

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 410

INTRODUCER: Senator Posey

SUBJECT: Open House Parties

DATE: March 7, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 410 would increase the current criminal penalty for hosting an open house party from a second degree misdemeanor to a third degree felony. (Potential imprisonment would increase from up to 60 days in jail and/or a fine up to \$500 to imprisonment up to 5 years and/or a fine up to \$5,000 under the bill.)

In addition to the increased criminal penalties, the bill would also statutorily prescribe a civil cause of action against an open house party host for “any injury or damage caused by or resulting from the possession or consumption of alcoholic beverages or drugs (by an underage drinker) at an open house party” (if such host had control of the residence and knowingly permitted an underage drinker to consume or possess alcohol or drugs there, and did not take reasonable steps to prevent such possession or consumption).

This bill would substantially amend section 856.015 of the Florida Statutes.

II. Present Situation:

Section 856.015, F.S., provides that it is a second degree misdemeanor for any person having control of any residence to allow an open house party to take place at the residence if that person knows that an alcoholic beverage or drug is being possessed or consumed by a minor and fails to take reasonable steps to prevent such possession or consumption. (Second degree misdemeanor penalties include potential incarceration up to 60 days in jail and/or a fine not exceeding \$500.)

Section 856.015(1), F.S., defines “minor” to mean a person not legally permitted by reason of age to possess alcoholic beverages, and “person” as anyone 18 years of age or older. 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 to persons 18 years of age or older who hold an open house party for minors under the age of 21 years.

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. The statute exempts the use of alcoholic beverages at legally protected religious observances or activities. s. 856.015(3), 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.

Section 768.125, F.S., provides that a person selling or furnishing alcohol to another person is not liable for injury or damage caused by or resulting from the intoxication of such other person, except that liability may attach if that person willfully and unlawfully sells or furnishes alcohol to an underage drinker or knowingly serves alcohol to a habitual drunkard. The Florida Supreme Court in *Bankston v. Brennan*, 507 So.2d 1385 (1987), held that this section does not create a cause of action against a social host and in favor of a person injured by an intoxicated minor who was served alcohol by the social host. The Court stated that “[t]he legislature has evidenced, through chapter 562 and section 768.125 for example, a desire to make decisions concerning the scope of civil liability in this area. While creating such a cause of action may be socially desirable as petitioners cogently argue, the legislature is best equipped to resolve the competing considerations implicated by such a cause of action.” *Id.* at 1387.

Two district courts of appeal have found that the Legislature did just that by enacting the statute criminalizing an open house party. Both courts held that the Legislature, by enacting s. 856.015, F.S., has imposed a duty of care on social hosts and created a civil cause of action for a statutory violation using a negligence per se theory. *Trainor v. Estate of Hansen*, 740 So.2d 1201 (2nd

DCA 1999), rehearing denied, review denied 753 So.2d 564; *Newsome v. Haffner*, 710 So. 2d 184 (1st DCA 1998), review denied 722 So.2d 193.

III. Effect of Proposed Changes:

Senate Bill 410 would increase the current criminal penalty for hosting an open house party from a second degree misdemeanor to a third degree felony. Thus, a person who has control of a residence holding an open house party and knowingly permitting an underage drinker to consume or possess alcohol or drugs at the residence, and who does not take reasonable steps to prevent such possession or consumption, could be prosecuted for a third degree felony under the bill. (Potential imprisonment would increase from up to 60 days in jail and/or a fine up to \$500 to imprisonment up to 5 years and/or a fine up to \$5,000.)

In addition to the increased criminal penalties, the bill would also statutorily prescribe a civil cause of action against an open house party host for “any injury or damage caused by or resulting from the possession or consumption of alcoholic beverages or drugs (by an underage drinker) at an open house party.” Thus, under the bill for example, a social host could be liable for civil damages caused by an underage drinker leaving the party intoxicated and causing personal injury as a result of a car accident while driving home (if such host had control of the residence and knowingly permitted an underage drinker to consume or possess alcohol or drugs there, and did not take reasonable steps to prevent such possession or consumption).

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:

Open house party hosts would be subjected to a greater fine under the bill because of the increased criminal penalties (fine not exceeding \$5,000 rather than currently not exceeding \$500). There could also be an indeterminate fiscal impact on open house party hosts because of the newly created cause of action for civil damages under the bill.

C. Government Sector Impact:

According to the Criminal Justice Impact Conference, any impact on prison beds because of this bill would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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