

State of Louisiana
Office of Alcohol and Tobacco Control

John Bel Edwards
Governor



Juana Marine-Lombard
Commissioner

October 25, 2017

Wholesalers

NOTICE AND CEASE AND DESIST
Regarding Serving/Selling on Premises
and Special Events on Premises

Dear Sir or Madam:

The Louisiana Office of Alcohol and Tobacco Control has started receiving complaints and has become aware that some wholesalers may be selling/serving alcohol to the public and holding special events on their premises. Since a special event is a retail permit allowing the sale/serving of alcohol to the public, they may not set up on a wholesaler's premises which, by law, must be dedicated to storing only your alcohol and only for sale and delivery to other wholesalers and retailers, not the public. Additionally, manufacturers and wholesalers are strictly prohibited from obtaining special event permits.

Please see below, some law and regulation (but not all), that clearly defines a wholesaler as storing, selling, and delivering alcohol only to other wholesalers and retailers. Any activity that blurs that limited purpose is prohibited. You may not sell or serve alcohol to the public, have other entities alcohol on your premises, have a retailer on your premises, serve as a partner in a retail enterprise or transaction, or obtain special event permits. You are asked to immediately cease and desist in all activities not permitted by law or regulation, to include, but not limited to, prohibited activities highlighted herein above.

Should you have any questions, please feel free to contact our office.

A handwritten signature in blue ink that reads "Brett Bonin".

Brett A. Bonin, Attorney
Louisiana Office of Alcohol and Tobacco Control (ATC)
brett.bonin@atc.la.gov • Cell: (504) 220-3199

§82. Issuance of wholesale permit

A. No wholesale permit shall be issued or held after issuance by any person unless at all times he meets the standards set forth as follows:

(1) Maintains warehouse space either owned or leased by the wholesaler, or dedicated to his use in a public warehouse, and:

(a) Such space shall be sufficient to store at one time a stock of liquor equal to ten percent or more of the wholesaler's annual case volume of liquor sales to retailers within this state, or

(b) Maintains at all times in the warehouse a stock of liquor owned by him, not consigned, nor then sold, consisting of not less than five percent of his annual sales to retailers, and whose cost of acquisition is fifty thousand dollars or more.

(2) Maintains delivery equipment which shall be leased or owned and dedicated to his primary use for the distribution and delivery of alcoholic beverages. The requirement that the delivery equipment be dedicated to a primary use for the distribution and delivery of alcoholic beverages shall not apply to any person continuously holding a wholesale permit issued pursuant to this Chapter for the three years immediately prior to January 1, 2010.

(3) Maintains brand representation with at least one distillery, or liquor manufacturer.

(4) Maintains sales of liquor to retailers generally within his immediate trade area, making sales to at least twenty percent of the retailers in said area with separate sales to retailers accounting for at least fifty percent of the gallonage handled by him.

B. No wholesale permit shall be issued or held after issuance by any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail permittees of the alcoholic beverages on hand, and the commissioner may revoke any wholesale permit when the permittee fails for a period of forty-five days actively and in good faith to engage in the wholesale business, and shall revoke any wholesale permit for any other violation of this Section or the rules and regulations adopted pursuant to the enforcement hereof.

C. Sale by a wholesaler to himself as a retailer, or as a partner in a retail establishment is not a bona fide wholesale transaction. No wholesaler shall store any of his stock on the premises of any retail establishment.

D. Persons engaged primarily in the sale, handling, distribution, and storage of alcoholic beverages which are ultimately delivered or transported beyond the borders of the state are exempt from complying with the standards set forth in this Section.

E. The commissioner may adopt and publish rules and regulations for the enforcement of this Section.

Acts 1987, No. 696, §1; Acts 2010, No. 125, §1.

§85. Combination of manufacturer, wholesale, and retail business prohibited; exceptions

Except as provided in Paragraphs (1) through (6) of this Section, no person shall, at the same time, engage in business as a manufacturer or wine producer and as a wholesaler, as a wholesaler and as a manufacturer or wine producer, as a manufacturer or wine producer and as a retailer, as a retailer and as a manufacturer or wine producer, as a wholesaler and as a retailer, or as a retailer and as a wholesaler of any regulated beverage. However:

(1) Any person who, from January 1, 1940, until July 28, 1948, was continuously a duly licensed manufacturer in the state of any established brand of alcoholic beverage and sold alcoholic beverages at wholesale and retail may be issued, subject to the other requirements of this Chapter, permits as a manufacturer and as a wholesaler and as a retailer of alcoholic beverages.

(2) Any person who, from January 1, 1947, until July 28, 1948, was the holder of a wholesale or retail permit, or of both, may procure, subject to the other requirements of this Chapter, permits under this Chapter either as a wholesaler or as a retailer, or as both.

(3) Any corporation, which on January 31, 2003, had held a wholesale dealer permit continuously for at least the past three years and whose officer, director, or stockholder is also an officer, director, or stockholder of a manufacturer, may be issued a wholesale dealer permit.

(4) A wine producer may sell or serve its finished product at retail directly to consumers at its winery.

(5) Provided that wine producers comply with the provisions of R.S. 26:90, wine producers who own and operate one or more wineries, may sell or serve their finished products at retail directly to consumers at fairs, festivals, farmers' markets and similar venues defined by the commissioner pursuant to rules and regulations promulgated in accordance with the Administrative Procedure Act.

(6) Notwithstanding any other provision of law to the contrary, wine producers who operate one or more wineries may sell and ship directly to a consumer in Louisiana provided that the total amount of sparkling wine or still wine shipped to any single household address in seven hundred fifty milliliter bottles, not to exceed one hundred forty-four bottles per adult person per household address per calendar year.

Acts 1987, No. 696, §1; Acts 2003, No. 519, §1, eff. June 20, 2003; Acts 2006, No. 808, §1, eff. June 30, 2006; Acts 2011, No. 327, §1, eff. June 29, 2011.

La. R.S. 26:793. Additional powers of the commissioner

A.(1) The commissioner may provide by regulation for the issuance of three-day retail permits to sell, offer for sale, or serve alcoholic beverages at fairs, festivals, civic and fraternal and religious events, Mardi Gras events, and nonprofit functions if the applicant, or any agent, member, officer, or representative thereof, has not had a license or permit to sell or deal in alcoholic beverages, issued by the United States, any state, or by a political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application date. The permits shall be for a duration of three consecutive days only and no more than twelve such permits may be issued to any one person within a single calendar year. Fees for the permits shall be as provided by regulation.

(a) There shall be three types of temporary alcoholic beverage permits: Type A, Type B, and Type C.

(b) Type A permits shall be issued only to nonprofit organizations with tax exempt status under the United States Internal Revenue Code, Sections 501(c)(3), 501(c)(6), and 501(c)(8), where no transactions exist, whether directly or indirectly, between the licensed tax exempt organizations and any disqualified person as defined by the United States Internal Revenue Code Section 4958(f) or any similar subsequent provision. To qualify for this permit, applicants shall submit all documentation as required in the regulations promulgated in accordance with the provisions of this Section or upon the request of the commissioner.

(c) Type B permits shall be issued only to nonprofit organizations, which are able to provide written proof of their nonprofit status, but are unable to show written proof of their tax exempt status under the United States Internal Revenue Code, Sections 501(c)(3), 501(c)(6), or 501(c)(8) and no transactions, exist, whether directly or indirectly, between the licensed tax exempt organization and any disqualified person as defined by the United States Internal Revenue Code, Section 4958(f) or any similar provision. To qualify for this permit, applicants shall submit all documentation as required in the regulations promulgated in accordance with the provisions of this Section or upon the request of the commissioner.

(d) Type C permits shall be issued to persons holding events where alcoholic beverages are sold or supplied as part of a general admission or other type fee, but who do not meet the requirements for Type A or Type B temporary permits. To qualify for this permit, applicants shall submit all documentation as required in the regulations or upon the request of the commissioner. Such regulations shall be promulgated in accordance with the Administrative Procedure Act are necessary to implement the provisions of this Subparagraph.

(e) The commissioner shall not issue a three-day temporary retail permit under this Paragraph to any alcoholic beverage manufacturer, wholesale dealer, homebrewer, or to any association with a membership that is primarily comprised of alcoholic beverage manufacturers, wholesale dealers, and/or homebrewers.

(2) The commissioner may also provide by regulation for special designations on the regular Class A permits of persons who wish to service special events as caterers and serve alcoholic beverages at locations other than their licensed premises.

(3) The commissioner shall also provide by rule and regulation for the definition and issuance of a Class A-Caterers Permit for any person who does not otherwise qualify for a retail dealers permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2. Any person holding a Class A-Caterers Permit shall not be authorized to sell alcoholic beverages to any wholesale or retail dealer licensed in accordance with this Title. The fees for a Class A-Caterers permit shall not exceed the fees for a Class A-Restaurant Permit set forth in R.S. 26:71(A).

(4) The commissioner shall adopt rules and regulations in accordance with the Administrative Procedure Act to effectuate the purpose of this Section. Notwithstanding the provisions of R.S. 26:90(B), (C), (D), (E), (F), and (G) and R.S. 26:286(B), (C), (D), (E), (F), and (G) to the contrary, the commissioner may establish rules and regulations adopted pursuant to the Administrative Procedure Act authorizing the types of entertainment and employment allowed on a licensed premises.

(5)(a) Notwithstanding any other provision of law to the contrary, the commissioner shall issue a three-day homebrew permit to any retail dealer qualified for on premise consumption who applies for such permit at no fee authorizing the retail dealer to allow a person to bring homebrew alcoholic beverages on his licensed premises for the purpose of possessing, consuming, and serving such homebrew on his licensed premises in connection with homebrew club meetings, organized affairs, exhibitions, or competitions such as homebrewer's contests, tastings, or judging where no general admission or other type of fee or charge is assessed in connection with the homebrew permit and in accordance with all of the following criteria:

(i) Homebrew shall not be sold or offered for sale and the person who makes the homebrew or any association of persons who make the homebrew shall not receive any compensation or any other thing of value, whether directly or indirectly, other than trophies, plaques, certificates, ribbons, medals, or similar awards of nominal value, from any club meetings, organized affairs, exhibitions, competitions or other events where the homebrew is sampled in accordance with the sampling provisions promulgated under the authority of R.S. 26:75(C) and 275(B).

(ii) Homebrew shall be served only to those individuals attending the homebrew event and shall not be served to the patrons of the retail establishment or general public.

(iii) All homebrew alcoholic beverages shall be removed from the licensed premises within a reasonable time upon conclusion of the homebrew event.

(iv) The retail dealer shall not be required to obtain a special events permit from the Louisiana Department of Health and shall be exempt from any additional compliance with the state's Sanitary Code but only with regard to the duration and location of the homebrew event.

(b) For purposes of this Paragraph, "homebrew" shall mean the brewing of beer, mead, and other alcoholic beverages through fermentation in a residence or other authorized facility by

a person of the lawful age to purchase alcoholic beverages on a small scale, not to exceed one hundred gallons per calendar year for a household with one resident of the lawful age to purchase alcoholic beverages or two hundred gallons for a household with two or more residents of the lawful age to purchase alcoholic beverages as a hobby for personal consumption by that person or his or her family, neighbors, guests, and friends, for use at competitions homebrew club meetings, organized affairs, exhibitions, or competitions on the premises of a licensed Class A retail dealer holding a homebrew permit in accordance with this Paragraph, or for any of the other noncommercial reasons as provided for in Paragraph (1) of this Subsection regarding special event licenses where homebrew is served as an incidental part of the event and in accordance with the sampling provisions promulgated under the authority of R.S. 26:75(C) and 275(B). "Homebrew" shall not include any licensed alcoholic beverages manufactured, distributed, or otherwise served for commercial purposes.

B. The provisions of R.S. 26:281(C), (D), (F), and (G) shall not apply to permits issued pursuant to the provisions of this Section.

NOTE: Subsection (C)(1) eff. until Jan. 1, 2016. See Acts 2015, No. 460, §2.

C.(1) In order to ensure compliance with "Prevention of Youth Access to Tobacco Law", the commissioner shall annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed. Persons under the age of eighteen may be enlisted by employees of the office of alcohol and tobacco control to test compliance, but such persons may be used only if the testing is conducted under the direct supervision of such employees and written parental consent has been provided. Any person under the age of eighteen shall either carry the person's own identification showing the person's correct date of birth or shall carry no identification. A person under the age of eighteen who carries identification shall, on request, present it to any seller of tobacco products. In addition, any person under the age of eighteen enlisted under this Subsection shall truthfully answer any questions about the person's age. Any other use of persons under the age of eighteen to test compliance with the provisions of this Section or any other prohibition of like or similar import shall be unlawful and the person or persons responsible for such use shall be subject to the penalties prescribed in R.S. 14:91.8(H).

C.(1) In order to ensure compliance with laws prohibiting the sale or service of alcoholic beverages, tobacco, alternative nicotine, or vapor products to underage persons, the commissioner shall annually conduct random, unannounced inspections at locations where alcoholic beverages, tobacco, or alternative nicotine, or vapor products are sold, served, or distributed. Persons under the age of eighteen or twenty-one may be enlisted by employees of the office of alcohol and tobacco control to test compliance, but such persons may be used only if the testing is conducted under the direct supervision of such employees and written parental consent has been provided if the person is under the age of eighteen. Any person under the age of eighteen or twenty-one shall either carry the person's own identification showing the person's correct date of birth or shall carry no identification. A person under the age of eighteen or twenty-one who carries identification shall, on request, present it to any seller or server of alcoholic beverages, tobacco, or alternative nicotine or vapor products. In addition, any person under the age of eighteen or twenty-one enlisted under this Subsection shall truthfully answer any questions about the person's age. Except where expressly authorized in writing by the commissioner in furtherance of the objectives of this Section, any other use of persons under the age of eighteen or twenty-one to test compliance with the provisions of this Section or any other prohibition of like or similar import shall be unlawful and the person or persons responsible for such use shall be subject to the penalties prescribed in this Title or R.S. 14:91.6, 91.8(H), 92, or 93.11.

(2) The commissioner shall prepare and submit to the governor a report outlining compliance with the "Prevention of Youth Access to Tobacco Law", which the governor shall

use to prepare and file annually with the secretary of the United States Department of Health and Human Services the report provided for by 42 U.S.C. 300x-26.

D.(1) The commissioner shall provide by rule for the registration, including submission and review of the container label, of all alcoholic beverages prior to being sold in this state.

(2) The commissioner may require the use of an electronic submission system by any person submitting an alcoholic beverage for registration and review.

(3) The submission of a Certificate of Label Approval prepared in compliance with the requirements of the Alcohol and Tobacco Tax and Trade Bureau shall constitute satisfactory compliance for the registration of products and labels pursuant to this Subsection, and the registration shall become effective upon submission of a completed application.

Acts 1991, No. 447, §1, eff. July 15, 1991; Acts 1994, 3rd Ex. Sess., No. 64, §2; Acts 1997, No. 1010, §2; Acts 1997, No. 1370, §§1, 4, eff. Oct. 1, 1997; Acts 1999, No. 987, §1; Acts 2010, No. 953, §1, eff. July 2, 2010; Acts 2014, No. 835, §1, eff. June 23, 2014; Acts 2015, No. 393, §1; Acts 2015, No. 460, §1, eff. Jan. 1, 2016.

LAC 55:VII-307. Regulation IV—Definitions and Explanations

A. Definitions

Alcoholic Beverages—[as used in R.S. 26:80(E), (F), (G), and (H)] interpreted as defined in R.S. 26:2(1).

Bona Fide Wholesaler—a dealer who in good faith truly and openly conducts the business of wholesaling alcoholic beverages to retailers in an immediate trade area without any simulation or pretense as to his true classification as a wholesaler.

Immediate Trade Area—(as used in R.S. 26:80) that geographical area in which a wholesale permittee in good faith actually carries on and intends to carry on a bona fide wholesale business by regular sales and deliveries of alcoholic beverages on hand to at least 20 percent of the retail permittees carrying on business in such area with separate sales to said retailers accounting for at least 50 percent of the gallonage handled by said wholesale permittee.

Liquor—[as used in R.S. 26:80(D)] interpreted as defined in R.S. 26:2(2).

B. Every bona fide wholesale dealer must necessarily have an immediate trade area the size of which depends upon the scope and extent of his operation.

C. Every applicant for a wholesale license must define his immediate trade area, as defined above, at the time of application. An applicant's designation must be reasonable and must not contain artificial or unrealistic areas, or areas amounting to a pretense or simulation.

D. No wholesale permit shall be issued to any applicant, or, if issued no wholesale permit shall be held by any permittee unless such applicant or permittee, at all times throughout the license year, meets and maintains, in addition to all other qualifications and requirements provided by law, the applicable standards set forth in R.S. 26:80, and in these regulations.

E. A Schedule B is required by the board of every wholesale permit applicant. This schedule must be filed prior to the issuance or renewal of any wholesale permit and must be answered in anticipation of the coming year's operation.

F. At any time during the license year, the board may require any wholesale dealer to file with the board any pertinent information requested in connection with his classification as a wholesale dealer.

G. At any time during the license year, the board may order an inspection and audit of any wholesale dealer in connection with his classification as a wholesale dealer.

H. All inspections and audits made and all Schedule B's on file shall remain confidential in the board's files, unless and until the same are used in connection with enforcement purposes or any denial, suspension or revocation preceding based upon R.S. 26:80(D), (E), (F), (G), and (H).