

Practice Update

Florida Restaurants Win Big with Permanent Mixed-Drinks To-Go

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It's official! On July 1, 2021, restaurants in Florida will be able to sell alcoholic beverages, including mixed cocktails, to-go and for delivery permanently.

Historically, food service establishments that operate under a special restaurant liquor license (the type that require 51 percent of sales to come from food and non-alcohol) have been prohibited from selling beverages for consumption off-premises or otherwise acting as a package store. Since the pandemic began, Florida, like many other states, began allowing restaurants to sell alcohol to-go and for delivery as a way of mitigating the economic damage caused by lockdowns and capacity limitations. However, without legislative action, this could only be implemented on a temporary basis through executive orders issued by the Governor which had to be renewed regularly, leaving restauranteurs in a position of never really knowing if they could continue this practice for more than a few weeks at a time. The latest extension of these orders allowing is set to expire on June 26, 2021. Now, that uncertainty is over, and to-go cocktails are here to stay.

Now, before you place that drink order, note that there are important limitations that will need to be observed. Here are some of the more notable regulations that restauranteurs should be aware of:

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- Any sales with alcoholic beverages will have to contain food in the same order.
- Restaurants will be able to sell manufacturer sealed beer and wine, but can only sell liquor as part of liquor-based beverages that the restaurant pours into a container that is sealed before it leaves the premises.
- Any alcoholic beverage prepared by the restaurant for off-premises consumption will need to have an unbroken seal that prevents it from being immediately consumed.
- All alcohol sold for off-premises consumption will also need to be placed in a bag or container and secured in a way to visibly see if the bag or container was opened or tampered with.
- All such bags and containers will also need to have a dated receipt attached.
- All alcoholic beverages, not sealed by the manufacturer, that are to be transported in a motor vehicle must be placed in a locked compartment, locked trunk, or area behind the last upright seat of a motor vehicle.
- All deliveries must be completed by someone who is over the age of 21.
- The restaurant is responsible for ensuring the customer's age has been verified prior to allowing them to take possession of any alcoholic beverages.
- Restaurants may now allow a customer to remove an unsealed bottle of wine from the premises, if a portion of the bottle was consumed on the premises, without having purchased a full course meal.
- No sales or deliveries for off-premises consumption may occur after the restaurant has stopped preparing food for the day or after midnight, whichever is earlier.
- All deliveries must be made in compliance with existing regulations regarding the delivery of alcoholic beverages.

Restaurants that operate under quota licenses (the type of liquor license that does not have any food sales percentage requirements) are also going to see some additional privileges under this law. These licensees already have the right to sell manufacturer sealed containers of alcoholic beverages, including liquor, however under this law they will also be able to sell drinks that they prepare, and place into a sealed container, to-go and for delivery. The limitations listed above will also apply to these licensees, except for that they are of course also able to sell sealed bottles of liquor. However, there is one other important limitation for these licensees — 40 percent of the total cost of the order must be made up of food and/or non-alcoholic beverages for the sale of a mixed beverage. Note, that this limitation does *not* include the cost of any manufacturer sealed containers of alcoholic beverages into that cost percentage.

Restaurants should also be wary of potential liabilities involved in delivering alcohol under this new law when utilizing third party delivery vendors, and should make sure that any third party vendors that are used are aware of and abiding by the regulations.

At the moment, the Division of Alcoholic Beverages and Tobacco has not stated whether it intends to promulgate any additional administrative rules to handle the enforcement of this new law or how their enforcement branch will handle investigating any alleged violations of the law.

All in all, this is great news for restaurants in Florida that have suffered through some hard times in the past year, and this new law will allow them an opportunity to increase to-go and delivery sales and will hopefully keep more of our local restaurants in business in the years to come.

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