



The Florida Senate

Interim Project Summary 2007-135

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Committee on Regulated Industries

UNDERAGE DRINKING AND ALCOHOL ABUSE ON UNIVERSITY AND COLLEGE CAMPUSES

SUMMARY

This study examines the programs and laws that address alcohol use by persons under the age of 21, and alcohol abuse on university and college campuses in Florida. During the 2006 Regular Session, Senator Hill requested that the committee staff conduct an interim study on the use of alcohol on public universities and college campuses. Senator King requested that committee staff review the measures that may be necessary to strengthen the current laws relating to access to alcohol by minors and the issue of underage drinking. The report reviews the responses of the state's universities and colleges to several questions presented by Senator Hill, including the number of alcohol-related campus incidents, hospitalizations, and arrests. The senator is also interested in whether there are any programs on campuses to deter the use of alcohol, and whether sports venues on campuses are funded by the alcohol industry.

The report makes several recommendations, including amending the Beverage Law to clarify that sale to persons under 21 years of age is prohibited regardless of the location; prohibit underage consumption; provide uniform penalties relating to driver license revocation for fake identifications; authorize confiscation of fake identifications; authorize local ordinances on drink specials; specify keg registration requirements if enacted; and provide age regulations for direct-shipment of wine.

The report includes recommendations directed to the state agencies, colleges and universities, including that the Office of Drug Control and the Division of Alcoholic Beverages and Tobacco (division) should evaluate the feasibility of a 24-hour underage drinking hotline; the division should seek federal grant money for its ICARE program; the Responsible Vendor Act should be promoted more by the division; and the

state's colleges and universities should evaluate programs for best practices.

BACKGROUND

Section 562.11(1)(a), F.S., prohibits the selling, giving, serving or permitting 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.

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.

Section 562.111(1), F.S., prohibits a person under 21 years of age from having alcoholic beverages 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.

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.

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.

Section 562.11(2)(c), F.S., authorizes courts to withhold issuance of, or suspend or revoke, a person's driver's license or driving privilege if that 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.

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.,¹ 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 agent of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her license, employment, or agency.

Section 768.125, F.S., commonly known as the Dram Shop Act,² provides civil liability for an injury or damage resulting from intoxication. The civil liability applies to a person who willfully and unlawfully sells or furnishes alcoholic beverages to a "person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages." Section 562.50, F.S., prohibits the sale and service of alcoholic beverage to habitual drunkards after being given written notice by that person's wife, husband, father, mother, sister, brother, child, or nearest relative. A violation is a misdemeanor of the second degree.

METHODOLOGY

Committee staff reviewed relevant statutory provisions, including the legal duties and responsibilities of the state's universities regarding on-campus alcohol use. Staff reviewed the current statutory provisions concerning the prohibition of underage drinking. Staff reviewed the current programs and resources that are available to the state's universities and colleges to address the issue of alcohol abuse on campus. Staff conducted surveys of the state's universities and

¹ 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.

² The term "dram" is a small unit of liquid, and the term "dram shop" refers to a bar, tavern or other location where alcoholic beverages, typically spirits, were traditionally sold by the dram.

colleges, and consulted with the staffs of the Department of Education, the Board of Governors, the Florida Drug Control Office, the Department of Children and Families, the Department of Juvenile Justice, and the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation. Staff participated in a "ride along" with Tallahassee Police Department officers on "party patrol" to witness law enforcement efforts and the security and safety practices of retail vendors frequented by college students. Staff also met with alcoholic beverage industry representatives and other interested parties.

FINDINGS

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.³ In July 2006, the division announced that it had instituted a new program to assist Florida's law enforcement agencies to identify the providers of alcohol to underage persons when there is an accident or incident that results in the fatality of a minor. The program is called "Identifying Contributors to Alcohol Related Events" or "ICARE." The division has successfully traced two cases that have resulted in seven arrests. According to the division, traditional local law enforcement focuses on the traffic crash investigation and not on where the underage-aged person illegally acquired the alcohol. ICARE is intended to fill this gap in enforcement. The division is evaluating the possibility of applying for federal grant money to further support this program.

UNIVERSITIES AND COLLEGES

Committee Staff prepared and submitted a survey to all state universities, and to selected private colleges and universities, and public community colleges, which included specific questions that Senator Hill had asked that the committee and schools address. All of the state universities, eight community colleges,⁴ and three

³ Section 561.01(6), F.S., defines these sections as the Beverage Law. Section 561.08, F.S., requires that the division enforce the provisions of the Beverage Law.

⁴ 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

independent universities⁵ responded to the survey. The following is a summary of the responses.⁶

1. How many alcohol related deaths have there been in the past five years? The University of Tampa (UT) was the only school that reported any deaths (three) that occurred during a term break. Only five schools reported any alcohol related deaths.⁷ It is not clear whether all of the schools distinguished between on-campus deaths and off-campus deaths.

2. Does campus security/police have the authority to issue driving under the influence (DUI) warning or citations? If so how many have been issued over the past five years? Several of the schools responded to the survey by noting that they do not issue warnings for DUI violations, and none reported issuing any DUI warnings. All of the state universities reported that the university police had the authority to issue DUI citations and to make arrests.⁸ The most reported DUI arrests were from UF, which reported 399 arrests for DUI and 92 arrests for .02 citations.⁹ Only two state universities (FAMU and FIU) reported no DUI arrests. The community colleges' security personnel are not authorized to make DUI arrests.

3. How many alcohol related incidents have there been in the past five years? The school with the highest reported number of incidents (2191) was UT. The state university with the highest reported number of incidents was UF with 694 incidents with arrests and 392 incidents without an arrest. The community

colleges reported a lower number of alcohol-related incidents than the four-year colleges and universities.

4. How many times have local law enforcement been called to campus for alcohol related incidents in the past five years? Most of the state universities responded by stating that their university police departments were self-sustaining and did not require outside assistance from local law enforcement. Only Florida Gulf Coast University (42), FIU (3), and UM (150) reported calling local law enforcement for assistance. Two schools (Nova and UT) reported that they did not keep a record of calls to local law enforcement.

5. How many alcohol related arrests have been made in the past five years? All of the universities reported the number of the arrests during the five year period. The University of Florida reported the most arrests (1093). Florida State University reported 1092 total arrests, while the University of Central Florida (UCF) reported the third most arrests at 497 total arrests. Only two community colleges, Gulf Coast Community College (2) and Brevard Community College (6), reported any arrests.

6. How many alcohol related arrests have resulted in incarceration? Five of the 14 responding universities reported incarcerations equal to the number of arrests.¹⁰ Five universities reported incarcerations that were significantly lower than the number of arrests.¹¹

7. Are there any programs on campus to deter the use of alcohol? If so, please describe these programs. All of the universities reported that they were actively concerned with the problem of alcohol abuse and irresponsible alcohol use. The universities and colleges responded with an extensive listing of the varied programs and resources. Only UCF and FAU reported that they notify the student's parents that the student has violated the school's alcohol policy. However, most of the schools noted that violations of the policy result in mandatory participation in the school's substance abuse programs. The prevention efforts of the colleges include providing on-campus programs dedicated to prevention research and education, providing treatment and counseling opportunities for

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.

⁵ The independent universities that responded to the survey are: University of Tampa (UT), Nova Southeastern University (Nova), and the University of Miami (UM).

⁶ Senator Hill's Letter to the committee, the survey, and survey responses are available for inspection or copying upon request of committee staff.

⁷ Florida State University, the University of Central Florida, the University of Florida, the University of Miami, and the University of Tampa.

⁸ See s. 316.193, F.S., for provisions dealing with driving under the influence, and s. 327.352, F.S., relating to boating under the influence.

⁹ Section 322.2616, F.S., provides that a law enforcement officer may detain a motor vehicle driver under 21 years of age whom the officer has probable cause to believe is under the influence of alcoholic beverages with a blood alcohol level of .02 or higher.

¹⁰ Florida A&M University, Florida International University, New College of Florida, the University of Central Florida, and the University of Miami.

¹¹ Florida Gulf Coast University, the University of Florida, the University of North Florida, the University of South Florida, and the University of West Florida.

alcohol dependent students, conducting what is termed social norms marketing, which involves educating students about the realities of alcohol use, e.g., that most students don't binge drink and responsible behavior is the norm, participating in national alcohol prevention campaigns such as the National Collegiate Alcohol Awareness Week (NCAAW),¹² providing late night, alcohol-free alternative social activities for students, and providing alternative transportation to encourage students not to drink and drive. All of the responding colleges and universities are members of the Florida Higher Education Alliance for Substance Abuse Prevention (FHE-ASAP),¹³ whose goal is to increase the effectiveness of campus and community prevention coalitions.

8. Are there any sports venues on campus funded by the alcohol beverage industry? If so, identify who does the funding and what they fund. Three schools (FAMU, FAU, and UNF) reported receiving funding from the alcoholic beverage industry for their athletic departments through corporate sponsorships.

9. Are there any beer or alcoholic beverage advertisements on campus? Most of the schools reported that there are no alcohol beverage advertisements on campus. Three universities (UWF, FAU, and UM) reported that alcoholic beverage advertisements can be found in on-campus restaurants and bars. Three universities (FAU, UNF, and UT) reported that they had alcoholic beverage industry advertisements in their athletic facilities.

10. How many alcohol related hospitalizations have there been within the past five years? Four universities (FAMU, FIU, FSU, and USF) and all of the community colleges reported that they did not know of any instances of alcohol-related hospitalizations. The number of hospitalizations varies greatly across the state. The colleges and universities reported a total of 367 known alcohol-related hospitalizations during the preceding five years.

11. What percentage of the student body is under the age of 21? On average, the universities reported that 38 percent of their students were under 21 years of age. On average, the community colleges reported that 42.8 percent of their students were under 21 years of age.

12. Does the university/college have any programs that foster or encourage the responsible use of alcohol by students? If so, please describe these programs. The universities' responses to this question are similar to the responses to Question 7.

13. Does the university/college have any programs to assist students with an alcohol abuse or dependency problem? If so, please describe these programs. All of the universities reported that they have one or more, on-campus, alcohol and substance abuse programs that can provide counseling for students with an alcohol or substance abuse problem. Only one community college, Gulf Coast Community College, reported that it provided on-campus counseling.

14. What is the university/college's policy regarding alcohol possession on campus, including in college/university housing or during events frequented by students? Florida A&M University was the only school to report that it is a "dry campus" and that students are not allowed to have alcohol on campus at any function or student housing. Most of the universities permit students over 21 years of age to possess beer or wine in their dorm rooms. Several universities reported that alcoholic beverages are permitted on campus at events and facilities, such as on-campus restaurants and meeting facilities, but that the events and facilities must comply with the school's alcohol policies. All of the schools prohibit alcohol in public areas of the campus.

15. Do any the college/university's sports teams utilize any off-campus or on-campus venues that serve alcoholic beverage during the team's sporting event? If so, what is the school's policy regarding the sale and service of alcoholic beverage during these sporting events. For example, does the school limit the sale and service of alcoholic beverage to certain times or limit the types of alcoholic beverage that may be served during the event? Five universities (FAMU, UNF, Nova, UT, and UWF) reported that they do not use off-campus sports venues and that they prohibit alcohol at all on-campus sporting events. All of the remaining universities reported that they use off-campus facilities for various sports that are licensed to sell alcoholic beverage, including golf, ice hockey, basketball, and football. Several schools noted that they have imposed limits for alcohol sales during off-campus sporting events. Four universities (FAU, UCF, UM, and USF) play football at off-campus stadiums, and reported that all alcohol sales stop at the beginning of the third quarter, and that sales are limited to beer, or

¹² See <http://www.bacchusgamma.org/ncaaw.asp> for information about National Collegiate Alcohol Awareness Week. (Last visited October 11, 2006.) For 2006,

¹³ See <http://www.fhe-asap.org/> (Last visited October 11, 2006.)

beer and wine. Two universities (FSU and UF) reported that they play their home football games at on-campus stadiums. They prohibit alcohol sales in these stadiums but permit alcohol use or possession in individual stadium suites, i.e., skyboxes.

16. What steps has the university/college taken to address the issue of underage alcohol consumption, and to address concerns relative to alcohol abuse, including binge drinking and alcoholism, within its student body? The responses of the universities and community colleges to this question were similar to the responses to questions 7 and 12. However, some schools noted additional programs and efforts. Florida A&M University is the only university that noted that it is on the Governor's Underage Drinking Task Force. According to the Office of Drug Control, all of universities are represented at meetings by an FHE-ASAP representative. The University of Florida also noted that it has joined the Campaign for Alcohol-Free Sports to reduce the amount of alcoholic-beverage advertising to underage students and young adults.¹⁴

ALCOHOLIC BEVERAGE INDUSTRY

The alcoholic beverage manufacturers and distributors have instituted extensive programs designed to prevent sales of their products to underage persons and to promote the responsible and legal consumption of alcoholic beverages. These efforts include establishing voluntary advertising and marketing standards that require that advertising and marketing materials be directed to adults and should not appeal to underage consumers, partnering with independent prevention advocates, research institutions, and local community coalitions and programs, using independent resources to improve the effectiveness of their prevention efforts, assisting local prevention programs by providing funding and printed materials, providing responsible vendor training to their retail vendors free of charge, and funding services to prevent drunk driving.

The principal, and potentially most effective, prevention activity conducted by the retail vendors is providing responsible vendor training to their employees. Many alcoholic beverage licensed establishments, especially those frequented by college students or underage persons, employ security

personnel, including off-duty law enforcement officers, to check identification cards at the entrance and to patrol the establishment to discourage, identify, and address underage drinkers and other illegal or disruptive behavior.

ISSUES AND POSSIBLE REMEDIES

Location-Neutral Prohibition Against Delivery of Alcohol to Persons Under 21. In *United Services Automobile Association v. Butler*¹⁵ (*Butler*), the underage sale, delivery or service prohibition in s. 562.11, F.S., was limited to violations that occur on alcoholic beverage licensed locations and not at other locations. Based upon discussions with several State Attorney offices across the state and the division, it appears that s. 562.11(1)(a), F.S., is not being interpreted consistently. When an adult gives an alcoholic beverage to a minor at a non-licensed 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.

Prohibiting Consumption of Alcohol by Underage Persons. Section 562.111, F.S., does not prohibit the consumption of alcoholic beverages. Thirty-one states appear to prohibit the possession and the consumption of alcoholic beverage by person under 21 years of age.¹⁶ Proponents of prohibiting underage alcohol consumption note that possession of alcoholic beverages can be difficult to prove. A consumption prohibition would permit law enforcement to arrest minors and underage person who are intoxicated even when the officer does not witness the actual possession of the alcoholic beverage container.¹⁷ Some states that prohibit consumption also set forth exceptions, including parent or legal guardian permission, presence of the parent or guardian, and whether the consumption occurred in a private residence. In New Hampshire, an alcohol concentration of 0.02 or more is prima facie

¹⁴ See <http://www.cspinet.org/booze/CAFST/> for more information on the Campaign for Alcohol Free Sports. (Last visited October 11, 2006.) The following Florida schools support this campaign: Jacksonville State University, University of Florida, Lynn University, Rollins College, and Saint Leo University.

¹⁵ *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

¹⁶ See: Alcohol Policy Information System at http://www.alcoholpolicy.niaaa.nih.gov/index.asp?SEC=%7B0D5C719E-FCE8-4E15-A367-4145C655505F%7D&Type=BAS_API (Last visited September 18, 2006.)

¹⁷ Law enforcement officers may arrest a person without a warrant when that person has committed a misdemeanor in the presence of an officer. See s. 901.15(1) F.S.

evidence of intoxication by a person under 21 years of age.¹⁸

Driver's License Revocation for 18 to 20 Year-old Violators. Persons under 21 years of age who violate ss. 562.11(2) and 562.111, F.S., are subject to a driver's license suspension under s. 322.056, F.S. But s. 322.056, F.S., limits this penalty to persons under 18 years of age. Prevention proponents assert that this penalty should be applied consistently across the under 21 years of age group.

Keg Registration. Several communities across the country have enacted keg identification or tagging requirements commonly referred to as "keg registration." These provisions are limited to beer kegs that are sold at retail for consumption off the alcoholic beverage licensed premises. Under keg registration, retailers are required to keep a record of the sale and affix unique identification tags to the kegs that permit law enforcement to track a keg to the vendor who sold it. Twenty-six states and the District of Columbia require keg-registration. Keg registration is supported by law enforcement because it may dissuade sales to underage persons, and help them identify the person or persons responsible for providing a beer keg that was used to serve an underage person. Opponents, including retail vendors, stress that the recordkeeping requirements would be too burdensome for a regulatory program of unproven efficacy.

Telephone Tip Line for Reporting Underage Drinking. The State of Kansas has a toll-free underage drinking tip line (1-866-MustB21) for citizens to anonymously report house parties or "pasture parties" involving underage drinking, plans to purchase alcohol for underage persons, and retailers who are willing to sell alcohol or drugs to underage persons. The tip line is operated 24 hours a day, seven days a week. In Florida, the division provides a toll free number for reporting underage drinking and sales. The telephone number is 1-866-540-SUDS (Stop Underage Drinking and Sales). However, this line only operates during the business hours (8 a.m. to 6 p.m.) on Monday through Friday. Tips made after hours or on the weekend must be left on the center's voice mail system.

Prohibiting the Sale or Service of Alcohol to Intoxicated Persons. Florida is one of three states that does not prohibit the sale or service of alcohol to intoxicated persons. Forty-seven states and the District

of Columbia have such a prohibition.¹⁹ Some alcohol abuse and prevention advocates, and some law enforcement professionals, support such a prohibition in Florida. Retail vendors advise that banning the sale or service of alcohol to intoxicated persons is unnecessary because the current laws and insurance restrictions are sufficient to address the problem.

Confiscation of Fraudulent Identification Cards. Law enforcement, vendors, and distributors who help train vendors in responsible vendor practices expressed the concern that the current law was unclear regarding whether vendors can retain driver's licenses and other identification cards that the vendor believed to be fraudulently presented. Section 322.212, F.S., prohibits the possession fraudulent drivers licenses, and s. 322.05(6), F.S., prohibits the possession of any fictitious, fraudulently altered, or fraudulently obtained identification card. Vendors are concerned that they could face civil or criminal charges for seizing an identification card they incorrectly believed to be fraudulent. Ten states provide for the confiscation of identification cards and provide vendors and their employees with protection from civil or criminal liability.

Mandatory Server Training. The Beverage Law does not require that persons who serve or sell alcoholic beverage must be trained in any way, including trained in skills needed to avoid sales of alcohol to underage persons, e.g., identifying fake identification cards. The Responsible Vendor Act at ss. 561.701 to 561.706, F.S., encourages responsible practices, including training, for serving and promoting the service of alcohol. The act encourages compliance by exempting qualified responsible vendors from revocation or suspension of their alcoholic beverage license for underage sale violations if they comply with its recordkeeping and training requirements.

Eighteen states have some level of mandatory training for servers or sellers, managers, or licensees. Alcoholic beverage industry representatives assert that mandatory training is not more effective than the current voluntary system, and that the costs of mandatory training and the

¹⁸ See N.H. Rev. Stat. Ann., s. 179:10.

¹⁹ See U.S. Department of Transportation, National Highway Safety Administration (NHTSA), *Prevention Over-Consumption of Alcohol – Sales to the Intoxicated and "Happy Hour" (Drink Special) Laws*, Revised February 2005. The report notes that Florida, Nevada, and Wyoming are the only states that do not have laws prohibiting the sale or service of alcohol to intoxicated persons.

attendant bureaucracy would be very burdensome for establishments with high employee turnover. One responsible trainer noted that most vendors in Florida are not familiar with or aware of the Responsible Vendor Act. The division's website does not reference the Responsible Vendor Act or provide vendors with guidance on how to comply with its requirements.

Regulating Drink Specials. Some states and municipalities regulate or prohibit drink specials. It appears that 23 states also prohibit drink specials to some degree. Drink specials may include free drinks, price-discounted drinks like two-for-one specials, "happy hour," and "all-you-can-drink" specials. Proponents of regulating drink specials argue that the specials encourage excessive and dangerous drinking and that many drink specials are marketed to college students. There is uncertainty regarding whether the Beverage Law pre-empts local government regulation of drink specials. There are no reported opinions regarding the authority of municipalities to regulate drink specials. The City of Tampa has requested an Attorney General's opinion on this issue. Representatives for the retail vendors and the alcohol distributors expressed the concern that limiting drink special for all vendors would also apply to businesses that do not cater to college students.

Prohibiting Underage Persons from Bars. Florida Law does not prohibit persons 18 to 20 years old from patronizing bars. Some alcohol-abuse prevention advocates assert that permitting underage persons in bars places them in an environment with a high risk for access to alcohol because patrons 21 years of age or older can buy drinks for the underage patrons and that it is more difficult to supervise a crowded establishment with underage patrons mixed-in with older adults. Six local governments in Florida restrict alcoholic beverage licensed establishments from permitting patrons under 21 years of age from entering the establishment.²⁰ The Florida ordinances generally provide exceptions, including for bona fide restaurants.

Proponents of banning underage persons in bars argue that the prohibition has reduced crime and the consequences of underage alcohol use in those communities. Opponents of such a ban stress the alcoholic beverage industry's efforts to curb underage drinking and that banning underage persons from bars would have little practical effect on underage drinking because underage persons can use fake identification

cards as effectively to enter an age-restricted bar as they can to illegally purchase alcohol. Opponents also stress that barring underage persons from bars would encourage them to socialize in locations that are not supervised. They also argue that the underage person's main source of alcohol is not alcoholic beverage licensees. They also stress the difficulty of defining a bar for purposes of the restriction.

Direct Shipment of Alcoholic Beverages to Underage Persons. In *Granholm v. Heald*,²¹ the U.S. Supreme Court held that states cannot allow in-state wineries to sell wine directly to consumers in that state while simultaneously prohibiting out-of-state wineries from also selling wine directly to consumers. The regulatory scheme that was invalidated by *Granholm* is comparable to Florida's regulatory scheme that permits in-state wineries to sell their wines directly to consumers but prohibits out-of-state persons from directly selling alcoholic beverages to Florida consumers. In *Bainbridge v. Turner*,²² the court enjoined the enforcement of ss. 561.54(1)-(2) and 561.545(1), F.S., which prohibit the direct shipping of alcoholic beverages to consumers from out-of-state, as unconstitutional under the authority in *Granholm* because they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

RECOMMENDATIONS

Staff recommends that the Legislature take the following actions:

- 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 locations.
- 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 a driver's license suspension.

²⁰ Ft. Lauderdale, Ocala, Ft. Myers, West Palm Beach, Manatee County, and Miami Beach.

²¹ *Granholm v. Heald*, 125 S.Ct. 1885, 161 L.Ed.2d 796 (2005).

²² *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM, (M.D. Fla. August 5, 2005).

- 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 the seized identification are given to the local law enforcement 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 that retailers affix unique identification tags to beer kegs, that vendors 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, that these records must be kept for a specified length of time, that the vendor 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, that the record list the location where the beer is to be consumed, and that the seller's keg registration forms must be made available 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, that, at minimum, require that an adult 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 requiring that the common

carrier must require that the recipient of wine provide proof of age, and that the recipient of the wine must 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 following recommendations are directed to the state agencies, the state's higher education institutions, and the alcoholic beverage industry:

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 state universities and community colleges should 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 alcoholic beverage industry should 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.