

# DEPARTMENT OF STATE

## OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 and 29 Delaware Code, Section 10119 (4 **Del.C.** §304 & 29 **Del.C.** §10119)  
4 **DE Admin. Code** 203

### EMERGENCY

#### ORDER

#### **Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption**

#### AUTHORITY

Pursuant to 4 **Del.C.** §304 and 29 **Del.C.** §10119, the Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is adopting amendments to 4 **DE Admin. Code** 203: Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption ("Regulation"), to allow on-premises licensees to sell, serve or deliver and patrons to consume alcoholic liquors 1 hour earlier, at 8 a.m., from the former time of 9 a.m., to comply with House Bill 235 which amends 4 **Del.C.** §709. The Commissioner is authorized under 29 **Del.C.** §10119 to adopt emergency regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 4 **Del.C.** §304 authorizes the Commissioner to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code or with any other law of the State.

#### REASON FOR THE EMERGENCY ORDER

In response to meeting the demands of Delaware consumers, liquor licensees, and the developing alcoholic beverage industry, the General Assembly passed House Bill 235 ("HB 235"), which amended 4 **Del. C.** §709 to change from 9:00 a.m. to 8:00 a.m. the time at which an on-premise licensee can sell, serve and deliver alcoholic beverages to customers for consumption on the premises. The Governor signed HB 235 effective January 11, 2024. The Office is implementing this measure through this Emergency Order until this revision to the Regulation can be completed in accordance with 29 **Del.C.** Chapter 101.

This Emergency Order is consistent with HB 235 by revising the Regulation for the time at which a Delaware on-premises licensee can sell, serve or deliver or a patron can consume alcoholic beverages on the licensee's premises, from 9 a.m. to 8 a.m.

The Office finds this measure is compliant with the amendments to the Delaware Code at 4 **Del.C.** §709. To avoid confusion in the industry, the Office finds it is necessary to adopt this measure pursuant to 4 **Del.C.** §304 and to implement the revision prior to completion of the typical regulatory process. 29 **Del.C.** §10111 et seq. Further, and in accordance with 29 **Del.C.** §10119, the Office finds it necessary to engage this regulatory measure regarding the time in which alcoholic liquors shall be sold, served, dispensed or consumed to ensure the public safety and welfare of consumers and on-premise licenses in the Delaware alcoholic liquor industry and avoid any confusion or misunderstanding as to the applicable law and regulations.

#### EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect on the date the Governor signed HB 235, January 11, 2024, and shall remain in effect for 120 days, or until such time as the regulatory process for this Rule change is complete.

#### PETITION FOR RECOMMENDATIONS

The Commissioner will receive, consider, and respond to any petitions by any interested party for recommendations or revisions of this Order. Petitions should be presented to the Office of Alcoholic Beverage Control Commission, 820 N. French St., 10th Floor, Wilmington, DE 19801, attention: Deputy Commissioner Douglas Denison.

#### ORDER

It is this 11th day of January, 2024 the Order of this Office that the above-referenced amendments to 4 **DE Admin.**

**Code 203 Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption**, a copy of which is hereby attached, are supported by the evidence contained herein and adopted pursuant to 4 **Del. C.** §304 according to the procedures of 29 **Del.C.** §10119.

The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

## **Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption**

### **1.0 Purpose and Scope**

This ~~rule~~ regulation defines the term "Delivery", "Sale", "Service" and "Consumption" of alcoholic liquors and prescribes the hours of the day when alcoholic liquors may be delivered, sold and consumed, under the provisions of 4 **Del.C.** §709.

### **2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

**"Consumption"** of alcoholic liquors means the act of drinking or eating alcoholic beverages, includes possession of an alcoholic beverage with the present ability to drink or eat it.

**"Delivery"** of alcoholic liquors means the transfer of possession or custody of alcoholic liquors from one person to another.

**"Sale"** of alcoholic liquors means solicit or receive an order ~~for;~~ for, keep or expose for sale, deliver for value or in any other way than purely gratuitously.

**"Service"** of alcoholic liquors means the delivery of alcoholic beverages.

**"Time of Day day"** means prevailing local time in the State of Delaware as fixed by Executive Order or pursuant to ~~the~~ The Uniform Time Act of ~~1966, 15~~ 1966 (15 U.S.C. §260, et ~~seq.~~ seq.)

### **3.0 Prohibited Acts**

No person licensed by the Commissioner shall sell, serve or deliver alcoholic liquors on, in or from an establishment licensed for On-premises consumption between the hours of ~~1:00 A.M. and 9:00 A.M.~~ 1 a.m. and 8 a.m. No alcoholic liquors shall be consumed on licensed premises between the hours of ~~2:00 A.M. and 9:00 A.M.~~ 2 a.m. and 8 a.m.

**19 DE Reg. 775 (02/01/16)**

**27 DE Reg. 563 (02/01/24) (Emer.)**