

Insights

TO-GO ALCOHOL BECOMES PERMANENT IN SEVERAL STATES

Jul 22, 2021

In an effort to alleviate the financial burden on bars and restaurants caused by the COVID-19 pandemic, more than 30 states temporarily modified their laws to allow the sale of “to-go” alcoholic beverages. These temporary measures allowed for the pickup and delivery of alcoholic beverages for consumption off-premises from establishments that were traditionally restricted to serving alcohol for consumption on-premises, such as bars and restaurants. Although the pandemic took a heavy financial toll on bars and restaurants, there is evidence showing that temporary measures allowing to-go alcohol sales have helped bars and restaurants stay afloat. And, despite many establishments being forced to close their inside spaces, total revenue from sales of alcoholic beverages was up 2.0% last year, the largest gain in the United States since 2002.

Now, in response to a recent push to keep the temporary to-go measures in place, and with most of the measures set to expire, many states have enacted laws making permanent the once temporary measures allowing for the sale of to-go alcohol. While over a dozen states have permanently legalized to-go alcohol sales, several other states have passed to-go alcohol laws as a temporary relief measure. These temporary measures are set to automatically expire after a number of years. Illinois’ to-go alcohol law, for example, expires in January 2024; Tennessee’s in July 2023. Other states—approximately one dozen—never extended temporary relief to restaurants and bars, and a few states, such as New York, have allowed the temporary relief to expire.

The requirements imposed on establishments and consumers by the to-go alcohol laws vary, but some trends are apparent:

Tamper-evident seals:

Virtually all states require alcoholic beverages prepared by bars or restaurants to be sealed in a manner that clearly shows whether the alcoholic beverage has been tampered with or opened. Such tamper-evident seals may include a bag sealed with a zip tie or staple, shrink wrap, tape, or another kind of seal.

Labelling requirements:

Some states have container-labelling requirements, and these vary widely. [Texas](#), for example, requires only that alcoholic beverages prepared by the establishment (rather than in a manufacturer's original container) be labelled with the business's name and the words "alcoholic beverage." [Illinois](#), by contrast, requires that alcoholic beverages prepared by the establishment be labelled with the beverage's ingredients, alcohol name, type, and volume, and the business's name, address, and license number. Alcoholic beverages sold in the manufacturer's original container must be labelled with the business's name, address, and license number.

To-go alcoholic beverages must be accompanied by a food order:

Many states require drinks be sold along with a food order prepared by the establishment selling the drinks, and some states, such as [Ohio](#), limit the number of drinks allowed per meal sold.

Size restrictions:

Some states impose drink-size restrictions. [Tennessee](#), for example, sets the limit at 16 fl. oz. per drink, but does not limit the number of drinks per order, while [Colorado](#) allows bars and restaurants to sell no more than 50.8 fl. oz. of wine, 144 fl. oz., of beer, and 33.8 fl. oz. of spirituous liquors per delivery or take out order.

Time restrictions:

A few states have imposed restrictions on when bars and restaurants can sell to-go alcohol. [Colorado's](#) law, for example, restricts the sale of to-go alcohol from 7:00 a.m. to midnight, and [Vermont](#) has implemented a similar 10:00 a.m. to 11:00 p.m. restriction.

None of the various states' to-go alcohol laws are identical, and some even have idiosyncratic requirements. For example, [Illinois](#) expressly prohibits delivery by a third party (that is, anyone who is not the establishment selling the alcohol), and [Tennessee](#) requires each establishment post a sign on its premises that states "[a] driver shall not consume alcoholic beverages or beer while operating a motor vehicle in this state." Because of the considerable differences between these laws, and the changing legal landscape, it is important that establishments intending to offer to-go alcoholic beverages ensure they stay up-to-date on any changes in the law within their state(s) of operation and consult an attorney to advise them of proper compliance measures.

These recently-implemented to-go alcohol laws serve as just one example of the evolving landscape of alcohol law and regulation in the United States. Establishments with questions about alcohol laws are encouraged to consult with legal counsel. To better serve our clients, we at Bryan Cave Leighton Paisner have and will continue to keep ourselves informed of the changing laws and how they affect our clients.

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for further information.

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