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## ***Louisiana Food and Beverage E-Commerce Task Force***

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*A Report of Recommendations on the Establishment of a Consumer Delivery System for Alcoholic Beverages*



MARCH 1, 2019  
LOUISIANA DEPARTMENT OF REVENUE

*“The way Americans drink is changing,”* reported a 2016 *Washington Post* article describing the decline in local bars and the rise in drinking at home.<sup>i</sup> A Nielson report on the rise in online grocery shopping introduced its data with a similar declaration: “Retailers are implementing innovative digital technologies that are transforming the shopping experience, in order to become more relevant to consumers’ lifestyles and shopping occasions. Thinking in terms of bricks versus clicks is outdated; bricks-and-clicks is the current and future retail reality.”<sup>ii</sup>

Senate Resolution 224 of the 2018 Regular Legislative Session combined a group of stakeholders in the retail, restaurant, and beverage industries with state legislators and regulators to compose the Louisiana Retail Food and Beverage E-Commerce Task Force (“Task Force”). This resolution requested the Task Force to study the industry and consumer benefits, the applicable laws and regulations enacted by other states, and any other matters inherent to the adoption of e-commerce innovations and full service delivery operations with minimal risk to public safety and in the least restrictive manner.

With evidence of the changing consumer landscape in mind, and with the examples provided by similar studies conducted in states ranging from Iowa to Texas, the Task Force undertook its work of studying the components required to create a legal framework for the full-service delivery of alcoholic beverages. The recommendations herein are provided in a manner that strives to incorporate the mechanisms necessary to protect public safety while expanding the state’s thriving retail, e-commerce and service industries.

After conducting monthly meetings from September 2018 to February 2019 and receiving testimony from industry leaders, the Task Force makes the following recommendations:

1. Proposed legislation should create a new permit which third party delivery service providers must obtain in order to operate in this state. The permit should include a fee that will fund the enforcement efforts that will be required of the Office of Alcohol and Tobacco Control (“ATC”).
2. Proposed legislation should require third party delivery service providers, as well as their agents and employees, to obtain certification through the Responsible Vendor Program created by Louisiana Revised Statute 26:931 *et seq.*
3. Proposed legislation may require third party delivery service providers to obtain technology for a mobile application which is approved by the ATC and which allows for identity and age verification of consumers.
4. Proposed legislation should require third party delivery service providers to retain consumer records for a period of three years for the purpose of making such records available for inspection by the ATC.
5. Proposed legislation should require the delivery of food or groceries be included with any alcohol delivery orders.
6. Proposed legislation should address a radius of delivery to ensure food safety and take into consideration existing laws prohibiting beverage alcohol near church or school campuses in determining delivery restrictions.
7. Proposed legislation should set forth the requirements necessary for a person to serve as a delivery driver for a third party delivery service provider including whether all drivers are required to be employees or whether independent contractors will be permitted.

8. Proposed legislation should require beverage alcohol to be transported in original, sealed packaging and provide a uniform definition for a “sealed” package.

A more detailed discussion of the recommendations is set forth below.

## Background

Existing Louisiana state law provides for the following types of permits to sell or manufacture alcoholic beverages:

- In-state manufacturer
- Out-of-state manufacturer
- Wholesaler
- Retailer
  - Class A-General
  - Class AR-Restaurant
  - Class A-Special
  - Class B Retail Liquor Permit (*Package House*)
  - Class C Package Store
  - Microdistiller (held by the holder of a Class A permit; allows permit holder to engage in the distilling, making, blending, rectifying, or processing of alcoholic beverages in Louisiana)
- Solicitor or broker
- Retail Distribution Centers
- Wine Producers
- Wineries

The recommendations included in this report from the Task Force are only applicable to retail permit holders in Classes AR, B, and C. The reason for this is the desire of the Task Force to build upon, not conflict with present law. Louisiana Revised Statute 26:71.1(1) limits eligibility for a Class A permit to those retail outlets where beverage alcohol “is sold on the premises for consumption on the premises;” the establishments authorized to sell alcohol as Class A-General permit holders do not fall within the scope of the Task Force’s study.

Similarly, with the exception noted below, Louisiana Revised Statute 26:85 prohibits any person or establishment from engaging in business as manufacturer or wine producer and as a retailer, as a retailer and as a manufacturer or wine producer, or as retailer and as a wholesaler of any regulated beverage. For this reason, the establishments permitted to sell alcohol as manufacturers, wholesalers, solicitors, or wine producers are outside the scope of the Task Force’s study.

Louisiana Revised Statute 26:85 does permit wine producers who operate at least one winery to sell and ship wine directly to a consumer in Louisiana, provided the total amount of wine shipped to any single household address in 750 milliliter bottles does not exceed 144 bottles per adult person per household address per calendar year.

Louisiana Revised Statute 26:359 provides the requirements for direct shipment of wine to consumers. The law requires each of the following:

- The consumer/purchaser be 21 years of age or older.
- The wine be for the consumer's personal consumption.
- The wine producer, manufacturer, or retailer engaging in the direct sale hold a valid license issued by that person's state of domicile.
- The package be prominently labeled to disclose that it contains alcohol.
- The package be received by a person who is at least 21 years of age.
- The package contain an invoice indicating the date of shipment, providing a full and complete description of all items included in the shipment, and the price of shipment.

While Louisiana Revised Statute 26:359 provides the framework for delivery of wine to consumers, it should be noted that a distinction can be made between the current law on the shipment of wine and the Task Force study. Present law provides for the delivery of wine to a consumer through the direct *shipment* from the wine producer or seller to the consumer, whereas the proposition placed before the Task Force is to recommend a framework which provides for the delivery of beer, wine, and alcohol from the retailer through an employee or third-party agent of the retailer utilizing innovations in e-commerce.

## Expanding Alcohol Delivery

A statutory and regulatory framework to expand delivery of alcoholic beverages should be structured in a way that allows restaurants and retailers the option of providing delivery services by either utilizing their own employees or by contracting with third party delivery service providers. Legislation to create such a framework should set forth specific requirements to provide for the safe transport of beverage alcohol, including provisions that require alcohol to remain in the sealed package provided by the manufacturer. Because the definition of "sealed" is open to interpretation, the Legislature should define the manner in which a container should be sealed in order to meet the standards determined necessary by state health officials, law enforcement, and other regulatory bodies.

Because over twenty-five percent of the State's parishes have already voted to either prohibit or to restrict the sale of alcohol, new legislation should be crafted in such a way that considers the individual community standards in Louisiana's parishes and towns and preserves the authority of local government to provide restrictions that may exceed, though not conflict with, state law. New legislation should expressly refrain from granting authority to sell or deliver beverage alcohol in a manner that conflicts with the existing statutory provisions governing alcohol regulation set forth in Chapter 3 of Title 26 of the Louisiana Revised Statutes of 1950. Further, proposed legislation should serve as a statewide standard to lay out the basic requirements that prospective and present alcohol delivery service providers must meet to obtain a permit authorizing them to carry out alcohol delivery. This standard should serve as a baseline for local governments, but should not serve as an impediment that prevents them from enacting local ordinances to reflect the standards of their particular community and electorate.

It is important to note that, while the memberships of each organization with a member appointed to serve on the Task Force do not express unanimous support for legislation to allow for the delivery of alcoholic beverages, the Task Force is unanimous in its recommendation that such legislation to permit the delivery of wine, beer, and liquor may be appropriate as long as reasonable safeguards and enforcement authority are incorporated into the enabling legislation.

## Liability, Permitting, and Enforcement

Proposed legislation should incorporate a requirement that third party delivery service providers apply for and obtain a permit from the ATC Commissioner. Proposed legislation should provide for the creation of this new class of permit, as well as permit fees that will provide ATC with necessary staffing, technology, and resources to implement and enforce the proposed law. Proposed legislation should expressly enumerate the existing permit classes (Class AR, B, and C) to which the provisions of new law will apply, thereby allowing retailers to provide delivery services through the use of their own agents and employees. Further, the proposed legislation should give the ATC Commissioner the authority to promulgate rules necessary for the administration and enforcement of the new permit class with present and proposed law.

Proposed legislation should provide general guidelines relative to civil and criminal liability for the acts and omissions of the agents and employees of third party delivery service providers including whether legal responsibility and liability should transfer from the Class AR, B, or C permit holder to the permitted third party delivery service provider's agent or employee upon the transfer of the alcoholic beverage from the Class AR, B, or C permit to the third party's agent or employee, or upon some other occurrence (such as the agent/employee's departure from the Class AR, B, or C permit holder's premises) that is delineated by proposed legislation.

## Training and Other Requirements

Louisiana Revised Statute 26:939 requires all vendors of beverage alcohol in the state to participate in the "Responsible Vendor Program." The purpose of this training program is to educate vendors and their employees and customers about selling, serving and consuming beverage alcohol. State law defines "vendor" as any holder of a Class A General retail permit, a Class A Restaurant permit, or a Class B retail permit. In order to maintain certification as a responsible vendor, permit holders must satisfy each of the following requirements:

- Enroll in the Responsible Vendor program and provide written verification to the ATC Commissioner that he has read and understands the responsible vendor handbook.
- Require each server and member of security personnel to successfully complete training courses and obtain a valid server permit within forty-five days after beginning employment.
- Require each server or security personnel to attend a refresher course at least once every four years.
- Maintain the training verification of its employees.

- Post signs on the vendor's premises informing customers of the vendor's policy against selling alcoholic beverages to underage or intoxicated persons.

Proposed legislation should also require third party delivery service providers to obtain certification as responsible vendors, and should require their agents and employees to possess Responsible Vendor permits. Proposed legislation should require third party delivery service providers to meet each of the following requirements:

- Maintain a minimum amount of liability insurance.
- Possess an internet or mobile application and magnetic card reader, or other form of technology that has been approved in accordance with ATC regulations, which allows for the scanning and retention of consumer identification for the purpose of completing the age verification process.
- Obtain consumers' signatures through the use of an electronic age verification device which is approved by the ATC.
- Require delivery persons to be 18 years of age or older.
- Restrict delivery persons to either employees who the service provider would be required to withhold income, social security or Medicare tax from and file a Form W-2 or to an independent contractor, who are subject to rules promulgated by the ATC, including such rules referenced above on Responsible Vendor certification and compliance with Title 26 of the Louisiana Revised Statutes of 1950.
- Maintain capability to monitor the routes of drivers out on deliveries.
- Retain delivery records for a three year period, for the purpose of providing these records to the ATC and law enforcement for inspection, if necessary.

## Food Delivery and Other Considerations

The legislation should include a requirement that all deliveries of beverage alcohol include the purchase of food, groceries, or another non-alcoholic product. Alcohol delivery should be incidental to the overall inventory of purchased goods, rather than a targeted purchase which has been made easier to obtain by virtue of innovations in the method of purchase. Opponents of such a provision may cite an unnecessary barrier imposed upon consumers legally authorized to purchase alcohol. The Legislature may wish to consider whether the value of food, groceries or non-alcoholic product purchased must exceed the value of beverage alcohol by a certain dollar threshold or percentage of value. The Task Force did not reach consensus on the dollar threshold issue.

Whether or not proposed legislation sets forth a specific requirement relative to the dollar value of food or other non-alcoholic products versus the dollar value of beverage alcohol, the delivery radius is a concept which should be addressed by proposed legislation. Food safety, as well as the overall experience that a restaurant or other retailer wishes to convey to the consumer, are each dependent upon the distance and time between the product and the consumer. In the absence of a specific provision in proposed legislation to set forth a delivery radius, the Legislature should authorize the Department of Health to promulgate rules necessary to ensure food safety is maintained throughout the delivery process from a retailer to the consumer.

Finally, in the absence of provisions which expressly set forth the point of sale and the party responsible for remitting the sales tax in transactions where the consumer purchases alcoholic beverages and other products for delivery through an e-commerce transaction, the proposed legislation should authorize the Department of Revenue, in consultation with the Louisiana Uniform Local Sales Tax Board, to promulgate rules relative to the collection and remittance of sales tax on such transactions.

## Louisiana Retail Food and Beverage E-Commerce Task Force

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<b>Juana Lombard</b>	Commissioner, Office of Alcohol and Tobacco Control
<b>Mandi Mitchell</b>	Member appointed by the Department of Economic Development
<b>Senator Dan “Blade” Morrish</b>	Member appointed by the president of the Senate
<b>Representative Lance Harris</b>	Member appointed by the speaker of the House
<b>Senator Daniel Martiny</b>	Chair of the Senate Committee on Commerce, Consumer Protection, and International Affairs
<b>Representative Thomas Carmody</b>	Chair of the House Committee on Commerce
<b>Senator Ronnie Johns</b>	Member appointed by the chair of the Senate Committee on Judiciary B
<b>Representative Valarie Hodges</b>	Member appointed by the chair of the House Judiciary Committee
<b>Mark West</b>	Member appointed by the Louisiana Municipal Association
<b>Patrick Mockler</b>	Member appointed by the Louisiana Association of Business and Industry
<b>Natalie Babin Isaacks</b>	Member appointed by the Louisiana Oil Marketers and Convenience Store Association
<b>Dwight Barnes</b>	Member appointed by the Beer Industry League of Louisiana
<b>Allison Rovira</b>	Member appointed by the Wine and Spirits Foundation of Louisiana
<b>Cary Koch</b>	Member appointed by the Louisiana Craft Brewers Guild
<b>Eldon Rogillio</b>	Member appointed by the Louisiana Restaurant Association
<b>Jessica Elliott</b>	Member appointed by the Louisiana Retailers Association
<b>Julius Meaux</b>	Governor’s designee; third-party platform provider for restaurants
<b>Donny Rouse</b>	Governor’s designee; third party platform provider for grocery stores



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<sup>i</sup> Ingraham, Christopher. (2016, May 19.) America's Trendiest New Bar is in Your Living Room. *Washington Post*. Retrieved from <https://www.washingtonpost.com>

<sup>ii</sup> Nielsen Insights. (2017, January 13). *What's In-Store For Online Grocery Shopping? 2017 Connected Commerce Report*. Retrieved from <https://www.nielsen.com>