemeanor of the first degree if they violate, within one year of a first violation, the prohibition against selling, giving, serving or permitting to be served alcoholic beverages to a person under 21 years of age or permitting a person under 21 years of age to consume alcoholic beverages on the licensed premises.

The bill provides a complete defense to any person charged with a violation of the prohibition in s. 561.11(1)(a), F.S., if the buyer or recipient of the alcoholic beverage falsely evidenced that he or she was of legal age, a reasonably prudent person would believe that person's appearance to be 21 years of age or older, the accused person carefully checked an identification card, and the accused person relied upon the identification card, the representation in the identification card, and the buyer or recipient's appearance.

This bill substantially amends section 562.11, 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. Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree,¹ 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 licensee or his or her agent convicted of violating this provision is guilty of a misdemeanor of the first degree² 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 locations, 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.³

Section 562.11(1)(c), F.S., provides that an alcoholic beverage licensee who violates the prohibition in s. 562.11(1)(a), F.S., has a complete defense to any civil action, except for any administrative action by the division under the Beverage Law,⁴ if at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage;
- The appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage;
- The licensee carefully checked one of the person's identification card;
- The licensee acted in good faith and in reliance upon the representation; and
- The appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage.

Section 569.101, F.S., provides a similar defense to any person charged with selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age. Florida law

¹ Pursuant to s. 775.082(4)(b), F.S., a person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days. Pursuant to s. 775.083(1)(e), F.S., a person who has been convicted of a misdemeanor of the second degree may be sentenced to pay a fine not to exceed \$500.

² Pursuant to s. 775.082(4)(a), F.S., a person who has been convicted of a misdemeanor of the first degree may be sentenced by a definite term of imprisonment not exceeding one year. Pursuant to s. 775.083(1)(d), F.S., a person who has been convicted misdemeanor of the first degree may be sentenced to pay a fine not to exceed \$1000.

³ See *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

⁴ Section 561.01(6), F.S., defines the term "the Beverage Law" to mean this chs. 561, 562, 563, 564, 565, 567, and 568.

does not provide a similar defense to non-licensees and in administrative actions by the division under the Beverage Law.

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 years 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;⁵
- Persons under the age of 18 years 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 years 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 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years 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 years 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.

⁵ See ss. 450.095 and 450.132, F.S.

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 to purchase or attempt to purchase alcoholic beverages. Any person convicted of violating this subsection is guilty of a misdemeanor of the second degree. Any person under the age of 17 years is within the jurisdiction of the circuit court and is treated as a juvenile delinquent.

Section 856.015, F.S., prohibits allowing an open house party to take place 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 said 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.

Additional 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.,⁶ 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.

⁶ Section 322.057, F.S., provides the procedures for revocation or suspension of the driver's license for persons found guilty of violating s. 562.11(1)(a), F.S. It authorizes a suspension of not less than six months and not more than one year for a first violation and of two years for a subsequent violation. *See* discussion regarding driver's license revocation for 18 to 20 year-old violators.

III. Effect of Proposed Changes:

The bill amends s. 562.11(1)(a)1., F.S., to provide that a person commits a misdemeanor of the first degree if they violate, within one year of a first violation, the prohibition against selling, giving, serving or permitting to be served alcoholic beverages to a person under 21 years of age or permitting a person under 21 years of age to consume alcoholic beverages on the licensed premises.

The bill amends s. 562.11(d), F.S., to provide a complete defense to any person charged with a violation of the prohibition in paragraph (a), at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The buyer or recipient falsely evidenced that he or she was 21 years of age or older;
- The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older;
- The accused person carefully checked the identification card presented by the buyer or recipient; and
- The accused person acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

This defense is identical to the defense to any civil action provided in s. 562.11(1)(c), F.S. The bill would extend this defense to criminal actions and to administrative actions by the division under the Beverage Law.

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 enhanced penalties in this bill may have a fiscal impact on the criminal justice system.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

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 April 1, 2008

The committee substitute creates s. 561.11(1)(d), F.S., to provide a complete defense to persons who violate the prohibition in s. 561.11(1)(a), F.S.

B. **Amendments:**

None.