
TITLE 4 ALCOHOLIC BEVERAGES AND MARIJUANA

DELAWARE ADMINISTRATIVE CODE

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DEPARTMENT OF STATE

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

500 Initial and Temporary Licensure

507 Licensing Third-party Delivery of Alcoholic Beverages

1.0 Purpose, Applicability and Findings

- 1.1 The purpose of this regulation is to establish procedures for the issuance of third-party delivery licenses under 4 **Del.C.** §512(a).
- 1.2 Only on-premise licensees with a license identified in 4 **Del.C.** §512(a) may contract with third-party delivery licensees to deliver alcoholic beverages to persons 21 years and older and not otherwise intoxicated. On-premise licensees, licensed pursuant to 4 **Del.C.** §512(a), may not themselves deliver alcoholic beverages to persons 21 years and older.
- 1.3 The Commissioner finds that certification cards issued by server training providers are revocable permits under the Delaware Liquor Control Act, as licenses, and may be subject to administrative sanctions, including suspension or revocation.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Commissioner" means the Alcoholic Beverage Control Commissioner.

"Delivery worker" means an independent contractor or payroll employee of a third-party delivery licensee who performs alcohol-delivery services within the scope of a contract or employment with that third-party delivery licensee.

"Fixed fee" means a pre-determined fee that is not dependent, directly or indirectly, on the sales, profits, or revenues earned by the on-premise licensee.

"Office" means the Office of the Alcoholic Beverage Control Commissioner.

"On-premise licensee" means, for purposes of this regulation, a licensee licensed at all times to sell and serve alcoholic beverages for consumption on the premises where sold pursuant to 4 **Del.C.** §512(a) that has entered into a written agreement with a third-party delivery licensee to deliver alcoholic beverages.

"Third-party delivery licensee" or **"TPDL"** means a third-party delivery vendor with a license issued by the Commissioner, authorizing it to arrange for the delivery of alcoholic beverages in original containers and cocktails-to-go in containers securely closed, as further defined by this regulation to customers on behalf of on-premise licensees.

"Third-party delivery vendor" or **"TPDV"** means an entity that arranges for delivery of food or beverages or both to customers.

3.0 Procedure and Requirements for Licensure

- 3.1 A third-party delivery vendor or TPDV shall pay the \$1,000 non-refundable application processing fee and submit a completed application form to be licensed as a third-party delivery licensee or TPDL, submit other documentation as required by the Commissioner, and submit the following:
 - 3.1.1 Sample agreement between TPDV applicant and on-premise licensee that shall include, at a minimum:
 - 3.1.1.1 All fees, costs, commissions, and other forms of compensation; and
 - 3.1.1.2 Responsibility for insurance and indemnity.
 - 3.1.2 Sample agreement between TPDV applicant and delivery worker that shall include, at a minimum:
 - 3.1.2.1 Delivery worker consent to background check; and
 - 3.1.2.2 Delivery worker consent to maintain a valid driver's license and adequate vehicle insurance coverage.
 - 3.1.3 Detailed description of all forms of compensation (e.g., delivery fees, delivery worker tips, etc.) from on-premise licensees and receiving customers, including routing or remitting payments.
 - 3.1.4 Proposed server training program for delivery workers for review and approval by the Commissioner.

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- 3.2 Any and all fees and other forms of compensation paid or anticipated to be paid to a TPDV by an on-premise licensee must be disclosed during the license application process.
- 3.3 Once approved as a TPDV, all executed agreements with on-premise licensees who wish to have alcoholic beverages delivered lawfully pursuant to 4 **Del.C.** §512(a) must be provided to the Office by the TPDV within 10 business day of execution. Any future contracts with on-premise licensees entered into after application approval shall also be filed with the Office by the TPDV within 10 business days of execution.
- 3.4 All TPDVs shall verify delivery worker eligibility, including that:
 - 3.4.1 Every delivery worker is 21 years or older, holds a valid driver's license and, for delivery workers who deliver using a motor vehicle, also holds a valid vehicle registration, and has adequate vehicle insurance coverage;
 - 3.4.2 All delivery workers undergo a criminal background check and driver history check by the TPDV or a vendor designated by the TPDV to conduct background checks;
 - 3.4.3 All delivery workers complete alcohol server training approved by this Office before delivering alcoholic beverages. The alcohol server training must be renewed in accordance with the Office's protocols.
- 3.5 Proof of general liability insurance with liquor liability endorsement. The TPDV must maintain sufficient general liability insurance with a liquor liability endorsement, which endorsement shall provide coverage for the conduct of, whether by act or omission, employees and independent contractors of the TPDV.
- 3.6 All records of delivery worker eligibility shall be maintained by the TPDV for 3 years.

4.0 Requirements for Delivery

- 4.1 Deliveries of alcoholic beverages are limited to 2 750-milliliter bottles of wine with each bottle limited to 750 milliliters, 6 servings of beer, and mixed cocktails which are made in the restaurant, brewpub, tavern, taproom, or other entity with a valid on-premise license that has entered into a delivery agreement with the TPDV. Canned, premixed cocktails are not permitted to be delivered. All on-premise licensees who provide alcoholic beverages for delivery must ensure that the beverages are in sealed containers, securely closed, and in a container that does not include a lid with sipping holes, pursuant to the Delaware Liquor Control Act and the Commissioner's regulations.
 - 4.1.1 TPDV must have a valid, executed written agreement or an independent contractor agreement with an on-premise licensee on file with this Office before the TPDV may make any deliveries of alcoholic beverages.
 - 4.1.2 TPDV must have a valid, executed written employment agreement or an independent contractor agreement with each delivery worker before the delivery worker may make any deliveries of alcoholic beverages.
- 4.2 Deliveries are prohibited to the following locations:
 - 4.2.1 State-operated facility;
 - 4.2.2 Correction and prison facilities;
 - 4.2.3 Hospital;
 - 4.2.4 Locker mailbox;
 - 4.2.5 Post office box;
 - 4.2.6 Package shipping or storage facility;
 - 4.2.7 Retail licensee licensed by this Office;
 - 4.2.8 All schools, including public, private, and charter schools through and including the 12th grade;
 - 4.2.9 Undergraduate housing at an institution of higher learning;
 - 4.2.10 Vacant home or building;
 - 4.2.11 Locations where alcoholic beverages are otherwise prohibited, such as places of public accommodation, public beaches, etc.; and
 - 4.2.12 Outside of the State of Delaware.
- 4.3 Process for delivery
 - 4.3.1 TPDV must transmit delivery-related information to delivery workers in real-time and alert them that an order contains an age-restricted alcoholic beverage.
 - 4.3.2 Delivery workers must have a copy of the invoice or bill of sale stating the name and address of the receiving customer and the type, brand, and quantity of each alcoholic beverage being delivered. Each

package of alcoholic beverages to be delivered must be clearly marked by the on-premise licensee, in 26-point legible type or larger, "CONTAINS ALCOHOL."

- 4.3.3 Delivery workers must verify that receiving customers are of legal age and are not visibly intoxicated before delivering alcoholic beverages. At a minimum, this includes electronic verification of a customer's identification as well as observable verification, i.e., "multifactor" verification.
- 4.3.4 Delivery workers must obtain the signature (electronic or paper) or "finger scan" of the receiving customer before handing over possession of the alcoholic beverages.
- 4.3.5 Delivery workers must refuse delivery to the customer and return the alcoholic beverage to the on-premise licensee if:
 - 4.3.5.1 The receiving customer is underage or intoxicated;
 - 4.3.5.2 The customer refuses to sign for delivery or to provide a valid and current I.D.;
 - 4.3.5.3 The third-party delivery licensee or its delivery worker doubts the authenticity of the customer's ID;
 - 4.3.5.4 There is reason to suspect the customer is accepting delivery on behalf of an underage person; or
 - 4.3.5.5 Other valid reason as determined by the third-party delivery licensee.
- 4.3.6 Delivery workers are prohibited from:
 - 4.3.6.1 Collecting payment for the alcoholic beverage from the receiving customer;
 - 4.3.6.2 Subcontracting or delegating to another person the delivery of alcoholic beverages;
 - 4.3.6.3 Delivering alcoholic beverages to prohibited locations identified in subsection 4.2 of this regulation;
 - 4.3.6.4 Leaving alcoholic beverages unattended or storing alcoholic beverages overnight under any circumstances;
 - 4.3.6.5 Delivering alcoholic beverages not identified in an invoice from the on-premise licensee who is the merchant of record for the delivery; and
 - 4.3.6.6 Engaging in no-contact deliveries without face-to-face interaction with the receiving customer.
- 4.3.7 The TPDL shall ensure all deliveries by its delivery workers occur only during the hours of operation of the on-premise licensee with whom it has contracted to deliver alcoholic beverages.
- 4.4 The third-party delivery licensee may receive a fixed fee as defined in Section 2.0 of this regulation for its delivery services.
- 4.5 The third-party delivery licensee does not have any retail sales privileges and therefore cannot charge a commission or receive a percentage of the proceeds from the sale of alcoholic beverages.
 - 4.5.1 The on-premise licensee must retain control of all aspects of alcoholic beverage commerce, including product selection, pricing, and collecting the sales proceeds.
 - 4.5.2 The Commissioner, upon request, may approve the third-party delivery licensees and on-premise licensees to use an integrated third-party payment processing platform (e.g., Stripe.com, Square.com or other platform) to aggregate their charges and bifurcate and remit the proceeds as appropriate (i.e., on-premise licensee is promptly remitted payment for sale of alcohol and third-party delivery licensee is remitted the fixed fee for the delivery of alcohol). The portion of the payment attributable to the alcoholic beverage purchase must be promptly remitted by the payment processing platform directly to the on-premise licensee, defined to mean the remittance would take place within 72 hours of the sales transaction.
- 4.6 The TPDL is prohibited from:
 - 4.6.1 Selling or reselling alcoholic beverages; and
 - 4.6.2 Setting the prices of alcoholic beverages or determining which beverages are available for delivery.

5.0 Recordkeeping Requirements

- 5.1 TPDs shall retain electronic records of each delivery for 3 years from the date of delivery and make available to the Division of Alcohol and Tobacco Enforcement or DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations. The record of each delivery shall include the following:
 - 5.1.1 On-premise licensee's name and address;
 - 5.1.2 Name of customer who placed the order and the date, time and method of the order;
 - 5.1.3 Name of delivery worker and the date, time and address of the delivery; and
 - 5.1.4 Type, brand, and quantity of each alcoholic beverage delivered.

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5.1.5 Age verification data collected under subsection 4.3.3 of this regulation.

- 5.2 The TPDL shall retain electronic records of every on-premise licensee agreement for 3 years and make them available to DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations.
- 5.3 The TPDL shall retain an electronic record of all delivery workers by name and address, and eligibility records for 3 years, and make them available to DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations.
- 5.4 DATE may also request a copy of a delivery worker's server training certificate at any time.
- 5.5 The TPDL shall store electronic records in a manner that allows for retrieval and production of requested records within 10 business days of receiving a request for records by DATE, unless a variance to subsection 5.5 of this regulation has been requested for good cause shown and approved.

6.0 Administrative Procedures

- 6.1 DATE agents have the authority to administratively cite any TPDL or delivery worker for violating provisions of the Delaware Liquor Control Act or Commissioner regulations. The TPDL will also be held administratively liable for the violative actions or omissions of its delivery workers if those actions or omissions are contrary to the conditions of license issuance, the Delaware Liquor Control Act, or the Commissioner's regulations.
- 6.2 A certified server trained delivery worker who violates the Liquor Control Act or Commissioner regulations shall be notified of the alleged violation by the investigating agent as promptly as is possible.
 - 6.2.1 A Notice of Violation will be mailed "Return Receipt Requested" to the delivery worker. The delivery worker shall have 10 working days after receipt of the notice to request a hearing by the Commissioner.
 - 6.2.2 Should a delivery worker fail to request a hearing after receiving notice in conformity with 29 **Del.C.** §10122, the delivery worker shall be assessed by the DATE the sanction listed in subsection 6.3 of this regulation which may then be ratified by the Commissioner at the next regularly scheduled meeting.
 - 6.2.3 If a delivery worker timely requests a hearing before the Commissioner pursuant to 29 **Del.C.** §10125, the delivery worker shall be placed on the next available agenda before the Commissioner and shall retain the rights set forth in 29 **Del.C.** §10122.
- 6.3 Sanctions
 - 6.3.1 In addition to the Commissioner's power and authority to cancel or suspend a license, or impose a fine, or both against a licensee, including a TPDL, if the Commissioner finds that a delivery worker has violated the Delaware Liquor Control Act or Commissioner regulations, the Commissioner may, in addition to the power to impose a fine, suspending or canceling the TPDL's license, impose any or all of the sanctions in subsections 6.3.1.1-6.3.1.2:
 - 6.3.1.1 Require that delivery workers re-take the mandatory server training program; or
 - 6.3.1.2 Suspend or cancel the server training certification of the delivery worker for a period determined by the Commissioner.
 - 6.3.2 Suspension or cancellation of the server training certification of a delivery worker shall preclude that person from employment as a delivery worker pursuant to this regulation. Any TPDL employing a delivery worker whose server training certification has been suspended or canceled may be subject to administrative sanctions pursuant to 4 **Del.C.** Ch. 12.

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