

**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 296

INTRODUCER: Senator Brandes

SUBJECT: Beverage Law

DATE: December 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 296 repeals the limits on the size of a wine container, which in current law may not hold more than one gallon, unless the container is reusable and holds 5.16 gallons.

The bill permits the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages.

The bill amends the current provision that permits a restaurant patron to take home a partially consumed bottle of wine under certain conditions, to permit restaurant patrons to take home a partially consumed bottle of beer. Also revised by the bill is the requirement that a restaurant patron must purchase and consume a full course meal (consisting of an entrée, salad or vegetable, beverage, and bread) in order to be able to take home a partially consumed bottle of wine or beer. The bill replaces that requirement with a requirement that a restaurant patron purchase only a meal with the bottle of wine or beer.

The effective date of the bill is July 1, 2018.

**II. Present Situation:**

**Division of Alcoholic Beverages and Tobacco**

The Division of Alcoholic Beverages and Tobacco (division)<sup>1</sup> within the Department of Business and Professional Regulation administers and enforces the Beverage Law,<sup>2</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

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<sup>1</sup> Section 561.02, F.S. Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

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

## Wine and Cider 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.<sup>3</sup>

Section 564.055, F.S., prohibits the sale of cider<sup>4</sup> at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

## 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 of malt beverages, regardless of individual container type.<sup>5</sup>

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.<sup>6</sup>

Growlers may be filled or refilled by the following licensees:

- Vendor-licensed malt beverage manufacturers;<sup>7</sup>
- Vendors holding a quota license<sup>8</sup> to sell alcoholic beverages only in sealed containers for consumption off-premises;<sup>9</sup> and

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<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> Section 563.06(6), F.S.

<sup>6</sup> Section 563.06(7)(b), F.S.

<sup>7</sup> Licensed pursuant to s. 561.221(2), F.S.

<sup>8</sup> 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.

<sup>9</sup> Licensed pursuant to s. 561.20(1) and 565.02(1)(a), F.S.

- 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.<sup>10</sup>

Growlers must identify or be imprinted or labeled with information specifying:

- The manufacturer;
- The brand of the malt beverage; and
- The anticipated percentage of alcohol by volume.<sup>11</sup>

The container must have an unbroken seal or be incapable of being immediately consumed.<sup>12</sup>

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.<sup>13</sup>

Section 563.06(7)(d), F.S., provides a first degree misdemeanor criminal penalty for a violation of the growler requirements.<sup>14</sup> A violation is also punishable by revocation or suspension of the alcoholic beverage license.<sup>15</sup> 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 a fine of up to \$250.<sup>16</sup>

### **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

<sup>10</sup> Licensed pursuant to s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S.

<sup>11</sup> Section 563.06(7)(b), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 563.06(7)(c), F.S.

<sup>14</sup> 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.

<sup>15</sup> Section 563.06(7)(d), F.S.

<sup>16</sup> *Id.*

- 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.<sup>17</sup>

### III. Effect of Proposed Changes:

#### Wine Containers

**Section 1** repeals the wine container size limits in s. 564.05, F.S.

#### Cider Containers

**Section 2** amends s. 564.055, F.S., to permit cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

The bill does not specify whether the penalties in s. 563.06(7)(d), F.S., apply to violations related to the packaging, filling, and refilling of growlers with cider.<sup>18</sup>

#### Restaurants - Off-Premises Consumption of Wine and Beer

**Section 3** amends s. 564.09, F.S., to permit a restaurant patron to take home a partially consumed bottle of beer. It revises the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine or bottle of beer. The bill retains the requirement that the restaurant patron purchase a meal with the alcoholic beverage.

#### Effective Date

**Section 4** provides the bill takes effect July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>17</sup> Section 564.09, F.S.

<sup>18</sup> Any person who violates any provision of the Beverage Law for which no penalty has been provided is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., which provide for a term of imprisonment not to exceed 60 days or a fine not to exceed \$500, respectively.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill amends s. 564.055, F.S., to permit cider, which is classified as wine, to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S. Section 563.06(7), F.S., provides criminal penalties, applicable fines, and revocation or suspension of alcoholic beverage licenses for violations of the provisions relating to malt beverage growlers. Although the bill provides that cider growler sales must be conducted under in the same manner and under the same restrictions authorized for malt beverages, the bill does not specify whether these penalties apply to violations related to growlers of cider.

Section 564.09, F.S., of the bill permits a restaurant patron to take home a partially consumed bottle of beer and requires that the partially consumed beer be "securely sealed." The bill does not specify how a vendor can "securely reseal" a bottle of beer as required by the statute. The sealing requirement in current law is limited to bottles of wine, which have corks or screw tops which allow relatively easy resealing. However, most beer bottles have screw tops or pop tops/pop caps which cannot be securely reattached to the bottle.

**VII. Related Issues:**

The provisions in SB 296 are substantively identical to provisions in CS/CS/SB 388 (2017 Regular Session), by the Rules Committee, Regulated Industries Committee, and Senator Hutson, which were amended onto the bill by the Rules Committee and passed by the Senate.<sup>19</sup> The provisions in SB 296 also were passed by the Regulated Industries Committee in CS/SB 400 during the 2017 Regular Session.<sup>20</sup>

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<sup>19</sup> See Amendment #379250 (2017 Regular Session) offered by Senator Brandes in the Rules Committee on April 12, 2017. The Senate passed CS/CS/SB 388 on April 19, 2017, by a vote of 36-1. (Subsequently, CS/CS/SB 388 was amended by the House of Representatives to remove provisions unrelated to provisions in SB 296 and died in Returning Messages.)

<sup>20</sup> See Substitute Amendment #323682 and Amendment #193132 to Substitute Amendment #323682 (both offered by Senator Brandes) to SB 400 by Senator Perry, which were adopted by the Regulated Industries Committee on March 16, 2016. (Those provisions subsequently were removed from CS/CS/SB 400 by Amendment #887606 offered by Senator Perry, which was adopted by the Senate on April 27, 2017. CS/CS/CS/HB 689 (2017 Regular Session) was substituted for CS/CS/SB 400 and CS/CS/SB 400 then was laid on the table. CS/CS/CS/HB 689 was enacted into law as Ch. 2017-137, Laws of Fla.)

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 564.05, 564.055, and 564.09.

**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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