

# 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.)

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Prepared By: Transportation Committee

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BILL: CS/CS/SB 1114

SPONSOR: Transportation Committee, Regulated Industries Committee and Senator King

SUBJECT: Restaurants Licensed to Sell Wine

DATE: March 21, 2005

REVISED: \_\_\_\_\_

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

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## I. Summary:

CS/CS/SB 1114 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 the patron purchased a full-course meal and consumed a portion of the bottle of wine with the meal. The CS defines a full course meal as consisting of a salad or vegetable, entrée, a beverage, and bread. The CS would require 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 secured in such a manner 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 if transported in a motor vehicle then the container must be placed in a locked glove compartment, locked trunk, or other non-passenger area.

The CS amends s. 316.1936, F.S., to clarify a resealed wine container in a motor vehicle is not an open container if the partially consumed bottle of wine is resealed and transported in the manner required by the CS.

This CS creates section 564.09 of the Florida Statutes.

This CS substantially amends section 316.1936, of the 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. The Beverage Law requires a person to be licensed prior to engaging in

the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability.

Restaurants may obtain one of two general classes of alcoholic beverage licenses: licenses only permitting sales of alcoholic beverages intended for consumption on the premises, and licenses permitting 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.<sup>1</sup> 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 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.<sup>2</sup> The division's rule governing SRX licenses requires full course meals must include a salad or vegetable, an entrée, a beverage, and bread.<sup>3</sup>

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 serving 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.<sup>4</sup>

While the state retains primary regulatory authority over the activities of alcoholic beverage licensees, certain areas of responsibility have been delegated to counties or municipalities by statute. Sections 562.45 and 562.14, F.S., grant zoning authority to counties and municipalities, as well as, the authority to enact ordinances regulating the type of entertainment, hours of operation, and conduct permitted in licensed alcoholic beverage establishments.

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<sup>1</sup> 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 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.

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

<sup>3</sup> See rule 61A-3.0141, F.A.C.

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

This combination of state and local regulation effectively prohibits the patron from removing an open container of alcoholic beverages from the premises of a restaurant alcoholic beverage licensee.

### **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.<sup>5</sup>

Section 562.45(1), F.S., provides 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 the violation shall constitute a second degree misdemeanor. A subsequent conviction for violating any provision of the Beverage Law constitutes a third degree felony.

### **Open Container Prohibition**

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."

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 located on a public roadway or the right-of-way of a public roadway. An exception is provided for passengers in vehicles designed, maintained, and used primarily for the transportation of persons for compensation and in motor homes. An open container is considered to be in the possession of an operator of a vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked nonpassenger area of the vehicle.<sup>6</sup> Any operator of a vehicle who violates this section is guilty of a noncriminal moving violation, punishable as provide in ch. 318, F.S. (\$60 fine, 3 points). In addition, an open container is considered to be in the possession of a passenger of a vehicle if the container is in the physical control of the passenger.<sup>7</sup> A passenger of a vehicle who violates this section is guilty of a nonmoving traffic violation, punishable as provided in ch. 318, F.S. (\$30 fine).

The Transportation Equity Act for the 21st Century (TEA-21) requires each state must enact an open container law prohibiting the possession of any open alcoholic beverage container in the passenger area of any motor vehicle located on a public highway or on the right-of-way of any public highway in the state. TEA-21 further provides a state which has not adopted an open container law that meets the minimum penalty provisions prescribed in TEA-21 by October 1, 2002, will have 3 percent of certain federal-aid highway construction funds transferred to the state's safety programs each year the state is not in compliance. Transferred funds may be used only for alcohol-impaired driving countermeasures, enforcement of drunk driving laws or the state's hazard elimination program.

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<sup>5</sup> See s. 561.29(1), F.S.

<sup>6</sup> See s. 316.1936(3), F.S.

<sup>7</sup> See s. 316.1936(4), F.S.

To comply with the federal program under 23 U.S.C. 154, a state's open container law must:

- Prohibit both possession of any open alcoholic beverage container and consumption of any alcoholic beverage;
- Cover the passenger area of any motor vehicle, including unlocked glove compartments and any other areas of the vehicle readily accessible to the driver or passengers while in their seats;
- Apply to all open alcoholic beverage container and all alcoholic beverages, including beer, wine, and spirits containing one-half of one percent or more of alcohol by volume (including 3.2 percent beer);
- Apply to all vehicle occupants except for passengers of vehicles designed, maintained or used primarily for the transportation of people for compensation (such as buses, taxi cabs, and limousines) or the living quarters of motor homes;
- Apply to all vehicles on public highway or the right-of-way (i.e. on the shoulder ) of a public highway; and
- Require primary enforcement of the law, rather than requiring probable cause that another violation had been committed before allowing enforcement of the open container law.

To avoid the transfer of funds, states must certify its open container law complies with the above elements, the law is in effect, and the state is enforcing the law. Florida's current open container law satisfies the requirements of TEA-21.

### III. Effect of Proposed Changes:

**Section 1.** The CS 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 CS 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
- if transported in a motor vehicle the container must be placed in a locked glove compartment, locked trunk, or other non-passenger area if being transported in a vehicle.

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

Although the CS 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 CS 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 motor vehicle without being in violation of the open container law if the partially consumed bottle of wine was resealed and transported in the manner required by s. 564.09, F.S.

According to a preliminary review, it is the opinion of the National Highway Traffic Safety Administration (NHTSA) enactment of CS/CS/SB 1114 would place current state law into non-compliance with the federal open container requirements of requirements of the TEA-21. As a result, the Department of Transportation (DOT) estimates approximately \$35 million per year from the National Highway System, Surface Transportation Program and Interstate Maintenance Program funds would be redirected to Florida's highway safety programs. The estimation was based on the 2004 apportionments for the state and should Florida's apportionments increase with reauthorization, then the amount would increase.

The CS 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:

The consuming public will be able to legally remove one partially consumed bottle of wine from licensed premises and transport the bottle in a vehicle without being in violation of the beverage law or open container law.

According to the Department of Highway Safety and Motor Vehicles, in the year 2003, there were a total of 24,475 citations issued for open container violations as designated as follows:

- (1) Open container citations (driver) 16,821; and
- (2) Open container citations (passenger) 7,654.

**C. Government Sector Impact:**

According to a preliminary review, it is the opinion of NHTSA enactment of CS/CS/SB 1114 would place current state law into non-compliance with the federal open container requirements of requirements of the TEA-21. As a result, DOT estimates approximately \$35 million federal-aid highway construction funds would be redirected to Florida's highway safety programs. The estimation was based on the 2004 apportionments for the state and should Florida's apportionments increase with reauthorization, then the amount would increase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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