

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 Regulated Industries

BILL: CS/SB 106

INTRODUCER: Regulated Industries Committee and Senator Flores

SUBJECT: Vendors Licensed Under the Beverage Law

DATE: January 26, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 106 amends s. 565.04, F.S., to prohibit the Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR) from issuing a package store license for the sale of beer, wine, and distilled spirits for any location or business located within 1,000 feet of a public or private elementary, middle school, or secondary school.

The bill permits package stores licensed on or before June 30, 2017, for a premises located within 1,000 feet of a school to maintain and renew the license for that location, if the place of business complies with the package store restrictions in current law in s. 565.04, F.S. Current law prohibits package stores from selling, offering and exposing for sale other merchandise in addition to distilled spirits, beer and wine. In addition, package stores may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business place of business from which patrons are excluded. However, those package stores are allowed to sell bitters, grenadine, nonalcoholic mixer-type beverages (not including fruit juices produced outside Florida), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited glassware and party-type foods), miniatures of no alcoholic content and tobacco products.

The bill removes the restrictions in current law from package stores that are located more than 1,000 feet of a school.

The bill permits the employment of persons under the age of 18 by alcoholic beverages vendors that are a retail drug store, grocery store, department store, florist shop, specialty gift shop, or

automobile service station and that derive 30 percent or less of their monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a person under the age of 18 only if the minor is supervised by a person 18 years of age or older who verifies the age of the purchaser to be 21 years of age or older and who approves the sale of alcoholic beverages to the purchaser. The bill provides that it is unlawful to employ a minor during a month in which those vendors' gross revenue from the sale of alcoholic beverages exceeds 30 percent of total revenue.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors. The division administers and enforces the Beverage Law.

Section 565.01, F.S., provides that “the words ‘liquor,’ ‘distilled spirits,’ ‘spirituous liquors,’ ‘spirituous beverages,’ or ‘distilled spirituous liquors’ 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.”

Quota Licenses

Section 561.20, F.S., limits, by county, the number of alcoholic beverage licenses that may be issued that 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.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine, and distilled spirits, regardless of alcoholic content. This includes licensees who are authorized to sell:

- Any alcoholic beverages, where the beverages are sold only in sealed containers for consumption off the premises;
- Any alcoholic beverages, where the sale is limited to consumption on the premises; and
- Any alcoholic beverages for consumption on the premises where off-premises sales are permitted.

Package Stores

Section 565.02(1)(a), F.S., permits the sale of alcoholic beverage (beer, wine, and distilled spirits) only in sealed containers for consumption off the premises. These type of licensees are known as “package stores.”

¹ The term “Beverage Law” is defined in s. 561.01(6), to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

Section 565.04, F.S., provides sales restrictions for vendors licensed as a package store under s. 565.02(1)(a), F.S. Package stores may have no openings that permit direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. Package stores must be devoted exclusively to alcoholic beverages; such stores are prohibited from selling, offering, or exposing for sale any merchandise other than the alcoholic beverages authorized under their alcoholic beverage license. However, package stores may sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products.

Rule 61A-3.054(1), F.A.C., defines the party-type supplies to include:

- a) All dairy products;
- b) Ready to eat deli meats and cheeses, including those packaged by a manufacturer;
- c) Condiments;
- d) Sauces;
- e) Spices;
- f) Eggs;
- g) Chips, popcorn, and nuts;
- h) Crackers;
- i) Ingredients for salads, dips, and dressings;
- j) Cooked foods ready to eat;
- k) Bread;
- l) Candy;
- m) Fruit;
- n) Napkins, paper and plastic plates and cups, and eating and serving utensils;
- o) Wine and liquor opening, storage, and serving utensils and equipment;
- p) Publications relating to alcoholic beverage products and recipes;
- q) Items containing the logo, trade name, or trademark relating to alcoholic beverages;
- r) Gift wrapping accessories and greeting cards; and
- s) Ice.

Package stores may petition the division for permission to sell products other than those listed if they can clearly show that the item is to be used as a party-type supply.² Package stores may not sell services or lottery tickets.³

Rule 61A-3.054, F.A.C., was adopted in 1994, it has not been amended.

² Rule 61A-3.054(2), F.A.C.

³ Rule 61A-3.054(3), F.A.C.

Electronic Benefits Transfer Cards

Section 402.82, F.S., requires the Department of Children and Families to establish an electronic benefits transfer program for the dissemination of food assistance benefits and temporary cash assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments. Section 402.82(4)(a), F.S., prohibits the use of the electronic benefit card to purchase alcoholic beverages.

Employment of Minors

Section 562.13, F.S., prohibits any vendor licensed under the Beverage Law from employing any person under 18 years of age. Section 562.13, F.S., provides specific exceptions to permit persons under the age of 18 years to be employed at locations licensed to sell beer, or beer and wine, when such sales are made in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations for consumption off the premises.

III. Effect of Proposed Changes:

Package Store Restrictions

The bill amends s. 565.04, F.S., to prohibit the division from issuing a package store license for any location or business located within 1,000 feet of a public or private elementary, middle school, or secondary school.

The bill permits package stores that are licensed on or before June 30, 2017, for a premises located within 1,000 feet of a school to maintain and renew the license for that location if the place of business complies with the package store restrictions in current law in s. 565.04, F.S. The bill prohibits package stores located within 1,000 feet of a school from selling, offering and exposing for sale other merchandise in addition to distilled spirits, beer and wine. In addition, package stores located within 1,000 feet of a school may not have openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. However, those package stores may sell bitters, grenadine, nonalcoholic mixer-type beverages (not including fruit juices produced outside Florida), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited glassware and party-type foods), miniatures of no alcoholic content and tobacco products.

The bill removes the restrictions in current law from package stores that are located more than 1,000 feet of a school.

Employment of Minors

The bill amends s. 562.13(2)(c), F.S., to permit the employment of persons under the age of 18 by vendors that are a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station and that derive 30 percent or less of their monthly gross revenue from the sale of alcoholic beverages. Those vendors may employ a person under the age of 18 only if the minor is supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and who approves the sale of alcoholic beverages to

any purchaser. The bill provides that it is unlawful to employ a minor during a month in which those alcoholic beverage vendors' gross revenue from the sale of alcoholic beverages exceeds 30 percent of total revenue.

Effective Date

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR anticipates that the bill would result in a reduction in the number of licenses and associated license fees, and that the state, cities, and counties could lose license fee revenue. The DBPR estimates an annual reduction in state revenue of \$258,720 if package store retailers that operate an adjacent location licensed to sell beer and wine opt to consolidate all alcoholic beverages sales under the authority of the package store license.

Current law requires that 24 percent of the license tax collected for the license issued in a county under ss. 561.14(6), 563.02, 564.02, 565.02(1), (4), and (5), and 565.03, F.S., be returned to the appropriate county tax collector.⁴ Thirty-eight percent of the license taxes collected within an incorporated municipality pursuant to these provisions must be returned to the appropriate municipal officer.⁵ The DBPR anticipates the bill will cause

⁴ Section 561.342(1), F.S.

⁵ Section 561.342(2), F.S.

license taxes returned to municipalities and counties to be reduced annually by up to \$90,449 and \$57,125, respectively; a total annual reduction of \$147,574.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 562.13 and 565.04 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on January 26, 2017:

The committee substitute (CS) does not repeal s. 565.04, F.S. The CS amends s. 565.04, F.S., to prohibit the Division of Alcoholic Beverages and Tobacco from issuing a license under s. 565.02(1)(a), F.S., (package stores) for any location or business located within 1,000 feet of a public or private elementary, middle school, or secondary school.

The CS permits package stores that are licensed on or before June 30, 2017, for a premises located within 1,000 feet of a school to maintain and renew the license if the place of business complies with the package store restrictions in s. 565.04, F.S. The CS removes the package store restrictions in s. 565.04, F.S., for all package stores that are located more than 1,000 feet of a school.

- B. **Amendments:**

None.