

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 406

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Malt Beverages

DATE: February 13, 2014 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 authorizes the sale of individual containers of malt beverages in containers of 64 ounces or a lesser size containing no more than 32 ounces of malt beverages. 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. The bill requires that malt beverage containers must include information specifying the manufacturer, brand, and the percentage alcohol by volume. The bill also requires that the malt beverage container must have an unbroken seal or be incapable of being immediately consumed. Current law also permits malt beverages to be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

The bill permits malt beverage containers to be filled at the point of sale by a licensed manufacturer, a vendor licensed beer, wine, or liquor under ss. 561.20(1) and 565.02(1)(a)-(f), F.S., or a vendor licensed for consumption on the premises, provided the license permits off-premises sales. The bill provides that the containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor.

The bill repeals the prohibition against beer tastings and permits licensed malt beverage distributors and vendors to conduct malt beverage tastings at licensed premises that are

authorized to sell malt beverage by package or for consumption on premises, provided that the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption. Current law permits wine and spirituous beverage distributors and vendors to conduct wine and spirituous beverage tastings at licensed premises that are authorized to sell such beverages.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates 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 (department) administers and enforces 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

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.⁵ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁶ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.⁷

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁸ allowing individuals to

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/pricee_001.pdf (Last visited January 13, 2014).

⁵ Section 561.14(2), F.S.

⁶ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁷ 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.

⁸ *See s. 561.221(2), F.S.*, which permits the limited manufacture of beer by vendors (brew pubs).

bring small quantities of alcohol back from trips out-of-state,⁹ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁰

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 be a manufacturer of 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.¹¹ 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."

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of liquor along with beer and wine. 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.

Section 565.02(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content. This includes licensees who are authored to sell:

- Any alcoholic beverages where the sale is limited to consumption on the premises;
- Any alcoholic beverages for consumption on premises where off-premises sales are permitted, and
- Any alcoholic beverage where the beverages are sold only in sealed containers for consumption off the premises.

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 consumption¹² and places of business where such on-

⁹ 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.

¹⁰ See s. 561.221, F.S.

¹¹ Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

¹² See s. 565.02(1)(a), F.S.

premises consumption is permitted.¹³ 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.¹⁴

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.¹⁵ The beverage law does not define the term “sealed container.”

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.”¹⁶

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, kegs, 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 that allows 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,”¹⁷ 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

¹³ See ss. 565.02(1)(b)-(f) and 565.045, F.S.

¹⁴ See s. 565.02(1)(a), F.S.

¹⁵ Section 316.1936, F.S.

¹⁶ 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 5, 1995.

¹⁷ 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 January 13, 2014).

representative for several vendors who manufacture malt beverages,¹⁸ the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64 ounce growler.

Tied House Evil Prohibitions

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. Specifically, s. 561.42(1), F.S., provides in part:

No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. (Emphasis supplied.)

Section 561.42(8), F.S., authorizes the division to establish rules and require reports to enforce limitation on credits and other forms of assistance. This rulemaking authority does not extend to cash deposits on beer sales, as provided in s. 563.08, F.S.

Section 561.42, F.S., defines the types of items or services that may be provided to vendors. For example, s. 561.42(10), F.S., prohibits manufacturers, distributors, importers, primary American sources of supply,¹⁹ or brand owners or registrants, or their brokers, sales agents or sales persons, from directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise.

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

¹⁸ According to several representatives for vendors who manufacture malt beverages and sell 32-ounce growlers, the vendors are typically licensed under s. 561.221(2), F.S.

¹⁹ Section 564.045(1), F.S., defines the term "primary American source of supply" as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

Section 565.17, F.S., permits licensed distributor of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

III. Effect of Proposed Changes:

Malt Beverage Containers

The bill amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages in containers of 64 ounces or a lessor size containing no more than 32 ounces of malt beverages.

The bill requires that malt beverage containers must:

- Include information specifying the manufacturer and brand of malt beverage, and specify the percentage alcohol by volume; and
- Have an unbroken seal or be incapable of being immediately consumed.

The bill permits the following types of alcoholic beverage licensees to fill malt beverage containers at the point of sale:

- A licensed manufacturer;
- A vendor licensed under ss. 561.20(1) and 565.02(1)(a)-(f), F.S.; or
- A vendor licensed for consumption on the premises, provided the license permits off-premises sales.

The containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor. This provision would prohibit manufacturers who are also licensed as a vendor under s. 561.221(2), F.S., to fill growlers at the point of sale with malt beverages that they did not produce on-site and which were obtained from another manufacturer through a distributor.

Malt Beverage Tastings

The bill creates s. 563.09, F.S., to permit licensed malt beverage distributors and vendors to conduct malt beverage tastings at license premises that are authorized to sell malt beverage by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the malt beverage tasting is limited to and directed toward the general public of the age of legal consumption.

The bill repeals s. 561.42(14)(e), F.S., which prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only, by manufacturers,

distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Effective Date

The effective date of the bill is July 1, 2014.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Although the bill creates s. 563.09, F.S., to authorize manufactures and vendors to beer tastings, the bill does not repeal the prohibition against beer tastings in s. 561.42(14)(e), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 563.06, Florida Statutes.
This bill creates section 563.09, Florida Statutes.

IX. 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 February 13, 2014:

The committee substitute (CS) amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages in containers of 64 ounces or a lesser size containing no more than 32 ounces of malt beverages. The CS does not authorize the sale of malt beverages in containers of any size.

The CS also provides the following additional requirements for the sale of containers of malt beverages:

- The containers must specify the percentage alcohol by volume;
- The containers may be filled at the point of sale by either a licensed manufacturer, a vendor licensed under ss. 561.20(1) and 565.02(1)(a)-(f), or a vendor licensed for consumption on the premises, provided the license permits off-premises sales.; and
- The containers may not be filled at the point of sale with alcoholic beverages purchased by a licensed manufacturer from a licensed distributor.

The CS creates s. 563.09, F.S., but does not provide that its provisions are notwithstanding any other provision of the beverage law. The CS also does not authorize malt beverage tastings by licensed manufacturers.

The bill repeals s. 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only by manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

- B. **Amendments:**

None.