

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.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1344

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Malt Beverages

DATE: March 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CM	
3.			CA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1344 authorizes the sale of individual containers of malt beverages containing 64 ounces. Current law requires that all malt beverages sold by retail vendors of alcoholic beverages must be packaged in individual containers containing no more than 32 ounces. Current law also permits malt beverages to be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

The bill requires that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 563.06, Florida Statutes.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁴

There are some exceptions to this regulatory system. The exceptions include allowing vendors to manufacture malt beverages⁵ and to sell them to consumers,⁶ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁷ and allowing in-state wineries to manufacture and sell directly to consumers.⁸

There are two license options that permit vendors to manufacture malt beverages for sale directly to consumers. Section 561.221(2), F.S., permits a vendor to manufacture malt beverages, even if the vendor is also licensed as a distributor. The malt beverages the vendor manufactures must be sold on property consisting of a single complex that includes a brewery and other structures that promote the brewery and the tourist industry of the state. The property may be divided by no more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured.

Section 561.221(3), F.S., permits a vendor also to be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.⁹ The malt beverages must be sold to consumers for consumption on the vendor’s licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known as “brew pubs.”

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 28, 2013).

⁵ Section 563.01, F.S., defines the terms “beer” and “malt beverage” to mean all brewed beverages containing malt.

⁶ *See* ss 561.221(2) and (3), F.S., which permits the limited manufacture of beer by vendors.

⁷ *See* s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁸ *See* s. 561.221(1), F.S.

⁹ Section 561.221(3)(a)1., F.S., defines the term “keg” as 15.5 gallons.

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹⁰ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.¹¹ Importers, whether resident or nonresident, are licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else. An importer can have no direct or indirect affiliation with any vendor licensed in this state.¹²

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of beer, wine, and liquor. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The 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 beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

On-Premises or Off-Premises Consumption-Malt Beverages

Section 564.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption¹³ and places of business where such on-premises consumption is permitted.¹⁴ According to the department, vendors licensed to sell malt beverages for on-premises consumption may sell alcoholic beverages for the customer to take it away from the licensed premises for consumption elsewhere. The license for a place of business where consumption on the premises is permitted does not prohibit the sale to a consumer for consumption away from the licensed premises. The license fee for consumption only off the licensed premises is 50 percent less than for a license in which on-premises consumption is permitted.¹⁵

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.¹⁶ The beverage law does not define the term “sealed container.”

¹⁰ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

¹¹ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹² Section 561.14(5), F.S.

¹³ See s. 565.02(1)(a), F.S.

¹⁴ See ss. 565.02(1)(b)-(f) and 565.045, F.S.

¹⁵ See s. 565.02(1)(a), F.S.

¹⁶ Section 316.1936, F.S.

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”¹⁷

Malt Beverage Containers

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32 ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces. The current provision allowing containers of one gallon or more was unaffected by that amendment.

Growlers

Some states permit vendors to sell malt beverages in containers known as “growlers,”¹⁸ which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a representative for several vendors who manufacture malt beverages,¹⁹ the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64 ounce growler.

III. Effect of Proposed Changes:

The bill amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages containing 64 ounces.

The bill requires that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5th, 1995.

¹⁸ The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “The Growler: Beer-to-Go!,” *Beer Advocate* (July 31, 2002). A copy of the article is available at: <http://beeradvocate.com/articles/384> (Last visited March 8, 2013).

¹⁹ According to several representatives for vendors who manufacture malt beverages and sell 32-ounce growlers, they are licensed under s. 561.221(2), F.S.

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:

Licensed venders of alcoholic beverages could sell malt beverages in 64 ounce containers.

C. Government Sector Impact:

None.

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.)

CS by Regulated Industries Committee on March 21, 2013:

The committee substitute (CS) amends s. 563.06(6), F.S., to require that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The CS also requires that the malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

B. Amendments:

None.