

E-Commerce Task Force Comments and Suggestions – Patrick Mockler

In recent years, litigation has increased dramatically in the alcohol shipping and delivery space. It is also incredibly important to clearly differentiate between shipping (wine not available in Louisiana brought to consumers by common carriers, not retail licensees) and delivery (On-demand. Product ideally brought to consumers by a retail licensee in a licensee's vehicle by an employee of licensee. Generally subject to geographic limitations).

Allowing common carriers to ship product from a retail licensee to consumers intrastate opens the statute up to legal challenge by out-of-state retailers who would like to ship to consumers in Louisiana. The risk in not clearly differentiating could result in substantial revenue loss in the collection of state excise taxes and the mass shipment of cheap and potentially un-taxed spirits to consumers with no clear means of regulating. Recent court cases in Illinois and Missouri have focused on these issues.

Regarding types of licenses, it is important Legislators and Legislative legal staff review the state's existing retail license structure. Most common legal challenges are identifying that there is a prohibition against treating in-state businesses different than out-of-state businesses. The basis of these challenges is that it is a violation of the Commerce Clause, a successful challenge could allow out-of-state distilleries to direct ship to consumers. It is important to require that the delivery of beverage alcohol only be made by a licensee with the Louisiana Alcohol Tobacco Control, as required by state law.

Because beverage alcohol shipping and delivery laws are routinely challenged, this suggestion contains "level down" provisions. States benefit by providing clarity through level down provisions, their intent to protect their authority under the 21st Amendment (repeal of prohibition and giving states the right to regulate beverage alcohol) to determine how beverage alcohol will be distributed and sold in their state.

Level down provisions explicitly define legislative intent to regulate alcohol in a way that provides active state control of the system, ensuring that decisions regarding alcohol are made by elected officials, and regulators with legislative oversight, as intended by the 21st Amendment, rather than by court interpretation or fiat.