

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595

Open House Parties

SPONSOR(S): Fitzgerald

TIED BILLS:

IDEN./SIM. BILLS: SB 1066

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-----------|---------|----------------|
| 1) | Public Safety & Domestic Security Policy Committee | 12 Y, 0 N | Krol | Cunningham |
| 2) | Policy Council | 17 Y, 0 N | Varn | Ciccone |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

House Bill 595 clarifies several restrictions relating to persons who are involved with open house parties and provides enhanced penalties for violating such restrictions.

Specifically, the bill:

- Creates enhanced penalties from a second to a first degree misdemeanor for persons having control of an open house party who violate statutory law a second or subsequent time; and
- Provides penalties that any violation of current law resulting in serious bodily injury or death is punishable by a first degree misdemeanor.

The bill does not appear to have a fiscal impact on state government; however the bill could have a minimal effect on local courts and jails.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.¹

Section 856.015, F.S., states that a person² in control of an open house party³ commits a second degree misdemeanor⁴ if they know a minor⁵ has possession of or consumed any alcoholic beverage⁶ or drug⁷ at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

This statute exempts the use of alcoholic beverages at legally protected religious observances or activities.⁸

The Florida Department of Law Enforcement reported as of February 1, 2010, the following arrests for a violation of s. 856.015, F.S.: 158 in 2008, 232 in 2009 and 22 for 2010.⁹ Forty of Florida's sixty-seven counties reported arrest charges based on this statute for these years as cited.

There have been instances of young, underage drivers attending open house parties, drinking alcoholic beverages and being allowed to drive home. Many of these parties have resulted in death or severe injury to the underage participants under a variety of circumstances, including drunk driving and physical altercations. In one instance in Sarasota a fight erupted and a child was killed when two rival high school groups attended the same open house party and a fight, using baseball bats, broke out.

¹ Section 562.111, F.S.

² Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

³ Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

⁴ Sections 775.082 and 775.083, F.S., state that a second degree misdemeanor is punishable by potential incarceration up to 60 days in jail and/or a fine not exceeding \$500.

⁵ Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

⁶ Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

⁷ Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

⁸ Section 856.015(3), F.S.

⁹ Statistics thru January, 2010 only.

Both groups were underage and had been drinking and the adults at the party appeared to be aware of the underage drinking.¹⁰

Proposed Changes

HB 595 amends present law to make a second or subsequent violation of s. 856.015(2), F.S., a first degree misdemeanor, which is punishable by a fine not to exceed \$1000 and/or up to 1 year in jail.¹¹

This bill also provides that any violation of s. 856.015(2), F.S., which results in serious bodily injury, as defined in s. 316.1933, F.S.,¹² or death, will be punishable by a first degree misdemeanor.

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of July 1, 2010.

II. 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:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015(2), F.S. The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of s. 856.015(2), F.S., results in seriously bodily injury or death.

¹⁰ Sarasota Herald-Tribune, July 31, 2008, news article on file with the Policy Council

¹¹ Sections 775.082 and 775.083, F.S., respectively.

¹² Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

The combination of increasing the penalty and fines for a second or subsequent violation, plus the impact of a potential incident of a death or serious bodily injury violation could have an impact on local jails.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES