

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737 Craft Distilleries

SPONSOR(S): DiCeglie

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 46

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N	Willson	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 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.

The bill creates a quota license exemption for craft distilleries located in a community redevelopment area, subject to certain requirements and limitations.

The bill amends the craft distillery requirements in s. 565.03, F.S., as follows:

- Increases the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 250,000 gallons per calendar year.
- Limits the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Effective July 1, 2026, requires that a minimum of 60% of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Authorizes a maximum of 10 craft distillery licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons. "Common ownership" is defined to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Allows craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Clarifies that craft distilleries may only sell directly to consumers in face-to-face transactions.
- Repeals the six bottle limit per branded product per consumer at a craft distillery's souvenir gift shop.
- Prohibits craft distilleries from shipping alcoholic beverages to consumers.

The bill also authorizes a craft distillery permit for tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill appears to have no fiscal impact on state government. The bill may have a positive fiscal impact for certain entities involved in the production or sale of distilled spirits.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law and the Three-Tier System

In Florida, the Beverage Law¹ 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.²

“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.³

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.⁴

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters⁵ are generally prohibited from holding a vendor’s license.⁶ 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.⁷

Exceptions

Exceptions to the three-tier regulatory system allow certain in-state wineries,⁸ craft breweries,⁹ and craft distilleries to sell directly to consumers.¹⁰ Further, certain restaurants may be granted a vendor’s license to manufacture a limited quantity of malt beverages which can be sold to consumers for consumption on premises.¹¹

Wineries may receive up to 3 vendor’s licenses on property contiguous to the manufacturing premises of the winery.¹² 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 of which 60% is made from state agricultural products, maintain a minimum of 5 acres of owned or managed land in Florida which

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

² Section 561.02, F.S.

³ Section 563.01, F.S.

⁴ Section 561.14, F.S.

⁵ Section 561.01(16), F.S. “Exporter” means any person that sells alcoholic beverages to persons for use outside the state.

⁶ Section 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.

⁷ See ss. 561.22, 561.24, 561.14(1), and s. 563.022(14), F.S.

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 See s. 561.221(1), F.S.

produces commodities used in the production of wine, be open to the public for tours, tastings, and sales at least 30 hours each week, and pay an annual application and registration fee of \$100.

Section 561.24, F.S., prohibits the licensing of a manufacturer as a distributor or exporter. Wineries that qualify as a certified Florida Farm Winery are the sole exception to this prohibition. Additionally, the Division may issue permits for a certified Florida Farm Winery 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.

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.¹³

Quota License Exemptions

Current law permits certain types of businesses or persons to be licensed to 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. Exemptions from the quota license system are known as “special licenses.”

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

The Beverage Law provides a limited exemption 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.¹⁴
- 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.¹⁵
- 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.¹⁶
- A caterer at a horse or dog racetrack or jai alai fronton.¹⁷
- 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.¹⁸
- A marine exhibition park complex meeting specified conditions.¹⁹
- A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra.²⁰

¹³ Section 561.20(6), F.S.

¹⁴ Section 565.02(2), F.S.

¹⁵ Section 565.02(3), F.S.

¹⁶ Section 565.02(4), F.S.

¹⁷ Section 565.02(5), F.S.

¹⁸ Section 565.02(6), F.S.

¹⁹ Section 565.02(7), F.S.

²⁰ Section 565.02(8), F.S.

- The operator of a passenger vessel engaged exclusively in foreign commerce.²¹
- 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.²²
- The John and Mable Ringling Museum of Art direct-support organization.²³

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.²⁴

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.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, 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.²⁶

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 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.²⁷

According to the Division, 61 of the 64 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.²⁸

A craft distillery is allowed to sell to consumers branded products,²⁹ 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.³⁰ The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

²¹ Section 565.02(9), F.S.

²² Section 565.02(10), F.S.

²³ Section 565.02(11), F.S.

²⁴ Section 561.57(1) & (2), F.S.

²⁵ Sections. 561.221 (2)(d), and 565.57(1), F.S.

²⁶ Sections. 565.03(1)(b) & (c), F.S.

²⁷ Section. 565.03(2)(b), F.S.

²⁸ Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 5-6 (Dec. 6, 2019).

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(1)(c), F.S.

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."³¹

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.

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.³² 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.³³

Beverage Tastings

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.³⁴ 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.³⁵

³¹ *Id.*

³² 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).

³³ *Id.*

³⁴ Ch. 163, F.S., part III.

³⁵ Section 163.340(8), F.S.

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.³⁶ 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, 2006.³⁷

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.³⁸ The second option is for the local governing body to appoint itself as the agency board of commissioners.³⁹ A community redevelopment plan must be in place before a CRA can engage in operations.⁴⁰

There are currently 222 active CRAs in Florida.⁴¹

Effect of the Bill

Quota license exemption

The bill creates s. 565.02(12), F.S., providing a quota license exemption for certain craft distilleries to allow such distilleries to qualify for a vendor's license for the sale of beer, wine, and liquor. The bill authorizes craft distilleries to sell alcoholic beverages for consumption on premises, including alcoholic beverages which are produced by another manufacturer and purchased from a distributor, 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 CRA;
- owned by any person licensed as a craft distillery located within the venue;
- served by multimodal transportation options; and
- located within a contiguous area of at least 15 acres, that contains:
 - At least one indoor event venue with a minimum capacity of 150 people which is fully serviced by a connected onsite kitchen;
 - At least one outdoor event venue with a minimum capacity of 1,000 people which has regularly occurring live entertainment on a stage that is at least 12 feet deep and 16 feet wide; and
 - One or more licensed craft distilleries sharing identical ownership.

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 purchased from a licensed distributor.

Craft distilleries

The bill also amends the craft distillery requirements in s. 565.03, F.S., as follows:

³⁶ Section 163.356(1), F.S.

³⁷ Section 163.340(10), F.S.

³⁸ Section 163.356(2), F.S.

³⁹ Section 163.357(1)(a), F.S.

⁴⁰ Section 163.360(1), F.S.

⁴¹ Department of Economic Opportunity, *Special District Accountability Program, Official List of Special Districts Online*, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 23, 2021).

- Increases the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 250,000 gallons per calendar year.
- Limits the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Effective July 1, 2026, requires that a minimum of 60% of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Authorizes a maximum of 10 craft distillery licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons. "Common ownership" is defined to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Allows craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Clarifies that craft distilleries may only sell directly to consumers in face-to-face transactions.
- Repeals the six bottle limit per branded product per consumer at a craft distillery's souvenir gift shop.
- Prohibits craft distilleries from shipping alcoholic beverages to consumers.

The bill also amends s. 565.17, F.S., to authorize a craft distillery permit for tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

B. SECTION DIRECTORY:

Section 1: Amends s. 565.02, F.S.; defining the term "destination entertainment venue"; authorizing craft distilleries to be licensed as specified vendors under certain circumstances; providing requirements for such licenses; etc.

Section 2: Amends s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; prohibiting a distillery from operating as a craft distillery until certain requirements are met; authorizing persons to have common ownership in craft distilleries under certain circumstances; etc.

Section 3: Amends s. 565.17, F.S.; authorizing craft distilleries to conduct spirituous beverage tastings under certain circumstances; requiring the division to issue permits to craft distilleries to conduct tastings and sales at certain locations; specifying requirements for distilleries for such permits.

Section 4: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact for many craft distilleries due to the removal of many current regulatory constraints.

The bill may also provide a positive economic impact for those craft distilleries located in a CRA that qualify for a vendor's license. It is not known how many craft distilleries are currently located in a CRA.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.