

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 667 Beverage Law
SPONSOR(S): Commerce Committee, Perez and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 2 N	Willson	Anstead
2) Commerce Committee	21 Y, 0 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

Section 561.57(1), F.S., provides that alcoholic beverage vendors may make deliveries away from their licensed place of business for sales that are actually made at their licensed place of business, including sales originating from telephone or mail orders received at the vendor's licensed place of business.

The bill allows alcoholic beverage vendors to make deliveries based on "electronic" orders in the same manner as telephone and mail orders.

Section 561.57(2), F.S., specifies that deliveries made by a manufacturer, distributor, or vendor (licensee) may only be made in a vehicle that is owned or leased by the licensee. Additionally, by acceptance of an alcoholic beverage license and the use of such vehicles, a licensee is presumed to agree to inspection of its delivery vehicle without a search warrant during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

The bill authorizes vendors to deliver alcoholic beverages in third-party vehicles, including common carriers, pursuant to a contract between the vendor and the third party.

The bill provides that that valid proof of the recipient's identity and age must be verified and documented at the time of delivery. The bill also specifies that all deliveries made pursuant to s. 561.57, F.S., must comply with prohibitions in current law relating to the provision of alcoholic beverages to a person under 21 years of age.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³ “Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.”

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.
- “Distributors” are those licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁴
- “Vendors” are those licensed to sell alcoholic beverages at retail only and may not purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.

Alcoholic Beverage Deliveries

Section 561.57(1), F.S., allows an alcoholic beverage vendor to make deliveries away from its place of business for sales actually 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.⁵ 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 such vehicles, the licensee 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 during business hours and anytime the vehicle is being used for deliveries.⁶

Current law allows common carriers⁷ to transport alcoholic beverages,⁸ but does not authorize licensees to use common carriers to make alcoholic beverage deliveries.

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

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 561.01(5), F.S.

⁵ s. 561.57(1), F.S.

⁶ s. 561.57(2), F.S.

⁷ 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.”

⁸ s. 561.57(5), F.S.; s. 562.07, F.S.

Section 562.11, F.S., provides that:

- A person may not sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age.⁹
- A licensee, its agents, officers, servants, or employees, may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee except as authorized under certain limited exceptions under the Beverage Law.
- It is unlawful for any person to misrepresent or misstate their age or the age of any other person for the purpose of inducing any licensee or its agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages.

Effect of the Bill

The bill amends s. 561.57, F.S., to allow vendors to make deliveries based on “electronic” orders in the same manner as telephone and mail orders.

The bill authorizes vendors to deliver alcoholic beverages in third-party vehicles, including common carriers, pursuant to a contract between the vendor and the third party.

The bill prohibits a manufacturer possessing a vendor’s license under s. 561.221(2), F.S. from making deliveries away from their place of business, without regard to the manner of sale or who owns the vehicle that is used to make the delivery.

The bill specifies that all deliveries made pursuant to s. 561.57, F.S., must comply with the prohibition under current law relating to the provision of alcoholic beverages to a person under 21 years of age.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.57, F.S., providing for electronic 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; authorizes vendors to make certain deliveries in a third-party vehicle under certain circumstances; requires that the recipient's identity and age be verified and documented at the time of delivery; and requires that deliveries comply with s. 562.11, F.S..

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁹ Section 562.11(1)(d), F.S. provides that a person charged with a violation of this provision has a complete defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served the buyer or recipient falsely evidenced that he or she was 21 years of age or older; the appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and the person carefully checked a driver license or an state-issued ID presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2018, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Specifies that vendors, but not manufacturers or distributors, may contract with third parties and common carriers for deliveries of alcoholic beverages. The amendment does not subject the vehicles of a contracted third party or common carriers to the warrantless inspection and search provisions imposed on vehicles owned by licensees.
- Clarifies that the current prohibition on certain manufacturers from making deliveries as a vendor still applies.
- Clarifies that all deliveries, including those made by third parties, must comply with s. 562.11, F.S., relating to the provision of alcohol to, and the possession of alcohol by, persons under the age of 21.

The bill analysis is drafted to the committee substitute as passed by the Commerce Committee.