

**STORAGE NAME:** h0187s1.br.doc  
**DATE:** March 21, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION  
ANALYSIS**

**BILL #:** CS/HB 187

**RELATING TO:** Alcoholic Beverage Containers

**SPONSOR(S):** Committee on Business Regulation and Representative(s) Maygarden

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION [CSG] YEAS 8 NAYS 0
  - (2) AGRICULTURE & CONSUMER AFFAIRS [CCC]
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
- 

I. SUMMARY:

This bill has two components:

First, the bill repeals the beer container size restrictions specified in s. 563.06(6), F.S., and allows beer to be sold at retail in individual containers of any size which is 32 ounces or less. Beer may still be sold in bulk, kegs and barrels.

Second, the bill removes the restriction that alcoholic cider may only be sold in container sizes of up to one gallon and allows cider to be sold in any size container that is 32 ounces or less and in kegs.

The bill is not expected to have a significant impact on state revenue collections or expenditures.

The act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Malt Beverages

The term "beer" and "malt beverages" are defined in s. 563.01, F.S., as all brewed beverages containing malt. Section 561.01(4), F.S., defines alcoholic beverages as distilled spirits and all beverages containing one-half of one percent or more alcohol by volume. There is no limit on the amount of alcohol by volume a malt beverage may contain and beverages containing less than 0.5 percent alcohol by volume are not regulated by the state.

Since 1965 the Florida Beverage Law has restricted the size containers in which malt beverages may be sold at retail. Section 563.06(6), F.S., specifies that beer may only be sold in individual containers of 8, 12, 16 or 32 ounces. The statute does not restrict bulk containers of one gallon or more, such as kegs, to a specific size. There are no statutory restrictions on the alcohol content of malt beverages.

Section 563.045, F.S., prohibits any beer from being sold in the state until the brands or labels under which the malt beverages are to be sold are registered with the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation [department]. Each registrant is required to pay an annual registration fee of \$30 for each brand or label.

Many domestic microbreweries prefer to market their product in 22-ounce containers, which are not allowed under the existing law. Also, most foreign breweries utilize metric size containers. It is reported that many foreign breweries do not market their product in Florida because of the expense of adding additional bottle sizes to accommodate Florida's restrictions.

Information obtained from the U. S. Department of Commerce indicates that only metric size containers are permitted in some European markets. For example, Germany requires beer container sizes to be shown in metric units and the permitted container sizes are: 0.25, 0.33, 0.5, 0.75, 1, 2, 3, 5 and 10 liters. In Germany, American breweries must convert from U. S. weights and measures to metric in order to enter that market.

Cider

Cider is sold and consumed in similar fashion as beer, however cider products are considered to be wine for purposes of the Beverage Law. Section 564.05, Florida Statutes, prohibits the sale of wine

at retail in individual containers that are larger than one gallon. Therefore, while cider may be sold in any container size smaller than one gallon it may not be sold in draft kegs or other containers larger than one gallon.

Section 564.045, F.S., requires the licensure of a primary American source of supply for each "wine" brand or label sold in the state and imposes a \$15 fee per brand that is subject to annual renewal. The statute prohibits any wine from being sold in the state until the brand or label under which the wine is to be sold is registered.

Alcoholic cider is similar to both wine and beer in that it is a fermented product. Unlike wine which is made from grapes and is aged, cider is made from apples and does not benefit from the aging process. Unlike beer which is made from grain products, cider may be carbonated or still, while beer is carbonated. Section 564.06, F.S., restricts the alcohol content of cider to not less than 0.5 percent and not more than 7 percent alcohol by volume. In efforts to increase its marketability, both the excise tax rate and the surcharge rate on cider were reduced from the rates imposed on wine in recent years. The statutes were also recently amended to allow cider to be sold from malt beverage delivery vehicles.

#### Other Related Information

There are approximately 4,300 varieties of malt beverages available for sale nationwide. According to the department, as of February 2001, there were 648 brands of malt beverages, 2,837 brands of spirits and 16,851 brands of wine [including cider] available for sale in Florida. Since cider is considered a wine for all purposes except the state excise tax, it was not possible to segregate cider products from wine products in the department's database. Section 565.10, F.S., prohibits the retail sale of liquor in individual containers that are larger than 1.75 liters or 59.18 ounces. There is no readily accessible source of information on container size restrictions in the United States.

#### C. EFFECT OF PROPOSED CHANGES:

This bill has two components:

##### Malt Beverages

The bill amends s. 563.06(6), F.S., to repeal the container size restrictions specified in s. 563.06(6), F.S., relating to malt beverages and allow malt beverages to be sold at retail in individual containers of any size which is 32 ounces or less. Malt beverages may still be sold in kegs, barrels, etc.

##### Cider

The bill creates a new s. 564.055, F.S., to set container size restrictions for cider sold at retail which will be identical to the new restrictions for beer; that is, in any size container which is 32 ounces or less and in kegs.

The bill is anticipated to have a positive but insignificant impact on state revenue collections.

The act will take effect upon becoming a law.

#### D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 563.06(6), F.S., to delete a requirement that malt beverages can be sold at retail only in containers of 8, 12, 16 and 32 ounces and replaces with a less stringent requirement

that malt beverages may be sold at retail in any size container of 32 ounces or less. The amendment to this subsection does not affect the sale of beer in bulk, kegs or barrels.

Section 2. Creates a new s. 564.055, F.S., which allows the retail sale of cider in any size container which is 32 ounces or less and in bulk, kegs or barrels.

Section 3. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The number of additional brands or labels of malt beverages that may be registered and sold in the state as a result of this legislation is unknown. Likewise, the degree to which the availability of cider in kegs will increase sales is unknown. Therefore, this legislation is anticipated to have a positive but insignificant impact on state revenue collections.

2. Expenditures:

The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation, will need to make minor programming adjustments to their excise and surcharge audit programs to accommodate the new container sizes. These costs are indeterminate but are not expected to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private sector of the need for, or the need to remove, the beer container size restrictions has been the subject of much debate in recent years. The following statements represent some of the differing perspectives regarding both beer and cider container restrictions:

Beer

Container size restrictions keep domestic microbrewed beer and many foreign brewed beers out of the Florida market, are anti-competitive, and limit consumer choice.

Passage of this bill may result in increased costs for product inventory, storage, shipment, and promotional activities for beer wholesalers.

Passage of this legislation may result in the establishment of an increased number of specialty retailer businesses.

Cider

Cider manufacturers and wholesalers may realize significant benefits if cider sales become more competitive with beer, particularly in the draft beverage markets.

Passage of this bill may result in increased costs for product inventory, storage, shipment, and promotional activities for wholesalers handling cider products.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The 21<sup>st</sup> Amendment to the U. S. Constitution repealed the 18<sup>th</sup> Amendment [prohibition] and gave to the individual states primary responsibility for the regulation of the alcoholic beverage industry within each state's borders.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The European Union [EU] currently comprised of 15 member countries: France, Germany, Italy, Netherlands, Belgium, Luxembourg, Ireland, Denmark, the United Kingdom, Spain, Portugal, Greece, Austria, Sweden and Finland, is the world's largest multi-nation trading bloc. EU member countries accept the entire body of EU laws and obligations associated with the treaties and agreements to which the EU is a party. In those areas where EU legislation is incomplete or absent, as in the case of beer container size restrictions, the laws of member states apply.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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On March 20, 2001, the Committee on Business Regulation adopted an amendment to HB 187 and passed the bill, 8 Yeas and 0 Nays, as a Committee Substitute.

The Committee Substitute deletes two components of the original bill. First, the requirement that beer sold in containers of more than 16 ounces be limited to no more than 3.2 percent alcohol by volume was deleted. Second, the bill deletes the affirmation/reciprocity requirement for beer which is manufactured or packaged in a foreign country.

The Committee Substitute also adds a new section relating to alcoholic cider which tracks the new container restrictions for beer and allows cider to be sold at retail in any size container which is 32 ounces or less and in kegs.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

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Janet Clark Morris

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M. Paul Liepshutz