

Date of Hearing: March 30, 2022

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Miguel Santiago, Chair

AB 2303 (Aguiar-Curry) – As Introduced February 16, 2022

SUBJECT: Agave spirits: labeling

SUMMARY: This bill would prescribe labeling requirements for agave spirits produced entirely in California, as specified. Specifically, this bill:

1) Provides only agave spirits produced entirely from agaves grown within California, without flavoring or coloring additives, may be labeled with the words “California agave spirits” or any combination of the words “California agave spirits,” “California agave,” or a substantially similar description.

2) Provides the Department of Alcoholic Beverage Control (ABC) may seize agave spirits labeled in violation of this new section, regardless of where they are found, and may dispose of the spirits, as specified.

EXISTING LAW:

1) The Alcoholic Beverage Control Act (Act), which is administered by ABC, regulates the application, issuance, and suspension of alcoholic beverage licenses.

2) Separates the alcoholic beverage industry into three separate component parts, or tiers, of the manufacturer (including, breweries, and distilleries), wholesaler/distributor, and retailer. This is referred to as the “tied-house” law or “three-tier” system.

3) Provides the Alcohol and Tobacco Tax and Trade Bureau (TTB) is the primary responsible for the promulgation and enforcement of labeling regulations of distilled spirits, wine and malt beverages pursuant to the Federal Alcohol Administration Act. Alcohol manufacturers must follow specified labeling and advertising requirements to sell their products in the U.S. marketplace.

4) Prescribes various requirements and prohibitions with regard to labeling alcoholic beverages and, with regard to wine, prescribes labeling requirements relating to the area of origin of the grapes used to produce the wine.

5) Creates the craft distillers license (Type-74) which, among other things, authorizes the licensee to produce up to 150,000 gallons of distilled spirits per year and sell up to 2.25 gallons of distilled spirits directly to a consumer at the licensee’s licensed premises.

6) Creates the distilled spirits manufacturer’s license (Type-04), which allows a licensee to manufacture, produce, package, mix, flavor, color, label, and export distilled spirits.

7) Provides that a violation of the Act for which another punishment is not otherwise provided is a misdemeanor.

FISCAL EFFECT: Unknown

COMMENTS:**Background.**

Dating back 1000 years B.C., pulque is considered to be the first intoxicating beverage to be produced from the agave plant. It was made by fermenting the sap from certain agave varieties which produces a milky and viscous drink, and was also a part of many religious rituals. While the timing of its origin is debatable – Mezcal is widely accepted as the first distilled spirit produced from the plant, and remains the colloquial term for any distilled spirit from agave in Mexico. Researchers claim that stills dating back to the 1500s have been identified in several areas of southern Mexico.

Agave is a perennial succulent, found all over the world, but most notably in the Southwestern United States, Mexico, India, South Africa and tropical South America. An agave plant typically takes 8 to 25 years to mature, and is harvested only once. Harvesting the plant is a demanding, physical process done by highly skilled farmers. Worldwide, there are over 200 species of wild and cultivated agave, diverse in size, form, and color. Approximately 40 of them are used in the creation of agave spirits.

An agave spirit can be classified as a distillate produced by the cooking, crushing, fermenting and distilling of agaves. Both blends and 100% agave spirit brands have emerged in the U.S., India, and South America. Just like the grape varieties used for wine, agave spirits can be classified by the species of plant from which they are distilled.

The most famous of all agave spirits is tequila, but before tequila got its name, it was called mezcal. It started off as a “Vino de Mezcal de Tequila.” Tequila is a town in the middle of the state of Jalisco. The producers there were so confident of the quality of their mezcal that the name of the spirit itself eventually turned into tequila.

Like cognac and champagne, tequila has a recognized Appellation of Origin (AOC) meaning that it is covered by and named after a geographical region. Declared by the Mexican government in 1974, the AOC is in consideration of specific characteristics of tequila due to location, climate, and cultural traditions. Tequila can be made only in the Mexican states of Jalisco, Guanajuato, Michoacán, Nayarit, and Tamaulipas and produced under the regulations dictated by the Tequila Regulatory Council of Mexico. Jalisco is the major area accounting for some 97 percent of tequila production. Any other distilled beverage made from the blue agave plant in other areas is not legally tequila.

Some alcoholic beverage producers outside of Mexico have tried to give their products names similar to tequila but have been met with resistance by the Tequila Regulatory Council. The Council has been accredited by the Mexican government to oversee and certify that the production, bottling, and labeling of tequila is done according to the Official Mexican Standard of Tequila.

All agave spirits have at least one thing in common: a one-of-a-kind recipe. They are all born from carefully crafted processes that have been tested and refined for generations. Although there are some similarities in production methods, each spirit is made with a very distinct technique.



A growing business in the United States and California. The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Treasury Department published a final rule on April 2, 2020, which established a new category of spirits called “Agave Spirits,” Agave spirits is now a new Class with 2 defined types listed under it, Tequila and Mezcal. U.S. producers making Agave spirits in this Class will now be able to do so without submitting a formula.

Previously, the standards included a class for tequila but generally did not address mezcal or the broader category of agave spirits. The new agave spirits class will include any spirits distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus agave and up to 49 percent is derived from sugar. Agave spirits must be distilled at less than 95 percent alcohol by volume and bottled at or above 40 percent alcohol by volume. Industry members who have approved labels for “spirits distilled from agave” may choose to change their labels to designate their products as “agave spirits,” but will not be required to do so.

It has been reported that since the TTB established the Agave spirits category, more than 150 labels for domestic agave spirits have been approved throughout the United States. With few exceptions these spirits are made entirely with imported agave syrup from Mexico. Proponents note that California is currently the only state growing agave and producing agave spirits made from agave grown in California.

Recent reports state that California is quickly establishing itself as the producer of the highest quality agave spirits produced in the United States. The growing and harvesting of agave matches up well with California’s varied climates. Additionally, it can grow in places where almost nothing else can grow—like rocky and sandy areas. Just as there are better regions for growing wine grapes, there are better areas for growing agave plants. While the plants take 7-9 years to mature into a harvestable and fermentable commodity, it uses significantly less water than other crops grown in California which is why some farmers are starting to transition part of their lands to grow agave.

The intent of this bill is to specify in law that if an agave spirit is labeled as a “California agave spirit” it shall be made from 100 percent California grown agave, without flavoring and coloring additives. A manufacturer could still make any kind of agave spirit in California, including those with only 51 percent agave, made from imported syrup, with additives, as long as they meet the TTB's general rules and do not use "California agave spirits" on their label.

Purpose of the bill. According to the author's office, "the agave spirits industry in California is an emerging industry, involving craft distillers and agave growers throughout the state. California agave distillers and growers are making significant investments and seek to protect the use of the word "California" from those who, in the future, could take advantage of our reputation for high quality products and cause consumer confusion and unfair competition. Similar labeling standards have been established to protect other California crops, including winegrapes and olive oil. AB 2303 will require that any agave spirits sold in California labeled with the words "California agave spirits," in any combination, must be made entirely from agave grown in the state of California and may not contain any flavor or coloring additives."

It should be noted that this bill will not prevent distillers in California from using a lower standard (less than 100 percent agave, or using additives) provided they do not use the word "California" on their label and adhere to the federal minimum agave spirit standards.

In support. The California Agave Council writes, "Agave spirits continue to gain in popularity throughout the United States and the world, and domestic craft distillers have responded to this demand. California is earning a reputation for the highest quality domestically produced agave spirits. Consumers deserve to know the highest standards continue to be met on bottles labeled with the words "California agave spirits," protecting this state's reputation for growing and producing high quality food and beverages."

According to California Agave Ventures, "In addition to producing fine agave spirits, agaves present California with an opportunity to cultivate a drought resistant crop with limited to no water use and help solve California's water challenges. Research has shown great potential for agaves for bio-fuel production on lands unsuitable for other crops. And some California agave growers are now using agaves to create defensible space in wildfire prone areas. This bill will further help to establish the highest quality standards for spirits labeled as California agave spirits."

Related legislation. AB 1617 (Stone) of 2022. This bill would require any wine bottled on or after January 1, 2024, labeled with an American Viticultural Area established pursuant to federal law that is located entirely within the "Santa Cruz Mountains" viticultural area to bear the designation "Santa Cruz Mountains" on the label in specified type sizes that are determined in relation to the size of the container. The bill would except from this requirement any wine labeled with a viticultural area appellation of origin, as specified, when the name of the appellation includes the term "Santa Cruz Mountains." (Pending in Assembly Governmental Organization Committee)

SB 620 (Allen) of 2022. This bill would authorize specified distilled spirits licensees, who obtain a distilled spirits direct shipper permit, to sell and ship specified amounts of distilled spirits directly to a resident of California, who is 21 years of age or older, for the resident's personal use and not for resale. Similarly, this bill authorizes beer manufacturers, regardless of specific type of license, who obtain a beer direct shipper permit, to sell and ship beer directly to a resident of California, who is 21 years of age or older, for the resident's personal use and not for resale. (Pending referral in the Assembly)

Prior legislation. SB 1164 (Skinner), Chapter 695, Statutes of 2018. Made various changes to the craft distiller's license, including eliminating the requirement that a person must attend a tasting before being able to purchase prepackaged containers of the licensee's spirits directly from the

craft distiller and increasing the maximum amount of distilled spirits that a craft distiller is permitted to manufacture from 100,000 gallons to 150,000 gallons.

AB 1295 (Levine), Chapter 640, Statutes of 2015. Created the craft distiller's license which, among other things, allow a licensee to manufacture up to 100,000 gallons of distilled spirits annually. Additionally, the licensee is authorized to sell to a consumer participating in a distilled spirits tasting, on the distiller's licensed premises, up to 2.25 liters of distilled spirits in any combination of prepackaged containers per day.

AB 933 (Skinner), Chapter 366, Statutes of 2013. Granted licensed distilled spirits manufacturers and licensed brandy manufacturers the privilege to conduct consumer tastings on their licensed premises and to charge for those tastings.

REGISTERED SUPPORT / OPPOSITION:**Support**

Agricultural Consulting Service
California Agave Council
California Agave Ventures, LLC
California Artisanal Distillers Guild
Coastal Agave and Distilleries, LLC
Hexnova LLC
Jano Spirits LLC
LA Paloma Ranch, LLC
Pasture 42
Raul Chavez Agave
Valle Lunagave
Ventura Spirits Distillery
Woolf Farming and Processing

Opposition

None on file

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