

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/CS/SB 658

INTRODUCER: Commerce and Tourism Committee, Regulated Industries Committee, Senator Simpson and others

SUBJECT: Wine

DATE: March 19, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
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/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. The bill also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law.

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

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

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, 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

² Section 561.02, F.S.

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/prictee_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.

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. The bill also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law (such as, when wine is purchased at a restaurant with a meal and the bottle of remaining wine is taken home).

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

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:

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/CS by Commerce and Tourism Committee on March 18, 2013:

The committee substitute amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. It also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law.

CS by Regulated Industries Committee on March 7, 2013:

The committee substitute 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.