

**STORAGE NAME:** h1309.jo.doc  
**DATE:** February 18, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIAL OVERSIGHT  
ANALYSIS**

**BILL #:** HB 1309  
**RELATING TO:** Sale of Alcohol to Minors  
**SPONSOR(S):** Representatives Gelber and Arza  
**TIED BILL(S):** none

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

- (1) JUDICIAL OVERSIGHT
  - (2) COUNCIL FOR SMARTER GOVERNMENT
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Current law specifies that someone who sells or furnishes alcoholic beverages to a person under 21 years of age is not exposed to potential civil liability for any damages resulting from the underage drinker's intoxication, unless the seller or supplier provides the alcohol "willfully and unlawfully."

This bill eliminates the "willfully and unlawfully" standard, and provides that someone supplying alcoholic beverages need only fail to request and check one of a list of identification documents in order to be exposed to potential liability for an underage drinker's torts.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: This bill introduces a standard close to strict liability in a civil cause of action that is currently fault-based.

B. PRESENT SITUATION:

Section 768.125, F.S., currently provides:

A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that 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 may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

Section 562.11(1), F.S., specifies that selling alcoholic beverages to persons under 21 years of age is a second-degree misdemeanor. The section further provides that a holder of a liquor license issued by the Division of Alcohol and Tobacco of the Department of Business and Professional Regulation (“the division”) who sells an alcoholic beverage to someone under 21 years of age

shall have a complete defense to any civil action therefor, except for an administrative action by the division under the Beverage Law, if, at the time the alcoholic beverage was sold, given, served, or permitted to be served, the [purchaser or consumer of the beverage] falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage and the appearance of the [purchaser or consumer] was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage and if the licensee carefully checked one of the following forms of identification with respect to the purchaser: a driver's license, a [state-issued] identification card ... a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card, and acted in good faith and in reliance upon the representation and appearance of the [purchaser or consumer] in the belief that he or she was of legal age to purchase or consume the alcoholic beverage.<sup>1</sup>

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 768.125, F.S., to eliminate the requirement that sellers or furnishers of alcoholic beverages to persons under 21 do so “willfully and unlawfully” before being exposed to potential

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<sup>1</sup> Section 562.11(1)(b), F.S.

civil liability. Instead, a seller or furnisher of alcoholic beverages to an underage person may be civilly liable for actions of that underage person unless the seller or furnisher requests and checks one of the documents listed in s. 562.11(1)(b), F.S.

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Although theoretically they would still be governed by a negligence standard, in practice, this bill may impose something close to strict liability for the torts of underage drinkers on sellers and furnishers of alcohol that do not check one of the documents listed in s. 562.11(1)(b), F.S. However, sellers and furnishers of alcohol that do check such documents might also be more certain that they would not be exposed to potential liability if one of those documents is fake.

This bill may allow a seller or furnisher of alcoholic beverages to escape exposure to liability by requesting and checking one of the required documents and then, knowing the purchaser or consumer to be under 21, selling or furnishing alcohol to him or her anyway.

Section 768.125, F.S., intermingles provisions by which a seller or furnisher of alcoholic beverages may be exposed to civil liability for providing alcoholic beverages to underage persons and for knowingly providing such beverages to an alcohol addict. The section may be confusing, and this bill may make the section more confusing.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

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