

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1229 Craft Distilleries
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	15 Y, 0 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 0 N	Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

A “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per year.

Section 565.03, F.S., authorizes a craft distillery to sell, directly to a consumer in a face-to-face transaction from their on-site souvenir gift shop, up to six individual containers of each branded product that is produced by the distillery, subject to certain conditions and restrictions.

The bill:

- Increases the maximum gallon threshold to qualify as a craft distillery, 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.
- 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.
- Removes the requirement that gift shop sales only be for the consumer’s personal use and not resold.
- Allows a craft distillery to ship products from its gift shop to out-of-state locations, subject to the laws of the receiving state.
- Prohibits a craft distillery that has not been issued a vendors license under s. 561.221, F.S., from shipping its product to consumers in Florida.
- Authorizes a craft distillery to obtain up to three vendor’s licenses for locations that are contiguous to a craft distillery’s manufacturing premises.
- Authorizes event permits for craft distilleries to conduct tastings and sales of distilled spirits produced by craft distilleries at fairs, trade shows, expositions, and festivals.
- Authorizes a craft distillery to conduct beverage tastings at any licensed premises that is authorized to sell alcohol.

Additionally, the bill exempts certain craft distilleries from the prohibition on licensing a manufacturer as a distributor or exporter. To qualify for this exemption, 60 percent of the distilled spirits produced at the craft distillery must be made with Florida agricultural products, and the craft distillery must be open to the public for tours, tastings, and sales at least 30 hours a week.

The bill will have an indeterminate, insignificant positive fiscal impact through the collection vendor’s licenses for craft distilleries. The bill will require computer system modifications and will create additional workload for the Department of Business and Professional Regulation (DBPR). However, DBPR will likely have sufficient resources to implement the provisions of the bill. 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 Law¹ 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.²

“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.³

Section 561.14, F.S., specifies license and registration classifications used in the Beverage Law:

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”
- “Importers” are those “licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.”
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”

Three-Tier System and Tied House Evil

Since the repeal of Prohibition in 1933, 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.⁴

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters⁵ are generally prohibited from holding a vendor’s license.⁶ Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier.⁷

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 S. 561.02, F.S.

³ S. 563.01, F.S.

⁴ S. 561.14, F.S.

⁵ 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

⁶ 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.

⁷ See ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14)

The three-tier 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.⁸

Exceptions to the Three-Tier System

Exceptions to the three-tier regulatory system allow certain in-state wineries,⁹ craft breweries,¹⁰ and craft distilleries to sell directly to consumers.¹¹ Further, certain restaurants may be granted a vendor’s license to manufacture a limited quantity of malt beverages which can be sold to consumers for consumption on premises.¹²

Wineries may receive up to 3 vendor’s licenses on property contiguous to the manufacturing premises of the winery.¹³ Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually of which 60% is made from state agricultural products, maintain a minimum of 5 acres of owned or managed land in Florida which produces commodities used in the production of wine, be open to the public for tours, tastings, and sales at least 30 hours each week, and pay an annual application and registration fee of \$100.

Section 561.24, F.S., prohibits the licensing of a manufacturer as a distributor or exporter. Wineries that qualify as a certified Florida Farm Winery are the sole exception to this prohibition. Additionally, the Division may issue permits for a certified Florida Farm Winery to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

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,¹⁴ 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.¹⁵

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.¹⁶

In 2016, 45 of the 46 licensed distilleries operating in Florida produced fewer than 38,000 gallons of distilled spirits, according to DBPR.¹⁷

⁸ See Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), <http://scholarship.law.unc.edu/nclr/vol88/iss6/6>.

⁹ See s. 561.221(1), F.S.

¹⁰ See s. 561.221(2), F.S.

¹¹ See s. 565.03, F.S.

¹² See s. 561.221(3), F.S.

¹³ See s. 561.221(1), F.S.

¹⁴ s. 565.03(1)(c), F.S.

¹⁵ s. 565.03(1)(b), F.S.

¹⁶ s. 565.03(2)(b), F.S.

¹⁷ Department of Business and Professional Regulation, Agency Analysis of 2017 HB 141, p. 3 (Jan. 17, 2017).

Retail Sales by Craft Distilleries

A craft distillery is allowed to sell to consumers branded products¹⁸ distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.¹⁹ 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.²⁰ Sales must be in face-to-face transactions with consumers²¹ who are making a purchase of no more than six individual containers of each branded product.²² 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 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."²³

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.

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.²⁴

Craft breweries that also hold a vendor's licenses are specifically prohibited from making deliveries under this law.²⁵

¹⁸ 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."

¹⁹ s. 565.03(1)(c), F.S.

²⁰ *Id.*

²¹ s. 565.03(1)(c)4., F.S.

²² s. 565.03(1)(c)1., F.S.

²³ *Id.*

²⁴ S. 561.57(1) & (2), F.S.

²⁵ Ss. 561.221 (2)(d), F.S.; 565.57(1), F.S.

Beverage Tastings by Distributors and Vendors

Section 565.17, F.S., provides an exemption to the Tied-House Evil Laws, authorizing vendors and liquor distributors to conduct liquor tastings at any location that is allowed to sell liquor by the package or for consumption on premises. The tastings must be directed toward the of-age general public.

Effect of the Bill

The bill:

- Increases the maximum gallon threshold to qualify as a craft distillery, 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.
- 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.
- Removes the requirement that gift shop sales only be for the consumer's personal use and not for resale.
- Prohibits a craft distillery that has not been issued a vendors license under s. 561.221, F.S. from shipping its product to consumers in Florida.
- Allows a craft distillery to ship products out-of-state, subject to the laws of the receiving state.
- Authorizes a craft distillery to obtain up to three vendor's licenses for locations that are contiguous to the craft distillery's manufacturing premises.
- Directs the Division to issue event permits to craft distilleries to conduct tastings and sales of distilled spirits produced by craft distilleries at fairs, trade shows, expositions, and festivals.
- Authorizes a craft distillery to conduct beverage tastings at any licensed premises that is authorized to sell alcohol.

Additionally, the bill exempts certain craft distilleries from the prohibition on licensing a manufacturer as a distributor or exporter. To qualify for this exemption, 60 percent of the distilled spirits produced at the craft distillery must be made with Florida agricultural products, and the craft distillery must be open to the public for tours, tastings, and sales at least 30 hours a week.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 561.221, F.S.; authorizing a craft distillery to hold multiple vendor's licenses for the sale of alcoholic beverages; authorizing certain wineries and craft distilleries to transfer wine or distilled spirits to its vendor's licensed premises; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue permits to a craft distillery to conduct tastings and sales at specified events.
- Section 2.** Amends s. 561.24, F.S.; authorizing a craft distillery to be licensed as a distributor under certain circumstances.
- Section 3.** Amends s. 565.03, F.S.; revising the definition of "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; revising requirements relating to the shipping of distilled spirits to consumers by a craft distillery; providing that it is unlawful to transfer a certain distillery license, or ownership in a distillery license, 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 to its souvenir gift shop; requiring a craft distillery to submit certain excise taxes.

Section 4. Amends s. 565.17, F.S.; authorizing a craft distillery to conduct spirituous beverage tastings under certain circumstances.

Section 5. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows craft distilleries to obtain up to three vendor's licenses to sell distilled beverages on their premises. There will be an indeterminate, insignificant positive fiscal impact from the collection of license fees collected from craft distilleries that choose to obtain vendor's licenses.

2. Expenditures:

DBPR indicated that between 2.00 and 3.00 FTE and an additional \$166,431 in budget will be needed to perform audits and make computer system modifications for the department to properly implement the bill.²⁶ However, as of January 29, 2019, the department had 9.00 vacant FTE over 180 days within the Division of Alcoholic Beverages and Tobacco that could be used by DBPR to perform the duties relating to the additional workload resulting from the bill. There will likely be sufficient resources within DBPR to implement the provisions of the bill related to additional workload and computer system modifications.

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 for many craft distilleries due to the removal of many current regulatory constraints, resulting in enhanced marketing and brand recognition, increased sales volume, 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.

²⁶ Florida Department of Business and Professional Regulation, Agency Analysis of 2019 HB 1229, pp. 4-6. (Mar. 18, 2019)
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DATE: 3/26/2019

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art, VII, s. 19 of the Florida Constitution may apply if the vendor's licenses for craft distilleries provisions in the bill are interpreted to be a new fee.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES