

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 1020

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Young and others

SUBJECT: Alcohol Deliveries

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1020 permits an alcoholic beverage vendor to make deliveries away from the licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business. Current law permits only telephone or mail orders received at a vendor's licensed place of business to be construed as a sale actually made at the vendor's licensed place of business.

Additionally, the bill permits an alcoholic beverage manufacturer, distributor, or vendor to make deliveries away from its licensed place of business in vehicles that are under the licensee's control and direction pursuant to a contract with a third party with whom the licensee has contracted to make deliveries, including, but not limited to, a common carrier. Current law permits an alcoholic beverage manufacturer, distributor, or a vendor to make deliveries away from its place of business only in vehicles that are owned or leased by the vendor.

The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.³ Current law does not address orders received via the Internet or other electronic forms of communication.

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁴

Common carriers⁵ may transport alcoholic beverages.⁶ However, current law does not authorize manufacturers, distributors, and vendors to use common carriers to make deliveries.

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.⁷

III. Effect of Proposed Changes:

The bill amends s. 561.57(1), F.S., to permit an alcoholic beverage vendor to make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business.

¹ Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to 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."

³ Section 561.57(1), F.S.

⁴ Section 561.57(2), F.S.

⁵ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

⁶ Section 561.57(5), F.S.

⁷ Section 561.01(20), F.S.

The delivery limitation in s. 561.57(2), F.S., is revised by the bill to permit a manufacturer, distributor, or vendor to make deliveries away from its licensed place of business in vehicles that are under the licensee's control and direction pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, a common carrier. The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

The effective date of the bill is July 1, 2018.

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:

An alcoholic beverage vendor could make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business.

A manufacturer, distributor, or vendor will be permitted to contract with a third party, including common carriers, to make deliveries in vehicles under the control and direction of the vendor pursuant to a contract with the third party with whom the licensee has contracted to make deliveries.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 561.57(2), F.S., provides that, by acceptance of an alcoholic beverage license, a vendor is presumed to agree to the inspection of its delivery vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws. This presumption does not extend to a third party, who is not an alcoholic beverage licensee, making deliveries of alcoholic beverages as authorized by the bill. Consequently, before inspecting a delivery vehicle owned or leased by a third party non-licensee, employees of the division or law enforcement may need to obtain consent from the third party before such a search, obtain a search warrant from a court based on a finding of probable cause, or conduct a warrantless search of the vehicle if it is readily mobile and law enforcement has probable cause to believe that the vehicle contains contraband or other evidence of a crime,⁸ or if there are exigent circumstances for the conduct of the search.⁹

VIII. Statutes Affected:

This bill substantially amends section 561.57 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 Commerce and Tourism on January 22, 2018:

The bill also requires the identity and age of the recipient to be confirmed upon delivery of the alcohol.

CS by Regulated Industries Committee on January 10, 2018:

The committee substitute revises the bill to add the condition that the vehicles used by a third party, including common carriers, to make deliveries for the vendor must be under the control and direction of the vendor pursuant to a contract with the third party with whom the vendor has contracted to make deliveries.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁸ See *State v. Ross*, 209 So.3d 606 (Fla. 2d DCA 2016); and *State v. Green*, 943 So.2d 1004 (Fla. 2d DCA 2006).

⁹ The factors indicating exigent circumstances may include (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; and (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public. *Lee v. State*, 856 So.2d 1133 (Fla. 1st DCA 2003), citing *United States v. Standridge*, 810 F.2d 1034, 1037 (11th Cir.), cert. denied, 481 U.S. 1072, 107 S.Ct. 2468, 95 L.Ed.2d 877 (1987).