

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 380
 SPONSOR: Senator Futch
 SUBJECT: Open House Parties
 DATE: December 10, 2001 REVISED: 03/12/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would expand the category of persons who are prohibited from holding open house parties as prescribed under s. 856.015, F.S., to include persons who are 18 years of age or older. This essentially means persons who are 18, 19, or 20 years of age would be affected by the bill because currently this section only applies to adults who are 21 years of age or older.

This bill substantially amends section 856.015 of the Florida Statutes.

II. Present Situation:

Section 856.015, F.S., provides that it is a second degree misdemeanor for an adult having control of any residence to allow an open house party to take place at the residence if the adult knows that an alcoholic beverage or drug is being possessed or consumed by a minor and the adult fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug. (The statute exempts the use of alcoholic beverages at legally protected religious observances or activities. s. 856.015(3), F.S.)

Section 856.015(1), F.S., defines “minor” to mean a person not legally permitted by reason of age to possess alcoholic beverages and “adult” as a person not legally prohibited by reason of age from possessing alcoholic beverages. In Florida, it is unlawful for any person younger than 21 years to possess alcoholic beverages. s. 562.111, F. S. Thus, the second degree misdemeanor penalty under s. 856.015(4), F.S., applies only to persons 21 years of age or older who hold an open house party under the circumstances prescribed above.

The term “open house party” is defined to mean “a social gathering at a residence.” “Control” is defined as the “authority or ability to regulate, direct, or dominate.” “Residence” is defined to include a “home, apartment, condominium or other dwelling unit.” s. 856.015(1), F.S.

In *State v. Manfredonia*, 649 So.2d 1388, 1390 (Fla. 1995), the Florida Supreme Court held that the statute’s provisions were not unconstitutionally vague and interpreted the provisions of the statute as follows:

As we read the statute, the State has a great burden to overcome in proving that an adult has violated section 856.015. In order to successfully prosecute under this section, the State must establish the following elements: (1) an adult in control of the premises knowingly allows a social gathering to take place there; (2) the possession or consumption of alcoholic beverages or controlled substances by one or more minors occurs during the gathering; (3) the adult in control has actual knowledge of the possession or consumption of alcoholic beverages or controlled substances by the minors; and (4) the adult in control: (a) allows the party to continue and (b) fails to take any reasonable steps to prevent the possession or consumption. In essence, the State has the heavy burden of proving beyond a reasonable doubt that the adult in charge stood by and did nothing in the face of the adult’s actual knowledge of the minor’s consumption or possession of alcohol or controlled substances.

The court noted that the “adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.” Id. at 1391.

III. Effect of Proposed Changes:

The bill would expand the category of persons who are prohibited from holding open house parties as prescribed under s. 856.015, F.S., to include persons who are 18 years of age or older. This essentially means persons who are 18, 19, or 20 years of age would be affected by the bill because currently this section only applies to adults who are 21 years of age or older.

Thus, if an 18, 19, or 20 year old who has control of a residence holds an open house party and knowingly permits a person under 21 years of age to consume or possess alcohol or drugs at the residence, and the 18 year old does not take reasonable steps to prevent the possession or consumption of alcohol or drugs, he or she could be prosecuted for a second degree misdemeanor offense under the bill.

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:

Persons who are 18, 19, or 20 years of age who hold open house parties as prescribed under the bill could be prosecuted for a second degree misdemeanor offense and pay a potential fine of up to \$500.

C. Government Sector Impact:

There is no prison bed impact on the Department of Corrections because the bill expands the scope of a second degree misdemeanor offense. There could be an impact, however, upon local jails to the extent that judges impose any of the potential 60 day jail term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Revises the definition of “open house party” to include a social gathering in a commons area within a residential apartment complex.

#2 by Criminal Justice:

Makes it a necessary element of the offense that must be proven by the prosecution for the person in control of a residence to **knowingly** allow a social gathering to take place when such person has actual knowledge of the possession or consumption of alcohol or drugs by minors at the residence.