

Legal Alert

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ONLINE SALES AND DELIVERY OF ALCOHOL

Arizona Attorney General Mark Brnovich issued an opinion, dated April 6, 2018, on the sale and delivery of alcohol, and the use of websites and mobile device applications for the delivery of alcohol. This opinion changes or clarifies, depending on your point of view, the following common practices:

- Those businesses that can receive orders online need to ensure that orders are not placed or transmitted between 2:00 a.m. and 6:00 a.m. This includes retailers with off-sale privileges, direct shipment licensees, farm wineries, and craft distilleries. This applies to all orders, even if the customer picks up the order at a later time.
- If a licensed business delivers alcohol to customers, it must have a contractual relationship with all the third party delivery services it uses for the deliveries.
- Unlicensed businesses, including websites and payment apps, cannot receive payment for alcohol.
- Licensed businesses directly or indirectly delivering alcohol need to ensure that the persons ordering, paying for, and receiving the alcohol are all over the legal drinking age.

Expect various proposals for legislative changes regarding all of these points, but especially the first three, before and during the next legislative session. The issue of monitoring whether orders were received online between the hours of 2:00 a.m. and 6:00 a.m. is a matter of a simple change to A.R.S. § 4-244(15), although obtaining that change may not be without some of its own hurdles. How to address payment applications and third party delivery services, including liability, will certainly be even more complicated.

As a brief explanation, the opinion uses as a basis the definition of “sell” found in A.R.S. § 4-101(32), which is broadly defined as “soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly

delivering for value, peddling, keeping with intent to sell and trafficking in.”
The opinion provides the following five answers:

- 1) Whether unlicensed or licensed, a business sells alcohol when it receives an order. If the business receives an order between the hours of 2:00 a.m. and 6:00 a.m., it is selling alcohol and violating Arizona’s statute, A.R.S. § 4-244(15), prohibiting the sale of alcohol during those hours.
- 2) A business can “sell” alcohol to different people within a single transaction in which different people order, pay for, and receive delivery of the alcohol.
- 3) Whether a business has “reason to question” for purposes of identifying a person as over the legal drinking age, when an order is placed online or through a mobile service application, is a question of fact left unanswered by this opinion.
- 4) Independent third party delivery services, meaning those who do not have a contractual relationship with a retailer having off-sale privileges, cannot deliver alcohol to customers on behalf of that business. Also noted was a reminder that retailers are liable for the actions of those who deliver for them when making a sale or delivery.
- 5) Finally, an unlicensed business may not receive payment for alcohol, even if it remits full payment to the retailer.

If you would like additional information or have any questions about the Attorney General opinion, its impact on your business, or alcohol regulation in general, please contact Camila Alarcon.