

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Regulated Industries Committee

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BILL: SB 1066

INTRODUCER: Senators Altman and Fasano

SUBJECT: Open House Parties/Criminal Offenses

DATE: March 17, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brink	Imhof	RI	<b>Favorable</b>
2.	_____	_____	CJ	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill amends s. 856.015, F.S., to enhance the penalty against a person who violates, for a second or subsequent time, the prohibition against knowingly hosting an open house party where drugs or alcohol are possessed or consumed by minors without taking reasonable steps to prevent the possession or consumption.

Under the bill, any second or subsequent violation would constitute a first degree misdemeanor, an increase from the current second-degree misdemeanor charge, which is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000. *See* ss. 775.082(4)(a) and 775.083(1)(d), F.S.

It also provides that a violation that results in serious bodily injury or death, even if a first-time offense, constitutes a first-degree misdemeanor, which is also punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000. *See id.*

The bill provides a July 1, 2010 effective date.

The bill substantially amends section 856.015, 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. A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.<sup>1</sup>

Section 856.015(1), F.S. defines the following terms:

- “Open house party” means a social gathering at a residence;
- “Control” means the authority or ability to regulate, direct, or dominate;
- “Residence” means a home, apartment, condominium or other dwelling unit;
- “Minor” means a person not legally permitted by reason of age to possess alcoholic beverages; and
- “Person” means anyone 18 years of age or older.

In Florida, it is unlawful for any person younger than 21 years to possess alcoholic beverages.<sup>2</sup> As a result, the second degree misdemeanor penalty applies to persons 18 years of age or older who hold an open house party for minors under the age of 21 years.<sup>3</sup> The statute exempts the use of alcoholic beverages at legally protected religious observances or activities under s. 856.015(3), F.S.

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 that minors at the residence consumed or were in possession of drugs or alcohol.

The provision also requires the person in control of the residence to take reasonable steps to prevent possession or consumption of drugs or alcohol by minors. This condition has been interpreted to require the person in control to 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.<sup>4</sup>

### III. Effect of Proposed Changes:

The bill amends subsection (4) of s. 856.015, F.S., to provide that individuals who violate, for a second or subsequent time, the prohibition against knowingly hosting an open house party where drugs or alcohol are possessed or consumed by minors without taking reasonable steps to prevent such possession or consumption would commit a first-degree misdemeanor. A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.<sup>5</sup>

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<sup>1</sup> See ss. 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>2</sup> Section 562.111, F.S.

<sup>3</sup> See s. 856.015(4), F.S.

<sup>4</sup> See *State v. Manfredonia*, 649 So.2d 1388 (Fla. 1995). 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.

<sup>5</sup> See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

The bill creates subsection (5), of s. 856.015, F.S., to provide that individuals who violate s. 856.015(2) face a first-degree misdemeanor penalty if the violation results in serious bodily injury or death.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact conference has not met to determine if there is a fiscal impact on the criminal justice system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

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