

SENATE 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: CS/SB 1114

SPONSOR: Regulated Industries Committee and Senator King

SUBJECT: Restaurants Licensed to Sell Wine.

DATE: March 12, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would allow restaurants licensed to sell wine on the premises and the restaurant's patrons to remove one unsealed bottle of wine for consumption off the licensed premises, provided that the patron purchased a full-course meal and consumed a portion of the bottle of wine with the meal. The bill defines a full course meal as consisting of a salad or vegetable, entrée, a beverage, and bread. The bill would require that the partially consumed bottle of wine must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed. A dated receipt for the wine and meal must be attached to the container, and the container must be placed in a locked glove compartment, trunk, or other non-passenger area if being transported in a vehicle.

The bill amends s. 316.1936, F.S., to permit a restaurant patron to transport a resealed wine container in a vehicle without being in violation of the open container law if the partially consumed bottle of wine was resealed in the manner required by the bill.

The bill would take effect July 1, 2005.

This bill creates Section 564.09 of the Florida Statutes.

This bill substantially amends section 316.1936, Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) of 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. Chapter 564, F.S., relates to the regulation of wine.

Restaurants may obtain one of two general classes of alcoholic beverage licenses: licenses that only permit sales of alcoholic beverages that are intended for consumption on the premises, and licenses that permit the sale of alcoholic beverages without limiting the consumption of such beverages on the licensed premises.

Section 561.20, F.S., places limits, based on county population, on the number of alcoholic beverage licenses that may be issued per county.¹ These alcoholic beverage licenses are known as quota licenses. Licenses issued under s. 561.20, F.S., may sell beer, wine, and liquor, for consumption on the premises or as package, i.e. for consumption off the licensed premises. A restaurant with a quota license is permitted to serve sealed containers of alcoholic beverages for consumption off premises.

Section 561.20(2)(a)4., F.S., creates a special restaurant alcoholic beverage license (SRX), which requires that a restaurant maintain food sales of at least 51 percent of gross revenue, have a minimum 2,500 square footage, and must be equipped to serve at least 150 persons full course meals at tables at one time.² The division's rule governing SRX licenses requires that full course meals must include a salad or vegetable, an entrée, a beverage, and bread.³

The SRX license is termed a COP (consumption on the premises) license. COP licensees are prohibited from serving alcoholic beverage for consumption off the licensed premises. A restaurant, or any other business that serves food and alcoholic beverages, is not limited to holding a quota or SRX license. A food service establishment may qualify for any of the non-quota license exceptions in s. 561.20, F.S., or may hold a license that permits the service of wine for consumption on the premises.⁴

Violations of the Beverage Law

Section 561.29, F.S., provides several grounds for the division's suspension or revocation of an alcoholic beverage licensee, including a violation by the licensee of any of the laws of this state.⁵

Section 562.45(1), F.S., provides that it is unlawful for any person to violate any provision of the Beverage Law. If the Beverage Law does not provide a penalty for a specific violation, s. 562.45(1), F.S., further provides that the violation shall constitute a second degree misdemeanor.

¹ Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county. These licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverages license that is limited in number; all other types of alcoholic beverages licenses are available without limitation. However, non-quota licenses may have limits on the types of alcoholic beverages that may be served or how or where the beverages may be served. Applications for quota licenses can exceed the number of available licenses. Section 561.19(2)(a), F.S., establishes a double random selection drawing process for quota liquor licenses.

² Section 561.20(2)(a)4., F.S., is an exception to s. 561.20, F.S.

³ See rule 61A-3.0141, F.A.C.

⁴ See s. 564.02, F.S., regarding vendor licenses that permit the service of wine for consumption on the premises.

⁵ See s. 561.29(1), F.S.

A subsequent conviction for violating any provision of the Beverage Law constitutes a third degree felony.

Open Container Prohibition

Section 316.1936, F.S., prohibits the possession of an open container of an alcoholic beverage or consumption of the beverage while operating a vehicle or while a passenger in or on a vehicle.

Section 316.1936(1)(a), F.S., defines an "open container" to mean "any container of alcoholic beverage which is immediately capable of being consumed from, or the seal of which has been broken."

III. Effect of Proposed Changes:

Section 1. The bill creates section 564.09, F.S., to allow restaurants licensed to sell wine on the premises and to permit patrons to remove one unsealed bottle of wine for consumption off the licensed premises: The bill establishes the following preconditions for the exercise of this option:

- the patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- before the partially-consumed bottle of wine is to be removed from the premises it must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- a dated receipt for the wine and meal must be attached to the container; and
- the container must be placed in a locked glove compartment, trunk, or other non-passenger area if being transported in a vehicle.

The bill does not require that the nonpassenger area where the container is transported must be locked.

Although the bill does not reference a penalty for violation of this provision, under s. 561.45, F.S., violations of the Beverage Law for which a penalty is not provided by the restaurant alcoholic beverages licensee or the patron may constitute a first degree misdemeanor.

Section 2. The bill amends section 316.1936, F.S., to create an exception to the open container prohibition. This provision would allow a restaurant patron to transport a resealed wine container in a vehicle without being in violation of the open container law if the partially consumed bottle of wine was resealed in the manner required by s. 564.09, F.S.

The bill would take effect July 1, 2005.

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 staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
