

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 Innovation, Industry, and Technology

BILL: SB 138

INTRODUCER: Senator Hutson

SUBJECT: Beverage Law

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 138 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, 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 must purchase (but need not consume) a meal and consume a portion of 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 200,000 gallons, and limits the amount that may be transferred to the craft distillery's souvenir gift shop for sale to consumers for off-premises consumption to 200,000 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 and Tobacco within 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. Fourth, the bill allows a craft distillery to ship its distilled spirits products out-of-state if the shipment complies with the laws of the other state. Fifth, under the bill, a distillery licensed as a vendor under

s. 561.221, F.S., may ship alcoholic beverages to consumers in Florida because vendors are permitted to make such deliveries.

The bill allows any licensed distillery to qualify for an alcoholic beverage vendor's license. Under the bill, a vendor-licensed distillery must obtain all distilled spirits and other alcoholic beverages manufactured by another licensed manufacturer, including any distilled spirits that are owned in whole or in part by the craft distillery but are distilled by another manufacturer, through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

The effective date of the bill is July 1, 2020.

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 enforces¹ the Beverage Law,² which regulates the manufacture, distribution, and sale of wine, beer, and liquor.³ 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.⁴

Section 564.055, F.S., prohibits the sale of cider⁵ 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, regardless of container type.

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:

¹ Section 561.02, F.S.

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

³ See s. 561.14, F.S.

⁴ 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.

⁵ 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 February 11, 2020).

- 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.⁶

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.⁷ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁸ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁹

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.¹⁰ 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,¹¹ breweries,¹² and craft distilleries to sell directly to consumers.¹³ Restaurants licensed as vendors (brew pubs) may

⁶ Section 564.09, F.S.

⁷ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ Section 561.22, F.S.

⁹ Sections 563.022(14) and 561.14(1), F.S.

¹⁰ Jessica C. Starns, *The Dangers of Common Ownership in an Uncommon Industry, Alcohol Policy in America and the Timeless Relevance of Tied-House Restrictions*, (2017) available at: <https://www.centerforalcoholpolicy.org/wp-content/uploads/2017/03/The-Dangers-of-Common-Ownership-in-an-Uncommon-Industry.pdf> (last visited Feb. 11, 2020).

¹¹ See s. 561.221(1), F.S.

¹² See s. 561.221(2), F.S.

¹³ See s. 565.03, F.S.

manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of a restaurant.¹⁴

A winery, even if licensed as a distributor,¹⁵ 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.¹⁶

The division may issue permits for a certified Florida Farm Winery¹⁷ 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,¹⁸ 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.¹⁹

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying²⁰ 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.²¹

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products²² 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.²³ The sales must occur at the distillery’s souvenir gift shop

¹⁴ See s. 561.221(3), F.S.

¹⁵ 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.

¹⁶ See s. 561.221(1), F.S.

¹⁷ 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.

¹⁸ Section 565.03(1)(c), F.S.

¹⁹ Section 565.03(1)(b), F.S.

²⁰ 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 Feb. 11, 2020).

²¹ Section 565.03(3), F.S.

²² 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.”

²³ Section 565.03(2)(c), F.S.

located on private property contiguous to the licensed distillery premises.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.

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.²⁵

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 and federal bonded warehouses, and exporters.²⁶

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.²⁷ 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.²⁸

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.²⁹

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.³⁰

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail

²⁴ *Id.*

²⁵ Section 565.03(2)(c)3., F.S.

²⁶ Section 565.03(2)(c)4., F.S.

²⁷ Section 565.03(2)(c)5., F.S.

²⁸ Section 565.03(2)(c)6., F.S.

²⁹ 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.

³⁰ 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 Innovation, Industry, and Technology).

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.³¹

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.³²

Common carriers³³ may transport alcoholic beverages.³⁴ The recipient's age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.³⁵

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.³⁶

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.

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 (consisting of a salad or vegetable, entrée, a beverage, and bread) 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.

³¹ Section 561.57(1), F.S.

³² Section 561.57(2), F.S.

³³ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

³⁴ Section 561.57(5), F.S.

³⁵ Section 561.57(6), F.S.

³⁶ Section 561.01(20), F.S.

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. The bill codifies the declaratory statement entered by the division on January 19, 2018.³⁷

The bill revises the requirement that a craft distillery may only produce up to 75,000 gallons per calendar year, instead allowing production of 200,000 or fewer gallons per calendar year. The bill also increases from 75,000 gallons to 200,000 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 200,000 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.

The bill requires a craft distillery to sell its distilled spirits products to consumers in Florida in a face-to-face transaction. The bill permits a craft distillery to ship its products to consumers out-of-state if the shipment complies with the laws where the products are scheduled to be delivered for personal use. Under the bill, a distillery licensed as a vendor under s. 561.221, F.S., may ship alcoholic beverages to consumers in Florida because vendors are permitted to make such deliveries.

Section 5 amends s. 561.221, F.S., to allow the division to issue a vendor’s license to a licensed distillery, even if the distillery is also licensed as a distributor. Under the bill, any distillery licensed under s. 565.03, F.S., may qualify for a vendor’s license whether or not designated as a craft distillery.

If the vendor’s license is for the sale of alcoholic beverages on a distillery’s licensed premise, a sketch or diagram of the premise must be included in the license application to verify that the vendor premises operated by the licensed distillery is owned or leased by the distillery and is located on the licensed distillery premises.³⁸ The bill does not require that a vendor’s license issued to a distillery must be for the sale of alcoholic beverages on a distillery’s licensed premises, i.e., the vendor’s license may be issued for a location where the distilled spirits are not produced.

Under the bill, a vendor-licensed distillery must obtain all distilled spirits and other alcoholic beverages manufactured by another licensed manufacturer, including any distilled spirits that are owned in whole or in part by the craft distillery but are distilled by another manufacturer, through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

³⁷ See *supra* at note 30.

³⁸ Section 561.01(11), F.S., which defines the term “licensed premises,” requires an applicant for an alcoholic beverage license to submit a sketch of the location where alcoholic beverages will be stored or sold by the licensee, including “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...”

Effective Date

Section 6 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A licensed distillery may qualify to be licensed as an alcoholic beverage vendor.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 564.09, 565.03, and 561.221.

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

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
