

Julie I. Brown, Secretary

Ron DeSantis, Governor

INFORMATIONAL BULLETIN 2021-001

NOTICE: When necessary, the Division of Alcoholic Beverages and Tobacco prepares informational bulletins on topics of common public interest and matters of regulatory significance for informational purposes only. Information presented in this Informational Bulletin is not intended to create or modify the Division's requirements or procedures as established in the Florida Beverage Law and the Florida Administrative Code. All actions taken by the Division are based on provisions of Florida law in effect at the time the action is taken by the Division. Applicants, licensees and other interested parties are advised that any Florida law or regulation cited or reproduced for reference herein may have been modified subsequent to the preparation of this document, and accordingly, are encouraged to review current Florida laws and regulations and seek independent counsel if necessary regarding matters regulated by the Division. For inquiries related to subjects addressed in this Informational Bulletin or related matters, please contact the Division's local licensing office in your area. Contact information is available at the following web address: <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/contact/>

DATE

Informational Bulletin 2021-001 is based on information available as of June 30, 2021.

SUBJECT

Informational Bulletin 2021-001 relates to sections 561.20(2)(a)4, 564.09, and 565.045, Florida Statutes.

SCOPE

Informational Bulletin 2021-001 addresses the following matter related to vendors licensed under the Beverage Law:

- Chapter 2021-30, Laws of Florida

APPLICABLE LAWS/RULES

- Sections 561.20(2)(a)4, 564.09, and 565.045, Florida Statutes.
- Sections 563.06, 564.05, 564.055, and 565.10, Florida Statutes.

SUMMARY

On May 13, 2021, Governor DeSantis signed Senate Bill 148 into law, creating chapter 2021-30, Laws of Florida. The changes to the Beverage Law within the act take effect on July 1, 2021.

Chapter 2021-30, Laws of Florida, amends section 561.20(2)(a)4, Florida Statutes, authorizing series Special Food Service (SFS) licensees to sell or deliver alcoholic beverages in a securely sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee or its employee and packaged in a container sealed by the licensee or its employee. Any sale or delivery of malt beverages

must comply with the container size, labeling, and filling requirements imposed under section 563.06, Florida Statutes.

Additionally, chapter 2021-30, Laws of Florida, allows licensees licensed under section 565.02(1)(b)-(f) (identified as licensees who pay a licensee fee based upon the population of the county in which the license is located), who also are licensed under chapter 509, Florida Statutes, as a public food service establishment by the Division of Hotels and Restaurants to sell or deliver alcoholic beverages prepared by the licensee for off-premises consumption if the alcoholic beverage is in a container sealed by the licensee. Such sales must be accompanied by food within the same order, the charge for the sale of food and nonalcoholic beverages must be at least 40 percent of the total charge for the order, excluding the charge for any manufacturer-sealed containers of alcoholic beverages included in the order. Such sales and deliveries of the alcoholic beverages may not occur after the vendor ceases preparing food on the licensed premises for the day or after midnight, whichever is earlier. Licensees authorized to sell malt beverages in growlers pursuant to section 563.06, Florida Statutes, may continue to do so pursuant to the requirements of that section.

For both types of licensees impacted by chapter 2021-30, Laws of Florida, any alcoholic beverage sold in this manner must be placed in a container securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Such alcoholic beverage also must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the alcoholic beverage and food must be provided by the licensee and attached to the bag or container. Further, if transported in a motor vehicle, an alcoholic beverage that is not in a container sealed by the manufacturer must be placed in a locked compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle.

Finally, restaurants licensed to sell wine for consumption on the premises may permit a patron to remove one unsealed bottle of wine for consumption off of the license premises pursuant to section 564.09, Florida Statutes. The requirement that the partially consumed bottle of wine be served with a full course meal consisting of salad or vegetable, bread, entrée, and a beverage has been removed. On July 1, the statute will only require that a meal, regardless of the contents of the meal itself, be purchased and a bottle of wine be partially consumed on the restaurant premises.

FREQUENTLY ASKED QUESTIONS

1. Can an SFS licensee operate as a package store under the new law?

No. SFS licensees are still prohibited from operating as a package store.

2. Do SFS licensees have to follow the 40% requirement when selling alcoholic beverages to go?

No. However, series SFS licensees are still subject to the 51 percent food and non-alcoholic beverage revenue requirement in section 561.20(2)(a)4, Florida Statutes. Sales of alcoholic beverages prepared or sealed on the licensed premises for consumption off the premises will be included in the series SFS licensee's sales when determining compliance with the aforementioned revenue requirement.

3. How are the alcoholic beverages prepared and sealed by the licensee to be consumed off the premises required to be packaged?

Any alcoholic beverage sold in this manner must be placed in a container securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. The alcoholic beverage also must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with. A dated receipt for the alcoholic beverage and food must be provided by the licensee and attached to the bag or container.

4. Are there requirements that must be met in order for alcoholic beverages prepared and sealed by a series SFS licensee to be delivered to a customer?

Yes. Any delivery of such alcoholic beverages must comply with section 561.57, Florida Statutes. One important requirement within that section is the verification and documentation of valid proof of the recipient's identity and age at the time of delivery.

Additionally, it is a violation of section 562.11, Florida Statutes, to allow any person under the age of 21 to deliver alcoholic beverages on behalf of a vendor. Licensees, or their agents or employees, are responsible for verifying the age of any person making a delivery of alcoholic beverages prior to allowing the person to take possession of alcoholic beverages for the purpose of making a delivery on behalf of the licensee.

5. Can every alcoholic beverage licensee or permittee sell alcoholic beverages prepared and sealed by the by the licensee or permittee "to go" now?

No. Other license types, such as 11C, 11PA, 13CT, EVNT, SCX etc., not authorized pursuant to section 561.20(2)(a)4, Florida Statutes, nor subject to the annual license fee based upon county population established by section 565.02(1)(b)-(f), Florida Statutes, are not impacted by chapter 2021-30, Laws of Florida.

6. I operate a quota license, but I am not licensed as a public food service establishment under chapter 509, Florida Statutes. I can operate as a package store under my license, but may I now also sell alcoholic beverages prepared by myself or my employee and/or packaged in a container sealed by myself or my employee for off-premises consumption?

No. Only vendors licensed as either series SFS licensees, or licensed under section 565.02(1)(b)-(f), Florida Statutes that hold a public food service establishment license issued under chapter 509, Florida Statutes, are impacted by chapter 2021-30, Laws of Florida.

7. Are there container size limits for selling alcoholic beverages prepared and sealed by a licensee "to go" pursuant to these new or amended laws?

Yes, but those limits are currently in effect and have not changed. They are:

- 32 oz. or less for beer unless sold in a growler at locations authorized to sell growlers, pursuant to section 563.06, Florida Statutes;
- 1 gallon or less for wine, unless sold in a reusable container of 5.16 gallons, pursuant to section 564.05, Florida Statutes;

- 32 oz. or less for cider, unless sold in kegs, barrels, or an individual container of 1 gallon or more, pursuant to section 564.055, Florida Statutes;
- 1.75 L or less for liquor, pursuant to section 565.10, Florida Statutes.

8. Are there any additional changes in chapter 2021-30, Laws of Florida, to be aware of?

Yes. Section 316.1936, Florida Statutes, was amended to read that an alcoholic beverage that has been sealed by the licensee and is transported pursuant to section 561.20(2)(a)4, section 564.09, or section 565.045(1), Florida Statutes, is not an open container. However, recall that chapter 2021-30, Laws of Florida, requires that if transported in a motor vehicle, an alcoholic beverage that is not in a container sealed by the manufacturer must be placed in a locked compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle.

