

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.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 596

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Hays

SUBJECT: Craft Distilleries

DATE: April 8, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2. <u>Siples</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3. <u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 596 increases the number of factory-sealed containers of spirits a craft distillery may sell directly to consumers, allowing for the sale of no more than two of each branded product or up to four individual containers, whichever is greater. A branded product is defined as a distilled spirit product manufactured on site and in accordance with federal requirements.

The bill repeals a craft distillery's ability to ship its distilled spirits, providing that it may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill allows a craft distillery's ownership to be affiliated with another distillery that produces 75,000 or fewer gallons on each of its premises in this state or in another state, territory, or country.

Upon request of a craft distillery, the Florida Department of Transportation must install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads. The craft distillery is responsible for all costs associated with the signs.

The Revenue Estimating Conference has not yet determined the impact of this bill. The Department of Business and Professional Regulation indicates that the bill will have a minimal negative impact on the department to update software.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which 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) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.³

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 separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverage; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.⁴ Manufacturers cannot sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁶ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁷

Craft Distilleries and Licensed Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to 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.”

A “distillery” is a manufacturer of distilled spirits and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per year on its premises. A craft distillery must notify the division in writing of its decision to qualify as a craft distillery.⁸

Distilleries licensed to distill, rectify,⁹ or blend distilled spirits pay a state license tax of \$4,000 for each plant or branch operating in Florida and may also rectify and blend spirituous liquors in addition to distilling liquors without paying an additional license tax.¹⁰ The Federal Alcohol

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 Section 561.02, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.14(3), F.S. However, see the exceptions provided in s. 561.221, F.S.

⁶ Section 561.22, F.S.

⁷ Sections 563.022(14) and 561.14(1), F.S.

⁸ Section 565.03(1), F.S.

⁹ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited April 4, 2015).

¹⁰ Section 565.03(2), F.S. The distillery must submit any beverage excise taxes under the Beverage Law in its monthly report to the division with any tax payments due to the state. s. 565.03(5), F.S.

Administration Act requires the labels of distilled spirits containers be approved by the Alcohol and Tobacco Tax and Trade Bureau within the U.S. Department of Treasury.¹¹

A craft distillery must report to the division within 5 business days after it has reached the 75,000 gallon production limitation and cease making sales to consumers on the day after it reaches the production limit.¹²

A craft distillery may have its ownership affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year. However, a craft distillery license or any ownership interest therein cannot be transferred to any individual or entity with a direct or indirect interest in another distillery.¹³

According to the Florida Craft Distillers Guild, there are 15 distilleries located in Florida that are members of the guild.¹⁴

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor, 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.¹⁵

Exception for Vendor-Licensed Distilleries.

Craft distilleries and all other licensed distilleries are allowed to sell the distilled spirits produced on premises to consumers for off premises consumption. The sales must occur at the distillery’s souvenir gift shop that is located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.¹⁶ The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”¹⁷

Craft distilleries and licensed distilleries are only allowed to sell factory-sealed individual containers of distilled spirits in face-to-face transactions with consumers who are making a

¹¹ 27 U.S.C. 201 et seq. and 27 C.F.R. pt. 5 for the labeling and advertising regulations for distilled spirits.

¹² Section 565.03(2)(c), F.S.

¹³ *Id.*

¹⁴ Florida Craft Distillers Guild, *Members of the Florida Distillers Guild*, available at <http://floridadistillers.org/members> (last visited April 4, 2015).

¹⁵ Section 561.20, F.S.

¹⁶ See s. 561.01(11), F.S., which defines the term “licensed premises” to include the area embraced within the sketch that appears on, or is attached to, the application for the license.

¹⁷ Section 565.03, F.S.

purchase of two or fewer individual containers.¹⁸ A craft distillery may also ship, arrange to ship, or deliver these distilled spirits to consumers within the state in face-to-face transactions on the distillery property.¹⁹

Florida's Highway Guide Sign Program

Florida Department of Transportation (FDOT) is responsible for maintaining a uniform system of traffic control devices²⁰ on the state's roadways.²¹ The FDOT has several programs where a business may be eligible for a guide sign, including destination guide signs, such as those for wineries, regional shopping centers, hospitals, and government agencies.²² For example, Florida's Highway Guide Sign Program is a system of guide signs that inform and guide motorists, improve traffic flow, and establish criteria for guide signs.²³

III. Effect of Proposed Changes:

The bill creates s. 565.03(1)(a), F.S., to define the term "branded product" to mean any distilled spirit product manufactured on site that requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill increases the number of factory-sealed containers of distilled spirits a craft distillery may sell directly to consumers, allowing for the sale of no more than two of each branded product or up to four individual containers, whichever is greater. For example, if a craft distillery has five different branded products that are distilled on the premises, the craft distillery could sell a maximum of ten factory-sealed containers (two containers for each branded product) to each customer per calendar year. If the craft distillery has one branded product, the craft distillery could only sell up to four containers to each customer per calendar year. If the craft distillery has two different branded products, the craft distillery could sell any of the following combinations: three containers of one branded product and one container of the other branded product, or two containers of each branded product, or four containers of one branded product.

The bill repeals a craft distillery's ability to ship its distilled spirits, providing that it may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill expands a craft distillery's ability to have its ownership affiliated with another distillery by allowing affiliation with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

¹⁸ The containers must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

¹⁹ Section 565.03(2)(c), F.S.

²⁰ Pursuant to s. 316.003(23), F.S., an official traffic control device is a sign, signal, marking, or device placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

²¹ Section 316.0745, F.S.

²² Florida Department of Transportation Traffic Engineering and Operations Office, *Highway Signing Program*, available at <http://www.dot.state.fl.us/trafficoperations/Operations/Signing.shtm> (last visited April 4, 2015).

²³ See Chapter 14-51, F.A.C.

Upon request of a craft distillery, the Florida Department of Transportation must to install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads, in accordance with Florida's Highway Guide Sign Program. The requesting craft distillery is responsible for paying all costs associated with the signs. The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

There may be a minimal, but indeterminate increase in tax revenue generated through the increased sales of distilled spirits products at the craft distilleries. The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

A craft distillery may experience an increase in revenue generated by the ability to sell two factory-sealed containers of each branded product or up to four individual containers, whichever is greater.

A craft distillery opting to participate in the Florida's Highway Guide Sign Program will incur costs associated with the placement of signs.

C. Government Sector Impact:

The department indicates that it will have to update Versa: Regulation and inspection applicant software to implement the changes in the bill, but can do so with existing resources.²⁴

²⁴ 2015 Department of Business and Professional Regulation, *Bill Analysis for SB 596*, (Feb. 18, 2015) (on file with the Senate Fiscal Policy Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 565.03 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Commerce and Tourism on March 30, 2015:

The committee substitute:

- Authorizes the Department of Transportation to install directional signs for a licensed craft distillery on the rights-of-way of interstate highways and primary and secondary roads, upon request, and in accordance with the Florida's Highway Guide Sign Program; and
- Requires the licensed craft distillery requesting the signs to pay all associated costs.

CS by Regulated Industries on March 11, 2015:

The committee substitute (CS) amends s. 565.03(2)(c), F.S., to permit craft distilleries to sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year. The CS amends s. 565.03(2)(c)2., F.S., to provide that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The CS amends s. 565.03(2)(c)4., F.S., to provide that a craft distillery may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

- B. **Amendments:**

None.