

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 202

SPONSOR: Committee on Regulated Industries and Senator Silver

SUBJECT: Beverage Law/Underage Students

DATE: March 23, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill allows certain postsecondary educational institutions to offer persons over 17 years of age, a required curriculum course that requires the tasting of alcoholic beverages for instructional purposes. The alcoholic beverages must remain in the possession and control of an authorized person who must be over 21 years of age. The student and the institution must agree to indemnify the state.

This bill substantially amends sections 562.11 and 562.111 of the Florida Statutes.

II. Present Situation:

Section 562.11, F.S., provides that it is unlawful to sell, give, or serve alcoholic beverages to a person under 21 years of age. It also provides that it is unlawful for any person to misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any alcoholic beverage licensee to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age. A person convicted of these provisions is guilty of a misdemeanor of the second degree.

Section 562.111, F.S., provides that it is unlawful for a person under the age of 21 to possess alcoholic beverages, unless the person is employed by a licensee and is acting within the scope of his or her employment. Any person under the age of 21 who is convicted of a violation of this section is guilty of a misdemeanor of the second degree, except that a subsequent conviction for this same type of offense results in a misdemeanor of the first degree.

III. Effect of Proposed Changes:

The bill amends s. 562.11, F.S., to provide that a person may give or serve alcoholic beverages to a student over 17 years of age under certain circumstances. The alcoholic beverage must be delivered as part of a student's required curriculum during classes and must at all times remain in

the possession and control of the instructional personnel, who must be 21 years of age or older. The alcoholic beverages must be provided for instructional purposes only and may not be offered for consumption.

The bill states that the

postsecondary educational institution must be institutionally accredited by an agency recognized by the United States Department of Education and be licensed or exempt from licensure by the State Board of Independent Colleges and Universities or be licensed by the State Board of Nonpublic Career Education.

The United States Department of Education recognizes several accrediting agencies including the Southern Association of Colleges and Schools (SACS). SACS is one of six private regional accrediting associations established to set standards and improve education in the colleges and schools of the south. The five others are 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, and the Northwest Association of Schools and Colleges. Florida's public universities and community colleges are accredited under SACS.

The State Board of Independent Colleges and Universities (SBICU) sets standards for certain private degree-granting colleges and universities. SBICU has oversight responsibility for 277 postsecondary institutions. 46 of these institutions utilize accreditation by an agency recognized by the United States Department of Education. These institutions may obtain a certificate of exemption from SBICU's licensing requirements. Likewise, public universities and community colleges are exempt from SBICU oversight.

The State Board of Nonpublic Career Education (SBNCE) exercises licensing authority over postsecondary career schools. These schools grant specialized associate degrees, diplomas, certificates, or other educational credentials to qualified students. There are approximately 450 such schools licensed in Florida. They include dog-grooming, bartending, beautician, and massage training programs. Some of these programs also are accredited.

The bill language regarding accreditation and licensing requirements may be read to limit the exemption from ss. 562.11, and 562.111, F.S., to public or private schools that are institutionally accredited by an agency recognized by the United States Department of Education. This would include programs licensed by SBNCE only if they were accredited. Alternatively, the "or" preceding the SBNCE may be read disjunctively, which would broaden the exemption to include non-accredited institutions licensed by SBNCE.

The institution must agree to indemnify the state for any civil action arising from this authorization. The student must also execute a waiver and consent that indemnifies the state.

The bill also amends s. 562.111, F.S., to create an exemption from the prohibition on possession of alcoholic beverages by persons under age 21. Specifically, the prohibition does not apply if the person in possession of the alcoholic beverage is over 17 years of age and the above conditions are met.

The bill takes effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase the number of classes offered that require the tasting or imbibing of alcoholic beverages for instructional purposes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The prohibition against consumption or imbibition will be difficult to enforce.

Further, the proposed indemnification language as it would apply to public education facilities, is inconsistent with s. 768.28(18), F.S. which provides that a contract between the state and any subdivision or agency of the state "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."

VII. Related Issues:

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 under the circumstances proposed in this bill. Committee staff contacted the Federal Department of Transportation and was informed by Heidi Coleman, Assistant Chief Counsel, that the bill would not jeopardize state transportation funding. In a memorandum dated March 22, 1999, Ms. Coleman noted that “the proposed legislation under consideration in Florida, if enacted without change, would not cause Florida to fall out of compliance with the NMDA [National Minimum Drinking Age Act].” She explained that “the regulations permit States to enact certain limited exceptions.” Although some modifications have been made to the language presented to Ms. Coleman, staff from the House Committee on Regulated Services has received confirmation that the new language does not change the analysis. Further changes, however, should be forwarded to the Federal Department of Transportation for consideration. Notably, three other states currently have laws that allow students to taste and or consume alcoholic beverages in certain educational settings. These states are New York, Rhode Island and South Carolina.

This bill is a companion to House Bill 165 which is now traveling with an amendment. 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 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.

VIII. Amendments:

None.