

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 Appropriations

BILL: PCS/CS/CS/SB 166 (431800)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Commerce and Tourism Committee; Regulated Industries Committee; and Senator Steube and others

SUBJECT: Alcoholic Beverages

DATE: April 19, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	McSwain	RI	Fav/CS
2. Askey	McKay	CM	Fav/CS
3. Davis	Betta	AGG	Recommend: Fav/CS
4. Davis	Hansen	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 166 increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand. Current law permits the distillery to sell to consumers in a face-to-face transaction, per calendar year, two containers of each brand of distilled spirits, three containers of one brand and one container of a second brand, or four containers of a single brand.

The bill does not impact state revenues or expenditures.

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

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.

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. Manufacturers may not sell directly to retailers or directly to consumers.

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁴ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁵ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁶

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.⁷ 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,⁸ breweries,⁹ and craft distilleries to sell directly to consumers.¹⁰ 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.¹¹

A winery, even if licensed as a distributor,¹² 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.¹³

⁴ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁵ Section 561.22, F.S.

⁶ Sections 563.022(14) and 561.14(1), F.S.

⁷ 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).

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 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.

¹³ See s. 561.221(1), F.S.

The division may issue permits for a certified Florida Farm Winery¹⁴ 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,¹⁵ 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.¹⁶

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 rectifying¹⁷ 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.¹⁸

There are 45 distilleries that produced fewer than 75,000 gallons of distilled spirits in 2016.¹⁹ 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 products²⁰ 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.²¹ 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.²² The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft

¹⁴ 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.

¹⁵ Section 565.03(1)(c), F.S.

¹⁶ Section 565.03(1)(b), F.S.

¹⁷ 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 April 13, 2017).

¹⁸ Section 565.03(3), F.S.

¹⁹ 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.

²⁰ 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.”

²¹ Section 565.03(2)(c), F.S.

²² *Id.*

distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”²³ 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 consumers²⁴ 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.²⁵

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.²⁶

A craft distillery must report to the division within five 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.²⁷

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.²⁸

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.²⁹ 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.³⁰

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³¹

²³ *Id.*

²⁴ Section 565.03(2)(c)4., F.S.

²⁵ Section 565.03(2)(c)1., F.S.

²⁶ Section 565.03(2)(c)2., F.S.

²⁷ Section 565.03(2)(c)3., F.S.

²⁸ Section 565.03(2)(c)4., F.S.

²⁹ Section 565.03(2)(c)5., F.S.

³⁰ Section 565.03(2)(c)6., F.S.

³¹ 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.

III. Effect of Proposed Changes:

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

The bill takes effect upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

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:

The bill will likely have a positive impact on craft distilleries that sell their branded products directly to consumers from their gift shop.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 565.03 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS/CS by Appropriations Subcommittee on General Government on April 13, 2017:

The committee substitute increases the number of factory-sealed individual containers of distilled spirits that a craft distillery may sell in a face-to-face transaction with a consumer to a maximum of six containers of each brand.

The committee substitute removes the provisions from the bill that:

- Permit a craft distillery to own, manage, operate, or control up to three vendor licenses and to conduct tastings and sales at Florida fairs, trade shows, expositions, and festivals.
- Permit a certified Florida Farm Winery or a 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.
- Increase the maximum number of gallons that a distillery may produce to qualify as a craft distillery from 75,000 to 250,000 gallons per calendar year.
- Provide 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.
- Permit 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.
- Repeal the limitation on the number of individual containers of distilled spirits that a craft distillery may sell to consumers.
- Permit 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.
- Provide that a craft distillery may retain and renew its vendor’s license(s) if it exceeds the 250,000-gallon production limitation.
- Repeal 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.
- 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.

CS/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.