Is this a "Restaurant" or a "Bar and Grill"??

On January 1, 2009, the Commissioner of the Louisiana Office of Alcohol and Tobacco Control ("ATC") sent a "policy letter" to all businesses that had an A R permit (restaurant designation) for a location in Louisiana. The letter addressed two concerns, the first of which was the Commissioner's interpretation of the requirements for a "restaurant establishment" and the second was the use of "bar and grill" in the restaurant's name. When explaining the ATC's position, the Commissioner noted:

> A restaurant is a place where alcohol is served in conjunctions with meals, has a fully equipped kitchen, cooks and serves food on all days of operation and all hours of operations, keeps separate sales figures of alcohol & food, and always the primary purpose of it's ability to serve and sell alcohol is tied to food service.
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> A bona fide restaurant does not have drink specials, happy hours, specialize in daiquiris, and charge a cover to enter for entertainment or have 2 people eating an appetizer while fifty people are simply to drink.

In regard to the name of the restaurant, the letter stated:

> If you are operating a facility under a trade name, "Bar & Grill" with only a Class A R license, and trying to utilize the same area of the building for the bar and grill then in all probability you are operating outside of your licensed qualifications and are subject to enforcement actions.

After the letters went out, the ATC began enforcing its interpretation of the law as set forth above. Partly in reaction to the ATC's crackdowns on several restaurants and in an effort to clarify any ambiguity in the law, Senate Bill 136 was introduced in the 2009 Legislative Session, to amend and reenact R.S. 26:73, 272, and 583(C), relative to alcoholic beverage permits and to provide for definitions and qualifications for restaurants.

While the bill was making its way through the Legislature, the Commissioner sent out another letter on June 2, 2009 in an effort to clarify "particular points of the policy letter sent out on January 1, 2009". He began by stating that the purpose of that letter was to address A R Restaurant Permit Holders "who were attempting to utilize with the same space a restaurant and a bar under a restaurant license only and who do not comply with local zoning laws". This letter provided the following explanations:

> By statute, Louisiana has a “bar permit” and a “restaurant permit.” The purpose of the distinction is to allow a business that has a restaurant license to allow less than 18 years olds on the premises. The primary purpose of these licensed restaurants must be to prepare and serve food, and to serve alcoholic beverages in conjunction with that food service.
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> Any licensed restaurant establishment that utilizes an open “bar” area within the restaurant should be mindful of underage access within or around the bar area. Because of their unique status, restaurants are under a particular obligation to ensure that minors are not allowed inappropriate access to alcoholic beverages. There are no prohibitions for a restaurant that is maintaining an A R Restaurant Alcohol License qualification from offering drink specials or happy hours.
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> If a location wants to be a restaurant during early hours and then operate as a bar later that same day, present state law allows for that establishment to apply and qualify for a “Restaurant Conditional” A G permit. The qualification for that permit are simply that during the restaurant hours the kitchen has to be open, the primary purpose has to be food service and alcohol is to be served in conjunction with that food service. In order to fulfill the legal requirements of local zoning ordinances, the “Conditional Permit” has to be in a location where a bar license is permitted and, once it converts to the bar license during the evening hours, no one under 18 years of age is allowed on the premise.

Addressing the use of “Bar & Grill” in the name of an establishment with an A R permit, it was the Commissioner’s opinion that:

> Lastly, in regard to the name of a business license as a restaurant the Office of Alcohol and Tobacco is charged with differentiating between a restaurant operation and a bar operation under state law. We also ensure that alcohol beverage licensees abide by zoning ordinances of local governments as well as state statute.
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> Our concerns have been with places operating under the name of “Jimmy’s Bar & Grill” that operate in an area where local option or zoning does not allow a bar to exist or upon inspection does not have a fully equipped kitchen. In a large number of cases, this type of establishment is found to be operating as a bar, not as a restaurant. That is our concern and we contend it is our legal obligation under present law to enforce the law against such establishments.

> For any restaurant that is operating under the trade name of “Grill & Bar” or the limited number who are without a doubt, bona fide restaurants using the name of “Bar & Grill,” the reason for the policy letter was to educate them about these issues which have always been the concern of this agency.
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> If either of those scenarios begin utilizing the bar portion of the establishment through advertising, entertainment or any activity not part of the restaurant qualifications, this may result in regulatory action by this agency. If any establishment seeks to use any permit as a way to avoid local zoning, that also may result in regulatory action by this agency.

The June 9th letter had no impact on SB 136. The two most significant changes in the bill which were to the definition of “restaurant establishment” found in LSA RS-26:73 and 26:272 remained intact. Prior to the bill, a "restaurant establishment" was:

> (a) Which operates a place of business whose purpose and primary function is to take orders for and serve food and food items.
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> (b) Which serves alcoholic beverages in conjunction with meals.
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> (c) Which serves food on all days of operation.
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> (d) Which maintains separate sales figures for alcoholic beverages.
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> (e) Which operates a fully equipped kitchen used for the preparation of uncooked foods for service and consumption of such foods on the premises.
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> (f) Which has a public habitable floor area of no less than five hundred square feet. This Subparagraph shall not apply to business locations that apply to or have been licensed to sell or serve alcoholic beverages prior to August 1, 2006, and have not discontinued the sale and service of such beverages for more than six months.

The bill amended Paragraph (a) by deleting “purpose and primary function is to take orders for and serve food and food items” and adding in its place “average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages”. As proposed, paragraph (a) would read:

(a) Which operates a place of business whose average monthly revenue from food and nonalcoholic beverages exceeds fifty percent of its total average monthly revenue from the sale of food, nonalcoholic beverages, and alcoholic beverages.

Furthermore, the following requirement in the definition found in paragraph (b) was deleted in its entirety:

(b) Which serves alcoholic beverages in conjunction with meals.

The remaining requirements of the statute were left unchanged by the legislation. The proponents of SB136 argued that the law would still mandate that businesses with an A R permit sell food every day they are open and that their average revenue from food and other non-alcoholic beverages must exceed 50 percent of their total average monthly revenue.

In response to the issue raised by the Commissioner's letter regarding the use of "Bar and Grill" in an establishment's name, the legislation proposed the following additional language:

(3) Notwithstanding any other provision of law to the contrary, a business's trade name shall not disqualify such business as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

Finally, to prevent an establishment from being disqualified as a restaurant because of charging a cover charges or having happy hour specials, the bill included the following:

(4) Notwithstanding any other provision of law to the contrary, a business which provides live entertainment, requires cover charges, offers alcoholic or other beverages at a reduced cost or engages in similar activity shall not be disqualified as a restaurant establishment provided the business meets the qualifications set forth in this Subsection.

To accommodate local jurisdictions that were opposed to the legislation, language was inserted which allowed them to be more restrictive in their requirements for a restaurant than the state:

(5) The provisions of this Section shall not prohibit a parish or municipality from enacting ordinances that establish more restrictive requirements for parish or municipal licenses or permits to sell alcoholic beverages at restaurant establishments.

After much debate in both chambers of the Legislature, the bill won legislative approval on June 22, 2009 when the Senate voted 22-14 for final concurrence on Senate Bill 136 to send the legislation to the governor to sign. The bill was then signed by Governor Jindal and became effective on August 15, 2009.