

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 Commerce and Tourism

BILL: CS/CS/SB 596

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

SUBJECT: Craft Distilleries

DATE: March 30, 2015

REVISED: _____

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

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 distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may 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.

Branded product is defined as a distilled spirit product manufactured on site and in accordance with federal requirements.

The bill also limits direct-to-consumer sales of distilled spirits to craft distilleries and limits the sale and delivery of distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill provides that a craft distillery may 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 and payment of all associated costs by a licensed craft distillery, the bill requires the Department of Transportation to install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor through manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

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.

Section 565.03(1)(b), F.S., defines the term “distillery” to mean a manufacturer of distilled spirits. Section 565.03(1)(a), F.S., defines the term “craft distillery” to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. The distillery must have also notified the division in writing of its status as a craft distillery.

Distilleries licensed to distill, rectify,⁴ or blend distilled spirits pay a state license tax of \$4,000 for each plant or branch operating in the state.⁵ Licensed liquor manufacturers may also rectify and blend spirituous liquors in addition to distilling liquors without paying an additional license tax.⁶

According to the Florida Craft Distillers Guild, there are 15 distilleries that are located in Florida and are members of the guild.⁷

The labels of distilled spirits containers must be approved by the Alcohol and Tobacco Tax and Trade Bureau⁸ within the U.S. Department of Treasury pursuant to the Federal Alcohol Administration Act.⁹

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 that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers (vendors) must buy their

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Merriam-Webster defines rectify as the purification (especially alcohol) by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited Mar. 26, 2015).

⁵ Section 565.03(2), F.S.

⁶ Section 565.03(2)(b), F.S.

⁷ *See* Florida Craft Distillers Guild at <http://floridadistillers.org/members> (last visited March 23, 2015).

⁸ For information about the Alcohol and Tobacco Tax and Trade Bureau, *see* <http://www.ttb.gov/index.shtml> (last visited March 23, 2015).

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

products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁰

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.¹¹ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹² Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.¹³ Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.¹⁴ In addition to being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.¹⁵ However, a manufacturer of wine may be licensed as a distributor.¹⁶

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,¹⁷ allowing individuals to bring small quantities of alcohol back from trips out-of-state,¹⁸ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁹

Vendor Licenses

Section 561.20, F.S., 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. 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.

¹⁰ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board* (June 2004), available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited March 23, 2015).

¹¹ Section 561.14(2), F.S.

¹² Section 561.14(3), F.S.

¹³ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹⁴ Section 561.22, F.S.

¹⁵ Section 563.022(14), F.S.

¹⁶ Section 561.221(1)(a), F.S.

¹⁷ See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

¹⁸ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

¹⁹ See s. 561.221, F.S.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine, and distilled spirits, regardless of alcoholic content.

Exception for Vender-Licensed Distilleries

Section 565.03(2), F.S., permits craft distilleries and all other licensed distilleries to sell the distilled spirits it produces on their manufacturing 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.²⁰ 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."

Section 565.03(2)(c), F.S., prohibits craft distilleries and licensed distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and not for resale. The distillery may sell no more than two individual containers to the consumer. The container must comply with the container limits in s. 565.10, F.S.²¹ 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.²²

Section 565.03(2)(c)1., F.S., requires the craft distillery to report to the division within 5 business days after it has reached the 75,000 gallon production limitation. The craft distillery must cease making sales to consumers on the day after it reaches the production limit.

Section 565.03(2)(c)2., F.S., provides that a craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors, bonded warehouses, and exporters.

Section 565.03(2)(c)3., F.S., prohibits the transfer of a craft distillery license, including the transfer of an ownership interest in the license, to any individual or entity with a direct or indirect interest in another distillery.

Section 565.03(2)(c)4., F.S., permits a craft distillery to have its ownership interest affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year.

²⁰ 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.

²¹ Section 565.10, F.S, prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

²² Section 565.03(5), F.S.

Florida's Highway Guide Sign Program

Florida Department of Transportation (FDOT) is responsible for maintaining a uniform system of traffic control devices²³ on the state's roadways.²⁴ The federal Highway Administration publishes the Manual on Uniform Control Devices to define standards on the design, installation, and maintenance of traffic control devices.²⁵ The FDOT has several programs under which 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.²⁶

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, which requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory sealed containers of distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may 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. For example, if a craft distillery has five different branded products that are distilled on the premises, then that distillery could sell a maximum of ten factory-sealed containers (two containers for each branded product) to each customer per calendar year. However, if the craft distillery has one branded product, the craft distillery could sell up to four containers to each customer per calendar year. Under current law the distillery is limited to the sale of no more than two containers of distilled spirits per calendar year.

The bill also amends s. 565.03(2)(c), F.S., to limit direct-to-consumer sales of distilled spirits to craft distilleries. However, a licensed distillery that produces more than 75,000 gallons of distilled spirits on its licensed premises per calendar year could not sell distilled spirits in its souvenir gift shop for off premises consumption.

The bill 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 bill 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.

²³ 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.

²⁴ Section 316.0745, F.S.

²⁵ The FDOT conforms its policies to the Manual for Uniform Traffic Control Devices pursuant to s. 316.0745, F.S. *See also* FDOT, Highway Signing Program, available at <http://www.dot.state.fl.us/trafficoperations/Operations/Signing.shtm> (last visited Mar. 30, 2015).

²⁶ *See generally* Rule 14-51.010, F.A.C., and also <http://www.dot.state.fl.us/trafficoperations/Operations/Signing.shtm> (last visited Mar. 30, 2015).

Upon request of a licensed craft distillery, the bill requires the Department of Transportation to install directional signs for the craft distillery on the rights-of-way of interstate highways and primary and secondary roads, in accordance with the Florida's Highway Guide Sign Program. The requesting distillery is responsible for payment of all associated costs.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an increase in sales 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 the guide sign.

C. Government Sector Impact:

There may be an increase in tax revenue generated through the increased sales of distilled spirits products at the craft distilleries.

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.