

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 81 Vendors Licensed Under the Beverage Law  
**SPONSOR(S):** Government Operations & Technology Appropriations Subcommittee, Avila  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	8 Y, 7 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee	7 Y, 6 N, As CS	Topp	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

Currently, package stores can sell beer, wine or liquor in sealed containers for consumption off premises, but are prohibited from selling any merchandise other than alcoholic beverages, with a few exceptions and may not allow direct access to another building or room.

The bill amends s. 565.04, F.S., defining the term "liquor package store" to mean a vendor that is:

- subject to the "quota" license limitation imposed under s. 561.20(1), F.S.,
- licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S.,
- permitted to sell any alcoholic beverages regardless of alcoholic content, and
- operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.

The bill creates a "Type A" and a "Type B" liquor package store license.

- A Type A license may be issued to a vendor pursuant to the same restrictions and license fee imposed on package store under current law.
- A Type B license may be issued to a vendor to sell alcoholic beverages without restriction as to openings to other buildings and rooms and without restriction as to other items and merchandise that may also be sold on the premises. This will permit grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages. Type B licensees pay the Type A license fee, plus an additional amount based on the county population where the licensee is located.

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor **to be** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor **to include within its premises** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions.

The bill requires any vendor who employs a person under the age of 18 to be supervised by a person over the age of 18 and requires the supervisor to verify by identification the age of any purchaser on behalf of the underage employee before permitting the sale of alcohol to the purchaser. The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the vendor derives more than 30 percent of its gross revenues from the sale of alcoholic beverages.

The bill does not appear to have a fiscal impact on state or local governments.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0081c.GOT

DATE: 3/17/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.<sup>1</sup>

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

##### Package Stores

Section 565.04, F.S., provides that vendors licensed to sell alcoholic beverages under s. 565.02(1)(a), F.S., are not permitted to sell any merchandise in their store other than alcoholic beverages, bitters, grenadine, nonalcoholic mixers (not including juice from outside of Florida), fruit juice produced in Florida, bar and party supplies and equipment and tobacco products. Section 565.02(1)(a), F.S., creates a state license for "vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content" and "operating a place of business where [alcoholic] beverages are sold only in sealed containers for consumption off the premises." The result has been the creation of "package stores," where the vendor sells the above and nothing else in an enclosed space that is separated from any other store by a wall.

##### Quota Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses for the sale of liquor along with beer and wine that may be issued per county. This limited alcoholic beverage license is often referred to as a "quota" license. The number of quota licenses issued is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the county population.<sup>2</sup>

Typically, quota licenses are owned by:

- A liquor store physically connected to a large retail store such as a grocery store, or
- A separate liquor store not affiliated with a large retail store.

According to the Department, there are currently 525 large retail locations that have both a quota license for their package store and a license to sell beer and wine in the connecting retail store, which is not accessible from the package store due to the restrictions set forth under s. 565.04, F.S. In addition, there are 135 quota licenses owned by large retailers that could be transferred to an affiliated but not physically connected large retail store.

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<sup>1</sup> s. 561.02, F.S.

<sup>2</sup> s. 561.20, F.S.

## Age Restrictions

The beverage law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions. Package stores are not exempt from this requirement and may only employ persons age 18 or over.

There are a number of exceptions to this requirement. Subsection 562.13(2)(c), F.S., permits vendors to employ persons under the age of 18 years old if the vendor is a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station.

## Effect of the Bill

### Package Stores

The bill amends s. 565.04, F.S., and defines the term “liquor package store” to mean a vendor that is:

- subject to the “quota” license limitation imposed under s. 561.20(1), F.S.,
- licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S.,
- permitted to sell any alcoholic beverages regardless of alcoholic content, and
- operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.

The bill creates a “Type A” and a “Type B” liquor package store license.

- A Type A license may be issued to a vendor pursuant to the same restrictions as a package store under current law.
- A Type B license may be issued to a vendor to sell alcoholic beverages without restriction as to openings to other buildings and rooms and without restriction as to other items and merchandise that may also be sold on the premises. Type B licensees must pay the s. 565.02(1)(a), F.S. license fee, plus an additional amount based on the county population where the licensee is located. This will permit grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages.

It is possible that 660 licenses to sell beer and wine will no longer be needed by vendors that have both a large retail store and a connected package store or affiliated package store. Licenses to sell liquor will be allowed to be transferred into a large retail store as a Type B license, and the vendor will be able to sell liquor in a large retail store that is currently licensed to sell beer and wine.

Additionally, the bill will permit Type B license vendors to have an entrance connecting package stores with physically connected retail stores. It is also possible that some vendors will choose to maintain both a Type A license and a beer and wine license. In such cases, the vendor will need to ensure that alcoholic beverages purchased from the distributor under each license are not comingled in the stores, in the storage areas, or during sales to consumers in order to comply with tax requirements.

## Age Restrictions

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor **to be** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor **to include within its premises** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. The additional restrictions require the vendor to:

- Pay the annual taxes set forth in s. 563.02(1), s. 564.02(1), 30 or s. 565.02(1)(a), F.S.;
- Derive 30 percent or less of its gross revenues each month from the sale of alcoholic beverages;
- Require a person 18 years of age or older to supervise the minor employee; and

- Require the supervisor to verify by identification the age of the purchaser to be 21 years of age or older and approve the sale of alcoholic beverages.

It is unlawful for a vendor that meets the above requirements to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 562.13 F.S., providing an exception to certain employment restrictions for vendors licensed under the Beverage Law for the employment of persons under a specified age.

**Section 2** amends s. 565.04, F.S., defining the term "liquor package store"; creating Type A and Type B liquor package store licenses; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue licenses; establishing additional fees based on the county where the vendor operates.

**Section 3** provides an effective date of July 1, 2017.

## **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 impact the marketplace and sales for large and small alcoholic beverage retailers. Some alcoholic beverage licensees may be able to increase profits by selling additional merchandise. Additionally, some businesses currently required to obtain multiple licenses for multiple stores will be able to save money by obtaining one license to conduct business rather than multiple licenses by combining their package store with a larger store location.

**D. FISCAL COMMENTS:**

The bill does not appear to have a fiscal impact on state or local governments.

### 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 Division will likely need to amend application forms for licensure. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Current statutory language requires a vendor **to be** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor **to include within its premises** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. Therefore, rather than requiring that the business be a drugstore or other listed business type, the business will now qualify for the exception if the building houses a drugstore or other listed business type. This could expand the types of businesses that could hire a person under the age of 18 if the business adds one of the listed businesses into its licensed premises.

The terms “drugstore,” “grocery store,” “department store,” “florist,” “specialty gift shop,” and “automobile service station” are not defined, so there is nothing indicating that a retailer that sells flowers in a small part of its store does not meet the definition of “florist,” or a convenience store with an aisle that holds cold medications does not meet the definition of “drugstore.”

The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded. If a vendor faces this situation, it is likely the vendor will not know that he or she has exceeded the restriction on monthly revenue until after the month has passed and the unlawful behavior has already occurred. The only way a vendor will be able to prevent a violation in cases where the business is often close to the restriction limit is for the vendor to track the alcoholic beverage sales daily and compare the sales to an estimate for overall revenues. If the revenue from the sales of alcohol approaches 30 percent, the vendor would be required to stop all sales of alcoholic beverages. This would be time consuming for the vendor and difficult to administer.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 14, 2017, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute amends, s. 565.04, F.S., as follows:

- defines the term “liquor package store” to mean a vendor subject to the limitation imposed in s. 561.20(1), F.S. who is licensed in accordance with and pays state taxes under s. 565.02(1)(a), F.S., who is permitted to sell any alcoholic beverages regardless of alcoholic content, and who operates a place of business where beverages are sold only in sealed containers for consumption off the premises where sold.
- creates “Type A” and “Type B” liquor package store license, where a Type A license may be issued to a vendor pursuant to the same restrictions as a package store under current law and a Type B license may be issued to a vendor without restriction as to the merchandise that may also be sold on the premises or whether the premises may have openings to other buildings or rooms. Type B licensees must pay the Type A license fee plus an additional amount based on the county population where the licensee is located.

The bill analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.