

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 214

SPONSOR: Committee on Regulated Industries

SUBJECT: Malt Beverage Container Sizes

DATE: November 5, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill would allow malt beverages to be sold in this state in individual containers of any size which is 32 ounces or less.

This bill substantially amends section 563.06 of the Florida Statutes.

II. Present Situation:

Subsection 563.06(6), F.S., restricts the size of individual containers of malt beverages sold or offered for sale by vendors at retail in Florida to four sizes only, 8, 12, 16, or 32 ounces. This restriction does not affect malt beverages packaged in any individual container of 1 gallon or more or malt beverages packaged in bulk, in kegs, or in barrels.

The subsection was enacted in 1965 and has remained substantively unchanged since. The only evidence of legislative intent would be the legislative documents created at the time subsection 563.06(6), F.S., was enacted. The Bureau of Archives and Records Management within the Florida Department of State has no legislative records prior to 1969. Therefore, there is no authoritative evidence available from which to establish legislative intent for this statute.

III. Effect of Proposed Changes:

The bill would allow malt beverages to be sold in this state in individual containers of any size which is 32 ounces or less.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The method of assessing excise tax on individual containers of less than 1 gallon of malt beverages at the rate of x cents on each pint or fraction thereof in the container was adopted in 1935. s. 9, ch. 16774, Laws of Florida. Though the rate has changed, the methodology has not.

A revenue estimating conference impact report on this bill indicates that there is a potential for an increase in malt beverage tax revenue if the bill is enacted. The basis for this potential increase lies with two factors, the method of assessing taxes and the potential for sales of new containers of over 16 ounces replacing current sales of containers of 16 ounces or less.

The tax is assessed at the rate of six cents on each pint or fraction thereof in the container. Under the current size restriction statute, containers of 8, 12, or 16 ounces are taxed as a pint, or six cents tax, while a 32 ounce container is taxed as two pints, or 12 cents tax. Most new container sizes will be tax neutral. For example, if sales of 341 milliliter (11.531 ounce) bottles replace current sales of 12 ounce bottles, there is no tax consequence; both are taxed as a pint. Similarly, if sales of 22 ounce bottles replace current sales of 32 ounce bottles, there is no tax consequence; both are taxed as a quart. If, however, sales of 22 ounce bottles replace current sales of 16 ounce or 12 ounce bottles, the tax is 12 cents per sale instead of six cents per sale. The possibility of these container size substitutions creates the potential for increased tax revenue, however, as the number of such sales cannot be predicted, the net tax impact is indeterminate.

B. Private Sector Impact:

The current container size restriction prohibits bottle sizes preferred by some microbreweries and foreign breweries. The expense of producing additional bottle sizes is a factor in keeping some of the products of these breweries out of the Florida market, which limits consumer choice. It cannot be determined how many new brands would be introduced in Florida if the container size restriction statute was amended.

The Committee on Regulated Industries' interim project report regarding container size restrictions (Report No. 2000-65) included an extensive analysis of the effect amending the current law might have on the private sector. Although it is impossible to make an accurate, detailed prediction of the bill's effect, the report identified the following consequences:

- ▶ The three large domestic breweries are unlikely to introduce a large number of new container sizes to the Florida market; some new container sizes may replace existing sizes.
- ▶ The core brands of the three large domestic breweries enjoy strong brand loyalty and appear to be in a different market segment than the microbreweries' and foreign breweries' beers.
- ▶ Increased competition and greater consumer choice mainly will involve microbrewery beers, imports, and specialty brews.
- ▶ The bill would benefit microbreweries that wish to compete both in Florida and in other states using only 22 ounce bottles.
- ▶ If, as some fear, the three major domestic breweries react to the marketing of new product sizes by competitors by introducing a large number of new container sizes and packages themselves, the impact on distributors may be significant. If, on the other hand, the breweries introduce new sizes and packages slowly, the effect on distributors should be minimal.
- ▶ The bill is unlikely to have a significant effect on large retailers or on small retailers who are a part of a national chain. The primary effect will be on independent retailers who specialize in microbrewery beers, import beers, and specialty brews. These retailers may benefit by being able to supply products to meet consumer demand for malt beverages not now available in Florida.
- ▶ Having a larger number of container sizes available may make it more difficult for consumers to make price comparisons.

C. Government Sector Impact:

The bill will have no significant impact on enforcement of malt beverage laws and regulations or on tax revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no readily accessible source of information on container size restrictions in the fifty states. The staff of the National Conference of State Legislatures does not independently research

the law on this issue, but relies on information obtained from Modern Brewery Age, an industry research organization. According to the most recent information available from the National Conference of State Legislatures, only 26 states, including Florida, have limitations on malt beverage container size. Of these 26 states, 13 have only restrictions such as a minimum container size or only keg or barrel limitations. The remaining 13 states, including Florida, have varying restrictions.

This information is not up to date. For example, it states that Tennessee prohibits any size beer container not listed with the Tennessee Department of Revenue as being sold in Tennessee on January 1, 1973, or within three years prior to that date. However, this law has been repealed and Tennessee now has no restrictions on malt beverage container sizes.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
