

FLORIDA IS THE LATEST STATE TO CONSIDER MAKING COCKTAILS-TO-GO PERMANENT



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Florida Governor Ron DeSantis has made clear he wants to make permanent a COVID-19 inspired change to Florida's Beverage Laws that has allowed restaurants and similar on-premises retailers to sell carry-out alcohol beverages during the coronavirus pandemic. DeSantis originally included the alcohol-to-go exemption for on-premises retailers in Executive Order 20-71, issued on March 20, 2020, to help provide a source of revenue for restaurants that were forced to close or severely scale back their operations during the pandemic. The pertinent text of Executive Order 20-71 reads as follows:

Section 1. Alcohol Sales.

A. I hereby order all vendors licensed to sell alcoholic beverages for consumption on the premises to suspend the sale of alcoholic beverages by the drink or in sealed containers for consumption on the premises. Such vendors may continue to sell alcoholic beverages in sealed containers for consumption off-premises.

B. The restriction in section 561.20(2)(a)4., Florida Statutes, prohibiting a specially licensed food service establishment from selling package sales of alcohol for delivery, take-out or consumption off-premises is suspended for restaurants complying with Executive Order 20-68, through the expiration of the state of emergency declared in Executive Order 20-52, including any extensions, so long as the following conditions are met:

1) Any sale of an alcoholic beverage in a sealed container for consumption off- premises is accompanied by the sale of food within the same order; and

2) Any delivery of an alcoholic beverage complies with section 561.57, Florida Statutes.

During a meeting in Fort Myers with restaurant operators on September 10, 2020, Gov. DeSantis said he will keep the policy so long as the Emergency Order remains in place, but that the Legislature would have to change state law to allow it permanently. *“I do think that it’s been successful, and I would encourage the Legislature to just make that permanent, because I think that you guys need all the help you can get, and I think it would make a lot of sense,So I’m for it being permanent,”* DeSantis told the restaurant operators.

A Growing Trend Nationally

Currently, 33 states plus the District of Columbia are allowing restaurants and/or bars to sell cocktails to-go, bottled spirits to-go or both. Eighteen states plus the District of Columbia are allowing restaurants and/or bars to deliver distilled spirits in some form. In addition, 14 states plus the District of Columbia are now permitting curbside pickup of distilled spirits from restaurants and/or bars.

The Florida Legislature next convenes in January of 2021. If the lawmakers are amenable to Gov. DeSantis’ proposal, Florida will join a growing number of states that either have made the cocktails-to-go a permanent part of their liquor codes, or at least have extended the exemption for on-premises retailers to make off-premises sales of alcohol beverages beyond 2021.

As recently reported in the Fall 2020 edition of [Artisan SPIRIT Magazine](#), Iowa Governor Kim Reynolds signed legislation on June 29, 2020, that permanently allows cocktails-to-go, making it the first state to make permanent an emergency measure that was adopted in response to the coronavirus pandemic. The bill, which the Iowa state House and Senate passed earlier this month, became effective immediately upon enactment by the Governor.

Only days later, Michigan Governor Gretchen Whitmer signed legislation on July 1, 2020, allowing restaurants, bars and other on-premises licensees to sell cocktails-to-go in sealed containers through 2025. Like its Iowa counterpart, the new Michigan law takes effect immediately; unlike the Iowa law the Michigan legislation automatically sunsets on December 31, 2025.

Additionally, several states including Maine, Texas, Ohio, and Oklahoma, as well as the District of Columbia, are considering either extending or making permanent their cocktails-to-go policies. For example, in Maine a representative from the [Distilled Spirits Council of the United States \(DISCUS\)](#) recently testified before the Maine Joint Committee on Veterans and Legal Affairs in support of [LR 3333](#), legislation to extend the state’s exemption for selling cocktails to-go from restaurants and bars. The proposed legislation

would allow certain beverage alcohol licensees to sell beer, wine and approved mixed drinks with a food purchase during the declared state of emergency or until April 15, 2022. Under the legislation, mixed drinks must be in sealed containers, appropriately labeled and placed in the trunk or non-passenger compartments of a vehicle.

Will This Trend Continue?

Advocates in favor argue that the hospitality industry, which represents hundreds of thousands of employers nationwide, has been one of the hardest hit during the COVID-19 pandemic. According to the National Restaurant Association, closures and reduced capacity restrictions have caused a nearly 80% reduction in restaurant sales and an 86% reduction in jobs across the country. The temporary approval of cocktails-to-go, these advocates assert, has provided a meaningful source of revenue to the many struggling hospitality businesses across the country.

But not everyone is in agreement. For example, off-premises retailers and their advocates express strong reservations about making a temporary pandemic exemption permanent. Liquor stores, grocery stores and a variety of alcohol merchants who are licensed for off-premises sales have enjoyed higher sales during the pandemic as more consumers purchased alcohol for use at home. However, these licensees are concerned that when the pandemic recedes, making cocktails-to-go permanent will allow on-premises retailers to steal market share and concomitantly erode the value of the off-premises license.

Additionally, there are not-unexpected concerns from law enforcement, who worry about on-premises retailers essentially converting into “drive-thrus” under a permanent cocktails-to-go regime. Similarly, anti-alcohol and health-focused interest groups argue that government should not be making it any easier for consumers to access alcohol given existing statistics relating to alcohol-related traffic incidents and population morbidity/mortality statistics.

What seems clear in the near term is that America’s hospitality industry is looking for COVID-19 relief from any available source. Allowing for cocktails-to-go is a ready-made and easily-implemented solution for the here and now. Whether it will stick around for the long term will depend on the advocates, the legislators and, . . . just maybe, the consumers.



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