

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 Beverage Law
SPONSOR(S): 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			

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 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.

The bill amends s. 564.055, F.S., to allow for 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.

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", and allows restaurant patrons to take home a partially consumed bottle of wine or beer.

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

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.⁵
- “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.⁶

Cider Containers

Section 564.055, F.S., prohibits the sale of cider⁷ 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.

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 s. 561.01(5), F.S.

⁶ 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.

⁷ 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).

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 of malt beverages, 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

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.¹⁴

The container must have an unbroken seal or be incapable of being immediately consumed.¹⁵

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.¹⁶

Section 563.06(7)(d), F.S., provides a first degree misdemeanor criminal penalty for a violation of the growler requirements.¹⁷ A violation is also punishable by revocation or suspension of the alcoholic

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)(b), F.S.

¹⁵ *Id.*

¹⁶ s. 563.06(7)(c), F.S.

¹⁷ 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.

beverage license.¹⁸ 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 \$250.¹⁹

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.²⁰

Effect of the Bill

Wine Containers

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

Cider Containers

The bill amends s. 564.055, F.S., to allow 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.

Restaurants - Off-Premises Consumption

The bill amends s. 564.09, F.S., shortening the meal specifications to simply "a meal," and allows for partially consumed bottles of beer to be taken home in the same manner as bottle of wine.

B. SECTION DIRECTORY:

- | | |
|-----------|---|
| Section 1 | Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers. |
| Section 2 | Amends s. 564.055, F.S., authorizing the packaging, filling, refilling, or sale of cider in growlers. |
| Section 3 | Amends s. 564.09, F.S.; revising provisions authorizing a restaurant to allow a patron to remove certain containers from a restaurant for off-premises consumption. |
| Section 4 | Provides an effective date. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁸ s. 563.06(7)(d), F.S.

¹⁹ *Id.*

²⁰ s. 564.09, F.S.

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:

Cider Containers and Malt Beverage Growlers

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. This subsection specifically identifies various license types that are authorized to sell "malt beverages," rather than wine. Clarification regarding the authority for wine vendors to sell cider growlers may be needed to effectively apply the specific malt beverage language within subsection 563.06(7), F.S., to cider.²¹

Additionally, s. 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.

²¹ Department of Business & Professional Regulation, Agency Analysis of SB 296, p. 6 (Oct. 17, 2017)

Restaurants - Off-Premises Consumption

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.

Section 564.09, F.S., currently uses the term "restaurant" as reflected on lines 30, 31, and 37 of the bill. The term restaurant as applicable to the special licenses available for these types of businesses pursuant to section 561.20(2)(a)4., F.S., was amended by chapter 2016-190, Laws of Florida, to be stated as "food service establishment."²²

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²² *Id.*