

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 166

INTRODUCER: Commerce and Tourism Committee, Regulated Industries Committee, and Senator Steube and others

SUBJECT: Alcoholic Beverages

DATE: April 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 166 permits a designated Florida Craft Distillery to:

- Own, manage, operate, or control up to three vendor licenses, even if the manufacturer is licensed as a distributor, for licensed premises situated on property contiguous to the manufacturing premises; and
- Conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals of distilled spirits that it produces, provided it pays all entry fees and has a representative present during the event.

The bill permits a certified Florida Farm Winery or a designated Florida Craft Distillery to transfer wine or distilled spirits produced at the winery or distillery from their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor-licensed premises or approved sales room. The transfers of wine or distilled spirits must be reported to the Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR) and included in the winery's or distillery's monthly excise tax payment.

Regarding a craft distillery, the bill:

- Increases the maximum number of gallons required to be produced to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year;

- Provides that a distillery is certified by the division as a “craft distillery” upon the distillery providing written notification of the distillery’s decision to qualify as a craft distillery;
- Permits a craft distillery to have one additional sales room located in the same county as the distillery’s production building, which shall be an extension of the craft distillery’s licensed premises, without requiring a vendor’s license for that additional location;
- Repeals the limitation on the number of individual containers that a craft distillery may sell to consumers;
- Permits a craft distillery that reaches the production qualification limit of 250,000 gallons per calendar year to continue retail sales if the distillery has a vendor’s license for each craft distillery and additional sales room;
- Provides that a craft distillery may retain and renew its vendor’s license(s) if it exceeds the 250,000-gallon production limitation;
- Repeals the prohibition against the transfer of a craft distillery’s 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; and
- Permits a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises.

The bill will increase revenue to the Alcoholic Beverage and Tobacco Trust Fund (AB&T TF) by \$62,244. *See* Section V.

The bill takes effect upon becoming law.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.⁴ Manufacturers may not sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited

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 *See* s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

from also being licensed as vendors.⁶ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁷

Tied House Evil Prohibitions

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.⁸ Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁹ breweries,¹⁰ and craft distilleries to sell directly to consumers.¹¹ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹²

A winery, even if licensed as a distributor,¹³ may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹⁴

The division may issue permits for a certified Florida Farm Winery¹⁵ 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.”

⁶ Section 561.22, F.S.

⁷ Sections 563.022(14) and 561.14(1), F.S.

⁸ 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 January 31, 2017).

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 Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹⁴ See s. 561.221(1), F.S.

¹⁵ 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 and that 60 percent of the wine produced is made from state agricultural products.

A “distillery” is a manufacturer of distilled spirits,¹⁶ 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.¹⁷

Distilleries and craft distilleries pay the same amount of state license tax. All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying¹⁸ distilled spirits must pay a state license tax of \$4,000 for each plant or branch operating in Florida. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.¹⁹

There are 45 distilleries that produced fewer than 75,000 gallons of distilled spirits in 2016.²⁰ The DBPR advises that 23 distilleries have provided the division with written notification that it qualifies as a craft distillery.

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products²¹ 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.²² 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.²³ 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.”²⁴ The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

Sales must be in face-to-face transactions with consumers²⁵ who are making a purchase of 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 a single branded product.²⁶

¹⁶ Section 565.03(1)(c), F.S.

¹⁷ Section 565.03(1)(b), F.S.

¹⁸ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited January 27, 2017).

¹⁹ Section 565.03(3), F.S.

²⁰ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

²¹ 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.”

²² Section 565.03(2)(c), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 565.03(2)(c)4., F.S.

²⁶ Section 565.03(2)(c)1., F.S.

Each container sold 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.²⁷

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.²⁸

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.²⁹

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.³⁰ 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.³¹

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³²

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that may be issued in a county for the sale of distilled spirits, beer, and wine. The number of licenses is limited to one license per 7,500 residents in 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 that 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.³³

Section 561.01(11), F.S., defines “licensed premises” to mean:

not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or

²⁷ Section 565.03(2)(c)2., F.S.

²⁸ Section 565.03(2)(c)3., F.S.

²⁹ Section 565.03(2)(c)4., F.S.

³⁰ Section 565.03(2)(c)5., F.S.

³¹ Section 565.03(2)(c)6., F.S.

³² Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

³³ Section 561.20, F.S.

attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk **or other outside area which is contiguous to the licensed premises.** When the sketch includes a sidewalk or other outside area, written approval from the county or municipality attesting to compliance with local ordinances must be submitted to the division to authorize inclusion of sidewalks and outside areas in licensed premises. (Emphasis added.)

Alcoholic Beverage Tastings

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises.

Section 563.09, F.S., permits manufacturers, distributors, and importers of malt beverages, or any contracted third-party agent thereof, to conduct sampling malt beverage tastings on the licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises.

Section 564.08, F.S., permits licensed distributors of wine, or any vendor, to conduct wine tastings at any licensed premises authorized to sell vinous or spirituous beverages by package or for consumption on premises.

All alcoholic beverage tastings must be limited to and directed toward the general public of the age of legal consumption.

III. Effect of Proposed Changes:

Licensing Manufacturers as Vendors

The bill amends s. 561.221(1), F.S., to incorporate certified craft distilleries into the current authority provided to certified Florida Farm Wineries. The bill permits a designated Florida Craft Distillery to:

- Own, manage, operate, or control up to three vendor licenses, even if the manufacturer is licensed as a distributor, for licensed premises situated on property contiguous to the manufacturing premises; and
- Conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals of distilled spirits that it produces, provided it pays all entry fees and has a representative present during the event.

The bill references the licensing of a craft distillery as a distributor.³⁴

The bill creates s. 561.221(1)(c), F.S., to permit a designated Florida Farm Winery and a certified Florida Craft Distillery to transfer wine or distilled spirits produced at the winery or

³⁴ Section 561.14(1), F.S., permits distilleries licensed under s. 565.03(2), F.S., to sell and distribute such beverages at wholesale only to other manufacturers and to licensed distributors and to no one else within this state.

distillery out of their federal bonded space or non-bonded space at its licensed premises or storage areas to its vendor's licensed premises or approved sales room. The division must approve the storage areas, provided that each is included in the winery's or distillery's current state tax bond. The transfers of wine or distilled spirits must be reported to the division pursuant to s. 561.55, F.S., and included in the winery's or distillery's monthly excise tax payment. The bill provides a comparable provision in s. 565.03(2)(c)5., F.S., for designated craft distilleries with a vendor's license.

Craft Distilleries

Qualifications

The bill amends s. 565.03(1)(b), F.S., to increase the maximum number of gallons required to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year. It provides that a distillery is designated by the division as a "craft distillery" upon the distillery providing written notification to the division of its decision to qualify as a craft distillery.

Additional Sales Room

The bill amends s. 565.03(2)(c), F.S., to permit a craft distillery to have one additional sales room located in the same county as the distillery's production building, as an extension of the craft distillery's licensed premises. The bill does not require that the additional sales room be licensed apart from the craft distillery's manufacturer license. It provides that all sketch and diagram revisions require local zoning approval.

Section 565.03(2)(c)6., F.S., permits the craft distillery to include the sales room location in its original license application or by amending its license application on forms prescribed by the division.

Sales Limits

The bill amends s. 565.03(2)(c)2., F.S., to repeal the limitation on the number of individual containers that a craft distillery may sell to consumers. The bill maintains the requirement that sales to consumers must be in face-to-face transactions without quantity limitations.

Sales after Production Limit is Reached

The bill amends s. 565.03(2)(c)3., F.S., to permit a craft distillery that reaches the production qualification limit during a license year (i.e., 250,000 gallons) to continue retail sales at its distillery or at its additional sales room located in the same county as the craft distillery if the distillery has been issued a vendor's license for the craft distillery and for its additional sales room as authorized by s. 561.221, F.S., as amended by the bill. A craft distillery may retain and renew its vendor's license or licenses if it exceeds the 250,000-gallon production limitation.

Shipping Distilled Spirits

The bill amends s. 565.03(2)(c)4., F.S., to provide that the shipping prohibitions in this subparagraph apply to a craft distillery "licensed under this section." The bill does not authorize a craft distillery to ship distilled spirits if licensed as a vendor under s. 561.221, F.S. Although a

winery may ship wine to consumers,³⁵ deliveries of alcoholic beverages by a vendor away from its place of business may be made only in vehicles that are owned or leased by the licensee.³⁶

Transferring Distilled Spirits

The bill creates s. 565.03(2)(c)5., F.S., and permits a craft distillery to transfer distilled spirits from its federal bonded space or non-bonded space at its licensed premises or storage areas to its souvenir gift shop or additional sales room. The division must approve the storage areas, provided that each is included in the distillery's current state tax bond. The transfers of wine or distilled spirits must be reported to the division pursuant to s. 561.55, F.S., and included in the winery's or distillery's monthly excise tax payment. The bill provides a comparable provision in s. 561.221(1)(c), F.S., for a vendor-licensed craft distillery.

Transferring a License

The bill amends s. 565.03(2)(c)5., F.S., to repeal the prohibition against a craft distillery transferring its license or any ownership interest in it to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country.

The bill also amends s. 565.03(2)(c)6., F.S., to repeal the prohibition on a craft distillery being affiliated with another distillery that produces more than 75,000 gallons per calendar year of distilled spirits on its premises in this state or in any other state, territory, or country.

Tastings of Distilled Spirits

The bill amends s. 565.17, F.S., to permit a craft distillery to conduct tastings of distilled spirits products at the premises of any vendor licensed for the sale of such products by package or for consumption on the premises, if limited to, and directed toward the general public of the age of legal consumption.

Effective Date

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁵ See *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005), which held that ss. 561.54(1)-(2) and 561.545(1), F.S., which prohibit out-of-state shipments of alcoholic beverages into Florida, violate the Commerce Clause of the U.S. Constitution and were therefore unconstitutional under the authority in *Granholm v. Heald*, 125 S.Ct.1885, 161 L.Ed.2d 796 (2005), and enjoined the enforcement of those provisions against out-of-state vendors and producers. Consequently, the division permits in-state wineries to ship wine to consumers because out-of-state wineries may ship wine directly to consumers in Florida.

³⁶ Section 561.57(2), F.S.

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:

None.

C. Government Sector Impact:

CS/CS/SB 166 permits a designated craft distillery to hold up to three vendor licenses. However, the bill permits each distillery to hold two vendor licenses per distillery (i.e., one license on property contiguous to the craft distillery's production building, and a second license for the additional sales room located within the same county as the distillery). The DBPR states that 45 distilleries qualify as craft distilleries.³⁷ If each distillery holds two vendor licenses (assuming no common ownership among the craft distilleries), the bill may result in a \$163,800 revenue increase, based on the maximum fee of \$1,820 per vendor license.³⁸

Current law requires that 24 percent of the license tax collected for a license issued in a county under ss. 561.14(6), 563.02, 564.02, 565.02(1), (4), and (5), and 565.03, F.S., be returned to the appropriate county tax collector.³⁹ Thirty-eight percent of the license taxes collected within an incorporated municipality pursuant to these provisions must be returned to the appropriate municipal officer.⁴⁰ Consequently, the additional vendor licenses may cause license taxes returned to counties and municipalities to increase annually by up to \$39,800 and \$62,244, respectively, and a net increase in payments to the AB&T TF of up to \$62,244.

VI. Technical Deficiencies:

None.

³⁷ See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 17, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

³⁸ See ss. 561.02(1)(b)-(g), F.S., which provides the license fees for vendors operating a place of business where consumption of beer, wine and distilled spirits on the premises is permitted.

³⁹ Section 561.342(1), F.S.

⁴⁰ Section 561.342(2), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 561.221, 565.03, and 565.17.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on April 3, 2017:

The committee substitute reinstates the requirement that a craft distillery's sales must be for the consumer's personal use and not for resale, which was removed from law in the original bill.

CS by Regulated Industries on February 8, 2017:

The committee substitute:

- Amends s. 561.221(1), F.S., to replace the term “certified” with the term “designated” in reference to a Florida craft distillery;
- Does not reduce the annual license tax for a craft distillery in s. 565.03(2)(a)1., F.S.;
- Revises s. 565.03(1)(b), F.S., to provide that a distillery is “designated” instead of “certified” by the division as a “craft distillery” when the distillery provides written notice to the division of its decision to qualify as a craft distillery; and
- Amends. 565.03(2)(c)3., F.S., to provide that a craft distillery may retain and renew its vendor's licenses if it exceeds the production limitation to qualify as a craft distillery.

- B. **Amendments:**

None.