

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 Rules

BILL: CS/CS/SB 106

INTRODUCER: Rules Committee; Regulated Industries Committee and Senator Flores

SUBJECT: Vendors Licensed Under the Beverage Law

DATE: February 9, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 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 provides a 4-year phased repeal of the package store restrictions for businesses that are located more than 1,000 feet from a school. 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 businesses, whichever is greater, can operate without the restrictions;
- Starting July 1, 2019, two businesses or 50 percent of a vendor's business;
- Starting July 1, 2020, three businesses or 75 percent of a vendor's businesses; and
- The restrictions expire June 30, 2021.

Under the bill, a business may sell, offer, or expose for sale distilled spirits in containers of 200 milliliters or less or 6.8 ounces or less only 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 requirement.

The bill prohibits the division from issuing a license to sell distilled spirits for a location or business that includes a gasoline service station or motor fuel retail outlet, as defined in s. 526.303(14), F.S.,¹ unless the location has at least 10,000 square feet of retail space for the general public.

The bill permits the employment of persons under the age of 18 by an alcoholic beverages 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 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 its of total revenue.

CS/CS/SB 106 likely will have a small, negative fiscal impact beginning in State Fiscal Year 2018-2019. *See* Section V.

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

II. Present Situation:

Alcoholic beverages are regulated by the Beverage Law,² 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.”

¹ Section 526.303(14), F.S., defines a “retail outlet” as “a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public.”

² The term “Beverage Law” is defined in s. 561.01(6), to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

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. 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.³

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 Store Restrictions

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.”

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) of the Florida Administrative Code 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;

³ Section 561.20(6), F.S.

- 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.⁴ Package stores may not sell services or lottery tickets.⁵

Rule 61A-3.054 of the Florida Administrative Code was adopted in 1994; it has not been amended.

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.

⁴ Fla. Admin. Code R. 61A-3.054(2) (2004).

⁵ Fla. Admin. Code R. 61A-3.054(3) (2004).

III. Effect of Proposed Changes:

Restrictions for Package Stores Near Schools

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 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.

Phased Repeal of the Package Store Restrictions

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 businesses can operate without the restrictions;
- Starting July 1, 2019, two businesses or 50 percent of a vendor's businesses;
- Starting July 1, 2020, three businesses or 75 percent of a vendor's businesses; and
- The restrictions 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.

Restrictions on the Sale of Small Distilled Spirits Containers

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.

License Prohibition for Gasoline Stations

The bill creates s. 565.04(4), F.S., to prohibit the division from issuing a license to sell distilled spirits for a location or business that includes a gasoline service station or motor fuel retail outlet, as defined in s. 526.303(14), F.S.,⁶ unless the location has at least 10,000 square feet of retail space for the general public.

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 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.

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.

⁶ Section 526.303(14), F.S., defines a "retail outlet" as "a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public."

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 106 likely will decrease state revenue from alcoholic beverage license fees; counties and municipalities likely also will receive less alcoholic beverage license revenues. The repeal of the current package store restrictions in s. 565.02(1)(a), F.S., would be phased-in over a four-year period beginning July 1, 2018.

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.⁷ Thirty-eight percent of the license taxes collected within an incorporated municipality pursuant to these provisions must be returned to the appropriate municipal officer.⁸

As a result, CS/CS/SB 106 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 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 \$111,146.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ Section 561.342(1), F.S.

⁸ Section 561.342(2), F.S.

⁹ 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 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 166, dated January 4, 2017 (on file with Senate Committee on Regulated Industries) at page 4. 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 of SB 106, the 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, the DBPR estimated an annual reduction in state revenue of \$258,720 from SB 106. Because counties and municipalities receive portions of that revenue, the 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.

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/CS by Rules Committee on February 9, 2017:

The Committee substitute (CS) amends s. 565.04(2), F.S., to provide a 4-year phased repeal of the existing package store restrictions.

The CS creates s. 565.04(3), F.S., to require a business to sell, offer, or expose for sale distilled spirits in containers of 200 ml or less or 6.8 oz. or less from a restricted area where access is restricted to the vendor of employees of the vendor, and to exempt a business from this requirement if it maintains the current package store restrictions.

The CS creates s. 565.04(4), F.S., to prohibit the division from issuing a license to sell distilled spirits for a location or business that includes a gasoline service station or motor fuel retail outlet, as defined in s. 526.303(14), F.S., unless the location has at least 10,000 square feet of retail space for the general public.

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.