

# IOWA / NEBRASKA

## BOOZE-TO-GO

### THE CHANGING LANDSCAPE OF TAKEAWAY ALCOHOLIC BEVERAGES IN THE UNITED STATES

ENGLES | KETCHAM  
OLSON | KEITH P.C.

Since the COVID-19 Pandemic, multiple states have approved new legislation approving restaurants and bars to sell to-go cocktails and alcoholic beverages. Prior to the pandemic, most states prohibited the sale of alcoholic beverages and cocktails by bars and restaurants; however, since the pandemic, many jurisdictions have approved the to-go sale of beer and liquor by these establishments on a permanent basis. According to Mike Whatley, Vice President of the National Restaurant Association, to-go alcoholic beverage sales were of paramount importance to restaurant and bar survival during the pandemic as alcohol sales are generally one of the highest margins in the industry. Since 2020, fourteen states and the District of Columbia have approved the sale of to-go alcoholic beverages on a permanent basis.

With the enactment of new legislation regarding the sale of alcoholic beverages, restaurants and bars should be aware of the local requirements of the legislation and how the laws of the individual jurisdiction may impact the to-go sale of wine, beer, and liquor, including the following potential issues that may be faced in the jurisdiction:

**•Licensing Requirements:** Many of the new statutes enacted require leasing and licensure for restaurants and bars to sell alcoholic beverages to go. For example, in Arizona bars and restaurants will need to apply for a lease and pay a fee in order to offer alcoholic beverages to go. Some jurisdictions, such as Nebraska and Wisconsin, have chosen to allow the sale of alcoholic beverages to patrons on a to-go basis if the restaurant or bar already holds a certain type of liquor license, and merely requires the licensee to provide notice of the to-go beverages at the time of annual renewal of the license. Restaurant and bars wishing to offer takeout alcohol will need to familiarize themselves with the

licensing requirements of its jurisdiction and determine whether any new or additional licenses are necessary prior to offering this service.

**•Quotas:** Some of the legislation passed to permit sale of wine, beer and cocktails for off-premises consumption has statutory language enacting a quota on the number of licenses issued to permit such sales. For example, Montana House Bill 226 has limited the number of permits that will issue per geographic area.

**•Availability of Delivery:** Restaurants and bars will need to review the legislation to determine whether the legislation recently passed in their state has authorized the ability to deliver beer, wine and cocktails, as this differs from jurisdiction to jurisdiction. For example, Arizona House Bill 2773 and West Virginia House Bill 2025 permit restaurants with appropriate licensure and leasing agreements to deliver beer, wine and cocktails and permit them to utilize appropriate registered alcohol delivery contractors. Meanwhile, Montana House Bill 226 and Wisconsin Assembly Bill 32 only authorize curbside pickup of alcoholic beverages to be consumed off-premises, do not intend to authorize delivery to residences or other businesses. Some state legislation, such as Arkansas Act 703, have limitations prohibiting the use of third-party delivery services making delivery of alcoholic beverages. Restaurants and bars will want to check the language of the legislation to ensure their to-go beer, wine and cocktail delivery is in compliance with local legislation.

**•Restrictions on Sales to Individuals in Vehicles:** Some jurisdictions may have restrictions on sales to patrons in vehicles that the establishments should be aware of before commencing to-go sales of alcoholic beverages. In Nebraska Legislative Bill 274, alcoholic beverages can only be sold to

patrons in vehicles if the alcoholic beverage is sold with food, if the motor vehicle is in park, if the liquor is placed in the trunk of the vehicle or in an area behind the last upright seat. Similar restrictions are contained in Oklahoma House Bill 2122 and Texas House Bill 1024. Iowa House File 2540 and Ohio House Bill 669 create a criminal penalty for customers who are consuming mixed drinks or cocktails that are not in compliance with passenger area of motor vehicle rules in the bill.

**•Containers:** Some jurisdictions have placed restrictions on what type of containers may be used in the sale of to-go alcoholic beverages. In Kansas House Bill 2137, liquor retailers and restaurants must sell alcohol in either unopened original containers or in refillable and sealable containers that discourage tampering. Oklahoma House Bill 2122 and Texas House Bill 1024 have similar restrictions, requiring alcoholic beverages to be contained in “rigid” and “tamper-evident” containers. Iowa expressly prohibits the sale of to-go alcoholic beverages in paper or plastic cups or containers outfitted with a straw or sipping hole. Restaurants and bars seeking to expand into to-go liquor sales should confirm if their location requires any specific containers for to-go offerings that must be utilized.

**•What Type of Alcohol Can Be Sold Under New Laws:** Restaurants and bars looking to develop to-go liquor sales should also check with the jurisdiction’s local rules regarding whether there are limitations on what type of alcohol can be sold. For example, in Arizona, restaurants and bars must possess a specific type of lease in order to sell full bottles of spirits for customers to take home.

**•Food Purchases:** Restaurants should also be aware if newly enacted legislation requires that food be sold along with alcoholic beverages pursuant to local state statutes. Some have concerns that the enactment of to-go alcohol legislation could lead to excess drinking, and a required simultaneous food purchase could limit the intoxicating effects. For example, the Texas, Arizona, Arkansas, and Kentucky statutes require food to be sold with to-go alcohol sales.

**•Number of Drinks Purchased:** Restaurants and bars will also want to check whether their jurisdiction has a limitation on the number of alcoholic beverages that can be purchased per order. For example, Kentucky Senate Bill 67 limits the sales of liquor per order to a number that “a reasonable person would purchase with a meal.” Ohio House Bill 669 has a three-drink limit per meal sold, and Georgia Senate Bill 236 permits the sale of two drinks per meal sold containing no more than 3 ounces of alcohol each.

**•Timing of Alcohol Sales:** Some new legislation places restrictions on the timing of the sale of alcohol that

restaurants and bars will want to familiarize themselves with. For example, West Virginia House Bill 2025 allows the sale of liquor to occur between 6:00 a.m. and 2:00 a.m. Florida Senate Bill 148 cuts off the sale of alcohol either when the restaurant’s food or bar service ends for the day or 12:00 a.m., whichever comes first.

**•Underage Alcohol Sales:** Some organizations have also voiced concerns about the ability for underage patrons to access alcohol through to-go alcohol sales. As such, some legislation has placed certain safeguards to prevent the sale of alcohol to minors. For example, Iowa House File 2540 requires presentation of a valid driver’s license upon the pickup or delivery of alcoholic beverages and creates civil and criminal penalties for furnishing alcoholic beverages to underage patrons.

**•Dram Shop Liability:** Restaurants and bars will also want to be aware of its jurisdiction’s dram shop liability law as it considers exploring the use of to-go alcoholic beverages. As the alcoholic beverages are being taken to be consumed off premises, this could increase the purveyor’s potential liability for dram shop litigation. Restaurants and bars will want to ensure they are up to date on all dram shop liability laws and are properly insured in the event of a dram shop litigation.

The passage of to-go alcohol sales legislation requires all vendors to be aware of the specific requirements and liabilities posed by your individual jurisdiction, as the legislation varies greatly from jurisdiction to jurisdiction. Local legal counsel should be consulted with to ensure that retail and restaurant establishments follow the various regulatory and safety requirements proscribed by legislation and to consider any additional liabilities or exposure that may be experienced in the establishment’s jurisdiction.



**PAIGE HALL**

402.348.0900

[PHall@EKOKlaw.com](mailto:PHall@EKOKlaw.com)