



ALAN WILSON
ATTORNEY GENERAL

November 14, 2019

The Honorable Beth Bernstein
Member
South Carolina House of Representatives
1019 Assembly Street
Columbia, South Carolina 29201

Dear Representative Bernstein:

We received your letter requesting an opinion as to the delivery and transportation of alcoholic beverages. Specifically, you ask whether an agent of a licensed retailer has the authority to deliver alcoholic beverages to a South Carolina consumer. In your letter, you describe the following situation:

After alcoholic beverages have lawfully traversed South Carolina's three-tier system and land in a licensed retailer's premises, waiting for purchase, a third-party's online platform allows consumers to place orders from that retailer's store via supported internet browsers on personal computers, web-enabled mobile devices, or through a mobile application. When a consumer visits the online platform, it is presented with various retail partner options. A consumer selects a retailer, then selects products for purchase. Any consumer selection involving alcoholic beverages will prompt an age verification screen. Once the consumer represents a legally appropriate age and is ready to complete the purchase, the consumer is routed into a payment portal and must enter valid credit card information.

For an order that contains alcohol, the consumer's payment flows directly to the retailer who will appear as the "merchant of record" on the consumer's credit card statement. For an order that contains alcohol in addition to other grocery items, the consumer will have two separate charges on their credit card to reflect the separate transactions for the grocery and alcoholic beverages. While this type of online transaction results in two separate payment channels, the consumer's credit card statement will reflect the purchase from the retailer just as it would appear for that retailer if the consumer were physically in the store making the same credit card purchase. Since the payment for alcoholic beverages is routed into a separate payment

portal, the third-party provider is not able to access these funds in any respect and it is deemed an irrevocable payment order.

Once the online purchase is complete, if an order contains alcoholic beverages, a third-party's delivery personnel must:

- a) Require the recipient to present valid state or federal government-issued ID;
- b) Scan the ID using ID validation software;
- c) Verify the name and picture on the ID match that of the recipient; and
- d) Verify that the recipient is at least 21 years old.

If any step is not satisfied, the delivery personnel will not deliver the alcoholic beverages. In fact, any scenario where the recipient of an online purchase containing alcohol fails the age and identification process, a third-party's delivery personnel is incentivized to return the alcohol product to the licensed retailer. The licensed retailer destroys the alcohol product, and third-party delivery personnel is paid for the additional time expended to prevent an underage transaction.

All delivery personnel must be at least twenty-one (21) years of age to prepare or deliver an order containing alcoholic beverages, and all delivery personnel must pass a thorough screening process, including criminal and DMV background checks. Additionally, all delivery personnel must complete responsible alcoholic beverage service training before becoming eligible to prepare or deliver an order containing alcoholic beverages. When a delivery personnel prepares a consumer's online purchase for delivery, the individual shops the items from a retailer's premises and moves through the retail checkout process as if it was the consumer so each and every compliance checkpoint for an alcohol sale is satisfied.

Based on this scenario, you ask us

to address the delivery and transportation of lawfully purchased alcoholic beverages through an online platform as detailed above, which are thereafter transported and delivered to a consumer's designated address by a 1099 independent contractor, particularly where the sale complies with Article 13, SECTION 61-6-4020 and Article 3, Subarticle 15, SECTION 61-6-1500 of the South Carolina Code.

Law/Analysis

Title 61 of the South Carolina Code governs manufacture, distribution, and sale of alcoholic beverages in South Carolina. The Alcoholic Beverage Control Act (the “ABC Act”) is contained in chapter 6 of title 61. The ABC Act governs the regulation of retailers, wholesalers, and manufacturers of alcoholic beverages. In addition, chapter 4 of title 61 provides laws specific to the regulation of beer and wine. Section 61-6-1800 of the South Carolina Code (2009) requires a license for those engaged in the sale of alcoholic beverages. Similarly, section 61-4-150 of the South Carolina Code (2009) prohibits the sale of beer and wine without a license. In the scenario you describe, the retailer has a valid license to sell alcoholic beverages and the retailer, not the third party delivery service, acts as the seller in the transaction.

Section 61-6-4150 of the South Carolina Code (2009) prohibits the sale alcoholic beverages from a vehicle. However, we understand that in the scenario you describe, the sale takes place not at delivery, but when the customer places the order through the online application and makes payment using a credit card. In this scenario, the alcoholic beverages are not sold from a vehicle as the statute prohibits.

While section 61-6-1500(A)(3) of the South Carolina Code (Supp. 2019) prohibits the sale of alcoholic liquors on credit, you point out this provision clarifies “this item does not prohibit payment by electronic transfer of funds if: (a) the transfer of funds is initiated by an irrevocable payment order on or before delivery of the alcoholic liquors; and (b) the electronic transfer is initiated by the retailer no later than one business day after delivery.” Accordingly, you assert that paying through the online application with a credit card is not prohibited.

In addition, you contend the delivery of the alcoholic beverages is permitted because section 61-6-4020 of the South Carolina Code (Supp. 2019) provides: “A person who is twenty-one years of age or older may transport lawfully acquired alcoholic liquors to and from a place where alcoholic liquors may be lawfully possessed or consumed.” You explain because the delivery occurs after the lawful purchase of alcoholic beverages, this provision applies to allow delivery by an independent contractor.

Considering the scenario you propose, the sale appears to be a lawful sale by a licensed retailer. In addition, we do not believe this transaction violates sections 61-6-4150 or 61-6-1500. Furthermore, we appreciate that a court could interpret section 61-6-4020 to allow third parties to deliver alcohol for a fee as it does not appear to be specifically prohibited by a provision in title 61. However, we have some concerns as to whether the Legislature intended to allow the delivery of alcohol under these circumstances.

As our Court of Appeals explained in Georgia-Carolina Bail Bonds, Inc. v. City of Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003), the primary function in interpreting a statute “is to ascertain the intent of the General Assembly. A statute must receive a practical and reasonable interpretation consistent with the ‘design’ of the legislature.” While we did not find a

provision in title 61 specifically prohibiting the scenario you propose, we are concerned that interpreting the law as it is currently written to allow third parties to deliver alcohol for a fee conflicts with the intent of the Legislature.

Specifically in regard to section 61-6-4020, the Legislature enacted this provision in 1996. While the Legislature amended this provision in 2000 and again in 2011, these amendments did not address situations in which an unlicensed person delivers alcoholic beverages for a fee. Moreover, in 1996, 2000, or even in 2011, third party delivery services were not prevalent as they are today. As our Supreme Court explained,

where the language of the statute gives rise to doubt or uncertainty as to the legislative intent, the search for that intent may range beyond the borders of the statute itself; for it must be gathered from a reading of the statute as a whole in the light of the circumstances and conditions existing at the time of its enactment.

Abell v. Bell, 229 S.C. 1, 5, 91 S.E.2d 548, 550 (1956). Accordingly, we are concerned that the Legislature simply did not contemplate the scenario you present in enacting section 61-6-4020.

In addition, we are concerned that interpreting title 61 to allow third parties to deliver alcohol for a fee is contrary to the Legislature's intent to regulate the sale and transportation of alcoholic beverages. In chapter 2 of title 61, the Legislature makes clear its intent to regulate all aspects of the manufacture, distribution, and sale of alcoholic beverages. Section 61-2-60 of the South Carolina Code (2009) gives the Department of Revenue (the "Department") and the South Carolina Law Enforcement Division ("SCLD") the authority to promulgate regulations including those that "prevent the unlawful manufacture, bottling, sale, distribution, transportation, and importation of alcoholic liquors" Section 61-2-70 of the South Carolina Code (2009) gives the Department the "sole and exclusive power to issue all licenses, permits, and certificates provided for in this title." Moreover, section 61-2-80 of the South Carolina Code (2009) gives the State, through the Department, "the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors"

Under the ABC Act, section 61-6-4010 of the South Carolina Code (2009) states it is unlawful to

(1) manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner and except in accordance with the provisions of this title; or

(2) accept, receive, or have in possession alcoholic liquors for unlawful use pursuant to the provisions of this title.

(emphasis added).

Based on our understanding in regard to the Legislature's intent, this provision can be read as allowing only sales of alcoholic that are provided for in title 61. For example, by enacting section 61-4-745 of the South Carolina Code (2009), the Legislature specifically allows persons at least twenty-one years of age to order and have wine shipped to them from a manufacturer. This provision indicates our Legislature does not always require in person sales. However, the Legislature specifically allowed for these transactions. No similar provision currently exists for the online sale of alcohol delivered to the customer by a third party.

We also worry that allowing third parties to deliver alcoholic beverages denigrates the qualifications and responsibilities placed on retail licensees by the Legislature. The Legislature makes clear throughout title 61 that any person, corporation, or organization seeking to sell alcoholic beverages must have a license. Section 61-6-110 of the South Carolina Code (2009) places restrictions on who can hold a retail license including restrictions on age, residency, and reputation. In the scenario presented, the delivery service screens its drivers to insure they are twenty-one years of age. In addition, you state the delivery drivers will undergo background checks. While these requirements could further the intent to the Legislature to restrict those involved in the sale and distribution of alcohol, they are not current requirements under the law. Thus, interjecting an unregulated third party into the sales process, in our opinion, seems contrary to the Legislatures intent to ensure those involved in the sale of alcohol meet certain age, residency, and reputational standards.

The Legislature also places responsibilities on those selling alcoholic beverages. Section 61-4-50 of the South Carolina Code (2009) makes it unlawful to sell beer and wine to persons under age twenty-one and places a responsibility on the retailer to verify the purchaser's age. Section 61-6-1500(A) of the South Carolina Code (Supp. 2019) precludes licensees from selling alcoholic beverages to intoxicated persons or persons under the age of twenty-one. Section 61-4-580(A) of the South Carolina Code (Supp. 2019) similarly prohibits the sales of beer and wine to intoxicated persons and persons under twenty-one. Furthermore, section 61-6-1530 of the South Carolina Code (2009) requires retailers of alcoholic beverages to place signs warning persons under twenty-one years of age that possession of alcohol is a criminal offence. Section 61-4-70 of the South Carolina Code (2009) places the same requirement on beer and wine retailers.

Under the circumstances you present, retailers are unable to assess the age or intoxication level of the purchaser. The retailer simply relies on the purchaser's online representation of their age. Additionally, the purchaser does not get the benefit of the legal notice posted by the retailer when they purchase through an online application. While the situation proposed involves verifications by the delivery person as to the age and potentially the demeanor of the purchaser when the alcohol is delivered, the retailer is no longer involved and is unable to fulfill these responsibilities.

As our Supreme Court stated in Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012), "[t]his Court will not construe a statute in a way which leads to an absurd result or renders it meaningless." Allowing third

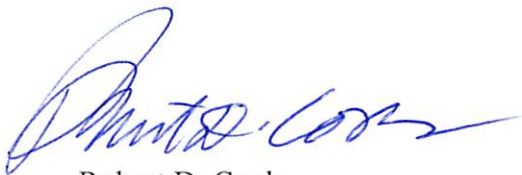
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parties to deliver alcohol could render these provisions meaningless or leave retailers unable to comply with their statutory responsibilities. In addition, section 61-4-745, allowing the shipment of wine to residents at least twenty-one years of age, includes a requirement that: "All containers of wine shipped directly to a resident in this State must be labeled conspicuously with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". This requirement again demonstrates the Legislature's intent to insure purchasers are of the legally required age. Currently, we are without a mechanism by which retailers can transfer their responsibility to check the ID to the delivery service and delivery services do not legally have these responsibilities. We do not believe the Legislature intended to allow delivery of alcoholic beverages by third party delivery persons without placing a legal responsibility on the person or service delivering it to insure the person receiving the alcohol is twenty-one years of age. While the requirements you propose would alleviate these concerns, they are currently not the law in this State.

Conclusion

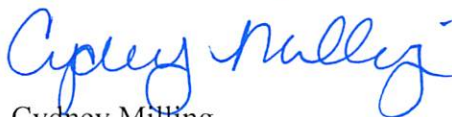
The issue which you present is difficult and likely not foreseen by the Legislature. Consumer transactions have changed quickly in the digital world. When many of the provisions contained in title 61 were enacted by our Legislature in 1996, the Legislature had no idea how technology would advance at such a rapid pace and how popular online shopping and post-sale delivery services would become. While we find no provision preventing the delivery of alcoholic beverages by third parties following a lawful sale and appreciate the argument that section 61-6-4020 allows for this type of service, we are concerned that this scenario was far from being contemplated by the Legislature. In addition, we also are concerned that allowing third parties to participate in the sale and delivery of alcoholic beverages without some sort of regulation at the very least frustrates the intent to the Legislature. As the South Carolina Supreme Court has often emphasized, "legislative intent is the paramount concern when interpreting a statute." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003).

In somewhat similar circumstances, when confronted with an anomalous situation in which technology outpaced the statutes and in which there was no legal prohibition to be found in those regulations or statutes, the Supreme Court noted: "it is not within our province to amend the law to resolve this inconsistency, rather, we leave to the legislature the resolution of this matter." State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991). So too here. We believe this issue should be promptly addressed and clarified by the Legislature either to allow or to prohibit these types of transactions.



Robert D. Cook
Solicitor General

Sincerely,



Cydney Milling
Assistant Attorney General