

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 296

INTRODUCER: Regulated Industries Committee; Commerce and Tourism Committee; Regulated Industries Committee; and Senator Brandes

SUBJECT: Beverage Law

DATE: February 28, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
4.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 296 repeals the limits on the size of a wine container, which in current law may not hold more than one gallon, unless the container is reusable and holds 5.16 gallons.

The bill also repeals the limits on the size of a cider container, which in current law may not hold more than 32 ounces of cider. However, current law permits cider to be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

The bill amends the current provision that permits a restaurant patron to take home a partially consumed bottle of wine under certain conditions. It revises the requirement that a restaurant patron must purchase and consume a full course meal (consisting of an entrée, salad or vegetable, beverage, and bread) in order to be able to take home a partially consumed bottle of wine. The bill replaces that requirement with a requirement that a restaurant patron purchase only a meal with the bottle of wine.

Additionally, the bill revises certain provisions applicable to craft distilleries. First, the bill increases the current distilled spirits production limit to qualify as a craft distillery from 75,000 gallons to 250,000 gallons, but limits the amount that may be transferred to the craft distillery's souvenir gift shop for sale to consumers for off-premises consumption to 75,000 gallons.

Second, the bill repeals the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop. Third, the bill codifies a recent declaratory statement issued to a craft distillery by the Division of Alcoholic Beverages of the Department of Business and Professional Regulation. The statement interprets current law to permit a craft distillery to blend distilled spirits produced at its licensed premises with distilled spirits produced elsewhere, provided the blended product is blended and filled in factory-sealed containers, at the craft distillery's licensed premises.

CS/CS/CS/SB 296 has no fiscal impact on state government. See Section V, Fiscal Impact Statement.

The effective date of the bill is July 1, 2018.

## II. Present Situation:

### Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces<sup>1</sup> the Beverage Law,<sup>2</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor<sup>3</sup>. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

### Wine and Cider Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. 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.<sup>4</sup>

Section 564.055, F.S., prohibits the sale of cider<sup>5</sup> at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

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<sup>1</sup> Section 561.02, F.S.

<sup>2</sup> Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>3</sup> See s. 561.14, F.S.

<sup>4</sup> Section 775.082(4), F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

<sup>5</sup> Section 564.06(4), F.S., provides that "cider" is "made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume." "Must" is the expressed juice of a fruit before and during fermentation. See <https://www.merriam-webster.com/dictionary/must> (last visited January 4, 2018).

## Restaurants - Off-Premises Consumption of Wine

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.<sup>6</sup>

## 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,<sup>7</sup> 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.<sup>8</sup>

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying<sup>9</sup> distilled spirits must pay a state license tax for each plant or branch operating in Florida. Distilleries pay \$4,000 annually for the license tax and craft distilleries pay \$1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.<sup>10</sup>

## Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products<sup>11</sup> 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.<sup>12</sup> The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises. 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.

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<sup>6</sup> Section 564.09, F.S.

<sup>7</sup> Section 565.03(1)(c), F.S.

<sup>8</sup> Section 565.03(1)(b), F.S.

<sup>9</sup> 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 10, 2018).

<sup>10</sup> Section 565.03(3), F.S.

<sup>11</sup> 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."

<sup>12</sup> Section 565.03(2)(c), F.S.

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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.<sup>17</sup>

### **Declaratory Statement**

On January 19, 2018, the division issued a declaratory statement interpreting s. 565.03(2)(c), F.S., to permit a craft distillery to sell to consumers, at its souvenir gift shop, a product comprised of a blend of liquors distilled on the premises of the craft distillery and liquors distilled by other manufacturers away from the premises. The craft distillery may then, at the craft distillery, fill individual containers with the final, blended liquor product for sale at its souvenir gift shop.<sup>18</sup>

### **III. Effect of Proposed Changes:**

#### **Wine Containers**

**Section 1** repeals the wine container size limits in s. 564.05, F.S.

#### **Cider Containers**

**Section 2** repeals the cider container size limits in s. 564.055, F.S.

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<sup>13</sup> Section 565.03(2)(c)3., F.S.

<sup>14</sup> Section 565.03(2)(c)4., F.S.

<sup>15</sup> Section 565.03(2)(c)5., F.S.

<sup>16</sup> Section 565.03(2)(c)6., F.S.

<sup>17</sup> 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.

<sup>18</sup> Final Order on Petition for Declaratory Statement, *In Re: Petition for Declaratory Statement Before the Division Of Alcoholic Beverages and Tobacco, On behalf of Drum Circle Distilling, LLC*, DS 2017-071 (DABT Case No. 2017-052675), January 19, 2018, (on file with Senate Committee on Regulated Industries).

### **Restaurants - Off-Premises Consumption of Wine**

**Section 3** amends s. 564.09, F.S., to revise the requirement that a restaurant patron must purchase and consume a full course meal in order to be able to take home a partially consumed bottle of wine. The bill retains the requirement that the restaurant patron purchase a meal with the bottle of wine.

### **Craft Distilleries**

**Section 4** amends s. 565.03, F.S., to revise the definition of “branded product” to include distilled spirits manufactured on site and blended with other distilled spirits to codify the declaratory statement entered by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation on January 19, 2018.<sup>19</sup>

The bill revises the requirement that a craft distillery may only produce up to 75,000 gallons per calendar year, instead allowing for 250,000 or fewer gallons per calendar year. The bill also increases from 75,000 gallons to 250,000 gallons the maximum production per calendar year of distilled spirits a distillery affiliated with a craft distillery may produce on its premises or in any other state, territory, or country.

Under the bill, the amount allowed to be transferred to the craft distillery’s souvenir gift shop for sale to consumers is limited to 75,000 gallons per calendar year.

Additionally, the bill repeals the limit of six individual containers of each branded product a consumer may purchase in a face-to-face transaction in the craft distillery’s souvenir gift shop.

### **Effective Date**

**Section 5** provides the bill takes effect July 1, 2018.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>19</sup> See, supra at note 18.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CS/CS/CS/SB 296 increases from 75,000 gallons to 250,000 gallons the maximum production per calendar year to qualify as a craft distillery. Under current law, distilleries pay an annual \$4,000 license tax and craft distilleries pay \$1,000. There are 48 distilleries licensed in Florida. Thirty-eight of the distilleries are designated as craft distilleries and eight distilleries produce less than 75,000 gallons per calendar year but have not sought designation as craft distilleries. The remaining two distilleries produce, or are affiliated with distilleries that produce, more than the 250,000 gallons per calendar year production limit in the bill. Consequently, CS/CS/CS/SB 296 is not anticipated to have a fiscal impact.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions repealing the limits on the size of wine containers and revising the conditions under which a restaurant patron may be permitted to take home a partially consumed bottle of wine in CS/CS/CS/SB 296 are substantively identical to provisions in CS/CS/SB 388 (2017 Regular Session), by the Rules Committee, Regulated Industries Committee, and Senator Hutson, which were amended onto the bill by the Rules Committee and passed by the Senate.<sup>21</sup> The provisions in CS/CS/CS/SB 296 also were passed by the Regulated Industries Committee in CS/SB 400 during the 2017 Regular Session.<sup>22</sup>

**VIII. Statutes Affected:**

This bill repeals the following sections of the Florida Statutes: 564.05 and 564.055.

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<sup>20</sup> See 2018 Agency Legislative Bill Analysis issued by the DBPR for CS/CS/SB 296, dated January 18, 2018 (on file with Senate Committee on Regulated Industries) at page 4.

<sup>21</sup> See Amendment #379250 (2017 Regular Session) offered by Senator Brandes in the Rules Committee on April 12, 2017. The Senate passed CS/CS/SB 388 on April 19, 2017, by a vote of 36-1. (Subsequently, CS/CS/SB 388 was amended by the House of Representatives to remove provisions unrelated to provisions in SB 296 and died in Returning Messages.)

<sup>22</sup> See Substitute Amendment #323682 and Amendment #193132 to Substitute Amendment #323682 (both offered by Senator Brandes) to SB 400 by Senator Perry, which were adopted by the Regulated Industries Committee on March 16, 2016. (Those provisions subsequently were removed from CS/CS/SB 400 by Amendment #887606 offered by Senator Perry, which was adopted by the Senate on April 27, 2017. CS/CS/CS/HB 689 (2017 Regular Session) was substituted for CS/CS/SB 400 and CS/CS/SB 400 then was laid on the table. CS/CS/CS/HB 689 was enacted into law as Ch. 2017-137, Laws of Fla.)

This bill substantially amends the following sections of the Florida Statutes: 564.09 and 565.03.

**IX. Additional Information:**

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

**CS/CS/CS by Regulated Industries Committee on January 24, 2018:**

The committee substitute:

- Revises the definition of “branded product” to include distilled spirits manufactured on site and blended with other distilled spirits.
- Repeals the limit of six individual containers of each branded product an individual may purchase at a craft distillery’s souvenir gift shop.

**CS/CS by Commerce and Tourism Committee on January 9, 2018:**

- Adds to the bill the provision that craft distilleries may now produce 250,000 or fewer gallons and retain their craft distillery status.
- Retains the provision that craft distilleries may only sell up to 75,000 gallons at their souvenir shop.

**CS by Regulated Industries Committee on December 7, 2017:**

The committee substitute:

- Removes from the bill the provision permitting the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages;
- Repeals s. 564.055, F.S., relating to the container size limitations for cider; and
- Removes from the bill the provision that would permit a restaurant patron to take home a partially consumed and resealed bottle of beer.

- B. **Amendments:**

None.