HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 263	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Business & Professions Subcommittee; Stevenson and others	118 **Y's**	1 **N's**
COMPANION BILLS:	CS/CS/SB 596	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 263 passed the House on April 28, 2015, as CS/CS/SB 596.

The bill defines the term "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 regulations."

Additionally, the bill provides that a craft distillery may sell branded products distilled on its premises to consumers at its souvenir gift shop, and expands the limit, per calendar year, on direct sales to consumers from two individual containers per person to no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of one branded product.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

The bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

Finally, the bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The craft distillery is responsible for paying all costs associated with placing the signs.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources and no fiscal impact on local government.

The bill was approved by the Governor on May 21, 2015, ch. 2015-52, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tier system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tier system is deeply rooted in the concept of the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or where the manufacturer exercises undue influence over the retail vendor.[2] Because of the perceived evils, manufacturers and distributors are not permitted to have a financial interest in vendors. The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[3]
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor;[4]
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;[5] and
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.[6]

In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits. "Distillery" is defined as "a manufacturer of distilled spirits." "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. A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

The 2013 amendment prohibits craft 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

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[1] Section 561.02, F.S.
[2] 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*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited January 20, 2015).
[3] s. 561.221(2), F.S.
[4] s. 561.221(3), F.S.
[5] s. 561.221(1), F.S.
[6] s. 562.16, F.S.

consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

The United States Department of Treasury houses the Alcohol and Tobacco Tax and Trade Bureau (TTB), which sets forth labeling and brand registration requirements for alcoholic beverages sold in the United States.[7] Distillers are not permitted to sell, ship, or deliver for sale or shipment or otherwise introduce into interstate or foreign commerce any distilled spirits in bottles unless the bottles are marked, branded, labeled, or packaged in conformity with ss. 27 C.F.R. 5.31 through 27 C.F.R. 5.42.[8] Those sections set forth what distillers are required to place on the labels, including manufacturer name, brand name, alcohol content, net contents, class and type of alcohol, and other labeling requirements. Distilled spirits and their labels are required to be "approved" by the TTB prior to being bottled or removed from the manufacturing site.[9] When the TTB approves the distilled spirit, they provide a Certificate of Label Approval, which includes a copy of the brand name as provided on the application for approval.

Alcoholic beverages cannot be sold or offered for sale in Florida, or moved within or into Florida without the brand/label first being registered with the Division.[10] A brand or label, as referred to in ch. 565, F.S., is a liquor product that is uniquely identified by label registered according to state and federal law.

Currently, the Department of Transportation implements the Florida Highway Guide Sign Program, which provides for a system of guide signing used to inform and guide motorists to needed signed facilities, improve traffic around intersections near destinations, and establish criteria for the erection of guide signs.[11] Pursuant to Rule 14-51.020(3)(g), F.A.C., Certified Florida Farm Wineries are "eligible for signing pursuant to s. 599.004, F.S." The wineries for which these signs are erected pay for the associated costs based on a fee associated with the signing.[12]

Effect of the Bill

The bill defines the term "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 regulations." The bill provides that a craft distillery may sell spirits distilled on its premises to consumers at its souvenir gift shop, and expands the limit on direct sales to consumers from two individual containers per person, per calendar year, to no more than:

- Two individual containers of each branded product;
- Three individual containers of a single branded product and up to one individual container of a second branded product; or
- Four individual containers of one branded product.

Each container sold in face-to-ace transactions with consumers must comply with the container limits in s. 565.10, F.S., per calendar year, for the consumer's personal use and not for resale.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

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[7] *What You Should Know About Distilled Spirits Labels* brochure, Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, http://ttb.gov/pdf/brochures/p51902.pdf.
[8] 27 C.F.R. § 5.31 (2014).
[9] 27 C.F.R. § 5.55 (2014).
[10] Department of Business and Professional Regulation website, Alcohol Brand/Label Registration online application, available at https://myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=4011&XACT_DEFN_ID=7172.
[11] Rule 14-51.010(1), F.A.C.
[12] Rule 14-51.020(3)(g), F.A.C.

The bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

Finally, the bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The craft distillery is responsible for paying all costs associated with placing the signs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to state governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to the state government. Monitoring of compliance by the state government is complaint driven. The Division can likely handle any increase in complaints with existing staff and equipment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to local governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may cause a minor increase in costs for craft distillers by requiring more complex record keeping, as they will be required to track purchases to consumers to ensure that no consumer purchases more than the permitted amount of branded product per calendar year. This cost will likely be offset by the increased revenue due to an increase in sales of distilled spirits directly to consumers.

D. FISCAL COMMENTS:

The bill provides that the Department of Transportation shall install directional signs for a craft distillery on the rights-of-way of interstate highways and primary and secondary roads if a craft distillery requests for the signs to be posted. The Department of Transportation may incur initial costs for the installation of the signs. However, the craft distillery is responsible for paying all costs associated with placing the signs.