

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 Commerce and Tourism

BILL: CS/SB 658

INTRODUCER: Regulated Industries Committee, Senator Simpson and others

SUBJECT: Wine

DATE: March 15, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Malcolm	Hrdlicka	CM	Pre-meeting
3.			RC	
4.				
5.				
6.				

I. Summary:

CS/SB 658 permits the sale of wine in reusable containers of 5.16 gallons. Current law prohibits the sale of wine in individual containers holding more than 1 gallon. The additional allowable container size would allow retail vendors to use wine kegs to dispense glasses of wine through a tap instead of through individual bottles of wine.

This bill amends s. 564.05, F.S.

II. Present Situation:

In Florida, the manufacture, distribution, and sale of wine, beer, and liquor is regulated by the Beverage Law.¹ The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is authorized to administer and enforce the Beverage Law.²

Three-Tier System

In many states, including Florida, the regulation of alcoholic beverages has traditionally been through what is termed the “three-tier” system.³ The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated.⁴ Each license classification has clearly delineated functions: retailers buy their products from distributors who in turn buy their products from manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is rooted in the perceived evils of the “tied house” in which a retail vendor, such as a bar,

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

² Section 561.02, F.S.

is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁵

In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail. Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁶

There are some exceptions to this regulatory system. Exceptions include allowing brew pubs to manufacture malt beverages and sell them to consumers,⁷ allowing individuals to bring small quantities of alcohol back from out-of-state trips,⁸ and allowing in-state wineries to manufacture and sell directly to consumers.⁹

Limitation on the Size of Individual Wine Containers

Section 564.05, F.S., prohibits the sale of wine in individual containers holding more than 1 gallon of wine. However, distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁰

Wine Kegs

Wine kegs are stainless steel barrels that contain the equivalent of 26 bottles, which is equal to approximately 5.2 gallons. They are filled with wine and an inert gas to prevent the spoilage of the wine. Wine kegs are also reusable.¹¹ Some states, including California, Georgia, Texas, and New York, permit retail vendors to sell wine from wine kegs. In Florida, retail vendors may not sell wine from wine kegs because of the 1 gallon limit on the sale of wine in s. 564.05, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons.

Section 2 provides that the bill takes effect July 1, 2013.

³ 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* (June 2004), available at http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited March 12, 2013); see s. 561.14, F.S.

⁴ See s. 561.14, F.S.

⁵ Price, *supra* note 3.

⁶ Section 561.14(3), F.S. Vendors may also buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

⁷ See s. 561.221(2), F.S.

⁸ See s. 562.16, F.S.

⁹ See s. 561.221(1), F.S.

¹⁰ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

¹¹ Worobiec, MaryAnn, "Tapped In: Wine in Kegs," *Wine Spectator* (Oct. 21, 2011), available at <http://www.winespectator.com/webfeature/show/id/45801> (last visited on February 28, 2013). According to proponents of the bill, 36 states permit the sale of wine kegs.

Other Potential Implications:

According to a representative for the Florida Beer Wholesalers Association, the association is concerned that wine kegs would facilitate the use of refillable containers by establishments that sell alcoholic beverages for off-premise consumption. Although the bill does not relate to the sale of alcoholic beverages for consumption off-premises, there is concern that it could begin a shift in public policy away from the current policy that alcoholic beverages sold for off-premises consumption must be sold in pre-packaged, sealed containers.

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:

Wine kegs may be more economical for restaurants to use in the sale of wine-by-the-glass. When a bottle of wine is opened, the contents are exposed to oxygen and the process of oxidation begins, which may spoil the wine. A vendor may risk losing money when the vendor opens a bottle for sale by-the-glass and then is unable to sell all of the wine in the bottle. Additionally, the transportation costs for wine kegs may be cheaper because they weigh less than the equivalent bottles. Wine kegs are also reusable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The current language of CS/SB 658 does not amend s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. Instead, it specifically prohibits the sale of wine in reusable containers of 5.16 gallons.

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 7, 2013:

The committee substitute (CS) amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The CS does not amend this section to increase the size of individual containers of wine that may be sold from one gallon to six gallons.

- B. **Amendments:**

None.