

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 Beverage Law

SPONSOR(S): Raschein

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|----------|--|
| 1) Business & Professions Subcommittee | 11 Y, 1 N | Willson | Anstead |
| 2) Government Operations & Technology Appropriations Subcommittee | 11 Y, 1 N | Helpling | Topp |
| 3) Commerce Committee | | | |

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 (DBPR) 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.
- Repeals s. 564.055, F.S., relating to cider container size limitations.
- 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:

- Clarifies that a craft distiller may blend their product with other distilled spirits.
- Increases the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Authorizes the issuance of up to 3 vendor’s licenses for the sale of alcoholic beverages on a craft distillery’s licensed premises.
- Specifies that a craft distillery that does not have a vendor’s license may not ship its product to consumers located in Florida.
- Allows a craft distillery to sell, from its souvenir gift shop, up to 75,000 gallons of branded product per year. The craft distillery may not be licensed as a vendor, and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state.
- Allows a craft distillery to be licensed as a distributor or exporter if the distillery is open to the public for tours, tastings, and sales at least 30 hours per week.
- Allows a craft distillery to receive a permit to conduct tastings and sales of its liquor products at fairs, trade shows, exhibitions, and festivals, subject to certain conditions.
- Authorizes a craft distillery to conduct liquor tastings anywhere that liquor may be sold.

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

DBPR estimates there will be additional resources needed to implement the bill. The bill may have a positive fiscal impact on state revenues and for certain entities involved in the production or sale of wine, cider and distilled spirits. See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law – Background

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

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.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. 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.⁷

Exceptions to the three-tier regulatory system allow certain in-state wineries,⁸ craft breweries,⁹ and craft distilleries to sell directly to consumers.¹⁰ 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.¹¹

Wineries may receive up to 3 vendor’s licenses on property contiguous to the manufacturing premises of the winery.¹² 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.

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.

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), F.S.

⁸ See s. 561.221(1), F.S.

⁹ See s. 561.221(2), F.S.

¹⁰ See s. 565.03, F.S.

¹¹ See s. 561.221(3), F.S.

¹² See s. 561.221(1), F.S.

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.

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.

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.¹³

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.¹⁴

Distilleries and Craft Distilleries – Current Situation

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.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

According to the Division, 61 of the 64 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.¹⁷

A craft distillery is allowed to sell to consumers branded products,¹⁸ 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.¹⁹ The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

¹³ S. 561.57(1) & (2), F.S.

¹⁴ Ss. 561.221 (2)(d), and 565.57(1), F.S.

¹⁵ Ss. 565.03(1)(b) & (c), F.S.

¹⁶ S. 565.03(2)(b), F.S.

¹⁷ Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 5-6 (Dec. 6, 2019).

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.

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."²⁰

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.

Distilleries and Craft Distilleries – Effect of the Bill

The bill amends s. 561.221, F.S., to:

- Authorize the issuance of up to three vendor's licenses to a craft distillery for the sale of alcoholic beverages on the distillery's licensed premises.
- Allow a craft distillery to conduct tastings and sales of their product at fairs, trade shows, expos, and festivals.

The bill also amends s. 565.17, F.S., to allow craft distilleries to conduct liquor tastings at any licensed premises authorized to sell liquor.

The bill amends s. 561.24, F.S., to allow a craft distillery to be licensed as a distributor or exporter if the craft distillery is open to the public for tours, tastings, and sales at least 30 hours a week.

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

- Clarify the definition of "branded product" to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increase the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Allow a craft distillery to sell up to 75,000 gallons of branded product 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.
 - For sales made from the craft distillery's souvenir gift shop, the craft distillery may not be licensed as a vendor under s. 561.221, F.S., and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state, subject to the laws of the receiving state.
- Specify 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.
- Prohibit a craft distillery that does not have a vendor's license under s. 561.221, F.S., from shipping its distilled spirits to consumers located in the state.
- Remove restrictions relating to the sale, transfer, or ownership affiliation for craft distilleries.

Wine and Cider Container Limitations – Current Situation

²⁰ *Id.*

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine, unless it is in a reusable container of 5.16 gallons, which may also be sold. 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.²¹

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.

Wine and Cider Container Limitations – Effect of the Bill

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

The bill repeals s. 564.055, F.S., relating to the retail sale of individual cider containers.

Merlot to Go – Current Situation

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.²²

Merlot to Go – Effect of the Bill

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

Dogs in Bars and Restaurants – Current Situation

The Division of Hotels and Restaurants (Division) within DBPR is authorized to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare, in accordance with ch. 509, F.S.²³ The law expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.²⁴

Pursuant to its rulemaking authority, the Division has adopted the 2017 Food Code (Code) published by the U.S. Food and Drug Administration (FDA).²⁵ The Code prohibits live animals on the premises of

²¹ 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.

²² S. 564.09, F.S.

²³ 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. 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.

²⁴ S. 509.032(7), F.S.

²⁵ U.S. Department of Health and Human Services, Public Health Service, Food & Drug Administration, *Food Code*, (2017), <https://www.fda.gov/media/110822/download> (last visited Jan. 8, 2019). According to the FDA, "the purpose of maintaining an updated model food code is to assist food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail segment of the food industry."

food service establishments.²⁶ “Premises” is defined to mean the physical facility, its contents, and the contiguous land or property under the control of the permit holder.²⁷ There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers, and service animals controlled by persons with disabilities.²⁸

The service animal law authorizes an individual with a disability the right to be accompanied by a trained service animal (a dog) in all areas of public accommodations that the public is normally allowed to occupy.²⁹ A public accommodation is required to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability.

The service animal law defines a “service animal” as an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual’s disability. A service animal is not a pet. It is also not a comfort animal.

Generally, only service animals are permitted to be inside bars and restaurants in Florida. However, Florida law allows local governments to establish a local exemption to the prohibition on having live animals inside food service establishments. Specifically, local governments may authorize local food service establishments to decide whether to designate outdoor portions of the establishment for “patrons’ dogs.” Participating establishments are required to apply for and receive a permit from the governing body of the local government. Local governments are authorized to include additional regulations and limitations to protect the health, safety and general welfare of the public.³⁰

The local ordinances must include the following requirements:

- All public food service establishment employees must wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the public food service establishment.
- Patrons in a designated outdoor area must be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
- Employees and patrons must be instructed that dogs are prohibited from contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations;
- Patrons must keep their dogs on a leash and under reasonable control at all times;
- Dogs are prohibited on chairs, tables, or other furnishings;
- All table and chair surfaces must be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink must be removed from the floor or ground between seating of patrons;
- Accidents involving dog waste must be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose must be kept near the designated outdoor area;
- A sign or signs reminding employees of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority;
- A sign or signs reminding patrons of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority; and
- A sign or signs must be posted in a manner and place as determined by the local permitting authority that places the public on notice that the designated outdoor area is available for the use of patrons and patrons’ dogs.³¹

²⁶ *Id.* at s. 6-501.115(A).

²⁷ *Id.* at s. 1-201.10(B).

²⁸ *Id.* at s. 6-501.115(B).

²⁹ S. 413.08(3), F.S.

³⁰ S. 509.233, F.S.

³¹ S. 509.233(3)(c), F.S.

Regarding where dogs are allowed to travel or pass through, the local ordinances must include the following requirements:

- Dogs are prohibited from traveling through indoor portions of the public food service establishment;
- Dogs are prohibited from traveling through nondesignated outdoor portions of the public food service establishment; and
- Access to the designated outdoor portions of the public food service establishment must not require entrance into or passage through any indoor area of the food establishment.³²

Dogs in Bars and Restaurants – Effect of the Bill

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

- 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.
- Dogs must be kept on a leash and under control at all times.
- Dogs are not allowed on tables, bar tops, or other furnishings.
- Dogs are not allowed in any area where food is stored or prepared.
- Dog waste must be cleaned immediately and the area sanitized.

An individual may be held liable for failure to comply with the dog-related conditions if such failure results in injury or damage. The bill also authorizes the Division to adopt rules to administer this law.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

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| Section 1 | Amends s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain craft distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring certain information be included on sketches approved by the division; requiring the division to issue permits to craft distilleries for conducting tastings and sales at certain events; requiring craft distilleries to pay entry fees for such events and have a representative of the distillery present at each event. |
| Section 2 | Amends s. 561.24, F.S., authorizing a craft distillery to be licensed as a distributor under certain circumstances. |
| Section 3 | Creates s. 562.65, F.S.; providing definitions; authorizing certain licensed vendors of alcoholic beverages to allow dogs in certain designated areas on licensed premises; providing requirements; providing for liability; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules. |
| Section 4 | Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers. |
| Section 5 | Repeals s. 564.055, F.S., relating to limitations on the size of individual cider containers. |
| 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"; revising the requirements for the sale of branded products by a licensed craft distillery to |

³² *Id.*

consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; etc.

Section 8 Amends s. 565.17, F.S., authorizing a craft distillery to conduct spirituous beverage tastings on specified licensed premises under certain circumstances.

Section 9 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in an insignificant positive fiscal impact from revenue generated by craft distilleries obtaining up to three vendor's licenses.

2. Expenditures:

To implement the bill, ABT estimates the need for two additional Tax Auditor positions for a total of \$143,875 in the first year and \$131,925 recurring thereafter.³³

However, currently there are 2 Tax Auditor positions within DBPR that are vacant over 300 days. These positions could be transferred to ABT to address the requirements of the bill.³⁴

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 entities in the wine and cider industry, due to the reduction 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.

³³ Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1165, p. 6 (Jan. 30, 2020).

³⁴ Department Vacancy Report, Jan. 30, 2020, on file with the Government Operations and Technology Appropriations Subcommittee.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division to adopt rules to administer s. 562.65, 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