

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 46

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

SUBJECT: Craft Distilleries

DATE: February 16, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | <u>Reeve</u> | <u>McKay</u> | <u>CM</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 46 revises the licensing requirements for craft distilleries. The bill creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor's license if the craft distillery is located on a property within a destination entertainment venue, as defined by the bill, and open for tours during normal business hours

The bill also amends s. 565.03, F.S., to increase the production limit for distilleries to qualify as craft distilleries from 75,000 gallons per year to 250,000 gallons per year. Craft distilleries may only sell up to 75,000 gallons of branded products in gift shops or tasting rooms and may not ship products to customers. A maximum of 10 craft distilleries meeting certain requirements may share common ownership. Effective July 1, 20206, a minimum of 60 percent of a craft distillery's total finished branded products must be distilled in the state and contain one or more of Florida's agricultural products. Craft distilleries must keep records of all alcoholic beverages received from within or outside the state for a period of 3 years.

The bill allows craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill takes effect July 1, 2021.

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

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 cannot sell directly to retailers or directly to consumers.⁴

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited 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 the restaurant.¹²

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 *Id.*

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

⁶ Section 561.22, F.S.

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

⁸ 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. 16, 2021).

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.

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

Quota Licenses

Section 561.20, F.S., limits, by county, the number of alcoholic beverage licenses that may be issued to permit the sale of liquor (distilled spirits) to one license per 7,500 residents within 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 which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation. A person, firm, or corporation may not have an interest, directly or indirectly, in more than 30 percent of the number of quota licenses in a county.¹⁵

Quota License Exceptions

Current law permits certain types of businesses or persons to be licensed sell beer, wine, and liquor without any limitation on the number of such licenses which may be issued in a county, i.e., such licenses are not subject to the quota in s. 561.20, F.S. Quota license exceptions are known as “special licenses.”

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports.

The Beverage Law provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to:

- An operator of railroads or sleeping cars and a vendor in railroad transit stations.¹⁶
- Operators of steamships and steamship lines, buses and bus lines, or airplanes and airlines engaged in interstate or foreign commerce or flying between fixed terminals and upon fixed schedules in this state.¹⁷
- Persons associated together as a chartered or incorporated club, if not organized for the purpose of evading license taxes and meeting certain conditions, including any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope.¹⁸
- A caterer at a horse or dog racetrack or jai alai fronton.¹⁹

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 561.20(6), F.S.

¹⁶ Section 565.02(2), F.S.

¹⁷ Section 565.02(3), F.S.

¹⁸ Section 565.02(4), F.S.

¹⁹ Section 565.02(5), F.S.

- A vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex and meeting specified conditions.²⁰
- A marine exhibition park complex meeting specified conditions.²¹
- A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra.²²
- The operator of a passenger vessel engaged exclusively in foreign commerce.²³
- A state-chartered legal entity not for profit organized principally for the purpose of operating a theater with live performances and not fewer than 100 seats.²⁴
- The John and Mable Ringling Museum of Art direct-support organization.²⁵

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,²⁶ 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 distillery must notify the division in writing of its decision to qualify as a craft distillery.²⁷

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying 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.²⁸

Retail Sales by Craft Distilleries

A craft distillery is allowed to sell to consumers branded products²⁹ 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.³⁰ The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises.³¹ 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.

²⁰ Section 565.02(6), F.S.

²¹ Section 565.02(7), F.S.

²² Section 565.02(8), F.S.

²³ Section 565.02(9), F.S.

²⁴ Section 565.02(10), F.S.

²⁵ Section 565.02(11), F.S.

²⁶ Section 565.03(1)(c), F.S.

²⁷ Section 565.03(1)(b), F.S.

²⁸ Section 565.03(3), F.S.

²⁹ 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.”

³⁰ Section 565.03(2)(c), F.S.

³¹ *Id.*

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.³²

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, except in a face to face transaction. However, a craft distillery 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.³³

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.³⁴ 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.³⁵

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³⁶

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.³⁷ However, a craft distillery may not sell to consumers a product comprised of a blend of only liquors distilled by other manufacturers away from the craft distillery's licensed premises.³⁸

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 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.

³² Section 565.03(2)(c)3., F.S.

³³ Section 565.03(2)(c)4., F.S.

³⁴ Section 565.03(2)(c)5., F.S.

³⁵ Section 565.03(2)(c)6., F.S.

³⁶ 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.

³⁷ 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).

³⁸ *Id.*

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.³⁹

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.⁴⁰

Common carriers⁴¹ may transport alcoholic beverages.⁴² 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.⁴³

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.⁴⁴

Alcoholic Beverage Tastings

Section 563.09, F.S., permits manufacturers, distributors, and importers of beer to conduct sampling activities that include the tasting of beer on the licensed premises of vendors authorized to sell alcoholic beverages for consumption on premises and, if the licensed premises is an establishment with at least 10,000 square feet or a package store, on the licensed premises of vendors authorized to sell alcoholic beverages for consumption off premises. A vendor may also conduct a tasting on its licensed premises using beer from its own inventory.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

A certified Florida Farm Winery⁴⁵ may be issued a permit by the division to conduct tasting and sales of wine produced by certified Florida Farm Wineries at Florida fairs, trade shows, expositions, and festivals. The certified Florida Farm Winery must pay all entry fees and must have a winery representative present during the event. The permit is limited to the length of the event.⁴⁶

³⁹ Section 561.57(2), F.S.

⁴⁰ *Id.*

⁴¹ 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."

⁴² Section 561.57(5), F.S.

⁴³ Section 561.57(6), F.S.

⁴⁴ Section 561.01(20), F.S.

⁴⁵ 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.

⁴⁶ Section 561.221(1)(b), F.S.

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 without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

Community Redevelopment Areas

The Community Redevelopment Act of 1969 authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas.⁴⁷ The act defines a “blighted area” as an area in which there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property and in which two or more of the factors listed in s. 163.340(8), F.S., are present. However, an area may also be classified as blighted if one of the aforementioned factors is present and all taxing authorities with jurisdiction over the area agree that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.⁴⁸

Either a county or a municipal government may create a CRA. A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the act.⁴⁹ A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.⁵⁰

The act allows the local governing body creating a CRA to choose between two structures for the agency governing board. One option is to appoint a board of commissioners consisting of five to nine members serving four-year terms.⁵¹ The second option is for the local governing body to appoint itself as the agency board of commissioners.⁵² A community redevelopment plan must be in place before a CRA can engage in operations.⁵³

There are currently 222 active community redevelopment agencies in Florida.⁵⁴

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor’s license for the sale of beer, wine, and liquor.

⁴⁷ Chapter 163, F.S., part III.

⁴⁸ Section 163.340(8), F.S.

⁴⁹ Section 163.356(1), F.S.

⁵⁰ Section 163.340(10), F.S.

⁵¹ Section 163.356(2), F.S.

⁵² Section 163.357(1)(a), F.S.

⁵³ Section 163.360(1), F.S.

⁵⁴ Dept. of Economic Opportunity, Special District Accountability Program, Official List of Special Districts Online, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 16, 2021).

Under the bill, a craft distillery may be licensed as a vendor for alcoholic beverages from other manufacturers consumed on the premises if the craft distillery is located on a property within a destination entertainment venue and is in operation and open for tours during normal businesses hours at least 5 days a week.

The bill defines a destination entertainment venue (DEV) as a venue located in a designated community redevelopment area (CRA), owned by any person licensed as a craft distillery located within the venue, and served by multimodal transportation options. DEVs must also be located within a contiguous area of at least 15 acres that contains indoor and outdoor event venues with capacities of 150 and 1,000 people, respectively, and one or more licensed craft distilleries with identical ownerships.

All craft distilleries licensed as a vendor in a CRA must be located within the same DEV, share identical ownership, and distill, blend, or rectify at least 50,000 gallons of blended product per calendar year. No more than three craft distilleries may be licensed as a vendor in a CRA.

Craft distilleries licensed as a vendor are prohibited from making package sales for off-premises consumption or making deliveries or shipments of alcoholic beverages, except as authorized in s. 565.03, F.S.

Alcoholic beverages not manufactured at the craft distillery must be obtained by a licensed distributor.

Section 2 amends the craft distillery requirements in s. 565.03, F.S.

The bill increases the production limit for distilleries to qualify as craft distilleries from 75,000 gallons per year to 250,000 gallons per year. A distillery may not operate as a craft distillery until the Division of Alcoholic Beverages and Tobacco has received notice of, and verified that, a distillery meets the production limits.

Craft distilleries may only sell up to 75,000 gallons of branded products distilled, rectified, or blended on the craft distillery's premises directly to consumers each year; such sales may only be sold by the drink for consumption on the premises or by the package in factory-sealed containers for consumption off the premises, and may only be sold in the craft distillery's souvenir gift shop or tasting room. The bill prohibits craft distilleries from shipping products to customers and clarifies that sales made directly to customers may only be face-to-face transactions. However, the bill repeals the six container limit on individual sales. Craft distilleries are responsible for submitting any excise taxes due on distilled spirits.

Effective July 1, 2026, a minimum of 60 percent of a craft distillery's total finished branded products must be distilled in the state and contain one or more of Florida's agricultural products.

The bill prohibits any one person from sharing common ownership in more than 10 craft distilleries, provided that four produce up to 250,000 gallons of distilled spirits a year each and six produce up to 50,000 gallons a year each. "Common ownership" means having a direct or indirect financial interest in two or more distilleries by the same person.

Craft distilleries must keep complete and accurate records of all beverages received from any point within or outside the state from another manufacturer, or from a broker, sales agent, or importer. Such records must include any delivery invoices or other records of the common or contract carriers of freight making the delivery of such alcoholic beverages. Pursuant to s. 561.55, F.S., records must be kept and maintained for a period of 3 years.

Section 3 amends s. 565.17, F.S., to allow craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

Section 4 provides an effective date of July 1, 2021.

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:

The bill may increase total sales revenue for craft distilleries by 1) allowing craft distilleries to sell their branded products to consumers by the drink and by 2) repealing 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.

The bill would provide additional sources of revenue for craft distilleries located in a community redevelopment area that qualify for a vendor's license, as specified in the bill.

C. **Government Sector Impact:**

Tax revenue from the sale of craft distillery products may increase if sales to consumers increase under this bill.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 565.02, 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/CS by Commerce and Tourism on February 15, 2021:

The committee substitute requires craft distilleries to keep records of alcoholic beverages received from within or outside the state from a broker, sales agent, importer, or another manufacturer.

CS by Regulated Industries on January 26, 2021:

The committee substitute:

- Deletes the definition of common ownership in the bill and requires any craft distilleries that share ownership in the destination entertainment venue must have identical ownership.
- Requires each distillery in a destination entertainment venue to produce at least 50,000 gallons of liquor each calendar year.
- Deletes the provision providing that other licensed alcoholic vendors may lease a licensed premises within a destination entertainment venue.
- Clarifies that souvenir gift shop and tasting rooms must be located within the state.
- Reinstates current law to clarify that craft distilleries may be affiliated with other craft distilleries in this state, and in other states or countries that do not exceed the production limit at each licensed distillery location.
- Provides an effective date of July 1, 2026 for the requirement that a minimum of 60 percent of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.

B. Amendments:

None.

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