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H 1191 GENERAL BILL/CS by Regulated Industries; Friedman; Lawson (Similar S 802)

Dwarf Exploitation/Rev. Licensees; requires Alcoholic Beverages & Tobacco Division, by rule, to prohibit beverage licensees operating certain commercial establishments from allowing exploitation of persons with dwarfism; provides definition; provides for suspension or revocation of license; provides civil penalty. Creates 561.665. Effective Date: 06/28/89.

03/22/89 HOUSE Prefiled

03/24/89 HOUSE Referred to Regulated Industries

03/28/89 HOUSE Subreferred to Subcommittee on Alcoholic Beverages

04/04/89 HOUSE Introduced, referred to Regulated Industries -HJ 112; Subreferred to Subcommittee on Alcoholic Beverages; On Committee agenda—Regulated Industries, 04/05/89, 1:15 pm, 212-HOB—For ratification to subcommittee

04/10/89 HOUSE On subcommittee agenda—Regulated Industries, 04/12/89, 1:15 pm, 24-HOB

04/12/89 HOUSE Subcommittee Recommendation: Favorable with 2 amendments

04/13/89 HOUSE On Committee agenda—Regulated Industries, 04/17/89, 10:40 am, 214-C

04/18/89 HOUSE Preliminary Committee Action by Regulated Industries: Favorable as a CS

04/25/89 HOUSE Comm. Report: CS by Regulated Industries, placed on Calendar -HJ 274; CS read first time -HJ 274

05/16/89 HOUSE Placed on Special Order Calendar

05/22/89 HOUSE Read second time -HJ 556

05/23/89 HOUSE Read third time; CS passed; YEAS 107 NAYS 4 -HJ 570

05/23/89 SENATE In Messages

05/29/89 SENATE Received, referred to Regulated Industries -SJ 497; Withdrawn from Regulated Industries; Substituted for SB 802; CS passed; YEAS 36 NAYS 0 -SJ 527

05/29/89 Ordered enrolled

06/13/89 Signed by Officers and presented to Governor

06/28/89 Approved by Governor; Chapter No. 89-204

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

AS PASSED BY THE 1989 LEGISLATURE

STORAGE NAME: \wp\sa\h1191-F.ri
DATE: June 7, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATED INDUSTRIES
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1191

RELATING TO: Alcoholic Beverages and Tobacco; to restrict beverage
licensees operating certain commercial establishments from
allowing the exploitation of persons suffering from dwarfism

SPONSOR(S): Committee on Regulated Industries, Representatives Friedman
and Lawson

EFFECTIVE DATE: Upon Becoming A Law

DATE BECAME LAW: June 28, 1989

CHAPTER #: 89-204, Laws of Florida

COMPANION BILL(S): SB 802

OTHER COMMITTEES OF REFERENCE: None

I. SUMMARY:

This bill prohibits the undertaking or permitting of contests or other forms of recreational activity endangering the health, safety and welfare of any person suffering from dwarfism by any commercial establishment which sells alcoholic beverages. The Division of Alcoholic Beverages is required to promulgate rules to prohibit this type of activity and may suspend or revoke the alcoholic beverage license as well as impose a civil penalty not to exceed \$1,000 against any person violating those rules.

A. PRESENT SITUATION:

Currently, there are no statutes relating to recreational activity by people with dwarfism in the State of Florida.

B. EFFECT OF PROPOSED CHANGES:

Under Committee Substitute for House Bill 1191, the Division of Alcoholic Beverages is required to promulgate rules to prohibit any one who maintains, owns or operates a commercial establishment which sells alcoholic beverages from permitting or promoting any form of recreational activity involving the exploitation of persons with dwarfism which endangers their health, safety and welfare. This bill defines dwarfism as a disproportionate or proportionate short stature most often caused by a genetic syndrome.

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If any rule promulgated by the Division is violated, the Division may suspend or revoke the alcoholic beverage license and impose a civil penalty not to exceed \$1,000.00.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

The Department of Business Regulation has stated that this bill will not have any fiscal impact on it.

2. Recurring or Annualized Continuation Effects:

The Department of Business Regulation has stated that this bill will not have any fiscal impact on it.

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There may be a loss of revenue to establishments which promote this activity as well as a loss of income to some dwarfs and their agents who participate in this activity. However, if a dwarf is injured, the cost to society for medical care may be substantial.

2. Direct Private Sector Benefits:

Society will not be subjected to the cost of medical care and treatment of a dwarf injured in this activity. The dwarf community will not be exposed to dehumanizing activity, and

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DATE: June 7, 1989
PAGE: 3

the State will not be subjected to negative publicity.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Employment opportunities for dwarfs may be reduced.

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

The mission statement for this committee is to "reduce the inappropriate and excessive alcohol consumption by encouraging alcohol use in the context of legitimate entertainment while discouraging beverage products tailored for a different market." It is uncertain as to whether this bill is relevant in that regard.

In a dwarf toss, a dwarf, wearing a harness and helmet, is thrown by another person onto mattresses placed on the floor. The tosser is required to stand flat-footed and may swing the dwarf twice before throwing him. The person who throws the dwarf the greatest distance wins the contest. Dwarfs have been thrown as far as 12 feet.

Although this activity originated in Australia in 1985, its popularity has increased in Florida, particularly at college campus bars. Dwarf tosses have occurred in Gainesville, Clearwater, Ft. Lauderdale, Sarasota and Daytona. A dwarf toss was also scheduled as part of the 1988 Gator Gig pep rally at The Phyrst in Tallahassee. However, it was cancelled due to community pressure and bad publicity.

A dwarf is a person of unusually small stature whose bodily proportions are usually abnormal. There are many variations of dwarfism with different syndromes and infinite subtleties. These infinite variations and subtleties predispose some dwarfs to greater risk than others. Dr. John Ogden, Director of Orthopedics at the Shriners Hospital in Tampa, Florida, has stated it is impossible to determine which people are potentially at a greater risk without a complete medical evaluation.

The Little People of America, Inc. have asserted four reasons why dwarf tossing should be banned. The most important reason is the potential for causing serious medical harm to the participating dwarf. The spine and bones comprising the skull are abnormal in dwarfs. Many of these people require numerous surgeries to relieve pain and mobility problems caused by normal activity. Even being overweight may cause spinal chord problems for some dwarfs. People with dwarfism are advised to avoid vigorous physical activities and contact sports. Because the problems are orthopedic in nature, their

STORAGE NAME: \wp\sa\h1191-F.ri
DATE: June 7, 1989
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bones are susceptible to injury due to trauma. Serious injuries such as quadriplegia or paraplegia may result from dwarf tossing.

Dr. Ogden noted that this sport would not be safe even if attempts to regulate it were made. The dwarf cannot be totally protected because any device which would be tight enough to keep the dwarf's head from moving may possibly result in choking. In addition the injury is a result of the trauma of being thrown and landing. The dwarf does not have any control over the manner in which he is thrown. If the tosser throws the dwarf in the wrong way, the dwarf may be injured. Since many of these events occur in bars, the tosser has often been consuming alcohol, exposing the dwarf to an even greater risk.

Secondly, dwarf-tossing is a dehumanizing activity reminiscent of the Middle Ages. It is a morally reprehensible activity which views a dwarf as an object for use in the competition rather than a competitor. This activity also exacerbates the myth that little people should be exploited. In fact, dwarfs are just like other people and capable of leading full productive lives.

Third, the state has received negative publicity for not banning the activity. By not prohibiting dwarf-tossing, the Legislature is viewed as condoning it as an acceptable activity.

Last, there is a potential for children to imitate this activity by throwing smaller children without the use of any protective gear or mattresses.

The State has broad power to regulate the sale of alcoholic beverages under the Twenty-first Amendment. California v. LaRue, 409 U.S. 109, 119 (1972). There is a presumption in favor of the validity of a state regulation under the Twenty-first Amendment. Id at 118. However, Article I, Section 2, of the Florida Constitution states that "No person shall be deprived of any right because of race, religion or physical handicap." [Emphasis added] Since dwarfism is caused by a genetic defect, it may be considered a physical handicap. By prohibiting the tossing of only dwarfs, this bill, if enacted may be subject to a state constitutional challenge based on discrimination because of a handicap. In Schreiner v. McKenzie Tank Lines & Risk Management Services, Inc., 408 So. 2d 711, 716-17 (Fla. 1st DCA 1982), the court stated "that the last sentence of the section specifically identifies three 'suspect classes,' including race, religion and physical handicap.

There are two possible standards of scrutiny to which the court may subject the bill. The United States Supreme Court has held that the strict scrutiny standard should be applied when suspect classes or fundamental rights are involved. The strict scrutiny standard requires the state to demonstrate that the classification of people is necessary to achieve a compelling governmental interest. This test invalidates almost any statute to which it is applied. However, the court may apply a lesser standard which would only require the classification to have a substantial relationship to the subject being regulated. Should the court use this standard of scrutiny, then the bill may survive a state constitutional challenge.

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In Sasso v. Ram Property Management, 431 So.2d 204, 212 (Fla. 1st DCA 1983) aff'd 452 So2d 932 (Fla. 1984) the court stated that the equal protection clause under the Florida Constitution is to be interpreted in the same manner as the equal protection clause of the United States Constitution. If the state court follows this analysis then the strict scrutiny standard would apply to a suspect class. However, the United States Supreme Court has rejected applying the strict scrutiny standard to laws which the state has authority to enact where the law effects groups of individuals with distinguishing characteristics. City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 441 (1985). Therefore, it is questionable as to whether the state court would expand the strict scrutiny test to physically handicapped people.

The state court may follow the United States Supreme Court in rejecting the physically handicapped as constituting a suspect classification and apply the lesser standard of scrutiny requiring the classification to have a substantial relationship to the subject being regulated. Should the court use this standard of scrutiny, then this legislation may survive a state constitutional challenge since the protection of the physically handicapped may be considered as having a substantial relationship to the prohibition of dwarf tossing.

Legislative History 1989 Session

A. Enacted Bill

House Bill 1191 was introduced on April 4, 1989, by Representatives Friedman and Lawson, and referred to the Committee on Regulated Industries. It was then subreferred to the Subcommittee on Alcoholic Beverages & Tobacco. On April 12, 1989, the Subcommittee gave the bill a favorable recommendation with two amendments.

The first amendment extended protection to all dwarfs by changing the definition of dwarfism. The second amendment narrowed the scope of prohibited activity by limiting it to activity which endangers the health, safety and welfare of any person with dwarfism.

On April 25, 1989, the full Committee reported the bill favorably as a Committee Substitute. The Committee Substitute was placed on the Calendar and read for the first time. On May 16, 1989, it was placed on the Special Order Calendar. It was read for the third time on May 23, 1989, and passed by a vote of 107-4.

B. Disposition of Companion

A companion bill, SB 802, was introduced in the Senate on April 14, 1989 by Senator Stuart. When Committee Substitute 1191 was received by the Senate, on May 29, 1989, it was substituted for SB 802 and passed by a vote of 36-0.

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V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Gertrude Kehne
Gertrude Kehne

Staff Director:

Wyatt F. Martin
Wyatt F. Martin

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: April 25, 1989BILL NO. SB 802DATE: April 21, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Skelton <u>STS</u>	Skelton <u>STS</u>	1. RI	Fav/2 amend
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Dwarf Exploitation/Beverage Licenses

BILL NO. AND SPONSOR: SB 802 by Senator Stuart

I. SUMMARY:

A. Present Situation:

Florida does not have any laws relating to the undertaking or permitting of any contest or promotion or other form of recreational activity involving the exploitation of any person suffering from dwarfism.

Several contests or exhibitions of an activity commonly known as "dwarf-tossing" have occurred in Florida. The activity originated in Australia in 1985 and has become increasingly popular in Florida, particularly at college campus bars. In a "dwarf-tossing", a dwarf, wearing a harness with two handles around his torso, is thrown by another person onto mattresses placed on the ground or floor. The tosser is required to stand flat-footed in place and may swing the dwarf twice before releasing him. The person throwing the dwarf the greatest distance wins the contest. Dwarfs have been thrown as far as 12 feet. The dwarf wears a protective helmet. "Dwarf-tosses" have occurred in Gainesville, Clearwater, Fort Lauderdale, Sarasota and Daytona. A "dwarf toss" was also scheduled as part of the 1988 Gator Gig pep rally at The Phyrst bar in Tallahassee. The event was cancelled due to community pressure and the fear of bad publicity.

The State has broad power to regulate the sale of alcoholic beverages under the Twenty-first Amendment to the U.S. Constitution. There is a presumption in favor of the validity of a state regulation under the Twenty-first Amendment. California v. Larue, 409 U.S. 109, 118 and 119(1972).

B. Effect of Proposed Changes:

The Division of Alcoholic Beverages and Tobacco will be required to promulgate rules to restrict any entity that owns or operates a commercial establishment which sells alcoholic beverages from permitting or promoting any form of recreational activity involving the exploitation of dwarfs. This bill defines dwarfism as a disproportionate short stature most often caused by a genetic syndrome.

If any rule is violated, the Division may suspend or revoke the alcoholic beverage license and/or impose a civil penalty not to exceed \$1000.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

REVISED: April 25, 1989

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DATE: April 21, 1989

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B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Regulated Industries:

Sets effective date as October 1, 1989 and will prohibit licensed beverage dealers from undertaking or permitting any contest or promotion or other form of recreational activity involving exploitation endangering the health, safety and welfare of any person with dwarfism. Expands definition of "dwarfism" to include persons of disproportionate or proportionate short stature.

#2 by Regulated Industries:

Corrects title to reflect above amendment.

SENATE COMMITTEE AMENDMENT

SB 802

No. 1
(reported favorably)

HB _____

The Committee on Regulated Industries recommended the following amendment which was moved by Senator.....and adopted:
and failed:

1 Senate Amendment
2
3 On page 1....., lines 18-25....., strike
4
5 all of said lines
6
7
8
9 If amendment is text from another bill insert:
10 Bill No. Draft No. With Changes? No — Yes —
11 and insert:
12 become effective no later than October 1, 1989, to prohibit
13 every person maintaining, owning, or operating a commercial
14 establishment located within this state at which alcoholic
15 beverages are offered for sale on the premises from
16 undertaking or permitting any contest or promotion or other
17 form of recreational activity involving exploitation
18 endangering the health, safety and welfare of any person with
19 dwarfism. For the purposes of this section, the term
20 "dwarfism" means a disproportionate or proportionate short
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CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 1, taken up by committee: 4/25/89 Adopted x *

* Offered by Senator Forman Failed — *

(Amendment No. — Adopted — Failed — Date —/—/—)

SENATE COMMITTEE AMENDMENT

SB 802

No. 2
(reported favorably)

HB _____

The Committee on Regulated Industries recommended the following amendment which was moved by Senator.....and adopted:
and failed:

1	Senate Amendment				
2					
3	In title, on page 1....., line 7....., strike				
4					
5	all of said line				
6					
7					
8					
9	If amendment is text from another bill insert:				
10	<table border="1"> <tr> <td>Bill No.</td> <td>Draft No.</td> <td>With Changes?</td> <td>No Yes</td> </tr> </table>	Bill No.	Draft No.	With Changes?	No Yes
Bill No.	Draft No.	With Changes?	No Yes		
11	and insert:				
12	<u>exploitation of persons with</u>				
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CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 2, taken up by committee: 4/25/89 Adopted x *

* Offered by Senator Forman Failed _ *

(Amendment No. ____ Adopted ____ Failed ____ Date __/__/__)