

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 583 Beverage Law

**SPONSOR(S):** Sabatini

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 138, SB 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	8 Y, 5 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	9 Y, 2 N	Helpling	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Relating to alcoholic beverage container sizes, the bill:

- Repeals s. 564.05, F.S., relating to wine container size limitations.
- Repeals s. 564.055, F.S., relating to cider container size limitations.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of “a meal.”

Relating to craft distilleries, the bill:

- Clarifies that a craft distiller may blend their product with other distilled spirits.
- Increases the maximum production threshold for craft distilleries, and similar provisions related to ownership interests, from 75,000 to 250,000 gallons.
- Allows a craft distillery to sell up to 250,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Allows a craft distillery to ship or deliver product to consumers located outside the state, subject to the laws of the receiving state.
- Authorizes the issuance of a vendor’s license for the sale of alcoholic beverages on a distillery’s licensed premises.
- Specifies that any alcoholic beverages not manufactured on-site by the distillery must be obtained through a licensed distributor, broker, agent or importer.

The bill may have a positive fiscal impact for certain entities involved in the production or sale of wine, cider and distilled spirit and an insignificant positive fiscal impact on the state. See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Beverage Law**

In Florida, the Beverage Law<sup>1</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.<sup>2</sup>

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.<sup>3</sup>

##### **Wine 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>

#### Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

##### **Cider Containers**

Section 564.055, F.S., prohibits the sale of cider by vendors at retail in any individual container of more than 32 ounces. 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. The Beverage Law does not provide for the sale of cider in growlers.

#### Effect of the Bill

The bill repeals s. 564.055, F.S., relating to the retail sale of individual cider containers.

##### **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

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> S. 561.02, F.S.

<sup>3</sup> S. 563.01, F.S.

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

- 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>5</sup>

### Effect of the Bill

The bill amends 564.09, F.S., simplifying the requirement that a patron's meal be a "full course meal consisting of salad or vegetable, entrée, a beverage, and bread" to just "a meal."

### **Three-Tier System**

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>6</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters<sup>7</sup> are generally prohibited from holding a vendor's license.<sup>8</sup> Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.<sup>9</sup>

### **Alcoholic Beverage Deliveries**

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail 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. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.<sup>10</sup>

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.<sup>11</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, 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>12</sup>

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of \$4,000 for each plant

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<sup>5</sup> S. 564.09, F.S.

<sup>6</sup> S. 561.14, F.S.

<sup>7</sup> S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop

<sup>8</sup> S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>9</sup> See ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.

<sup>10</sup> S. 561.57(1) & (2), F.S.

<sup>11</sup> Ss. 561.221 (2)(d), and 565.57(1), F.S.

<sup>12</sup> Ss. 565.03(1)(b) & (c), F.S.

or branch operating in Florida. The license tax for a craft distillery is \$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>13</sup>

According to the Division, 58 of the 60 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.<sup>14</sup>

### *Retail Sales by Craft Distilleries*

A craft distillery is allowed to sell to consumers branded products,<sup>15</sup> distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. 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. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six individual containers of each branded product.<sup>16</sup> The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop 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."<sup>17</sup>

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

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

### Effect of the Bill

The bill amends s. 565.03, F.S., to:

- Expand the definition of "branded product" to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increase the maximum production threshold for craft distilleries and similar provisions related to ownership interests, from 75,000 to 250,000.
- Allow a craft distillery to sell up to 250,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Specify that a craft distillery can transfer up to 250,000 gallons of its product from its federal bonded space, nonbonded space, or storage areas to its souvenir gift shop, per year.

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<sup>13</sup> S. 565.03(2)(b), F.S.

<sup>14</sup> Department of Business and Professional Regulation, Agency Analysis of 2019 HB 1229, p. 4 (Mar. 18, 2019).

<sup>15</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>16</sup> S. 565.03(1)(c), F.S.

<sup>17</sup> *Id.*

- Prohibit a craft distillery that does not have a vendor's license under s. 561.221, F.S., from shipping its distilled spirits to consumers located in the state.
- Allow a craft distillery to ship, arrange to ship, or deliver product to consumers located outside the state, subject to the laws of the receiving state.

The bill amends s. 561.221, F.S., to:

- Authorize the issuance of a vendor's license to any distillery for the sale of alcoholic beverages on the distillery's licensed premises.
- Specify that any alcoholic beverages distilled by another manufacturer, regardless of ownership, must be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

The bill provides an effective date of July 1, 2020.

#### B. SECTION DIRECTORY:

**Section 1:** Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

**Section 2:** Repeals s. 564.055, F.S., relating to limitations on the size of individual cider containers.

**Section 3:** Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption.

**Section 4:** Amends s. 565.03, F.S., redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; etc.

**Section 5:** Amends s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain distilleries under certain circumstances; requiring that certain information be included on certain sketches and diagrams and approved by the Division under certain circumstances; requiring that certain alcoholic beverages be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

**Section 6:** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There will be an indeterminate, insignificant positive fiscal impact from the collection of license fees from craft distilleries that choose to obtain a vendor's license.

#### 2. Expenditures:

The bill may require modifications to the Electronic Data Submission system and Versa, used by the Department of Business and Professional Regulation. The Department has sufficient resources to make the modifications.<sup>18</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

<sup>18</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 7 (Dec. 6, 2019).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on certain entities in the wine and cider industry, due to the lessening or elimination of regulatory constraints relating to container sizes.

The bill may have a positive economic impact for many craft distilleries due to the removal of many current regulatory constraints, resulting in enhanced brand recognition, increased sales volume, opportunities for collaboration, and access to new markets and consumers.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES