



# **OPEN CONTAINER LAWS AND ALCOHOL-TO-GO**

Implications and Considerations

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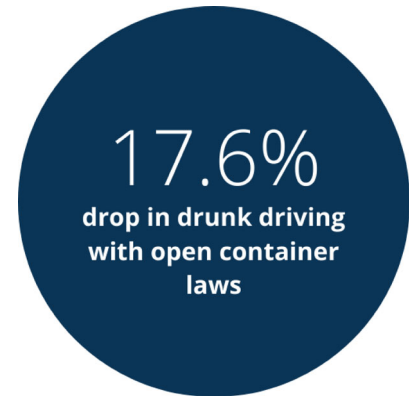
A report on the origin and history of open container laws in the United States and how they pertain to transportation funding.  
(August, 2021)

# OPEN CONTAINER LAWS AND ALCOHOL-TO-GO

## INTRODUCTION

Open container laws that prohibit open alcohol containers in the vehicle while driving have served as an important countermeasure to stop drunk driving. Combined with enforcement of open container laws, they can reduce drunk driving by 17.6%.<sup>1</sup>

The concept is simple and based on a commonsense approach to stopping drunk driving. Because it is not only illegal, but deadly to drink and drive, it makes sense that there should be no open containers of alcohol inside a vehicle and consequently no alcohol consumption in the vehicle by the driver or passengers. Open container laws also help reinforce the messaging that you should not drink and drive.



Drunk driving continues to be a leading cause of death and injury on the roadways. In 2019, 10,142 people were killed in drunk driving (.08 BAC or higher) crashes.<sup>2</sup> Early 2020 estimates from the National Highway Traffic Safety Administration (NHTSA) point to a 9% increase in drunk driving deaths.<sup>3</sup>

To date, 40 states, Washington, D.C., and three territories have laws prohibiting open containers that meet federal standards.<sup>4</sup>

In 1998, the Congress included provisions highly incentivizing the states to pass laws to prevent open alcohol containers in vehicles. The Transportation Equity Act for 21<sup>st</sup> Century (TEA-21) was amended on July 22, 1998, with a technical corrections act (P.L. 105-206). This amendment updated the nation's highway authorization to include a new provision, Section 154, which says, "states must enact and enforce a law that prohibits the possession of any open alcoholic beverage

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<sup>1</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5584594/>

<sup>2</sup> <https://www.nhtsa.gov/press-releases/nhtsa-releases-2019-crash-fatality-data>

<sup>3</sup> <https://www.nhtsa.gov/press-releases/2020-fatality-data-show-increased-traffic-fatalities-during-pandemic>

<sup>4</sup> [https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/fy\\_20\\_all\\_grants\\_summary.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/fy_20_all_grants_summary.pdf)

container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or right-of-way of a public highway.”<sup>5</sup>

In 2000 and 2001, states that failed to enact or enforce open container laws had 1.5% of highway dollars transferred to their general highway safety program known as Section 402. The idea behind Section 154 is to highly incentivize states to comply with the intent, but not to fully penalize the state by completely taking their money. From 2002 forward, states “transfer” 3% of highway dollars to the general safety fund.



The Covid-19 pandemic brought unprecedented challenges to the U.S. in terms of health and the economy. Businesses that relied on in-person sales were especially hard-hit. Restaurants and bars were at the top of the list for shutdowns and closures. As these establishments looked for creative ways to continue operating during the pandemic, many began serving alcohol-to-go as part of take out or delivery orders.

Across the country, 32 states relaxed alcohol regulations and allowed bars and restaurants to sell alcohol-to-go during Covid-19.<sup>6</sup> As the pandemic’s effects began to lift, some states have continued to allow or make permanent these changes to current alcohol sale laws. Others have discontinued these sales and temporary privileges.

With this new concept of alcohol-to-go comes new challenges. Alcohol has always been a tightly regulated and controlled substance with the long established three-tiered alcohol sales system in place to regulate the industry that sells them. The United States Supreme Court has noted: “*The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system .*”<sup>7</sup>

As a result, there are robust debates in all 50 states about alcohol and the regulation of the industry that makes, distributes, and sells it. Alcohol laws are constantly evolving, and the states are tweaking their rules every year.

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<sup>5</sup> <https://one.nhtsa.gov/people/outreach/traftech/TT274.htm>

<sup>6</sup> <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/01/12/cocktails-to-go-help-restaurants-stay-afloat>

<sup>7</sup> California Retail Dealers v. Midcal 445 U.S. 97 (1980)

The interest in changing long-standing laws due to Covid-19 is something that the Center for Alcohol Policy previously observed in a 2020 report encouraging policy makers to go slow and consider all perspectives as they debate alcohol law changes.<sup>8</sup> The paper noted that the virus, not alcohol laws caused the shutdowns to industry. Nevertheless, there has been a desire to “do something to help the industry.” As more time passes, concerns initially glossed over will invariably be raised by different stakeholders. Such examples include compliance with federal highway safety laws as well as the Americans with Disability Act (ADA) for access curtailed due to roadside dining or changes to address Covid-19 concerns will invariably be raised by different stakeholders.

*"THE CRISIS OF COVID-19  
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OF CONSUMERS..".*

*Crisis De-Regulations: Should They Stay or  
Should They go?*

Alcohol-to-go sales have changed the sales landscape and bring into question compliance with federal and state alcohol law. How do you ensure that craft cocktails, beer, and wine are properly sealed to keep drivers and occupants from consuming? How do restaurants who sell alcohol to go impact other businesses who sell alcohol but are restricted by time of sale? How does delivery of alcohol comply with ID checks and age verification?

## OPEN CONTAINER LAW EFFECTIVENESS

Following passage of TEA-21, four states immediately passed legislation in 1999 to prohibit open containers. Prior to passage of TEA-21, 13 states and the District of Columbia had open container laws in compliance with the new Federal law. According to NHTSA, 40 states plus D.C. have federally compliant open container laws.<sup>9</sup>

According to a NHTSA study:

*Comparison of crash data showed that states that lacked Open Container laws had significantly greater percentages of alcohol-involved fatal and single-vehicle crashes than the states with partially or fully conforming laws. Although the differences cannot be attributed with certainty to the presence or absence of Open Container laws, the results of the analyses suggest that*

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<sup>8</sup> <https://www.centerforalcoholpolicy.org/2020/06/09/crisis-de-regulations-should-they-stay-or-should-they-go/>

<sup>9</sup> [https://www.ghsa.org/sites/default/files/2020-07/DrunkDrivingLaws\\_0720.pdf](https://www.ghsa.org/sites/default/files/2020-07/DrunkDrivingLaws_0720.pdf)

*conformance with some or all of the six elements of the Federal requirements contributes measurably to traffic safety.*<sup>10</sup>

Following passage of federal open container requirements, four states, Iowa, Maine, Rhode Island, and South Dakota, immediately updated open container laws. Three of those four states saw decreases in all fatal crashes in which alcohol was involved.<sup>11</sup>

In addition to the comparison data and studies, open container laws can assist law enforcement in their efforts to stop drunk driving. Open containers help provide evidence and reasonable suspicion to create probable cause that can help an investigation to stop someone who may be drinking and driving.

Finally, there is an element of commonsense to open container laws. If the public is told that drinking and driving is dangerous, shouldn't laws prohibit open alcohol containers in the car?

## CONFORMANCE

Following passage of TEA-21, NHTSA created regulations to ensure states conform with intended open container laws. Below are the criteria from a 2002 NHTSA report that details requirements for compliance.<sup>12</sup>

### **1. Prohibit possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in a motor vehicle.**

A state's open container law must prohibit the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way. However, state laws and proposed legislation that prohibit possession without prohibiting consumption also have been found to be in conformance with the possession and consumption criterion because in order to consume an alcoholic beverage, an individual must first have that beverage in their possession.

### **2. Specify the passenger area of any motor vehicle.**

The open container law must apply to the passenger area of any motor vehicle. Passenger area is defined as the area designed to seat the driver and passengers while the motor

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<sup>10</sup> <https://one.nhtsa.gov/people/outreach/traftech/TT274.htm>

<sup>11</sup> [https://one.nhtsa.gov/people/injury/research/OpenContainer/figure\\_1.htm](https://one.nhtsa.gov/people/injury/research/OpenContainer/figure_1.htm)

<sup>12</sup> [https://one.nhtsa.gov/people/injury/research/OpenContainer/open\\_container\\_criteria.htm](https://one.nhtsa.gov/people/injury/research/OpenContainer/open_container_criteria.htm)

vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Vehicles without trunks may have an open alcoholic beverage container behind the last upright seat or in an area not normally occupied by the driver or passengers. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements. Motor vehicle is defined in the regulation to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways. The term does not include a vehicle operated exclusively on a rail or rails.

### **3. Apply to all alcoholic beverages.**

The open container law must apply to all alcoholic beverages. Alcoholic beverage is defined in the regulation to include all types of alcoholic beverages, including beer, wine, and distilled spirits. Beer, wine, and distilled spirits are covered by the definition if they contain one-half of one percent or more of alcohol by volume. An open alcoholic beverage container is any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open or has a broken seal, or the contents of which are partially removed.

### **4. Apply to all occupants.**

The open container law must apply to all occupants of the motor vehicle, including the driver and all passengers. The statute provides for two exceptions, however, to the all-occupant requirement. A law will be deemed to apply to all occupants if the law prohibits the possession of any open alcoholic beverage container by the driver but permits possession of alcohol by passengers in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation (e.g., buses, taxis, limousines) and passengers in the living quarters of a house coach or house trailer.

### **5. Specify on a public highway or the right-of-way of a public highway.**

The open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. The agencies have defined public highway or the right-of-way of a public highway to include a roadway and the shoulder alongside of it.

### **6. Specify primary enforcement.**

A state must provide for primary enforcement of its open container law. Under a primary enforcement law, officers have the authority to enforce the law without the need to show that they had probable cause to believe that another violation had been committed. An open

container law that provides for secondary enforcement does not conform to the requirements of the regulation.

## CURRENT STATE LAWS

According to NHTSA, funding for FY 2020 through the annual highway safety grant programs, 10 states currently have highway construction dollars “transferred” to the state highway safety office due to non-compliance with Section 154 federal highway open container laws. Transferring money reduces the overall road and infrastructure spending that allows states to construct things like roads and bridges.

States impacted are Connecticut, Delaware, Hawaii, Louisiana, Mississippi, Missouri, Rhode Island, Tennessee, Virginia, and Wyoming. In total, over \$40 million in highway funding is transferred to safety each year.



## ALCOHOL-TO-GO

Alcohol-to-go sales began as a reaction to restrictions placed on restaurants and bars during the Covid-19 pandemic in 2020. According to a March 2020 report from the National Restaurant Association (NRA):

*The restaurant industry experienced its largest one-month employment decline on record in March. Eating and drinking places – which employ nearly 80 percent of the total 15.6 million restaurant and foodservice workforce – lost a net 417,000 jobs in March on a seasonally-adjusted basis, according to preliminary data from the Bureau of Labor Statistics (BLS). This was more than six times larger than the previous record decline of 67,000 jobs in October 2000.<sup>13</sup>*

The true impact of the pandemic is difficult to assess for the restaurant industry. Both job losses and sales declines dropped quickly but began to slowly rebound by June 2020. The NRA estimated a total reduction of \$145 billion in restaurant and foodservice sales during the first four months of the pandemic.<sup>14</sup>

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<sup>13</sup> <https://restaurant.org/articles/news/restaurant-job-losses-in-march>

<sup>14</sup> <https://restaurant.org/articles/news/restaurant-sales-hit-a-pandemic-high-in-june>



Eating and drinking sales remained below pre-pandemic levels from March 2020 through March 2021. However, by April 2021, reported sales rose to \$66.1 billion and topped \$67 billion in May 2021.<sup>15</sup>



*Sources: Census Bureau, National Restaurant Association; figures are seasonally adjusted*

In fact, May 2021 sales largely represent a return to normalcy in terms of pre-pandemic spending.

## STATE LEGISLATION



Of the 32 states that gave temporary approval for alcohol-to-go sales to help restaurants and bars as part of Covid-19 relief efforts, 16 states have made these changes permanent.<sup>16</sup> The Distilled Spirits Council (DISCUS) has been one of the leading organizations in support of making these changes permanent. DISCUS is the national trade organization representing distilled spirits in the United States.

Some states moved quickly to make alcohol-to-go sales permanent while others let any temporary changes to the law expire. Texas is an example of one state that made alcohol-to-go sales permanent. Governor Greg Abbott signed into law H.B. 1024 on May 12, 2021. The bill, sponsored by state Rep. Charlie

<sup>15</sup> <https://restaurant.org/articles/news/restaurant-sales-continue-to-trend-higher>

<sup>16</sup> <https://www.distilledspirits.org/news/30-states-take-legislative-action-to-allow-cocktails-to-go-in-support-of-devastated-hospitality-businesses/>



Green, a restaurant owner, allows beer, wine, and mixed drinks to be included in pickup and delivery orders.<sup>17</sup>

The legislation passed with overwhelming two-thirds support in both the Texas House and Senate. Kristi Brown, senior director of government relations at DISCUS said, "Bars and restaurants in Texas have leaned on cocktails to-go throughout the pandemic as a lifeline to keep their doors open and generate revenue. We thank Governor Abbott for being a vocal supporter of cocktails to-go and encourage him to sign this bill as soon as possible and make the business- and consumer-friendly measure permanent in Texas."<sup>18</sup>

H.B. 1024 faced little to no opposition. Mothers Against Drunk Driving, which is based in Texas, did not weigh in on the legislation and instead urged people to drink responsibly.<sup>19</sup> Texas A&M University noted that DUIs in Texas had increased during the pandemic and vowed to educate the public on the dangers of drinking and driving. Mary Jo Prince of the University said, "We can't control what the governor does."<sup>20</sup>

One local television station, KRHD 25, in Brazos County noted that "The bill does have guidelines in place to prevent drunk driving, but they rely more so on the honor system."<sup>21</sup>

The law requires beer or wine to be in original packaging provided by the manufacturer. For drinks containing hard liquor, it requires the alcohol beverage to be in a "tamper-proof" container which is defined in the law as:

- A container that, once sealed, clearly shows whether it has been opened.
- A closed cup, which means,
  - Placed into a bag that has been sealed with a zip tie or staple;
  - Sealed with shrink wrap or similar seal; or
  - Sealed by other methods approved by rule of the Texas alcohol commission.

In terms of safeguarding against those under age 21 from purchasing alcohol to go or through delivery, the legislation requires the person receiving the alcohol to show identification as well as to sign a receipt, either digital or electronic, to acknowledge receipt of the product.

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<sup>17</sup> <https://www.texastribune.org/2021/05/12/texas-alcohol-to-go-greg-abbott/>

<sup>18</sup> <https://abc13.com/alcohol-to-go-texas-greg-abbott-restaurants/10620613/>

<sup>19</sup> <https://www.kxxv.com/brazos/alcohol-to-go-bill-heads-to-gov-abbotts-desk-but-some-texans-still-concerned>

<sup>20</sup> <https://www.kxxv.com/brazos/alcohol-to-go-bill-heads-to-gov-abbotts-desk-but-some-texans-still-concerned>

<sup>21</sup> <https://www.kxxv.com/brazos/alcohol-to-go-bill-heads-to-gov-abbotts-desk-but-some-texans-still-concerned>

New York experienced a different outcome than Texas. During the pandemic, Governor Cuomo allowed restaurants and bars to sell alcohol-to-go with food orders as part of an executive order that was extended several times. Part of the executive order prohibited on-premise alcohol sales, so alcohol to go privileges were granted to offset these losses. The executive order concerning alcohol sales lasted through June 24, 2021.<sup>22</sup>

It is unclear what type of requirements were implemented to ensure the safety of alcohol to go per Governor Cuomo's executive order. One bar owner in Brooklyn noted a takeout window for sandwiches and drinks and said, "We are definitely investing in flasks and having stickers printed on them with some of our cocktail logos."<sup>23</sup> This opens up questions about potential compliance with open container laws.

Legislation was introduced in the New York state legislature, S 589A, by Senator Brian Benjamin, and A 7732 by Assemblyman Steven Cymbrowitz, which would continue alcohol to go sales for one year and would then "sunset," or need to be passed again.

Unlike Texas, New York experienced lobbying both in favor and in opposition to these sales. The Empire State Restaurant and Tavern Association heavily supported the legislation and viewed alcohol to go as a way to assist restaurants struggling following the Covid-19 pandemic. Scott Wexler, executive director of the association, said, "Bars and restaurants have had a very difficult last year, and it looks like it will take another year or so to fully recover. Selling cocktails to go can help bridge that gap to recovery."<sup>24</sup>

The New York legislation faced stiff opposition from local liquor store owners. The Metropolitan Package Store Association raised concerns about increasing alcohol sales outlet density as well as extending hours of service due to expansion of alcohol to go. Michael Correra, a liquor store owner in Brooklyn Heights, said on behalf of the association, "There's a ton of sympathy for restaurants, and I get it," Mr. Correra said. "But now you're going to have 10 outlets per block able to sell booze-to-go until 2 o'clock in the morning."<sup>25</sup>

The New York Liquor Store Association also opposed the legislation. Stefan Kalogridis, president of the group, pointed out that the New York Liquor authority does not have enough resources to

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<sup>22</sup> <https://sla.ny.gov/Restrictions-in-Response-to-COVID-19>

<sup>23</sup> [https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article\\_inline](https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article_inline)

<sup>24</sup> [https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article\\_inline](https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article_inline)

<sup>25</sup> [https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article\\_inline](https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article_inline)

police alcohol-to-go sales. He also said, “We have documentation and pictures of displays in restaurants that say, ‘bottles to-go,’ which wasn’t in the executive order,” said Kalogridis. “If it wasn’t in the executive order and they did it then, don’t you think they’ll do it when they pass the law? That’s the problem we have.”<sup>26</sup>

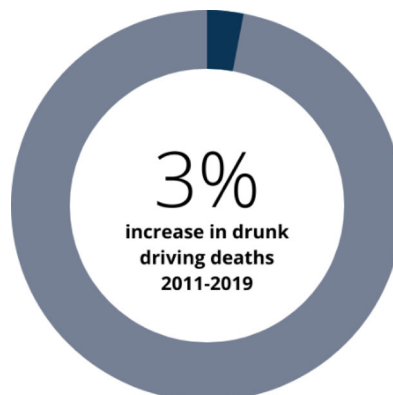
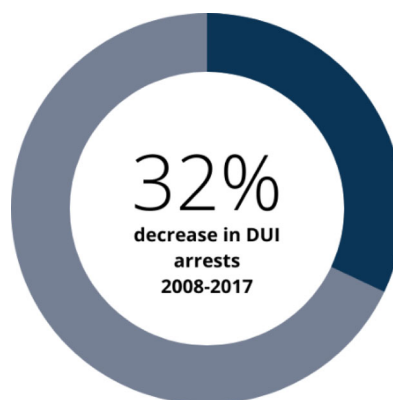
Ultimately, neither S 589A nor A 7732 passed the respective houses and therefore alcohol-to-go sales ended in June 2021. Restaurant owners are continuing to work to expand alcohol-to-go sales and make them permanent. Some New York lawmakers called for a special session to reconsider the proposal. The legislation was not considered as a special session but most likely will be reconsidered during the next session of the assembly.

## LAW ENFORCEMENT

Even before the pandemic, DUI arrests had witnessed a significant decline which contributes to an increase in deaths. According to FBI statistics, DUI arrests fell from 1.171 million in 2008 to 802,047 in 2017. NHTSA data shows DUI deaths increasing from 9,878 in 2011 to 10,142 in 2019. Early estimates for 2020 predict drunk driving deaths increased by 9 percent.<sup>27</sup>

Events in 2020 called attention to policing practices across the country and ignited a national debate regarding social justice issues. Protestors and some politicians called for defunding the police or shifting resources away from law enforcement to other areas like mental health. Some believe that this attitude on policing has negatively impacted recruitment, retention, and retirements among law enforcement. A survey by the Police Executive Research Forum showed retirements up 45 percent, an 18 percent increase in resignations, and a 5 percent decrease in the hiring rate.<sup>28</sup>

In New York, the New York Association of Police Benevolent Association’s issued a memo in opposition to extending alcohol-



<sup>26</sup> <https://www.wxnews.org/post/alcohol-go-sales-extended-again>

<sup>27</sup> <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813118>

<sup>28</sup> [https://www.policeforum.org/workforcesurveyjune2021?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=newsletter\\_axiosam&stream=top](https://www.policeforum.org/workforcesurveyjune2021?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top)

to-go sales because of the potential to increase drunk driving.<sup>29</sup> In the memo of opposition, they write, “numerous incidents have occurred with these “to-go” beverages being consumed in the vehicle after being picked up.” Furthermore, they note that NHTSA estimates show a decrease in vehicle miles traveled but “there were disturbing trends in the increase of impaired driving.”<sup>30</sup>

In order for law enforcement to initiate a DUI stop, there should be probable cause such as swerving or other erratic behavior signaling that the driver could be impaired. Once law enforcement makes a DUI stop, an open container of alcohol can serve as a clue for officers to further investigate the driver.

Studies show that the key to open container laws is enforcement. In fact, primary enforcement is a requirement of state law to avoid the federal transfer penalty. One study which examined the effectiveness of open container laws said, “Active enforcement of laws prohibiting open containers of alcohol may help reduce drinking-driving.”<sup>31</sup> The study found that states in which state patrols conducted open container enforcement had 17.5% lower levels of drinking-driving than in states that did not conduct enforcement. Thus, it is critical to combine strong open container laws with enforcement.

## CLOSING SUMMARY

Alcohol sales have been tightly regulated since the end of Prohibition. The three-tiered alcohol sales system was designed to separate manufacturing, sales, and consumption of alcohol as it is widely regarded as a unique product.



*United States Three-Tier Distribution System for Alcohol Sales*

Alcohol remains one of the leading causes of death and injury on U.S. roadways. In 2019, 10,142 people were killed in alcohol related crashes equaling almost one-third of all traffic deaths.

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<sup>29</sup> [https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article\\_inline](https://www.wsj.com/articles/new-york-weighs-whether-to-go-cocktails-should-stick-around-post-pandemic-11622547000?mod=article_inline)

<sup>30</sup> New York State Troopers PBA. Memorandum of Opposition S589/A3806/A3116

<sup>31</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5584594/>

Open container laws are an important countermeasure available to discourage drunk driving. These laws require alcoholic beverages to be sealed and stored out of the passenger area in vehicles. As part of the 1998 highway authorization law, Congress required states to pass open container laws or face a transfer penalty. This penalty “transfers” 3% of a state’s highway construction money to the state’s highway safety programs. Currently 10 states have funding transferred due to noncompliance with federal law.

Following passage of federal legislation, four states immediately passed open container laws and saw reductions in DUI deaths and injuries.

The Covid-19 pandemic, which began in 2020 caused extreme changes in the U.S. economy. The restaurant and bar industry were particularly hard hit during the pandemic. Eating and drinking place sales dropped from \$66.2 billion in February 2020 to \$29.9 billion in April 2020, the lowest of the pandemic. However, by April 2021, eating and drinking sales had risen back to pre-pandemic levels of \$66.1 billion.<sup>32</sup>

In response to the dramatic dip in restaurant and bar sales, many states allowed temporary alcohol to go sales. This allowed eating and drinking establishments to continue to sell alcohol with to-go food orders. It also allowed alcohol sales with food delivery orders.

Initially the relaxed sales were to be temporary, but restaurant and bar owners along with the national liquor association began lobbying to make these changes permanent.

In total, 32 states relaxed restaurant, bar, and delivery sales of alcohol in response to the economic impact of the Covid pandemic.

Even though restaurant sales have currently rebounded to pre-pandemic levels, 16 states have made alcohol-to-go sales permanent. Opposition to these laws has been scant. Groups like DISCUS and the National Restaurant Association have lobbied states to make these laws permanent.

Some states like Texas have seen these laws pass with relative ease. In New York, the New York Liquor Store Association as well as the New York PBA Association opposed this legislation. The liquor store owners raised concerns about alcohol sales and density. Law enforcement raised concerns about increased drunk driving.

Law enforcement is under tremendous pressure. Retirement, recruiting, and retention have dramatically reduced the number of law enforcement officers. Enforcement is a major component

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<sup>32</sup> <https://restaurant.org/articles/news/restaurant-sales-continue-to-trend-higher>

of stopping drunk drivers, especially when combined with open-container laws. Studies show that together they can reduce drunk driving by 17.5%.

Alcohol to go laws raise important safety questions. For over forty years, the U.S. has sent a strong “don’t drink and drive message” to the public. Groups like MADD have helped educate the public on the dangers of drinking and driving, including passage of strong open container laws.

Open container laws have a strong element of common sense. If the public should not drink and drive, it makes sense that they should not have open containers of alcohol in the vehicle. However, alcohol to go laws may mix this messaging. Laws may provide that to-go cocktails, wine, or beer may need to be covered, but are the covers/lids easily removed and does this send the wrong message to drivers?

Federal open container law prohibits open containers in the passenger area and cabin of the vehicle. But do alcohol-to-go laws comply with federal open container policy? An argument could certainly be made that the intent of open container laws is that alcohol should be in its original, manufacturer’s packaging. This is difficult if not impossible to achieve when serving a craft cocktail, draft beer, or glass of wine.

As the U.S tries to return to normal following an unprecedented 2020 Covid-19 pandemic, policy makers and elected officials should consider several things when considering new alcohol sales policy:

- Restaurant and bar sales have returned to pre-pandemic levels.
- Alcohol-to-go sales could be in violation of federal open container laws costing states 3% of federal highway dollars.
- Law enforcement’s reduced capacity to enforce current laws, including open container laws, as well as any new alcohol sale laws.
- Time of sales for restaurants verses retail locations.
- Increasing alcohol sales density.
- Alcohol delivery must take into consideration underage drinking and sales to those under age 21.

Since the end of Prohibition, alcohol sales have been tightly regulated and rightly so. Drunk driving alone claimed over 10,000 lives in 2019. As states consider alcohol-to-go laws, they must consider the impact of these changes to public health and safety.

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## ABOUT THE AUTHOR

J.T. Griffin has over 20 years of Capitol Hill and government relations experience. His career began on Capitol Hill where he worked for over 8 years for a senior member of the House Appropriations Committee on issues ranging from transportation to commerce and technology. He left Capitol Hill to lead the government relations and communications department at Mothers Against Drunk Driving. For over 13 years he helped the organization achieve unprecedented success by advancing major federal and state legislation.



On Capitol Hill, J.T. has a bi-partisan reputation for bringing together lawmakers, staff, and other interest groups to achieve success. He has built an extensive network of Washington contacts and is considered an international traffic safety expert. This includes testifying on influential panels before groups like the NTSB and the National Academy of Sciences. In addition, he has prepared five MADD National Presidents with written testimony and coaching when testifying before several House and Senate committees.

As the head of government relations and communications, J.T. led his advocacy team to major victories in Congress and in state capitols. J.T. has worked with many individual members of Congress and Senators to introduce various pieces of “standalone” legislation. To accomplish this, he has developed strategic legislative agendas and advanced these goals in each of the last three highway authorization bills as well as over a dozen annual appropriations bills. This has resulted in millions of dollars in federal funding for technology and transportation programs as well as major improvements to our nation’s highway safety programs. At the state level, J.T. has worked in almost all 50 states to pass stronger drunk driving laws. These laws are research and data driven and are proven save lives. His expertise has led to the passage of ignition interlock laws in 34 states. Together these laws have helped save over 8,000 lives.

In the fall of 2020, J.T. formed Griffin Strategies, LLC, a full-service Government Relations firm representing clients before the federal government including the U.S. House of Representatives, U.S. Senate, and various federal agencies. The firm specializes in issues relating to transportation and technology, the federal appropriations process, and advising non-profit organizations on fundraising and best practice management.





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