



How to Regulate Alcohol Delivery

By C. Jarrett Dieterle

Finding the right mix of governing principles can be the difference between a flourishing marketplace and one bogged down in unnecessary and counterproductive red tape.

Executive Summary

Alcohol delivery took off with the advent of the COVID-19 pandemic. The majority of states passed rules that allowed restaurants and other retailers to deliver alcohol directly to consumers. These rules came first in the form of emergency orders, then via legislation. Now that delivery alcohol is firmly entrenched across the country, state lawmakers and regulators are continuing to assess potential options for how to best regulate the delivery of these beverages.

While alcohol has long been regulated at the state and local level, the on-demand delivery of alcoholic beverages—often known as the “fourth tier” in the alcohol-distribution system—does not have established regulatory practices. As with any new technology or legal change, finding the right mix of governing principles can be the difference between a flourishing marketplace and one bogged down in unnecessary and counterproductive red tape.

Table of Contents

Executive Summary	1
Introduction	2
The Current Debate Around Alcohol Delivery	2
A Model for the 21st Century	4
Delivery Licenses or Permits	4
ID Verification and Underage Access	6
Overserving	8
Driving Training and Qualifications	10
Insurance	11
Hours of Sale	12
Conclusion	13
About the Author	13
Table 1: Summary of Best Practices	13

This paper reviews the most salient topics in this regulatory arena—including delivery licenses and permits, ID verification, overserving, driver training and qualifications, insurance, and hours of sale—to provide a set of recommendations for how best to regulate alcohol delivery. These governing principles can provide a framework for industry growth, while protecting public health and safety—goals that need not be mutually exclusive.

Introduction

More than three years after the start of the COVID-19 pandemic, to-go and delivery alcohol are becoming more commonplace. The pandemic ushered in a massive reform wave in which states and localities revamped rules around takeout alcohol as well as alcohol delivered to consumers' doorsteps.¹

While alcohol delivery appears to be here to stay, that does not mean that the debates around it have ceased or that efforts to hinder delivery are necessarily subsiding. In many states, the locus of attention has shifted from discussions around allowing alcohol delivery to debates on how that delivery should be regulated now that it exists.

As many regulated industries can attest, deeming something legal does not mean that it will be allowed to exist in a viable form. Poor regulatory models can limit the ability of private marketplace actors to provide valuable goods and services to the public.

Alcohol delivery is no different. While many states are seeking to implement reasonable and appropriate regulations, some regulatory proposals are impractical and overly burdensome. Policymakers therefore need to protect public health and safety while also ensuring that alcohol delivery given the opportunity to become a workable and dynamic service model for both businesses and consumers.

With America's 50-state system—and the fact that alcohol is one of the largest industries primarily regulated at the sub-national level—few have cohesively discussed how best to regulate alcohol delivery.² To understand what works best, it is important to first understand the current lay of the land.

The Current Debate Around Alcohol Delivery

Alcohol delivery has expanded rapidly since the advent of COVID-19 in early 2020. Before COVID-19, no state allowed alcohol to be delivered from on-premise establishments like restaurants or bars. By fall of 2022, 38 states had passed reforms that either made delivery alcohol from on-premise establishments permanent or that extended permissibility for at least two years.³



Poor regulatory models can limit the ability of private marketplace actors to provide valuable goods and services to the public.

1. C. Jarrett Dieterle, "Capturing the COVID Booze Wave, Part 2—It's Tsunami Time," R Street Institute, Sept. 16, 2022. <https://www.rstreet.org/commentary/capturing-the-covid-booze-wave-part-2-its-tsunami-time>.

2. Chris Edwards, "Entrepreneurs and Regulations: Removing State and Local Barriers to New Businesses," *Cato Institute Policy Analysis* No. 916, May 5, 2021. <https://www.cato.org/sites/cato.org/files/2021-05/pa-916.pdf>.

3. Ibid.

Alcohol delivery from off-premise outlets like grocery stores was more common pre-pandemic, but this form of alcohol delivery likewise saw an expansion, with 35 states allowing delivery pre-COVID-19, and 43 states allowing it by 2022.⁴ Similarly, delivery from alcohol producers such as breweries and distilleries also expanded.⁵

Despite the rapid expansion and popularity of alcohol delivery, some still oppose it or want it to be regulated with a punitive hand.⁶ While opponents of delivery have yet to succeed in repealing any alcohol-delivery laws that came about during and after COVID-19, delivery can still be severely handicapped and even made non viable if it is forced to labor under burdensome regulatory models that do more harm than good.

It is worth noting that alcohol has long been a regulated substance for obvious reasons. Its intoxicating properties, if misused, create potentially negative externalities that can impact the health and well-being of the populace. The most obvious example is drunk driving, in which the misuse of alcohol can lead to injury and death.⁷ Other cited negative externalities involving alcohol include harmful over-consumption and the potential for underage individuals to access and drink the substance.⁸

While all of these concerns should command the attention of policymakers, it is critical to evaluate the data to determine how the evidence relates to alcohol delivery. Over the years, many researchers have studied the health effects of alcohol, but there has been little effort to specifically analyze the potential externalities, or lack thereof, of alcohol delivery.⁹

The R Street Institute undertook a series of research projects to empirically evaluate whether alcohol delivery or to-go alcohol has contributed to various possible negative externalities. Overall, we found no clear evidence to suggest that alcohol delivery is connected to higher drinking rates, more youth drinking, or greater incidents of drunk driving. For instance, there was no evidence that overall alcohol consumption rates were higher in states that allowed alcohol delivery during the pandemic than they were in those that forbade it.¹⁰ Likewise, there was no clear correlation between underage drinking and alcohol delivery.¹¹



There was no evidence that overall alcohol consumption rates were higher in states that allowed alcohol delivery during the pandemic than they were in those that forbade it.

4. Ibid.

5. Ibid.

6. Edgar Domenech, "Keep New York State's strong liquor laws intact," *Daily News*, Nov. 28, 2022. <https://www.nydailynews.com/opinion/ny-oped-ny-liquor-laws-20221128-gadzskspk5dvljzqkjucltvuqm-story.html>; The Police Benevolent Association of New York State Troopers, "Memorandum of Opposition S589/A3806/A3116," May 6, 2021. https://cdn.ymaws.com/www.metropsa.org/resource/resmgr/files/Troopers_PBA_Letter_Opposing.pdf; Patrick Maroney, "'Crisis De-Regulations' Should They Stay, or Should They Go?," Center for Alcohol Policy, June 2020. https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/06/An-Essay-on-the-Current-Alcohol-Industry-Dilemma_FINAL-6-9-2020-1.pdf.

7. Thomas K. Greenfield et al., "Externalities from Alcohol Consumption in the 2005 US National Alcohol Survey: Implications for Policy," *International Journal of Environmental Research and Public Health* 6:12 (December 2009), pp. 3205-3224. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800345>.

8. Kari M. Glöppen et al., "Assessing the Costs of Excessive Alcohol Consumption in Minnesota," *American Journal of Preventive Medicine* 63:4 (Aug. 10, 2002), pp. 505-512. [https://www.ajpmonline.org/article/S0749-3797\(22\)00295-1/fulltext](https://www.ajpmonline.org/article/S0749-3797(22)00295-1/fulltext).

9. Robert H. Shmerling, "Sorting out the health effects of alcohol," Harvard Health Blog, Nov. 3, 2020. <https://www.health.harvard.edu/blog/sorting-out-the-health-effects-of-alcohol-2018080614427>.

10. C. Jarrett Dieterle, "The Data Is In: Alcohol Delivery and Consumption During COVID-19," *R Street Shorts* No. 127, April 2023. <https://www.rstreet.org/wp-content/uploads/2023/04/policy-short-no-127-R3-1.pdf>.

11. C. Jarrett Dieterle, "The Facts About Drunk Driving," *R Street Shorts* No. 114, June 2022. https://www.rstreet.org/wp-content/uploads/2022/06/ULTIMATE_policy-short-no-114-REVD.pdf.

In terms of drunk driving, alcohol delivery is likely to reduce its prevalence, as consumers who want alcohol can simply have it brought to them, rather than attempting to get behind the wheel after a few drinks. In analyzing the data, there was again no discernible connection between alcohol delivery and alcohol-induced driving fatalities.¹²

Of course, none of this is to suggest that alcohol has zero potential negative externalities and should not be regulated. As noted, it makes sense to regulate alcohol to protect public health and safety. It is simply important to do so by understanding the context and evidence available to develop a safe and effective governing model. Alcohol has been regulated for centuries, and as technology and the marketplace change to allow things like on-demand delivery, it is vital to create nuanced, thoughtful approaches to regulating alcoholic beverages.¹³

A Model for the 21st Century

When it comes to developing a regulatory model for alcohol, it is best to break it down by issue area. Among states that have enacted rules for alcohol delivery, the following issues predominate: delivery licenses or permits, ID verification, overserving, driver training and qualifications, insurance, and hours of sale. Each of these will be addressed below to provide a set of best practices for policymakers considering how to regulate delivery.

Delivery Licenses or Permits

Alcohol has traditionally been regulated via a licensing process, with its roots tracing back as far as 16th century England.¹⁴ The licensing of drinking establishments proliferated in early America as well, and again in the wake of Prohibition when alcohol was legalized once more.¹⁵ Today, to sell alcoholic beverages, stores or restaurants first need to obtain the requisite licenses from state and local regulators.¹⁶

Licensing or permitting schemes operate as mechanisms to place the onus on private actors to limit any negative impacts from the goods and services they provide:

Part of the impetus for a licensing regime is to transfer regulatory responsibility over potential negative externalities associated with alcohol from government officials to private actors ... The idea being that private businesses have an inherent vested interest in controlling negative externalities related to their products to ensure the continuation of their businesses. And, for this reason, licensing often receives less scrutiny than other forms of governmental power.¹⁷



To sell alcoholic beverages, stores or restaurants first need to obtain the requisite licenses from state and local regulators.

12. Ibid.

13. "Alcohol and society," *Britannica*, last accessed Jan. 10, 2024. <https://www.britannica.com/topic/alcohol-consumption/Alcohol-and-society>.

14. C. Jarrett Dieterle, "Revisiting Alcohol Licensing Caps in 21st Century America," *R Street Policy Study* No. 228, May 2021. https://www.rstreet.org/wp-content/uploads/2021/05/29April21_Final_RSTREET228.pdf.

15. Ibid.

16. "How to Obtain a Liquor License," *WebrestaurantStore*, June 6, 2023. <https://www.webrestaurantstore.com/article/206/how-to-get-a-liquor-license.html>.

17. Dieterle, "Revisiting Alcohol Licensing Caps in 21st Century America." https://www.rstreet.org/wp-content/uploads/2021/05/29April21_Final_RSTREET228.pdf.

The government’s enforcement tool in this arena is the ability to revoke or rescind a license or permit, thereby effectively putting the licensed establishment—at least temporarily—out of business.

Today, all tiers of the alcohol-distribution system require a license to operate: producers, wholesalers, and retailers. When a delivery company is added to the mix, it creates a “fourth tier,” which takes the alcohol from a retailer (such as a restaurant or grocery store) to a consumer’s home. This leads us to question whether this fourth tier also require a license or permit.

So far, the states that have allowed alcohol delivery have been split on this question, with 17 requiring a permit or license of some kind.¹⁸ One can certainly debate the merits of whether the licensure system is the best setup for regulating alcohol, but this process is unlikely to change anytime soon. It therefore makes sense to require delivery companies to obtain some form of license or permit to deliver alcohol that the regulatory structure parallels treatment of other tiers in the alcohol-distribution system.

But how this license or permit is structured needs to be carefully thought out. The license or permit should attach to the delivery company, not to individual drivers. There are several reasons for this. First, requiring each individual driver to obtain a permit is simply unrealistic—the part-time driver who logs onto a delivery app to deliver from 6pm to 8pm twice a week in an effort to earn a little side money is unlikely to take the time to register and apply for a government license.

Second, the administrative burden of ensuring every driver has a copy of their license in their vehicle at all times would be immense. Would paper copies be required, like most existing liquor licenses you see framed behind bars? Where would these be kept inside the car, and what if they got lost? Third, this type of structure would run counter to the prevailing alcohol licensure system. Mandating that every individual driver be licensed would be analogous to every waiter and table runner at a restaurant being required to obtain an individual license.

Instead, the license or permit should attach to the delivery company. In this case, it can be used as a regulatory enforcement mechanism in the same way that it is for the other tiers in the alcohol industry. If a delivery company violates state alcohol laws, for instance, it will run the risk of having its license revoked and being put out of business in that state.

One final component worth considering is the cost of the license or permit. Most states that have enacted licensing schemes for delivery have charged a modest price for them. Legislation introduced in states like California, however, has proposed licensing fees of up to \$20,000—an amount that appears to have no justification other than as a backdoor way to raise revenue for the state.¹⁹



The license or permit should attach to the delivery company. In this case, it can be used as a regulatory enforcement mechanism in the same way that it is for the other tiers in the alcohol industry.

18. Matthew Bruner, “2023 NCSLA Conference Recap,” Fintech, June 22, 2023. <https://fintech.com/blog/2023-ncsla-conference-recap>.

19. Sen. Bill 846, 2021-2022, Reg. Sess., 2022 Cal. State. <https://legiscan.com/CA/text/SB846/id/2599261>.

Licensure should not be treated as a form of stealth taxation; it is a regulatory tool that needs to be wielded appropriately and judiciously.

As alcohol delivery continues to establish itself as part of American culture, it is reasonable for delivery companies to apply for a license or permit that is relatively straightforward to obtain and priced fairly.

ID Verification and Underage Access

Perhaps the biggest hot-button issue surrounding alcohol delivery is the concern that delivery could make it easier for underage drinkers to obtain alcohol. This fear seems to stem from the prospect of children secretly ordering alcohol via their parents' delivery apps.

Seemingly on cue, the media caught hold of several high-profile “decoy operations” conducted during the pandemic by alcohol enforcement officers in various states, such as California and Virginia. These decoy operations showed concerning results, suggesting that well over half of the monitored alcohol deliveries ended up in the hands of minors.²⁰

Unfortunately, these undercover operations had something else in common: They were based on extremely limited sample sizes. Virginia’s operation consisted of a mere 52 delivery transactions in one small geographic region; California’s was barely larger at 200 transactions. To put this in context, the populations of Virginia and California are 8 million and 39 million, respectively.²¹ Both states clearly recognize the need for much larger sample sizes for decoy operations at on-premise establishments like restaurants and bars. In the first three-quarters of 2023, Virginia conducted over 2,000 on-premise decoy operations for underage drinking.²² Similarly, California has conducted over 6,000 such decoy operations for on-premise establishments.²³

We attempted to create a more national and expanded dataset to study the potential effects of alcohol delivery on underage drinking. This has been the only comprehensive, nationwide attempt to measure the impact of COVID-era alcohol reforms on youth drinking. Using the Center for Disease Control’s and Prevention Youth Risk Behavior Surveillance System (YRBSS) survey, which asks high schoolers across the country whether they currently drink alcohol, we were able to create a pre- and post-COVID-19 comparison.²⁴

First, underage drinking notably fell across the board from 2019 to 2021.²⁵ Further, American underage drinking rates have dropped precipitously over the past few decades: In the early 1990s, over 50 percent of American high schoolers



The first three-quarters of 2023, Virginia conducted over 2,000 on-premise decoy operations for underage drinking. In contrast, it used a sample size of merely 52 such operations to evaluate underage sales for delivery.



California has conducted over 6,000 annual decoy operations for on-premise establishments in recent years, compared to just 200 for evaluating delivery compliance.

20. Dieterle, “Alcohol Delivery and Underage Drinking: A COVID-19 Case Study.” <https://www.rstreet.org/wp-content/uploads/2023/07/policy-short-no-128-R5-1.pdf>.
21. “QuickFacts: Virginia,” United States Census Bureau, July 1, 2022. <https://www.census.gov/quickfacts/fact/table/VA/PST045222>; “QuickFacts: California,” United States Census Bureau, July 1, 2022. <https://www.census.gov/quickfacts/fact/table/CA/PST045222>.
22. Virginia Alcoholic Beverage Control, “Quarterly Report: 3rd Quarter,” Bureau of Law Enforcement, 2023. https://www.abc.virginia.gov/library/enforcement/pdfs/quarterly-reports/2023/quarterly-report-2023_3q_draft-2.pdf.
23. “Underage Drinking,” California Department of Alcoholic Beverage Control, last accessed Dec. 13, 2023. <https://www.abc.ca.gov/enforcement/underage-drinking>.
24. “Youth Risk Behavior Surveillance System (YRBSS),” Centers for Disease Control and Prevention, April 27, 2023. <https://www.cdc.gov/healthyyouth/data/yrebs/index.htm>.
25. Dieterle, “Alcohol Delivery and Underage Drinking: A COVID-19 Case Study.” <https://www.rstreet.org/wp-content/uploads/2023/07/policy-short-no-128-R5-1.pdf>.

drank alcohol; today, it is closer to 30 percent.²⁶ Beyond these macro trends, we found a lack of any demonstrable correlation between alcohol delivery and underage drinking stemming from COVID-era delivery reforms.²⁷

This context is worth keeping in mind when evaluating potential underage access concerns involving alcohol delivery. Underage buyers have found ways to purchase alcohol for generations at brick-and-mortar stores, and there is no inherent reason why the delivery context should be viewed as more susceptible to illegal purchases.

Nonetheless, it is important that good identification protocols are established and implemented. Companies specializing in alcohol delivery have various systems in place for ensuring that underage buyers cannot obtain alcohol. Most delivery companies require their delivery drivers to scan the ID of every buyer before transferring the alcohol—even going so far as to restrict the sale from going through until a scan is registered.²⁸

ID scanning technology has taken off in recent years, and it is an important tool in the ID verification toolkit. But it should not be the only one: Drivers also should engage in a visual verification of the ID to confirm the buyer is of-age and that the ID being scanned shows the same person as the one receiving the delivery. It is likely that issues with alcohol deliveries to underage buyers can be traced to a lack of visual ID verification by a delivery driver.

While delivery companies require both a scan and a visual check, it is paramount that they confirm that their delivery drivers are not just scanning IDs but also taking the time to engage in the additional visual verification. Training delivery personnel to perform visual ID verification is no different than training brick-and-mortar retail personnel to do so. Some restaurants and bars choose to deliver alcohol via on-staff employee drivers rather than working with a third-party delivery company. Many of these businesses lack the ability to employ scanning technology, further underscoring the that of a visual ID check.

For their part, regulators need to work with, rather than against, delivery companies and restaurants to discuss feasible and streamlined ways to ensure drivers are engaging in these visual checks. While the government may be able to impart helpful knowledge about what key visual cues to look for on an ID, it needs to resist the temptation to use one-size-fits-all solutions. For instance, instead of merely requiring ever-more-complex driver training about how to conduct ID checks, the use of repeated “push notifications” within a delivery app platform may be more effective. These notifications can operate by popping up on the screen of the driver’s phone and prompting them in some way to engage in a visual assessment of the buyer’s ID.



While the government may be able to impart helpful knowledge about what key visual cues to look for on an ID, it needs to resist the temptation to use one-size-fits-all solutions.

26. “Trends in the Prevalence of Alcohol Use National YRBS: 1991—2019,” Centers for Disease Control and Prevention, Aug. 20, 2020. https://www.cdc.gov/healthyyouth/data/yrbs/factsheets/2019_alcohol_trend_yrbs.htm.

27. Dieterle, “Alcohol Delivery and Underage Drinking: A COVID-19 Case Study,” <https://www.rstreet.org/wp-content/uploads/2023/07/policy-short-no-128-R5-1.pdf>.

28. Stephen Johnson, “Will Delivery Services Let Your Kids Order Alcohol?,” LifeHacker, July 26, 2022. <https://lifelifehacker.com/will-delivery-services-let-your-kids-order-alcohol-1849328630>.

While some level of driver training is appropriate, an ID verification training course completed six months in the past is likely to be less durable in the long term than a recurring, in-the-moment prompt to check the buyer's ID during a delivery. Such prompts could also include reminders and tips for the key things to look for on an ID. Perhaps even experimenting with concepts like having the driver manually enter the date of birth of the buyer—which requires them to look at the license—could be explored on a trial basis to assess any potential impact on underage sales. Companies might also pilot test paying drivers a modest sum to return alcohol to its origin point if the buyer cannot produce an ID, creating a compliance incentive.

In an era when some sports stadiums are using biometric age verification in the form of facial recognition software for alcohol purchases, this issue will almost certainly continue to evolve in the years ahead based on technological advances.²⁹ This could increasingly take the element of human error out of the visual ID verification process, such as by allowing a driver to take a picture of a buyer's license as well as the buyer's face to ensure a match. However, this type of innovation would surely raise data privacy concerns, which in turn would require regulators and companies to further develop thoughtful policies in this sphere.

Although underage drinking is the aspect of alcohol delivery most likely to grab media headlines, it is also an eminently tractable issue. Training drivers in basic ID verification techniques—and then repeatedly prompting them to follow-through with tools like push notifications during a delivery—is the best road forward. These steps, combined with the use of scanning technology, or even as-yet-undeveloped technological innovations, can ensure high IDing compliance rates for alcohol delivery.

Overserving

States also forbid the sale of alcohol to intoxicated customers via delivery.³⁰ To understand this issue, one must first understand the different types of potential liability at play with alcohol sales.

To many, the concept of “overserving” is synonymous with “dram shop liability” laws—also known as “commercial host liability” laws. These laws hold alcohol retailers like bars and restaurants responsible for harm caused by intoxicated patrons. The canonical example of this is a bartender serving a clearly drunk person one too many beers and that person being involved in a drunk driving accident on the way home.³¹

Dram shop laws are distinct, however, from what are usually called “sales to intoxicated persons” (SIP) laws. Unlike dram shop liability, SIP laws make serving of alcohol to an intoxicated person itself a crime. SIP and dram shop rules are



Instead of merely requiring ever-more-complex driver training about how to conduct ID checks, the use of repeated “push notifications” within a delivery app platform may be more effective.

Dram Shop Liability

comes into play if alcohol is served to an intoxicated person who then injures a third party.

SIP Laws

make serving of alcohol to an intoxicated person a crime.

29. Jennifer A. Kingson, “Buying booze? Your face — or palm — could verify your age,” *Axios*, July 25, 2023. <https://www.axios.com/2023/07/25/alcohol-biometric-scan-face-palm-age-recognition#>.

30. “Delivery Personnel Information,” Virginia Alcoholic Beverage Control Authority, last accessed Dec. 13, 2023. <https://www.abc.virginia.gov/licenses/retail-resources/delivery-regulations/delivery-personnel-information>.

31. “Dram shop rule,” Legal Information Institute, last accessed Dec. 13, 2023. https://www.law.cornell.edu/wex/dram_shop_rule.

often linked, for instance, in dram shop cases where a finding that a bar violated SIP law is a prerequisite of a dram shop claim.³²

This delineation between dram shop and SIP liability is particularly important in the context of alcohol delivery. By far the most likely injury to a third party from overserving an intoxicated person is the increased risk that it creates for a drunk driving accident. In the delivery context, the entire point is to bring the alcohol to a person, eliminating the driving component. The main risk from overserving in this context would be a customer or acquaintance drinking to the point of hurting themselves from a condition such as alcohol poisoning.

There may still be circumstances, of course, in which a third party could be injured with delivery, but if dram shop liability is to apply, policymakers will need to grapple with the thorny legal causation issues that would come into play. For instance, if a person had alcohol delivered to their house and then later tried to drive and got in a drunk driving accident, how would law enforcement know whether the alcohol they drank was from the delivery or from preexisting stores? What if it was a friend that was at the recipient's house who got in the accident driving home? In the latter case, a delivery driver may never have seen the recipient's friend at all when making the delivery, further convoluting the chain of causation. These circumstances are far different from the clear causation of a bartender serving numerous house margaritas to a patron over the course of several hours. In the latter case, the restaurant's alcohol and the bartender's actions clearly contributed to the inebriation.

Outside of the dram-liability context, the enforcement of pure SIP laws is relatively rare but nonetheless worth reviewing given the application to alcohol delivery.³³ Delivery drivers interact with a customer only at the point of sale—a fleeting transaction that lasts just a few minutes. Accordingly, there is an extremely small window in which a delivery driver can assess a person's level of intoxication, not to mention its cause (e.g., the consumer's intoxication could be caused by cannabis consumption rather than alcohol).

While some privacy advocates may argue from a civil liberties perspective that it is no one else's business what someone does inside their own home, it seems unlikely that SIP laws will be completely abandoned in the delivery context. However, it is worth thinking through whether SIP laws for delivery should be more limited and targeted than those that apply in settings where a customer is in a place of public accommodation. Most SIP laws involve two different varieties of penalties—criminal penalties and administrative penalties. Criminal penalties can result in jail time, whereas administrative penalties often come in the form of sanctions on the licensee.³⁴



Most SIP laws involve two different varieties of penalties—criminal penalties and administrative penalties.



Criminal penalties can result in jail time.



Administrative penalties often come in the form of sanctions on the licensee.

32. "Commercial Host (Dram Shop) Liability FAQ," ChangeLab Solutions, last accessed Dec. 13, 2023. <http://alcohol-psr.changelabsolutions.org/alcohol-psr-faqs/commercial-host-dram-shop-liability-faq/underage-furnishing-and-sales-to-intoxicated-persons-laws>.

33. James F. Mosher et al., "An Update on Laws Prohibiting Alcohol Sales to Intoxicated Persons," Bloomberg School of Public Health, December 2011. https://wwwapp.bumc.bu.edu/BEDAC_Camy/_docs/resources/reports/alcohol-availability/sip-report-update-on-laws-prohibiting-alcohol-sales-to-intoxicated-persons.pdf.

34. James Mosher et al., "Laws Prohibiting Alcohol Sales To Intoxicated Persons," U.S. Department of Transportation, June 2009, pp. 14-17. <https://www.nhtsa.gov/sites/nhtsa.gov/files/811142.pdf>.

Legislators and governments should consider whether focusing on administrative penalties over criminal penalties might be a more appropriate approach to SIP laws when it comes to delivery. Another option could be the use of civil penalties, such as fines, instead of charging delivery personnel with crimes and potential jailtime. Throwing someone in jail for up to 3 years—the potential maximum for violating New Jersey’s SIP law, with other states ranging from 6 months to a year—for a 3-minute interaction with a customer does not seem reasonably tailored to advancing the public interest.³⁵

It's also worth considering what might happen if a delivery driver refuses to sell to an inebriated buyer. It is possible that the frustrated drinker may get behind the wheel of a car to go and purchase alcohol elsewhere. In other words, disproportionate enforcement of such rules in delivery contexts could increase negative externalities like drunk driving, rather than reduce them. At the very least, policymakers need to confront these questions and issues, rather than automatically importing laws from other contexts to the delivery arena.

Driving Training and Qualifications

If delivery drivers are expected to adequately conduct ID checks or know what to look for in terms of intoxication, then those drivers need to be taught how to do so. There is little debate over the importance of driver training, but what type of training is needed and who should be doing the training is less clear.

Some lawmakers have been pushing for delivery drivers to be required to take what’s known as a Responsible Beverage Service (RBS) course, which is the standard training protocol in the restaurant industry for servers and bartenders.³⁶ But training delivery drivers in the same way as bartenders makes little sense. For instance, RBS courses include training on “intervention techniques” when dealing with an inebriated customer, lessons on “how alcohol affects the body” over time, and a primer on state drunk driving laws.

As noted above, delivery drivers operate at the point of sale—usually a customer’s doorstep—for a fleeting transaction that rarely lasts more than a few minutes. After that point, they are no longer in contact with the customer in any way. It is therefore less relevant to train them on how alcohol affects the human body over many hours. Teaching them about drunk driving laws makes even less sense because the entire point of delivery is to bring the alcohol to the customer, rather than the customer driving somewhere to obtain it after a few drinks.

As such, delivery-specific training should be developed. Determining the proper regulatory role here is essential. While some regulators may be tempted to develop and administer their own delivery training courses, this is a particularly poor idea in the delivery context. Each delivery company uses unique app-based



While some regulators may be tempted to develop and administer their own delivery training courses, this is a particularly poor idea in the delivery context.

35. Ibid., p. 15.

36. C. Jarrett Dieterle, “California’s Latest Attempt to Regulate To-Go Cocktail Freedom,” Orange County Register, July 21, 2022. <https://www.ocregister.com/2022/07/21/californias-latest-attempt-at-to-go-cocktail-freedom>; “Responsible Beverage Service (RBS) Training Program,” California Department of Alcoholic Beverage Control, last accessed Dec. 13, 2023. <https://www.abc.ca.gov/education/rbs>.

technology and platforms, and no two are identical. A one-size-fits-all training course that is not tailored to how the specific delivery app works is likely to both confuse and frustrate drivers.

A better route is to allow delivery companies to develop training courses tailored to their technological platforms. The curricula for these training courses could then be submitted to regulators as part of the delivery company's application for a delivery license or permit. To the extent government should play a role in driver training, it is in reviewing and signing off on the courses developed by each applicant for a delivery license. The state could potentially mandate that certain topics be included in the course, such as how to visually verify an ID. If these topics were not sufficiently covered in the training, then the license would be withheld until the defect is remedied.

One additional issue worth discussing is the age of delivery drivers. In many states, restaurant servers and grocery store clerks only need to be 18 to serve alcohol.³⁷ It makes sense that the mandated age for delivery drivers would be set at the same level as the age requirements for brick-and-mortar establishments.

Nevertheless, reasonable minds may disagree on the age level appropriate for serving alcohol, and there could be virtues in setting an above-21 demarcation for delivery drivers. Delivery companies themselves may prefer opting for an age requirement of 21 to reduce potential liability, given that drivers over 21 are generally involved in fewer car accidents than 18-year-olds.³⁸

Insurance

At first blush, determining insurance requirements for delivery might seem to necessitate complex calculations. As a practical matter, however, delivery companies already carry insurance policies for their other delivery services, such as food delivery or packages.

In general, small and medium-sized businesses usually have insurance coverage via a businessowners (BOP) policy or a commercial multiperil (CMP) policy, whereas larger businesses may purchase a separate general liability policy.³⁹ These policies cover claims that come up in the course of business operations.⁴⁰ Standard BOP, CMP, and standalone general liability policies generally exclude coverage for liquor liability.⁴¹ When it comes to alcohol delivery, some states require an endorsement in these policies to provide liquor liability coverage.⁴²



Delivery companies should be allowed to develop training courses tailored to their technological platforms. The curricula for these training courses could then be submitted to regulators as part of the delivery company's application for a delivery license or permit.

37. "Minimum Ages for On-Premises Servers and Bartenders," National Institute on Alcohol Abuse and Alcoholism, last accessed Jan. 10, 2024. <https://alcoholpolicy.niaaa.nih.gov/apis-policy-topics/minimum-ages-for-on-premises-servers-and-bartenders/38>.

38. "Fatality Facts 2021 Teenagers," Insurance Institute for Highway Safety, last accessed Jan. 10, 2024. <https://www.iihs.org/topics/fatality-statistics/detail/teenagers#:~:text=The%20fatal%20crash%20rate%20per,phase%20in%20full%20driving%20privileges>.

39. "What does a business owners policy (BOP) cover?," Insurance Information Institute, last accessed Dec. 13, 2023. <https://www.iii.org/article/what-does-businessowners-policy-bop-cover>; "What Is General Liability Insurance?," The Hartford, last accessed Dec. 13, 2023. <https://www.thehartford.com/general-liability-insurance/what-is-general-liability-insurance>.

40. Ibid.

41. "Commercial General Liability Coverage Form," Insurance Services Office, 2012. https://sonomacounty.ca.gov/Main%20County%20Site/General/Sonoma/Sample%20Dept/Sample%20Dept/Divisions%20and%20Sections/Liability/Services/Help%20Request/Subpages/Help%20Request/_Documents/SampleISO-CGL.pdf.

42. LA Rev Stat § 26:308 (2019). <https://law.justia.com/codes/louisiana/2019/revised-statutes/title-26/rs-308>; "Instructions for Third-Party Alcohol Delivery License," New Mexico Regulation and Licensing Department, last accessed Dec. 13, 2023. https://www.rld.nm.gov/uploads/files/Alcohol%20and%20Gaming/Third-Party%20Alcohol%20Delivery%20License%20Application%206_16_2021.pdf; James B. Graziano, "SR 2022-15 Special Ruling Establishing Third-Party Delivery Permit," New Jersey Division of Alcoholic Beverage Control, Aug. 18, 2022. https://www.nj.gov/oag/abc/downloads/SR-2022-15_3rd-Party-Delivery-Permit.pdf.

Liquor liability insurance covers claims of injury or damage caused by an intoxicated customer of a business.⁴³

However, other retailers in the alcohol space, such as bars and restaurants, often package policies in the so-called “program market.”⁴⁴ In this market, insurance companies get their business from managing general agents who create “programs” to focus on a particular industry or business segment. There are numerous programs for bars and restaurants, and they have liquor liability included in the package, whether by endorsement or a separate policy. Such program packages could potentially be formulated for delivery companies, helping sort out what might be worthwhile to include in coverage or not (which relates to the above discussion of dram shop liability and SIP laws in the delivery context).

A few states have specifically required a certain dollar amount for what constitutes a sufficient general liability policy or liquor license endorsement.⁴⁵ While regulators may be inclined to go in this direction, it is worth noting that companies are already incentivized to carry sufficient insurance policies for their activities. Unless there is substantial evidence of inadequate insurance being carried, it does not seem necessary to set specific dollar amounts.

Overall, it is natural to require delivery companies to carry insurance, but it is best to let them select the policies that work best for their unique needs. Given the relative nascence of alcohol delivery, this issue is could use further review and study from insurance experts and stakeholders.

Hours of Sale

A final area of regulatory attention regards the hours of sale for alcohol delivery. Of all the various delivery issues, this one is perhaps the most straightforward. Matching the hours of sale for alcohol delivery with the legal hours of sale for brick-and-mortar retailers is by far the most sensible policy.







For starters, delivery companies pick up the alcohol they deliver from retailers, so as a practical matter it would not be realistic to allow delivery companies to operate after retailers close. On the other hand, it would be equally short-sighted to set delivery hours to be narrower than brick-and-mortar retailing hours. If delivery was required to stop before the neighborhood corner store closes, it once again creates a dangerous incentive: A customer drinking at home may attempt to get behind the wheel to make a late-night alcohol run. For both logistical and safety reasons, the best bet is to match delivery hours to brick-and-mortar retailing hours.



Unless there is substantial evidence of inadequate insurance being carried by delivery companies, it does not seem necessary to set specific dollar amounts for the level of coverage.

43. “What Is Liquor Liability Coverage?” The Hartford Insurance, last accessed Jan 10, 2024. <https://www.thehartford.com/business-insurance/liquor-liability-insurance#:~:text=Liquor%20liability%20coverage%20helps%20protect,your%20general%20liability%20insurance%20policy>.
44. Andrea Wells, “Not All Program Market Competition Good,” *Insurance Journal*, Jan. 26, 2015. <https://www.insurancejournal.com/news/national/2015/01/26/355323.htm>.
45. “Dram shop rule.” https://www.law.cornell.edu/wex/dram_shop_rule.; Ala. Code § 28-3A-13.1 (2021). <https://casetext.com/statute/code-of-alabama/title-28-intoxicating-liquor-malt-beverages-and-wine/chapter-3a-alcoholic-beverage-licensing-code/section-28-3a-131-delivery-service-license>; Mississippi Code Title 67. Alcoholic Beverages § 67-1-51.1 (2023). <https://codes.findlaw.com/ms/title-67-alcoholic-beverages/ms-code-sect-67-1-51-1>.

Table 1: Summary of Best Practices

Alcohol Delivery Issue Area	Regulatory Best Practices	
Delivery License or Permit	Straightforward-to-obtain, reasonably priced license/permit that can be used as an enforcement mechanism to weed out bad actors	
ID Verification	ID visual verification in addition to ID scanning; use of in-app push notifications to prompt delivery drivers to conduct visual verification	
Overserving	Consider the use of administrative and civil penalties, rather than criminal, for enforcement of overserving laws in the delivery context	
Driver Training and Qualifications	Delivery-specific training, not RBS; regulator-approved, rather than regulator-created driver training; potential 21+ age requirement for drivers	
Insurance	Insurance requirement, but no specific dollar-amount mandate unless evidence of delivery companies carrying inadequate insurance	
Hours of Sale	Match delivery hours with hours of brick-and-mortar alcohol sales	

Conclusion

Whenever a new technology takes hold or new policy reforms are enacted, it is important for government rules to keep pace. There is a tendency among legislators and regulators to resist the tides of change and try to fit new service models into outmoded legal structures. The better tactic is to develop workable laws and regulations that both promote a healthy marketplace and protect public health and safety. These goals need not be mutually exclusive. Simple, easy-to-digest best practices like those laid out here can point the way forward.

About the Author

C. Jarrett Dieterle is a senior fellow at the R Street Institute.