

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: Regulated Industries Committee

BILL: SPB 7056

INTRODUCER: For consideration by Regulated Industries Committee

SUBJECT: Alcoholic Beverages

DATE: February 15, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill prohibits the sale, delivery or service of alcoholic beverages to persons under 21 years of age without limiting the prohibition to alcoholic beverage licensed premises. The current prohibition is limited to alcoholic beverage licensed premises.

The bill permits alcoholic beverage vendors and their employees to confiscate driver's licenses and identification cards believed to be fraudulent, provided that any seized identification must be given to the Division of Alcoholic Beverage and Tobacco, the Department of Highway Safety and Motor Vehicles, or local law enforcement within 72 hours. The decision by a vendor or his or her agent or employee to seize or not to seize a license or identification card does not create any civil or criminal liability.

The bill prohibits the consumption of alcoholic beverages by persons under 21 years of age, and prohibits underage persons to be intoxicated by the consumption of alcoholic beverages. The minimum alcohol blood and breath levels are set at 1.02 and 0.02, respectively. The bill permits counties and municipalities to enact ordinances regulating drink specials.

The bill amends s. 322.056, F.S., to provide that all persons under 21 years of age who illegally possess alcohol or who misrepresent their age to illegally obtain alcohol may be subject to the suspension or revocation of their driving privilege.

The bill requires that the State Board of Education, in consultation with the Board of Governors, to develop an annual report regarding the extent of alcohol and illicit drug abuse at the state universities and community colleges. The university boards of trustees, to the extent delegated

by the Board of Governors, and the community college boards of trustee must each establish a plan to reduce and eliminate alcohol and illicit drug abuse, including underage alcohol use.

The bill would take effect July 1, 2007.

This bill substantially amends following sections of the Florida Statutes: 562.11, 562.111, 562.45, 322.056, 1001.02, 1001.64, and 1001.74.

II. Present Situation:

Prohibitions against underage access to alcohol

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve, or permit 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.¹ Anyone convicted of a violation of these provisions is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

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. A licensee² or his or her agent convicted of violating this provision is guilty of a misdemeanor of the first degree punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

The prohibition in s. 562.11, F.S., is limited to violations that occur on alcoholic beverage licensed premises, and does not apply to instances in which a person furnishes an alcoholic beverage to a person under legal age at locations that are not licensed to serve alcoholic beverages.

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. Any person convicted of violating this subsection is guilty of a misdemeanor of the second degree. Any person under the age of 17 years is within the jurisdiction of the circuit court and is treated as a juvenile delinquent.

Section 562.111(1), F.S., prohibits a person under 21 years of age from having an alcoholic beverage in his or her possession. Section 562.111, F.S., exempts persons employed under the

¹ Section 561.01(11), F.S., defines licensed premises to include “not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch . . .”

² Section 561.01(14), F.S., defines licensee “as legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15.”

provisions of s. 562.13, F.S., and acting in the scope of her or his employment. Any person under the age of 21 years convicted of violating this section is guilty of a misdemeanor of the second degree. A subsequent conviction is a misdemeanor of the first degree.

Persons 18 years of age or older may be employed by alcoholic beverage licensees. Section 562.13, F.S., prohibits alcoholic beverage vendors from employing any person less than 18 years of age, but this prohibition does not apply to:

- Professional entertainers 17 years of age who are not in school;
- Minors employed in the entertainment industry and who are employed under the procedures established for such employment or who have been granted a waiver from the Child Labor Law;
- Persons under the age of 18 years employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have licenses to sell beer and wine for consumption off the premises;
- Any senior high school student 17 years of age or older with written permission of his or her principal or any high school graduate employed by a bona fide food service establishment where alcoholic beverages are sold if they do not participate in the sale, preparation, or service of alcoholic beverages and the student's duties provide training that may lead to advancement in the food service establishments;
- Persons under the age of 18 years employed as bellhops, elevator operators, and other duties in hotels that do not work in the portion of the hotel where alcoholic beverages are sold for consumption on the premises;
- Persons under the age of 18 years employed in bowling alleys if they do not participate in the sale, preparation, or service of alcoholic beverages;
- Persons under the age of 18 years employed by a bona fide dinner theater whose employment is limited to being an actor, actress, or musician; or
- Persons under the age of 18 years who are employed by a theme park as provided in s. 562.02(6), F.S., if they do not participate in the sale, preparation or service of alcoholic beverages.

A minor subject to s. 562.13, F.S., may not be employed if the employment involves nudity on the part of the minor and the nudity is intended as adult entertainment.

Section 562.111(2), F.S., also permits a student who is at least 18 years of age to possess alcoholic beverages in the tasting of alcoholic beverages as part of the student's required curriculum at a postsecondary educational institution. The student may only taste, but not consume or imbibe, the alcoholic beverages. The alcoholic beverages must at all times remain in the possession and control of authorized instructional personnel of the college who are 21 years of age or older.

Section 856.015, F.S., prohibits open house parties 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 the residence. The person in control of the residence must take reasonable steps to

prevent the possession or consumption of the alcoholic beverage or drug. Anyone convicted of a violation of this provision is guilty of a misdemeanor of the second degree.

The open house party prohibition in s. 856.015, F.S., requires that the person in control of the residence have actual knowledge of the possession by the underage person. It is not sufficient proof that the person should have known of the possession or failed to take reasonable steps to prevent the illegal possession. The provision also requires that the person in control of the residence take reasonable steps to prevent the possession. However, this condition has been interpreted as requiring that the person in control take reasonable steps to prevent the continued possession of the alcohol beverage or drug by the underage person after attaining actual knowledge of the illegal possession.³

Driver's License Penalties

Section 562.11(2)(c), F.S., authorizes the courts to impose the following additional penalties if a 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.:

- The court may order the person to participate in public service or a community work project for a period not to exceed 40 hours; and
- The court shall direct the DHSMV to withhold issuance of, or suspend or revoke, the person's driver's license or driving privilege, as provided in s. 322.056, 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., 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 agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her license, employment, or agency.

Chapter 2006-203, L.O.F., provides that the court may order the department to issue a driver's license restricted to business or employment purposes. It provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than three months or more than six months for a first violation and one year for any subsequent violation. Chapter 2006-203, L.O.F., took effect October 1, 2006.

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.

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume."

³ See *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995).

Chapter 563, F.S., relates to the regulation of beer and malt beverages. Chapter 564, F.S., relates to the regulation of wine and fortified wine. Chapter 565, F.S., relates to the regulation of liquor. According to the division, it has 167 sworn law enforcement agents and approximately 70,000 licensees.

Location-Neutral Prohibition Against Delivery of Alcohol to Persons Under 21

In *United Services Automobile Association v. Butler*⁴ (*Butler*), the underage sale, delivery or service prohibition in s. 562.11, F.S., was interpreted as being limited to violations that occur on the licensed premises and not applicable to instances that occur at locations that are not licensed to serve alcoholic beverage.

Based upon discussions with several State Attorney offices across the state, it appears that s. 562.11(1)(a), F.S., is not being interpreted consistently among the judicial circuits. Some State Attorney offices interpret the provision as applicable to violations that occur only on licensed alcoholic beverage premises, while other offices interpret the provision more broadly to include both licensed and unlicensed locations. According to the division, this provision is also not interpreted consistently among the agency's district offices.

In instances involving an adult who gives an alcoholic beverage to a child under 18 years of age 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.

When an adult serves an alcoholic beverage to another adult who is less than 21 years of age, jurisdictions that follow the *Butler* decision may also rely on s. 777.011, F.S., to charge the adult as a principal in the first degree. This violation charges the person who gives the alcohol to the underage person with aiding and abetting the person to illegally possess the alcoholic beverage. A violation of s. 777.011, F.S., as a principal in the first degree for a violation of underage possession in s. 562.11(1)(a), F.S., constitutes a second degree misdemeanor.

The lack of clarity in s. 562.11(1)(a), F.S., regarding whether a violation of this section is limited to alcoholic beverage licensed premises and the inconsistent interpretation of this provision across the state, may contribute to the inequitable application of criminal penalties. For example, an adult may be charged with a second degree misdemeanor violation of s. 562.11(1)(a), F.S., while another adult in a different jurisdiction, but with the same circumstances, may be charged with a first degree misdemeanor violation of contributing to the delinquency of a child under s. 827.04, F.S.

Prohibiting Consumption of Alcohol by Underage Persons

Section 562.111, F.S., prohibits a person under 21 years of age from having in his or her possession alcoholic beverages, but does not prohibit the consumption of alcoholic beverages.

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

Thirty-one states appear to prohibit the possession and the consumption of alcoholic beverage by persons under 21 years of age.⁵

Proponents of prohibiting underage alcohol consumption, including the Changing Alcohol Norms Workgroup,⁶ cite several advantages to such a prohibition. According to law enforcement and the Governor's Office of Drug Control, which also recommends the prohibition, possession of alcoholic beverages can be difficult to prove because underage persons can easily put aside an alcoholic beverage container when they notice a law enforcement officer. Unless the law enforcement officer sees the underage person before they see the officer, the officer is unable to make an arrest even if the person is noticeably intoxicated.⁷ A consumption prohibition would permit law enforcement to arrest minors and underage persons who are intoxicated even when the officer does not witness the actual possession of the alcoholic beverage container.

Some states that prohibit consumption also set forth exceptions relating to whether the parent or legal guardian has given permission, whether the parent or guardian is present, or whether the consumption occurred in a private residence or location. Some states provide an exception if the underage person is married to a person who is 21 years of age or older and the spouse consents. Some states also provide an exception for consumption for religious, educational, or medical purposes. For example, Illinois prohibits consumption but provides an exception for consumption under the direct supervision and approval of the parent or guardian and which occurs in the privacy of a home.⁸ Louisiana also permits consumption when there is consent by a spouse who is 21 years of age or older, consumption for an established religious purpose, and consumption "for medical purposes when purchased as an over-the-counter medication, or when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution."⁹

Proof of alcoholic beverage consumption could be obtained by use of a breathalyzer test to measure the existence of alcohol in the suspect. New Hampshire prohibits the intoxication by consumption of alcohol by an underage person, and provides that an alcohol concentration of 0.02 or more shall be prima facie evidence of intoxication.¹⁰ A prosecutor also recommended that, if a minor refuses to take the breathalyzer test, the minor's driving privilege should be suspended in same manner provided in s. 316.1932, F.S., for driving under the influence violations.

Driver's License Revocation for 18 to 20 year-old Violators

Persons under 21 years of age who violate s. 562.11(2), F.S., by misrepresenting or misstating their age or the age of another when purchasing, or attempting to purchase, or when inducing a

⁵ See Alcohol Policy Information System at http://www.alcoholpolicy.niaaa.nih.gov/index.asp?SEC=%7B0D5C719E-FCE8-4E15-A367-4145C655505F%7D&Type=BAS_APIIS (Last visited September 18, 2006.)

⁶ See *Changing Alcohol Norms (CAN): Florida's Initiative to Lower Youth Drinking, A White Paper*, Florida Office of Drug Control, April 2004.

⁷ 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.

⁸ See s. 235, Ill. Comp. Stat.

⁹ See La. Rev. Stat. Ann., s. 14:93.10(2).

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

vendor to sell, give, serve, or deliver alcoholic beverages are subject to a driver's license suspension under s. 322.056, F.S. However, the applicability of s. 322.056, F.S., is limited to persons under 18 years of age. Persons who possess alcoholic beverages in violation of s. 562.111, F.S., are also subject to having their driver's license suspended under s. 322.056, F.S., and that penalty is also limited to persons under 18 years of age.

Persons found to have violated ss. 562.11(2) and 562.111, F.S., are subject to disparate treatment based upon their age. For example, a seventeen year-old who misrepresents his or her age to purchase alcohol may have his or her driver's license revoked, but a nineteen year-old person who violates the same provision is not subject to this penalty. Prevention proponents assert that this inequitable age-based penalty structure undermines the seriousness of the prohibition, which proponents argue should be applied consistently across the affected under 21 years of age group.

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 is unclear regarding whether vendors can retain driver's licenses and other identification cards that the vendor believes to be fraudulently presented. Current law does not authorize vendors or their employees to retain identification cards that they believe to be fraudulent by falsely representing the age and/or identity of the person offering the identification card. Section 322.212, F.S., prohibits the possession of fraudulent driver's 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. Failure to seize an identification card believed to be fraudulent also presents the risk that the card could be used to purchase an alcoholic beverage at another less vigilant location. As a practical matter, vendors advise that when confronted by a vendor or a vendor's employee, most persons do not request the return of the fraudulent identification. Concerns were also expressed regarding whether the confiscated identification cards should be remitted to the division, the Florida Department of Highway Safety and Motor Vehicles, or to other local law enforcement agencies.

Ten states provide for the seizure of identification cards that the vendor believes to be fraudulent. For example, California permits an alcoholic beverage licensee, or his or her agent or employee, to seize any identification presented by a person that falsely shows the person to be over 21 years of age. The licensee must give a receipt to the person from whom it was seized. The seized identification must be given to the local law enforcement agency that has jurisdiction over the premises within 24 hours. California, along with several other states, also provides the vendors and their employees with protection from civil or criminal liability for seizing a license or identification card they believe to be fraudulent.¹¹

Regulating Drink Specials

Some states and municipalities regulate or prohibit drink specials. Drink specials may include

¹¹ See Cal. Bus. & Prof. Code, s. 25659.

free drinks, price-discounted drinks like two-for-one specials, “happy hour,” and “all-you-can-drink” specials. Drink special regulation may include prohibitions against certain drink specials and/or prohibitions against the advertising of such 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. This was the rationale cited by the City of Tampa when, on September 12, 2006, it submitted a request to the Florida Attorney General for an opinion regarding whether the city could enact an ordinance regulating drink specials or whether such an ordinance was pre-empted by the Beverage Law.¹²

According to some prevention experts concerned with excessive college drinking, the advertisement and the marketing of drink specials promote or encourage excessive drinking. Particularly, drink specials specifically targeted at college students. For example, in the FSView & Florida Flambeau,¹³ a student newspaper distributed for free on the Florida State University campus and at area retailers, most of the local, student-oriented bars and nightclubs advertise weekly drink specials and events in a two or three page advertisement section. The advertised drink specials include: all you can drink at a set price, typically five or ten dollars, free drinks for ladies, nickel beers, and other low-cost specials.¹⁴ Representatives for the retail vendors note that these drink specials are usually effective during the hours before 10 p.m. or before midnight, which is typically the period before most students visit their establishments and that the advertisements do not promote excessive alcohol use.

The City of Jacksonville, Florida, regulates drink specials and their advertisement. It prohibits the delivery of two or more drinks to one person at one time for consumption by that one person, all-you-can-drink specials, sale of beer or liquor pitchers for just one person, and the advertising of prohibited drink specials.¹⁵

There is uncertainty regarding whether the Beverage Law pre-empts local government regulation of drink specials in the manner exercised by the City of Jacksonville and contemplated by the City of Tampa. Section 562.45(2)(a), F.S., explicitly authorizes counties and municipalities to regulate the hours of business and location of places of business and to prescribe sanitary regulations. Section 562.45(2)(b), F.S., authorizes counties and municipalities to regulate the type of entertainment and conduct permitted in any establishment licensed under the Beverage Law. However, s. 562.45(2)(c), F.S., prohibits counties and municipalities from regulating or prohibiting those activities or business transactions of a licensee that are regulated by the division.

¹² A copy of the request from the City of Tampa to the Attorney General is on file with the committee.

¹³ The FSView & Florida Flambeau is published by the Gannett Company, which also publishes USA Today and the Tallahassee Democrat, and of several youth-oriented publications, including Noise, Velocity, and Intake.

¹⁴ See, for example, FSView & Florida Flambeau, August 24, 2006, pages 26 and 27, which included two full page advertisements for multiple bars and drink specials. The publisher was contacted and she stressed the First Amendment rights of the advertisers, and noted that the newspaper does not approve ads that promote excessive drinking or are offensive. For example, the publisher noted that it has not approved ads for “unlimited drinking.” However, when asked about its usual advertisement of “all you can drink” specials, the publisher noted that these advertisements did not encourage excessive drinking. See Committee on Regulated Industries, *Underage Drinking and Alcohol Abuse on University and College Campuses*, report no. 2007-135, November 2006.

¹⁵ See Section 154.113, Ordinance Code, City of Jacksonville, Florida.

Whether a local ordinance is pre-empted by the Beverage Law is dependent on whether the ordinance directly conflicts with state law.¹⁶ Case law has interpreted the prohibition in s. 562.45(2)(c), F.S., to provide that local governments can prohibit the service of alcohol at the same time as sexual performances,¹⁷ can require that employees of alcoholic beverage vendors must register with the police department,¹⁸ and can require the posting of health warning signs in alcoholic beverage licensed business.¹⁹

There are no reported opinions regarding the authority of local governments to regulate drink specials. In a 1987 challenge to Jacksonville's regulation of drink specials, the Fourth Judicial Circuit Court held, in an unreported opinion, that the Beverage Law does not preempt the city's regulation of drink specials.²⁰ This case was not appealed and it remains unclear whether the local government regulation of drink specials is pre-empted by the Beverage Law.

It appears that 23 states also prohibit drink specials to some degree. The states differ as to what constitutes a prohibited drink special. For example, Massachusetts appears to be one of the most comprehensive in regards to what is a prohibited drink special. Massachusetts prohibits the delivery of free drinks, the delivery of two or more drinks to one person at one time, the sale of drinks at a price less than regularly charged for such drinks, the sale of an unlimited number of drinks for any set period of time for a fixed price (except at private functions not open to the public), and increasing the volume of alcohol beverages without proportionally increasing the price regularly charged for that drink during the same week. It also prohibits the advertisement of the prohibited drink specials.²¹ These restrictions are similar to the drink specials prohibited by the Jacksonville ordinance.

Representatives for the retail vendors and the alcohol distributors expressed the concern that limiting drink specials for all vendors to address irresponsible drinking by college students would be too broad of a step and would apply to businesses that do not cater to college students.

Two retail vendors, alcohol abuse prevention advocates, and others stated that drink specials like all-you-can-drink specials are expensive for vendors and are not cost effective, i.e., they are not profitable but instead lose money for the vendor. Vendors maintained that they are compelled to run drink specials because their competitors are offering drink specials, and because the drink specials attract the patrons to the establishment.

Proponents of regulating drink specials, including two vendors, stated that, although vendors generally may not oppose the limiting of drink specials because such regulation would eliminate the competitive pressure to engage in this expensive and unprofitable practice, the beer distributors would be the principal opponents to such a limiting or banning of drink specials. The vendors and other interested parties, including local government and law enforcement

¹⁶ See *State v. Redner*, 425 So.2d 174 (Fla. 2nd DCA 1983).

¹⁷ See *City of Miami Springs v. J.J.T., Inc.*, 437 So.2d 200 (Fla. 3rd DCA 1983).

¹⁸ *Redner*, at n. 16, supra.

¹⁹ See *Hillsborough County v. Florida Restaurant Assn. Inc.*, 603 So.2d 587 (Fla. 2nd DCA 1992).

²⁰ See the Order Granting Temporary Injunction and the Final Judgment in *Jacksonville Bar and Restaurant Owner's Association, et al. v. City of Jacksonville*, Fourth Judicial Circuit, Case no. 86-1893-CA, Div. M. (March 27, 1986 and January 23, 1987 respectively). A copy of this order is on file with the committee.

²¹ See chapter 204, Code of Massachusetts Regulations, s. 4.03.

representatives, noted that, although the vendors who offer drink specials like the all-you-can-drink and free-drink specials tend to lose money on such offers, the beer distributors tend to profit from the offers because the vendor must still pay the regular wholesale price for the beer that they give away or sell at drastically reduced prices. Representatives for the beer distributors refute this assertion.

Interim Project 2007-135

The Senate President approved Interim Project Report 2007-135 to study the issues presented by underage drinking and alcohol abuse on university and college campuses.²² The study included a review of current law and surveyed the concerns of the affected interests, including substance abuse and prevention experts, the alcoholic beverage industry, law enforcement, and university representatives. The study reviewed the underage sale prevention efforts of the alcoholic beverage industry, and the laws of other states.

The interim study included a survey to all state universities and selected private colleges and universities and public community colleges. The survey addressed the schools' experiences with alcohol-related incidents and their efforts to prevent underage drinking and irresponsible drinking by students of legal age. This survey included specific questions that Senator Hill had asked that the committee and schools address. All of the state universities²³ and eight community colleges²⁴ responded to the survey. Three independent universities responded to the survey.²⁵ The report provides a summary of the responses to the survey questions. The report noted that the colleges and universities do not consistently or uniformly track or maintain records or data on alcohol related issues. For example, the report noted that not all schools investigate the deaths of their students or record whether a student's death is alcohol-related. The report also noted that the universities and community colleges also provide different prevention and enforcement efforts.

The interim project resulted in the following recommendations:

- 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 premises.
- Amend s. 562.111, F.S., to prohibit the consumption of alcoholic beverages by persons under 21 years of age.

²² See Committee on Regulated Industries, *Underage Drinking and Alcohol Abuse on University and College Campuses*, report no. 2007-135, November 2006.

²³ The state universities are: Florida A & M University, Florida Atlantic University, Florida Gulf Coast University, Florida International University, Florida State University, New College of Florida, the University of Central Florida, the University of Florida, the University of North Florida, the University of South Florida, and the University of West Florida.

²⁴ 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 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.

²⁵ The independent universities that responded to the survey are: the University of Tampa, Nova Southeastern University, and the University of Miami.

- 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 the provision's driver's license penalties.
- 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 any seized identification be 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 report also directed the following recommendations to the state agencies:

- 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 report recommended that the state universities and community colleges 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 report also recommended that the alcoholic beverage industry 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.

State University System

The State University System is established by Art. IX, s. 7, of the Florida Constitution. The constitution also creates the Board of Governors and provides that the Board of Governors shall “operate, regulate, control, and be fully responsible for the management of the whole university system.” A case is currently pending in Leon County circuit court which requests that the court delineate the powers and duties of the State Board of Education and the Board of Governors as they relate to the State University System.²⁶

Section 1002.02, F.S., sets forth the general powers of the State Board of Education. Sections 1001.64 and 1001.74, F.S., set forth the powers and duties of the boards of the trustees for the state universities and community colleges, respectively.

²⁶ *Floridians for Constitutional Integrity, Inc., v. State Board of Education, and the Board of Governors*, Second Judicial Circuit, Case no. 2004 CA 003040.

III. Effect of Proposed Changes:

Location-Neutral Prohibition Against Delivery of Alcohol to Persons Under 21

The bill amends s. 562.11(1)(a)1., 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 premises.

Confiscation of Fraudulent Identification Cards

The bill amends s. 562.11(1)(d), F.S., to permit alcoholic beverage vendors and their employees to confiscate driver's licenses and identification cards believed to be fraudulent, provided that any seized identification must be given to the division, the Department of Highway Safety and Motor Vehicles, or local law enforcement within 72 hours. The bill requires that the licensee must give a receipt to the person from whom the identification is seized that identifies the agency to which the seized identification will be given and from which it can be reclaimed.

The bill also provides that the decision by a vendor or his or her agent or employee to seize or not to seize a license or identification card does not create any civil or criminal liability.

Prohibiting Consumption of Alcohol by Underage Persons

The bill amends s. 562.111, F.S., to prohibit the consumption of alcoholic beverages by persons under 21 years of age. The bill also prohibits underage persons to be intoxicated by the consumption of alcoholic beverages.

The bill provides that it is prima facie evidence that a person under the age of 21 years has consumed an alcoholic beverage or is intoxicated by the consumption of an alcoholic beverage if the person is affected to the extent that the person's normal faculties are impaired. It also provides that a blood-alcohol level of 1.02 or more grams of alcohol per 100 milliliters of blood, or a breath-alcohol level of 0.02 or more grams of alcohol per 210 liters of breath, is prima facie evidence of intoxication.

Local Government Regulation of Drink Specials

The bill amend s. 562.45(2)(a), F.S., to permit counties and municipalities to enact ordinances regulating drink specials.

Driver's License Revocation for 18 to 20 year-old Violators

The bill amends s. 322.056, F.S., to delete the provision's limitation to persons under 18 years of age. The bill would 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 the provision's driver's license penalties in this section.

Annual Reporting Requirement for the State Board of Education

The bill amends s. 1001.02, F.S., to require that the State Board of Education, in consultation with the Board of Governors, develop an annual report regarding the extent of alcohol and illicit drug abuse, including underage alcohol use, at the state universities and community colleges and by college and university students.

The bill requires that the report must review the enforcement, prevention and intervention policies and practices of the state universities and community colleges, including the need for uniform reporting, data collection, and record keeping.

The bill specifies issues that the report must include:

- The schools' policies and practices regarding the use and possession of alcohol, including the extent to which alcohol use and possession is permitted in campus housing, campus dining and meeting facilities, and during university sponsored events, including on-campus and off-campus athletic events;
- Whether the schools notify the parents or legal guardians of students under 21 years of age of violations of the institution's policies governing the use or possession of alcohol or illicit drugs;
- The number of alcohol-related student deaths;
- The number of alcohol and illicit drug related incidents on the campuses of the state universities, including incidents involving students and non-students;
- The number of alcohol-related hospitalizations of students, the term "alcohol-related hospitalizations" is defined as "incidents in which a student requires medical treatment for injuries or other medical condition related to the abuse or excessive consumption of illicit drugs or alcohol;"
- The on-campus and off-campus programs designed to deter and prevent the use of alcohol, alcohol and substance abuse, and underage alcohol consumption; and
- The number of alcohol and illicit drug violations of each institution's student code of conduct, including an accounting of the penalties imposed.

The bill also requires that the report assess progress being made to reduce the incidence of alcohol and illicit violations and abuse, including underage alcohol use, at the state universities and community colleges and by students. It also requires that the report specify the practices and policies that need improvement.

The bill requires that the annual report must be submitted by July 1, 2008, and by July 1 in each successive year, to the Governor, the President of the Senate, and to the Speaker of the House of Representatives.

The bill also requires that the State Board of Education encourage the non-public universities and colleges to contribute to the findings of the annual report and to participate in its preparation.

University and Community College Board of Trustees

The bill amends s. 1001.64, F.S., to require that the boards of trustees for the community colleges establish a plan to reduce and eliminate alcohol and illicit drug abuse, including underage alcohol use. The bill requires that the boards of trustees conduct an annual evaluation of the effectiveness of that plan.

The bill amends s. 1001.74, F.S., to also require that the university boards of trustees, to the extent delegated by the Board of Governors pursuant to s. 10001.706, develop a plan to reduce and eliminate alcohol and illicit drug abuse and to annually evaluate the effectiveness of that plan.

Effective Date

The bill would take effect July 1, 2007.

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:

None.

C. Government Sector Impact:

None.

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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