



Drizly appreciated the opportunity to present to the Louisiana Retail Food and Beverage E-Commerce Task Force on December 6, 2018. At the request of the Task Force we are pleased to offer the following comments and draft bill language for the Task Force's consideration.

The following is a draft of retailer delivery bill language with elements that support the three-tier system while accounting for a changing marketplace. The lack of these elements or restrictions opens the door to unlicensed entities to engage in critical functions traditionally reserved for local retailers, which may compromise public safety.

The scope of our proposal is limited to the subject of local retail deliveries to end consumers and the related use of a third party platform/marketplace such as Drizly.

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### **Draft Retailer Delivery Language**

Add new Section \_\_\_\_ to the Alcohol Beverage Control Act as follows:

Section \_\_\_\_\_

1. Definitions. (PLEASE DRAFT ACCORDING TO LOUISIANA'S STATUTORY DEFINITIONS)

- a. "Electronic Means" in this Section shall mean Internet-enabled technology and digital media, including but not limited to websites and consumer applications accessible through smart phones and other mobile devices.
- b. "Employee"
  - i. This definition is intended to mean W2 employees of a retail licensee. This prevents people from "free-loading" off of a retailer license while avoiding penalties should they operate irresponsibly.
- c. "Licensee"
  - i. This definition should encompass the standard off-premise retailer definition in Louisiana's statutes. A licensee should also be a retailer with a physical store with normal hours of operation.
- d. "Third Party"
  - i. This definition should include a technology platform like Drizly: an independent technology company that runs a website or app where independent retailers may market their products. But this third party tech company should not handle product, and is not subject to a state alcohol

license. A third party should not be allowed to make deliveries or otherwise transport the product on behalf of a licensee. A third party should not be the merchant of record or be able to process payments for product, and should only connect a consumer with a licensed retailer—the only entity that should process payments.

- e. “Delivery”
  - i. This definition should encompass ONLY local deliveries made by retail licensees and their employees, in a vehicle subject to the license.
2. Notwithstanding any law, rule or regulation to the contrary, any licensee currently licensed in this state to sell alcohol products at retail (**subject to: specify license type here**) to consumers for off-premise consumption may deliver, either on the licensed premise itself or at an address designated by the consumer, products lawfully sold to and purchased by such consumer, provided that:
  - a. The licensee (*Insert type of licensee - Standard off premise retailer*), or an employee of the licensee, must process at the licensed premise all payments initiated by a consumer that is transacting the purchase with the licensee;
  - b. The licensee, or an employee of the licensee, assembles, packages and fulfills each order at the licensed premise where the order was processed using the inventory at that licensed premise;
  - c. Deliveries to consumers are made only by the licensee or by an employee of the licensee; and
  - d. At the time of delivery, the licensee, or an employee of the licensee, verifies the identity and age of the person accepting the order by at least validating photo identification of the person and obtaining his or her signature on a written acknowledgement of receipt of the order and certification of legal age.
  - e. The address is in this state.
3. Notwithstanding any law, rule or regulation to the contrary, any licensee currently licensed in this state to sell alcohol products at retail to consumers for off-premise consumption may use Electronic Means to (i) market the alcohol products it is licensed to sell and (ii) receive and process purchase order(s) placed by a consumer of legal drinking age, which orders may then be delivered to such consumer on the licensed premise itself or at an address in Louisiana designated by the consumer in accordance with paragraph 2 above.
4. A licensee may market, receive, and process orders for alcohol products under this Section using Electronic Means owned, operated and maintained by a Third Party, provided that:
  - a. The licensee maintains ultimate control and responsibility over the sales transaction and transfer of physical possession of the alcohol products;
  - b. The licensee retains the sole discretion to determine whether to accept and complete an order or reject it, and the licensee, or an employee of the licensee, reviews and accepts/rejects each order;

- c. The licensee retains the independence to determine which alcohol products are made available for ordering through Electronic Means, which alcohol products are made available for delivery to the consumer at the licensed premise itself or at another address designated by the consumer, and to independently set the price of such products;
  - d. The purchase transaction takes place between the consumer and the licensee and the licensee appears as the merchant of record;
  - e. Any credit or debit card information provided by a consumer to the Third Party for the purpose of transacting a purchase with a licensee is automatically directed to the licensee such that the licensee appears as the merchant of record at the time of purchase and on the receipt;
  - f. The licensee, or an employee of the licensee, processes at the licensed premise that accepts the order, all payments initiated by a consumer that is transacting a purchase with the licensee;
  - g. The alcohol products are in the possession of the licensee prior to the licensee's processing of payment for such products;
  - h. The licensee, or an employee of the licensee, assembles, packages and fulfills each order at the licensed premise that accepted the order;
  - i. Deliveries to consumers are made by the licensee, or by an employee of the licensee; and
  - j. At the time of delivery, the licensee, or an employee of the licensee, verifies the identity and age of the person accepting the order by at least validating photo identification of the person and obtaining his or her signature on a written acknowledgement of receipt of the order and certification of legal age.
5. The relationship between the licensee and Third Party under paragraph 4 shall be one of independent contractors, and neither party shall be deemed the employee, agent or joint venturer of the other party under any circumstances or for any purposes.
  6. If any provision of this Act, or its application to any person or circumstance, is determined by a court to be invalid or unconstitutional, the remaining provisions shall be construed in accordance with the intent of the legislature to further limit rather than expand commerce in alcoholic liquor and to enhance strict regulatory control over taxation, distribution and sale of alcoholic liquor through the three-tier regulatory system imposed by the Act upon all beverage alcohol.

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