

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1219 Beverage Law

**SPONSOR(S):** Sabatini

**TIED BILLS:** IDEN./SIM. **BILLS:**

| REFERENCE  | ACTION    | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|----------|--|
| 1) Business & Professions Subcommittee                               | 12 Y, 0 N | Willson  | Anstead                                  |
| 2) Government Operations & Technology<br>Appropriations Subcommittee | 9 Y, 0 N  | Helpling | Topp                                     |
| 3) Commerce Committee  | 16 Y, 7 N | Willson  | Hamon                                    |

### 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.

Relating to alcoholic beverage container sizes, the bill:

- Repeals s. 564.05, F.S., relating to wine container size limitations.
- Amends s. 564.055, F.S., to authorize the packaging, filling, refilling, or sale of cider in a growler that holds 32, 64, or 128 ounces of such cider if it is filled at the point of sale, subject to certain conditions.
- Amends ss. 563.06 and 564.055, F.S., to specify that malt beverages and cider may be sold in two-liter containers of any type.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of “a meal.”

Relating to craft distilleries, the bill:

- Expands the definition of “branded product” to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increases the maximum gallon threshold for craft distilleries and similar provisions related to ownership interests, from 75,000 to 250,000.
- Allows a craft distillery to sell up to 75,000 gallons of branded products per year and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Allows a craft distillery to ship or deliver product through a common carrier to a consumer who purchased the product in a face-to-face transaction at the distillery, subject to the laws of the receiving state.

The bill also authorizes the owner of an establishment licensed under the Beverage Law to allow dogs in certain indoor areas, subject to certain conditions.

There is an indeterminate positive fiscal impact from revenue generated from fines relating to the improper sale of cider as provided for in the bill. The bill may have a positive fiscal impact on certain manufacturers of wine, cider and beer. See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Beverage Law**

In Florida, the Beverage Law<sup>1</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.<sup>2</sup>

“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.<sup>3</sup>

##### **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.<sup>4</sup>

##### Effect of the Bill

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

##### Current Situation

##### **Malt Beverage and Cider Containers**

The Beverage Law prohibits the sale of malt beverages by vendors at retail in individual containers of more than 32 ounces. However, malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of individual container type.<sup>5</sup>

Additionally, 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.<sup>6</sup>

Growlers may be filled or refilled by the following licensees:

- Vendor-licensed malt beverage manufacturers;<sup>7</sup>

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> S. 561.02, F.S.

<sup>3</sup> S. 563.01, F.S.

<sup>4</sup> 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.

<sup>5</sup> S. 563.06(6), F.S. However, this statute does not affect malt beverages packaged in bulk, in kegs, or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

<sup>6</sup> S. 563.06(7)(b), F.S.

<sup>7</sup> A tap room at a craft brewery, licensed pursuant to s. 561.221(2), F.S.

- Vendors holding a quota license<sup>8</sup> to sell alcoholic beverages only in sealed containers for consumption off-premises;<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

Section 563.06(7)(d), F.S., provides that it is a first degree misdemeanor to violate the growler requirements.<sup>12</sup> A violation is also punishable by revocation or suspension of the alcoholic beverage license. 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.

Section 564.055, F.S., prohibits the sale of cider by vendors at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of container type. The Beverage Law does not provide for the sale of cider in growlers.

### Effect of the Bill

The bill amends s. 564.055, F.S., to authorize the packaging, filling, refilling, or sale of cider in a growler that holds 32, 64, or 128 ounces of such cider if it is filled at the point of sale. The bill also specifies that:

- Cider packaged in a growler may be filled or refilled by a licensed manufacturer of wine holding a vendor's license under s. 561.221(1)(a), F.S., or any person authorized to fill or refill a malt beverage growler pursuant to s. 563.06(7)(a)1.-3., F.S.
- 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 cider. The package must have an unbroken seal or be incapable of being immediately consumed.
- 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.

The bill provides certain criminal and administrative penalties for any person, firm, or corporation that violates the provisions relating to cider growlers.

<sup>8</sup> 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.

<sup>9</sup> Licensed pursuant to s. 561.20(1) and 565.02(1)(a), F.S.

<sup>10</sup> Licensed pursuant to s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S.

<sup>11</sup> S. 563.06(7)(c), F.S.

<sup>12</sup> 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.

The bill amends s. 562.34, F.S., to provide that it is not unlawful for a person to possess a cider growler.

The bill amends s. 563.06, F.S., to allow malt beverages to be sold in any type of individual two-liter container.

The bill amends s. 564.055, F.S., to specify that cider may also be sold in any type of individual two-liter container.

### Current Situation

#### **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.<sup>13</sup>

### Effect of the Bill

The bill amends 564.09, F.S., removing the requirement that a patron's meal must consist of "a salad or vegetable, entrée, a beverage, and bread" and simplifying the "full-course meal" requirement to just "a meal."

### Current Situation

#### **Three-Tier System**

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>14</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters<sup>15</sup> are generally prohibited from holding a vendor's license.<sup>16</sup> Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.<sup>17</sup>

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<sup>13</sup> S. 564.09, F.S.

<sup>14</sup> S. 561.14, F.S.

<sup>15</sup> S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop

<sup>16</sup> S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>17</sup> See ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.

## Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.<sup>18</sup>

Craft breweries that also hold a vendor's license are specifically prohibited from making deliveries under this law.<sup>19</sup>

## Distilleries and Craft 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 calendar year on its premises. A craft distillery must notify the Division in writing of its decision to qualify as a craft distillery.<sup>20</sup>

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. The license tax for a craft distillery is \$1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.<sup>21</sup>

According to the Division, 58 of the 60 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.<sup>22</sup>

### *Retail Sales by Craft Distilleries*

A craft distillery is allowed to sell to consumers branded products,<sup>23</sup> distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six individual containers of each branded product.<sup>24</sup> The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop 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."<sup>25</sup>

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<sup>18</sup> S. 561.57(1) & (2), F.S.

<sup>19</sup> Ss. 561.221 (2)(d), and 565.57(1), F.S.

<sup>20</sup> Ss. 565.03(1)(b) & (c), F.S.

<sup>21</sup> S. 565.03(2)(b), F.S.

<sup>22</sup> Department of Business and Professional Regulation, Agency Analysis of 2019 HB 1229, p. 4 (Mar. 18, 2019).

<sup>23</sup> Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."

<sup>24</sup> S. 565.03(1)(c), F.S.

<sup>25</sup> *Id.*

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

- A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.
- A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country. However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.
- A craft distillery must report to the Division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.
- A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the Division.
- 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.

### Effect of the Bill

The bill amends s. 565.03, F.S.:

- Expands the definition of “branded product” to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increases the maximum gallon threshold for craft distilleries and similar provisions related to ownership interests, from 75,000 to 250,000.
- Allows a craft distillery to sell up to 75,000 gallons of branded products per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Specifies that a craft distillery can transfer up to 75,000 gallons of its product from its federal bonded space, nonbonded space, or storage areas to its souvenir gift shop, per year.
- Allows a craft distillery to ship, arrange to ship, or deliver product through a common carrier to a consumer who purchased the product in a face-to-face transaction at the distillery’s souvenir gift shop, subject to the laws of the receiving state.

### Current Situation

#### **Florida Food Hygiene Standards**

The Florida Department of Health is responsible for regulations related to food service protection and environmental health. Current regulations prohibit live animals inside food service establishments, vehicles used to transport food, and any other area or facility used to conduct food service operations.<sup>26</sup>

### Effect of the Bill

The bill creates s. 562.65, F.S., authorizing the owner of an establishment licensed under the Beverage Law to allow dogs in certain indoor areas, subject to the following conditions:

- The owner is licensed for consumption on premises, including certified Florida Farm Wineries.
- No more than 10% of gross revenues are derived from the sale of food that is consumed on the licensed premises. For the purpose of the bill, ice is not considered food.
- The patron’s dog is kept on a leash at all times and under reasonable control.
- Dogs are not allowed on tables, bar tops, or other furnishings.
- Dogs are not allowed in any area where food is stored or prepared.

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<sup>26</sup> R. 64E-11.003(6)(c), F.A.C. An exception exists for service animals, as provided under s. 413.08, F.S. *See also* ss. 381.006 and 381.0072, F.S.

- Dog waste must be removed immediately and the area sanitized.

The bill specifies that a patron may be liable if they fail to meet applicable conditions and such failure results in injury to another. The bill also authorizes the Division to adopt rules to administer this law.

The bill provides an effective date of July 1, 2019.

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 562.34, F.S.; conforming provisions to changes made by the act.
- Section 2:** Creates s. 562.65, F.S.; providing definitions; authorizing a licensed vendor of alcoholic beverages to allow dogs in certain designated areas on their licensed premises; providing conditions for dogs to be allowed in a licensed premises; providing rulemaking.
- Section 3:** Amends s. 563.06, F.S.; revising limitations on the size of malt beverage containers.
- Section 4:** Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.
- Section 5:** Amends s. 564.055, F.S.; authorizing cider to be packaged, filled, refilled, or sold in a growler under certain conditions; providing requirements; providing penalties.
- Section 6:** Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption.
- Section 7:** Amends s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; specifying limitations on a craft distillery's retail sales to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; declaring that it is unlawful to transfer a distillery license, or ownership in a distillery license, for certain distilleries to certain individuals or entities; prohibiting a craft distillery from having its ownership affiliated with certain other distilleries; authorizing a craft distillery to transfer specified distilled spirits from certain locations to its souvenir gift shop; revising limitations on craft distillery shipments of items purchased in face-to-face transactions.
- Section 8:** Provides for an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill has an indeterminate positive fiscal impact from revenue generated from fines not exceeding \$250 each relating to the sale of cider in growlers as outlined above.

#### 2. Expenditures:

DBPR will need to make modifications to current allegation/violation information technology systems to implement the bill. The modifications can be made within existing resources.<sup>27</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive economic impact on certain manufacturers of wine, cider and beer due to the lessening or elimination of regulatory constraints relating to container sizes.

The bill may have a positive economic impact for many craft distilleries due to the removal of many current regulatory constraints, resulting in enhanced brand recognition, increased sales volume, opportunities for collaboration, and access to new markets and consumers.

**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:**

The bill authorizes the Division to adopt reasonable rules to administer s. 562.34, F.S., relating to the discretionary authority to allow dogs at certain licensed premises under certain conditions.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**