

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 658
INTRODUCER: Regulated Industries Committee and Senator Simpson
SUBJECT: Wine
DATE: March 7, 2013 REVISED: _____

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

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

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

This bill amends section 564.05, 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

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.

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 beer brew pubs to manufacture malt beverages and to sell them to consumers,⁵ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁶ and allowing in-state wineries to manufacture and sell directly to consumers.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.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 one 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

Some states, including California, Georgia, Texas, and New York, permit retail vendors to sell wine from wine kegs which dispense wine through a tap. According to proponents of the bill, 36

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

⁶ 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.

⁷ See s. 561.221, F.S.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ 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.

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.

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

III. Effect of Proposed Changes:

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

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, the association is concerned that it could begin a shift in public policy away from the current policy that alcoholic beverages that are 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:

Proponents of wine keg technology argue that kegs are 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. Proponents also argue that the

¹¹ Worobiec, MaryAnn, "Tapped In: Wine in Kegs," *Wine Spectator* (Oct. 21, 2011). A copy of the article is available at: <http://www.winespectator.com/webfeature/show/id/45801> (Last visited on February 28, 2013).

transportation costs for wine kegs are less because they weigh less than the equivalent bottles. Wine kegs are also reusable.

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 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.