# HOUSE OF REPRESENTATIVES
# FINAL BILL ANALYSIS

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| **BILL #:** | CS/CS/HB 81 | **FINAL HOUSE FLOOR ACTION:** | |
| **SUBJECT/SHORT TITLE** | Vendors Licensed Under the Beverage Law | 58 **Y's** | 57 **N's** |
| **SPONSOR(S):** | Commerce Committee, Government Operations & Technology Appropriations Subcommittee, Avila | **GOVERNOR'S ACTION:** | Vetoed |
| **COMPANION BILLS:** | CS/CS/SB 106 | | |

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## SUMMARY ANALYSIS


CS/CS/HB 81 passed the House on April 26, 2017, as CS/CS/SB 106.

The bill 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 allows 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 current package store restrictions in s. 565.04, F.S.

For businesses that are located more than 1,000 feet from a school, the bill provides a 4-year phased repeal of the package store restrictions prohibiting the sale of other non-alcoholic merchandise or customer access to other rooms or buildings, to be complete on June 30, 2021. During the phase-in period, the number of places of business that a vendor may operate without the restrictions is calculated by the vendor (rounded to the next greater whole number) each year:

- Starting July 1, 2018, one business, or 25 percent of a vendor's places of business;
- Starting July 1, 2019, two businesses, or 50 percent of a vendor's places of business; and
- Starting July 1, 2020, three businesses, or 75 percent of a vendor's places of business.

The bill prohibits the sale or display of distilled spirits in containers that are less than 200 milliliters or 6.8 ounces in any area where access is not restricted to the vendor or employees of the vendor. A business that maintains the current package store restrictions is exempt from this requirement. The bill prohibits issuance of a package store license for any location that includes a gas station unless the location of the premises consists of a minimum of 10,000 square feet of retail space for the general public.

The bill allows a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is licensed under the Beverage Law to employ a person under the age of 18. The bill provides that the minor must be 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 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 a vendor's gross revenue from the sale of alcoholic beverages exceeds 30 percent of its total revenue.

The bill will likely have an insignificant negative fiscal impact beginning in State Fiscal Year 2018-2019.

The effective date of this bill was July 1, 2017; however, this bill was vetoed by the Governor on May 24, 2017.

# I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 (DBPR), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, the 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[2]. 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.[3]

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

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[1] s. 561.02, F.S.

[2] Rule 61A-3.054(1) F.A.C. defines the party-type supplies to include: All dairy products; Ready to eat deli meats and cheeses, including those packaged by a manufacturer; Condiments; Sauces; Spices; Eggs; Chips, popcorn, and nuts; Crackers; Ingredients for salads, dips, and dressings; Cooked foods ready to eat; Bread; Candy; Fruit; Napkins, paper and plastic plates and cups, and eating and serving utensils; Wine and liquor opening, storage, and serving utensils and equipment; Publications relating to alcoholic beverage products and recipes; Items containing the logo, trade name, or trademark relating to alcoholic beverages; Gift wrapping accessories and greeting cards; and 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. Package stores may not sell services or lottery tickets. The rule was adopted in 1994 and has not been amended.

[3] s. 561.20, F.S.

addition, there are 135 quota licenses owned by large retailers that could be transferred to an affiliated but not physically connected large retail store.

Age Restrictions

The Beverage Law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions. Section 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

The bill amends s. 562.13(2)(c), F.S., to permit the employment of persons under the age of 18 by an alcoholic beverage vendor that is a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station and that derives 30 percent or less of its 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 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 a vendor's gross revenue from the sale of alcoholic beverages exceeds 30 percent of its total revenue.

The bill amends s. 565.04(1), 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 (school).

Package stores that are licensed on or before June 30, 2017, at a premises located within 1,000 feet of a school, are permitted to maintain and renew the license for that location if the place of business complies with the current package store restrictions 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 amends s. 565.04(2), F.S., to provide a 4-year phased repeal of the existing package store restrictions. The bill specifies the number of a vendor's places of business or the percentage of a vendor's places of business that would become exempt from the package store restrictions in each phase of the repeal. During the phase-in period, the number of places of business that a vendor may operate without the restrictions is calculated by the vendor (rounded to the next greater whole number) each year:

- Starting July 1, 2018, one business or 25 percent of a vendor's places of business;
- Starting July 1, 2019, two businesses or 50 percent of a vendor's places of business; and
- Starting July 1, 2020, three businesses or 75 percent of a vendor's places of business.

The restrictions fully expire June 30, 2021.

Vendors that elect to operate locations without being subject to the existing restrictions during the phased repeal must notify the Division of those locations.

All package stores located within 1,000 feet from a school would remain subject to the current package store restrictions as provided in s. 565.04(1), F.S.

The bill creates s. 565.04(3), F.S., to require a business to sell, offer, or expose for sale distilled spirits in containers of 200 milliliters or less or 6.8 ounces or less from a restricted area where access is restricted to the vendor or employees of the vendor. A business that maintains the current package store restrictions is exempt from this provision.

The bill prohibits issuance of a package store license for any location that includes a gas station unless the location of the premises consists of a minimum of 10,000 square feet of retail space for the general public.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   *See Fiscal Comments*.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   *See Fiscal Comments*.

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 will likely have a negative, but insignificant, effect on both state and local revenues.

Current law requires that 24% 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] 38% of the license taxes collected within an incorporated municipality pursuant to these provisions must be returned to the appropriate municipal officer.[5]

As a result, the bill may reduce net state revenues from alcoholic beverage license fees by approximately $27,787 during State Fiscal Year 2018-2019 (the first year of the four-year phased repeal); counties likely will receive $14,281 less revenue and municipalities will receive $22,612 less revenue, during the same period. The net reduction from those license fees will increase each state fiscal year thereafter until State Fiscal Year 2021-2022, the first state fiscal year after the complete

[4] s. 561.342(1), F.S.
[5] s. 561.342(2), F.S.

repeal of the package store restrictions is effective. In State Fiscal Year 2021-2022, the bill may reduce net state revenues from alcoholic beverage license fees by $111,146.[6]

[6] These estimates are based upon the DBPR analysis of SB 106 and assume that the projected impacts would occur proportionately during the phased repeal of s. 565.04, F.S. *See* DBPR, Agency Analysis of 2017 Senate Bill 106, p. 4 (Jan. 4, 2017) SB 106 provided for the complete repeal on July 1, 2017, of the current package store restrictions in s. 565.02(1)(a), F.S.

In its analysis, DBPR anticipated that SB 106 would result in a reduction in the number of licenses and associated license fees if package store retailers that operate an adjacent location licensed to sell beer and wine opted to consolidate all alcoholic beverages sales under the authority of the package store license. As a result, DBPR estimated an annual reduction in state revenue of $258,720 from SB 106. Because counties and municipalities receive portions of that revenue, DBPR estimated that counties would experience reduced revenue of $57,125, municipalities would experience a reduction of $90,449, and the net loss to state revenue would be $111,146.