

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 186

INTRODUCER: Senator Latvala and others

SUBJECT: Malt Beverages

DATE: January 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			CM	
3.			FP	

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**I. Summary:**

SB 186 permits the filling and refilling of 32, 64, and 128 ounce malt beverage containers (known as “growlers”) at the point of sale. Current law does not permit the 64 ounce malt beverage container. The 32, 64, or 128 ounce malt beverage container may be filled at the point of sale by vendor- licensed brewers, vendor who hold a quota alcoholic beverage license for the sale of beer, wine, and liquor only in sealed containers for consumption off the premises; and vendors licensed to sell for consumption on the licensed premises, unless such license restricts the consumption of malt beverages to the premises only.

The bill requires that the growler identify or be imprinted or labeled with information specifying the manufacturer and the brand of the malt beverage. The container must also have an unbroken seal or be incapable of being immediately consumed.

It provides a violation of the provisions in the bill is a first degree misdemeanor. It also authorizes the Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation to impose a fine of up to \$250 for a violation.

**II. Present Situation:**

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.<sup>3</sup>

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<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

### Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, 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 (vendors) 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.<sup>4</sup>

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.<sup>5</sup> Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>6</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.<sup>7</sup> Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.<sup>8</sup> In addition from being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.<sup>9</sup> However, a manufacturer of wine may be licensed as a distributor.<sup>10</sup>

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,<sup>11</sup> allowing individuals to bring small quantities of alcohol back from trips out-of-state,<sup>12</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>13</sup>

### Exception for Vendor-licensed Malt Beverage Manufacturers

There are two license options that permit malt beverage manufacturers to sell malt beverages directly to consumers. Section 561.221(2), F.S., permits a manufacturer of malt beverages to be licensed as a vendor, even if the manufacturer is also licensed as a distributor. To qualify for a vendor license, the manufacturer’s property must consist of a single complex that includes a brewery and other structures that promote the brewery and the tourism industry of the state. The property may be divided by no more than one public street or highway. This type of license does

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<sup>4</sup> 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/prictee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/prictee_001.pdf) (last visited January 23, 2015).

<sup>5</sup> Section 561.14(2), F.S.

<sup>6</sup> Section 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.

<sup>7</sup> 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.

<sup>8</sup> Section 561.22, F.S.

<sup>9</sup> Section 563.022(14), F.S.

<sup>10</sup> Section 561.221(1)(a), F.S.

<sup>11</sup> See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

<sup>12</sup> 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.

<sup>13</sup> See s. 561.221, F.S.

not limit the amount of malt beverages that may be manufactured. It also does not limit the type of vendor license that the manufacturer may obtain, e.g., a license to sell beer, wine and liquor, and licenses that permit package sales of other alcoholic beverages.

Section 561.221(3), F.S., permits a vendor to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.<sup>14</sup> The malt beverages must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known in the industry as "brew pubs."

### **Vendor Licenses**

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor<sup>15</sup> 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. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued 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.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

### **On-Premises or Off-Premises Consumption Alcoholic Beverage Licenses**

Section 563.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption<sup>16</sup> and places of business where such on-premises consumption is permitted.<sup>17</sup> According to the department, vendors licensed to sell malt beverages for on-premises consumption can also sell alcoholic beverages in sealed containers for the customer to take away from the licensed premises for off-premises consumption. Vendors licensed to sell malt beverages for consumption "only" on the licensed premises are not permitted to sell alcoholic beverages for off-premises consumption.<sup>18</sup> The license fee for a license that does not permit the sale of alcoholic beverages in sealed containers for off-premises consumption is 50 percent less than the license fee for a license that permits the sale of sealed containers for off-premises consumption.<sup>19</sup>

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<sup>14</sup> Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

<sup>15</sup> Section 565.01, F.S., defines liquor as "[t]he words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

<sup>16</sup> See s. 563.02(1)(a), F.S.

<sup>17</sup> See s. 563.02(1)(b)-(f), F.S.

<sup>18</sup> For example, the brew pub exemption under s. 561.221(3), F.S., permits sales for consumption only on the premises, but not sales for consumption off the premises.

<sup>19</sup> See s. 563.02(1)(a), F.S.

Vendors licensed under s. 564.02(1)(a), F.S., to sell malt beverages, wine, and fortified wine may only sell the beverages for consumption off the premises. Similarly, vendors licensed under s. 565.02(1)(a), F.S., to sell any alcoholic beverages (which includes liquor), may only sell the beverages in sealed containers for consumption off the premises. The license fees for these vendors are 50 percent and 75 percent of the license fee, respectively, compared to the fee for a license that permits the sale of sealed containers for consumption on and off the premises.

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.<sup>20</sup> The beverage law does not define the term “sealed container.”

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”<sup>21</sup>

### **Malt Beverage Containers**

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk, kegs, barrels, or in any individual container containing one gallon or more of a malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32-ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces.”<sup>22</sup> The current provision that allows containers of one gallon or more was unaffected by that amendment.

Section 563.06 (7), F.S., provides that any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of s. 563.06, F.S., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.<sup>23</sup> It also provides that the license, if any, shall be subject to revocation or suspension by the division.

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<sup>20</sup> Section 316.1936, F.S.

<sup>21</sup> Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5, 1995.

<sup>22</sup> See also *Review of the Malt Beverage Container Size Restrictions*, Interim Report No. 2000-65, Florida Senate Committee on Regulated Industries, September 1999.

<sup>23</sup> Section 775.082, F.S., provides that the penalty for misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

## Growlers

Some states permit vendors to sell malt beverages in containers known as “growlers,”<sup>24</sup> which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a representative for several vendors who manufacture malt beverages, the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64-ounce growler, i.e., 64-ounce malt beverage containers.

### III. Effect of Proposed Changes:

The bill creates s. 563.0614, F.S., to provide for the filling and refilling of growlers, including 32, 64, and 128 ounce growlers, by specified vendors.

Section 563.0614(1), F.S., permits malt beverages to be packaged in individual containers of 32 ounces, 64 ounces, or 128 ounces if the container is filled at the point of sale by any of following licensees:

- Vendor- licensed brewers licensed pursuant to s. 561.221(2), F.S.;
- Vendors holding a quota license under ss. 561.20(1) and 565.02(1)(a), F.S., i.e., vendors licensed to sell alcoholic beverages only in sealed containers for consumption off the premises; and
- A vendor holding a license under s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S., which authorize consumption of malt beverages on the premises, unless such license restricts the consumption of malt beverages to the premises only.

Vendors licensed to sell beverages only for off premises consumption would not be authorized to sell growlers.

Section 563.0614(4), F.S., requires that the growler must identify or be imprinted or labeled with information specifying:

- The manufacturer; and
- The brand of the malt beverage.

The bill also requires that the container have an unbroken seal or be incapable of being immediately consumed.

The bill provides that a violation of the provisions in s. 563.0614, F.S., is a first degree misdemeanor.<sup>25</sup> It also authorizes the division to impose a fine of up to \$250 for a violation.

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<sup>24</sup> The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “*The Growler: Beer-to-Go!*,” Beer Advocate (July 31, 2002). A copy of the article is available at: <http://beeradvocate.com/articles/384> (Last visited January 13, 2014).

<sup>25</sup> *Supra* at n. 23.

**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:

None.

## C. Government Sector Impact:

According to the Department of Business and Professional Regulation (department), the bill requires minimal increase in the department's workload which can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 563.0614, Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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