

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 669 Beverage Law
SPONSOR(S): Commerce Committee, Perez and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	14 Y, 1 N	Willson	Anstead
2) Commerce Committee	22 Y, 0 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. 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.

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 564.055, F.S., prohibits the sale of cider at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more.

The bill amends s. 564.055, F.S., to authorize the packaging, filling, refilling, or sale of cider in a growler that holds 32, 64, or 128 ounces of such cider if it is filled at the point of sale. Additionally, the bill specifies that:

- Cider packaged in a growler may be filled or refilled by a licensed manufacturer of wine holding a vendor's license or any person authorized to fill or refill a malt beverage growler.
- A growler must include an imprint or label that provides information specifying the name of the manufacturer, the brand, and the anticipated percentage of alcohol by volume of the cider. The package must have an unbroken seal or be incapable of being immediately consumed.
- A licensee authorized to fill or refill growlers may not use growlers for the purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.

The bill provides certain criminal and administrative penalties for any person, firm, or corporation that violates the provisions relating to cider growlers.

Section 564.09, F.S. provides that restaurant patrons may take home a partially consumed bottle of wine under certain conditions, including the purchase of "a full course meal which includes an entrée, salad or vegetable, beverage, and bread." The bill simplifies the meal specifications to just "a meal".

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴ “Cider” is fermented apple or pear juice containing between one-half of 1 percent and 7 percent of alcohol by volume.⁵

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.
- “Distributors” are those licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.
- “Importers” are those 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 in this state.⁶
- “Vendors” are those licensed to sell alcoholic beverages at retail only and may not purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.

Wine Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. 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.⁷

Cider Containers

Section 564.055, F.S., prohibits the sale of cider at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual

¹ Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ Section 564.06(4), F.S., provides that “cider” is “made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume.” “Must” is the expressed juice of a fruit before and during fermentation. See <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

⁶ s. 561.01(5), F.S.

⁷ Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

container of one gallon or more, regardless of container type.

Malt Beverage Growlers

Malt beverages must be sold or offered for sale in containers of no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of individual container type.⁸

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. A growler must include an imprint or label that provides information specifying the name of the manufacturer, the brand, and the anticipated percentage of alcohol by volume of the malt beverage. The container must have an unbroken seal or be incapable of being immediately consumed.⁹

Growlers may be filled or refilled by the following licensees:

- Vendor-licensed malt beverage manufacturers;¹⁰
- Vendors holding a quota license¹¹ to sell alcoholic beverages only in sealed containers for consumption off-premises;¹² and
- Vendors holding a license which authorizes consumption of malt beverages on-premises, unless such license restricts consumption to on the premises only, and have held that license in current, active status on June 30, 2015, subject to the following requirements:
 - The vendor proves, to the satisfaction of the division, that the vendor had draft equipment and tapping accessories installed and had purchased kegs before June 30, 2015.
 - The growlers are filled or refilled by the vendor or the vendor’s employee aged 18 or older.
 - The taps or mechanisms used to fill or refill the growlers are not accessible to customers.
 - The growlers meet the labeling and sealing requirements.
 - The vendor does not permit consumption on-premises, including tastings or other sampling activities.¹³

A licensee authorized to fill or refill growlers may not use growlers for the purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.¹⁴

Section 563.06(7)(d), F.S., provides that it is a first degree misdemeanor to violate the growler requirements.¹⁵ A violation is also punishable by revocation or suspension of the alcoholic beverage license.¹⁶ A violation of the labeling and sealing requirements in s. 63.06(7)(b), F.S., by a licensee, including its agents, officers, or employees, is also punishable by a fine of up to \$250.¹⁷

⁸ s. 563.06(6), F.S.

⁹ s. 563.06(7)(b), F.S.

¹⁰ Licensed pursuant to s. 561.221(2), F.S.

¹¹ The term “quota license” refers to the type of license authorized under s. 561.20, F.S., which limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county, or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

¹² Licensed pursuant to s. 561.20(1) and 565.02(1)(a), F.S.

¹³ Licensed pursuant to s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S.

¹⁴ s. 563.06(7)(c), F.S.

¹⁵ Section 775.082, F.S., provides a term of imprisonment not to exceed one year for a misdemeanor of the first degree. Section 775.083, F.S., provides a fine not to exceed \$1,000 for a misdemeanor of the first degree.

¹⁶ s. 563.06(7)(d), F.S.

¹⁷ *Id.*

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.¹⁸

Effect of the Bill

The bill amends s. 562.34, F.S., to provide that it is not unlawful for a person to possess a cider growler.

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill amends s. 564.055, F.S., to authorize the packaging, filling, refilling, or sale of cider in a growler that holds 32, 64, or 128 ounces of such cider if it is filled at the point of sale. Additionally, the bill specifies that:

- Cider packaged in a growler may be filled or refilled by a licensed manufacturer of wine holding a vendor's license under s. 561.221(1)(a), F.S., or any person authorized to fill or refill a malt beverage growler pursuant to s. 563.06(7)(a)1.-3., F.S.
- A growler must include an imprint or label that provides information specifying the name of the manufacturer, the brand, and the anticipated percentage of alcohol by volume of the cider. The package must have an unbroken seal or be incapable of being immediately consumed.
- A licensee authorized to fill or refill growlers may not use growlers for the purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.

The bill provides certain criminal and administrative penalties for any person, firm, or corporation that violates the provisions relating to cider growlers.

The bill amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine when the patron has purchased "a meal."

B. SECTION DIRECTORY:

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| Section 1 | Amends s. 562.34, F.S., authorizing the possession and transport of cider growlers. |
| Section 2 | Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers. |
| Section 3 | Amends s. 564.055, F.S., authorizing the packaging, filling, refilling, or sale of cider in growlers of specified sizes and under specified circumstances; providing labeling and packaging requirements for cider growlers; restricting the use of cider growlers; and providing criminal and civil penalties and license revocation or suspension for certain persons or licensees who violate provisions regulating cider growlers. |

¹⁸ s. 564.09, F.S.

Section 4 Amends s. 564.09, F.S., revising provisions authorizing a restaurant to allow a patron to remove bottles of wine from a restaurant for off-premises consumption.

Section 5 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2018, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Creates a regulatory framework for the packaging, filling, refilling, and sale of cider growlers that is analogous to the language authorizing malt beverages growlers, rather than simply providing that cider growlers may be sold “in the same manner and under the same restrictions as authorized for malt beverages.”
- Removes the bill provision that allowed an unfinished bottle of beer to be taken away from a restaurant when a meal has been purchased.

The bill analysis is drafted to the committee substitute as passed by the Commerce Committee.