

**STORAGE NAME:** h0187.br.doc  
**DATE:** February 6, 2001

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

**BILL #:** HB 187  
**RELATING TO:** Malt Beverage Containers  
**SPONSOR(S):** Representative(s) Maygarden  
**TIED BILL(S):** None

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

- (1) BUSINESS REGULATION [CSG]
  - (2) AGRICULTURE & CONSUMER AFFAIRS [CCC]
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
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I. SUMMARY:

This bill has three 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.

Second, the bill restricts the alcohol content of beer sold in individual containers of more than 16 ounces to no more than 3.2 percent alcohol by volume.

Third, the bill prohibits any beer that is manufactured or packaged in a foreign country from being offered for sale in Florida until the Department of Business & Professional Regulation receives an acceptable affirmation that beer manufactured or packaged in Florida, in American standards of measurements, may be sold in that foreign country.

The bill is not anticipated to have a significant impact on state revenue.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

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.

A September 1999 interim project report by the Senate Committee on Regulated Industries indicated that there are approximately 4,300 varieties of malt beverages available for sale nationwide. According to the department, there are currently 648 brands of malt beverages registered for sale in Florida. There is no readily accessible source of information on container size restrictions in the United States.

Section 564.05, F.S., prohibits the sale of wine at retail in individual containers that are larger than one gallon. Similarly, s. 565.10, F.S., prohibits the retail sale of liquor in individual containers that are larger than 1.75 liters or 59.18 ounces.

**C. EFFECT OF PROPOSED CHANGES:**

This bill has three components:

First, the bill repeals the container size restrictions specified in s. 563.06(6), Florida Statutes, relating to malt beverages and allows malt beverages to be sold at retail in individual containers of any size which is 32 ounces or less.

Second, the bill restricts the alcohol content of malt beverages sold in individual containers containing more than 16 ounces to no more than 3.2 percent alcohol by volume. Since many foreign-brewed beers and specialty or domestic microbrewed beers have an alcohol content which is higher than 3.2 percent by volume, this provision will effectively prohibit the sale of those products in the state.

Third, the bill prohibits any malt beverage which is manufactured or packaged in a foreign country from being offered for sale in Florida until the department is provided with a written certification which affirms that malt beverages manufactured or packaged in Florida, in American standards of measurements, may be sold in that foreign country. [See V.C. OTHER COMMENTS]

The bill is not anticipated to have a significant impact on state revenue.

The act will take effect upon becoming a law.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1. Amends s. 563.06(6), F.S., thereby allowing the sale of beer in any size container of 32 ounces or less; restricts any beer sold in a container containing more than 16 ounces to no more than 3.2 percent alcohol by volume; and, requires an affirmation, in a form acceptable to the department, that beer manufactured or packaged in Florida in American standards of measurement containers are acceptable in that foreign country prior to a beer from that country being sold in Florida.

Section 2. 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 in the state as a result of this legislation 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. In addition, the department will need to incorporate an affirmation-receipt process within the existing brand registration system. 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:

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.

Passage of this legislation may have a positive impact on the social ills associated with alcohol consumption by reducing the alcohol content of malt beverages in larger size containers.

**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 term "American standards of measurements" is somewhat generic and should either be defined or a reference included to a specific system of weights and measures such as Units of Liquid Volume as approved by the National Institute of Standards and Technology, the National Conference on Weights and Measures, etc.

The bill extends the reciprocity created in this legislation to only those malt beverages manufactured or packaged "in this state." If it is the sponsor's intent to extend the reciprocity to other domestically brewed beer, the term "in this state" should be stricken.

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:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

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