

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 347 Distilled Spirits

SPONSOR(S): Regulatory Affairs Committee; Business & Professional Regulation Subcommittee; Renuart and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 642

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	11 Y, 0 N, As CS	Livingston	Luczynski
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	13 Y, 0 N, As CS	Livingston	Hamon

SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation (DBPR) is responsible for enforcing the provisions of the beverages laws.

The bill defines a "craft distillery" to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises. The bill allows a liquor manufacturer that meets the requirements of a craft distillery to sell two sealed containers per year of the distilled spirits it produces on its premises, to a consumer, for off premises consumption. The bill requires that sales of the spirits be made on "private property" contiguous to the distillery premises.

Once a craft distillery's production limitations have been surpassed (i.e., 75,000 gallons), the bill requires the craft distillery to notify the division within five days and immediately cease retail sales to consumers.

The bill provides that a craft distillery may not have its ownership affiliated with another distillery, unless the distillery produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises.

The bill specifies that the provisions of the bill are nonseverable.

The DBPR indicates that any fiscal impact as a result of this bill is insignificant and can be covered within existing resources.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

There are some exceptions to this regulatory system. The exceptions include allowing a vendor license to be issued to a manufacturer of malt beverages for the sale of alcoholic beverages on property that includes a brewery and promotes tourism¹ and beer brew pubs to manufacture malt beverages and to sell them to consumers for consumption on the premises.² An exception is also allowed for in-state wineries to manufacture and sell directly to consumers.³

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill relate to ch. 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The 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.

"Manufacturer" is defined to mean all persons who make alcoholic beverages except those who make beer or wine for personal or family consumption.⁴ "Distillery" or "distiller" is not specifically defined in statute or division rule.

Effect of proposed changes

The bill creates two definitions in s. 565.03, F.S.

- "Distillery" is defined to mean a manufacturer, of distilled spirits; and
- "Craft Distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the division of the desire to operate as a craft distillery.

The bill allows a craft distillery, as defined by the bill, to sell the distilled spirits it produces to consumers for off premise consumption. The bill requires that sales of the spirits be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the manufacturer and included on the sketch submitted with the license application. The bill further requires that the division must approve any subsequent "revisions" to a craft distillery's sketch, verifying that the location operated by the distillery are owned or leased by the distillery and on property contiguous to the distillery's production building.

¹ See s. 561.221(2), F.S.

² See s 561.221(3), F.S., which permits the limited manufacture of beer by vendors known as brew pubs.

³ See s. 561.221(1), F.S.

⁴ See s. 561.01(7), F.S.

Once a craft distillery's production limitations have been surpassed (i.e., 75,000 gallons), the bill mandates that the craft distillery notify the division within five days and immediately cease sales to consumers.

The bill prohibits distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer to two or less containers per customer per year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers, although they are authorized to deliver them to manufacturers, distributors, bonded warehouses, and exporters.

The bill provides that a craft distillery may not have its ownership affiliated with another distillery, unless the distillery produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises.

The bill specifies that each craft distillery responsible for submitting any beverages excise taxes under the Beverage Law in its monthly report to the division with any excise tax payments due to the state.

The bill specifies that the provisions of the bill are nonseverable.

B. SECTION DIRECTORY:

Section 1 amends s. 565.03, F.S., to allow craft distilleries (producing less than 75,000 gallons of distilled spirits) to sell their products to consumers in face-to-face transactions on premises contiguous to the distillery's premises.

Section 2 provides that the provisions of the bill are nonseverable.

Section 3 provides for an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill is insignificant. The DBPR indicates that any additional workload or expenditures as a result of this bill could be absorbed within existing resources.⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The division notes that there would be a benefit to the distilleries being able to sell directly to the consumer, which would provide another source of revenue.

⁵ Updated fiscal impact of the CS/HB 347, per e-mail communication between DBPR and staff of the Government Operations Appropriations Subcommittee, March 26, 2013, on file with the Government Operations Appropriations Subcommittee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes DBPR to adopt rules relating to the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Business & Professional Regulation Subcommittee considered a strike-all amendment and two amendments to the strike-all amendment and reported the bill favorably with a committee substitute.

The committee substitute made the following changes to the filed version of the bill:

- Removed reference to rectifier, blender, or processor of distilled spirits as a part of the definition of distillery.
- Removed provisions which specified that the Beverage Law does not prohibit:
 - A licensed distillery owning 100% of a vendor's license,
 - A licensed distillery transporting its distilled spirits to a vendor's licensed premises;
 - A distillery also licensed as a vendor purchasing alcoholic beverage products directly from the distillery.
- Limited the total sales to each consumer to two or less containers per customer per year.
- Provided that a craft distillery may not have its ownership affiliated with another distillery, unless the distillery produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises
- Provided a nonseverability clause.

On April 9, 2013, the Regulatory Affairs Committee considered one amendment to the committee substitute and reported the bill favorably with a committee substitute for committee substitute.

The committee substitute made the following changes to the committee substitute:

- Clarifies that the factory-sealed beverage containers must be filled with the distilled spirits at the distillery.

The staff analysis is drafted to reflect the committee substitute for committee substitute.

