

AMENDED IN ASSEMBLY JUNE 14, 2018

AMENDED IN SENATE MAY 26, 2017

AMENDED IN SENATE MARCH 30, 2017

AMENDED IN SENATE MARCH 13, 2017

SENATE BILL

No. 254

Introduced by Senator Portantino

February 7, 2017

An act to add Section 25513 to the Business and Professions Code, relating to delivery network companies.

LEGISLATIVE COUNSEL'S DIGEST

SB 254, as amended, Portantino. Delivery network companies: deliveries of alcoholic beverages.

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. Unless otherwise specified, a violation of the act is a misdemeanor.

~~This bill would prohibit a delivery network company, as defined, from delivering, providing, arranging, or in any way facilitating the delivery of alcoholic beverages unless it has a system, reviewed and approved by the Department of Alcoholic Beverage Control, that meets specified requirements, including that the company can verify that the products are delivered to a person who is 21 years of age or older. The bill would also prohibit a delivery network company from delivering alcoholic beverages to consumers on the grounds of a college or university. The bill would authorize the department may charge an original and annual fee in an amount no greater than the amount required~~

~~to cover the actual and reasonable costs of administering the review and approval program.~~

This bill would prohibit a certified delivery network, as defined, from delivering alcoholic beverages sold by an off-sale retail licensee to persons within this state without first obtaining a license issued by the department, subject to specified circumstances relating to the delivery of alcoholic beverages. The bill would require the department to issue licenses to certified delivery networks on or before January 1, 2020. The bill would authorize the department to charge an original and annual fee in an amount no greater than the amount required to cover the actual and reasonable costs of administering the review and approval program. The bill would prohibit a noncertified delivery network company from delivering alcoholic beverages without meeting specified requirements, including that the alcoholic beverages are limited to beer and wine.

The bill, by expanding the scope of an existing crime, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25513 is added to the Business and
- 2 Professions Code, to read:
- 3 25513. (a) A certified delivery network shall not deliver
- 4 alcoholic beverages sold by an off-sale retail licensee to persons
- 5 within this state without first obtaining a license issued by the
- 6 Department of Alcoholic Beverage Control. Delivery of alcohol
- 7 shall take place only under the following circumstances:
- 8 (1) The off-sale retail licensee selects the products offered for
- 9 sale and delivery on the delivery network company's application
- 10 or platform, determines the price at which the products will be
- 11 sold, and has sole discretion to accept or reject any order.
- 12 (2) The alcoholic beverages are dispatched for delivery from
- 13 the premises of the off-sale licensee directly to the recipient.

- 1 (3) *The person delivering alcoholic beverages shall:*
2 (A) *Be at least 21 years of age.*
3 (B) *Verify by means of bona fide evidence of majority and*
4 *identity that the person taking delivery of the alcoholic beverage*
5 *is at least 21 years of age and refuse delivery to any person not*
6 *providing such evidence.*
7 (C) *Refuse delivery to any person who is obviously intoxicated.*
8 (D) *Refuse delivery to any person located on property identified*
9 *as a college campus.*
10 (4) *The off-sale retail licensee has exclusive and continuous*
11 *control of the proceeds from the sale of alcoholic beverages and*
12 *shall be identified as the merchant of record on receipts, invoices,*
13 *and billing statements.*
14 (5) *Delivery of the alcoholic beverages occurs in a*
15 *person-to-person transfer with the recipient taking delivery of the*
16 *alcoholic beverage.*
17 (6) *Delivery of the alcoholic beverages is to a physical address.*
18 (7) *Delivery of the alcoholic beverages will take place between*
19 *9:00 a.m. and 1:00 a.m.*
20 (8) *A certified alcohol delivery network shall be able to charge*
21 *a price no more than 10 percent higher than the price determined*
22 *by the off-sale retail license.*
23 (9) *A certified alcohol delivery network shall be able to charge*
24 *a fee for delivery.*
25 (b) *In addition to any other penalty or remedy provided by law,*
26 *a certified delivery network company's failure to maintain or*
27 *operate a system meeting any requirement of this section shall be*
28 *cause for revocation or suspension of the license issued pursuant*
29 *to subdivision (a). The delivery of alcoholic beverages to a person*
30 *under 21 years of age or who is intoxicated may be enforced in*
31 *the same form and manner as for persons holding an off-sale retail*
32 *license. For purposes of this section, the acts or omissions of the*
33 *person making the delivery shall be imputed to the certified delivery*
34 *network company,*
35 (c) *For purposes of this section, a "certified delivery network*
36 *company" means a person who operates an online-enabled*
37 *application or platform licensed by the Department of Alcoholic*
38 *Beverage Control that connects consumers with a network of*
39 *persons for the delivery of alcoholic beverages purchased from*
40 *an off-sale retail licensee, and the person delivering the alcoholic*

1 *beverage is not directly compensated and contracted by the retail*
2 *licensee.*

3 *(d) A noncertified delivery network company shall not deliver*
4 *alcoholic beverages sold by an off-sale retail licensee to persons*
5 *within this state without meeting the following requirements:*

6 *(1) The off-sale retail licensee selects the products offered for*
7 *sale and delivery on the delivery network company's application*
8 *or platform, determines the price at which the products will be*
9 *sold, and has sole discretion to accept or reject any order.*

10 *(2) The alcoholic beverages are dispatched for delivery from*
11 *the premises of the off-sale licensee directly to the recipient.*

12 *(3) The person delivering alcoholic beverages shall:*

13 *(A) Be at least 21 years of age.*

14 *(B) Verify by means of bona fide evidence of majority and*
15 *identity that the person taking delivery of the alcoholic beverage*
16 *is at least 21 years of age and refuse delivery to any person not*
17 *providing such evidence.*

18 *(C) Refuse delivery to any person who is obviously intoxicated.*

19 *(D) Refuse delivery to any person located on property identified*
20 *as a college campus.*

21 *(4) The off-sale retail licensee has exclusive and continuous*
22 *control of the proceeds from the sale of alcoholic beverages and*
23 *shall be identified as the merchant of record on receipts, invoices,*
24 *and billing statements.*

25 *(5) Delivery of the alcoholic beverages occurs in a*
26 *person-to-person transfer with the recipient taking delivery of the*
27 *alcoholic beverage.*

28 *(6) Delivery of the alcoholic beverages is to a physical address.*

29 *(7) Delivery of the alcoholic beverages is limited to beer and*
30 *wine.*

31 *(8) Delivery of the alcoholic beverages will take place between*
32 *12:00 p.m. and 9:00 p.m.*

33 *(9) The price that the delivery network company may charge*
34 *shall match the price determined by the off-sale retail licensee and*
35 *the only fee that may be charged is for delivery.*

36 *(10) Any agreement between the delivery network company and*
37 *the off-sale retail licensee includes a form signed by both the*
38 *off-sale retail licensee and the delivery network company issued*
39 *by the department dictating that the off-sale retail licensee takes*
40 *full liability for any legal violations pursuant to the law.*

1 (e) On or before January 1, 2020, the department shall issue
2 licenses to certified delivery network company pursuant to the
3 requirements of subdivision (a).

4 (f) Beginning January 1, 2020, a certified delivery network shall
5 submit to the department all of the signed forms described in
6 paragraph (10) of subdivision (d).

7 (g) The department may charge an original and annual fee in
8 an amount no greater than the amount required to cover the actual
9 and reasonable costs of administering the review and approval
10 program established by this section.

11 (h) This section shall not apply to a motor carrier or freight
12 forwarder as defined in Section 13102 of Title 49 of the United
13 States Code or an air carrier as defined in Section 40102 of Title
14 49 of the United States Code.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 SECTION 1. ~~Section 25513 is added to the Business and~~
25 ~~Professions Code, to read:~~

26 25513. ~~(a) A delivery network company shall not deliver,~~
27 ~~provide, arrange, or in any way facilitate the delivery of alcoholic~~
28 ~~beverages to a consumer unless it meets the following~~
29 ~~requirements:~~

30 ~~(1) The company can verify that the individual to which the~~
31 ~~alcoholic beverages are delivered is 21 years of age or older, the~~
32 ~~delivery takes place person to person, and the delivery driver is~~
33 ~~21 years of age or older.~~

34 ~~(2) A consumer may suspend, for any length of time, delivery~~
35 ~~of alcoholic beverages to a specified location that he or she has~~
36 ~~identified as the consumer's primary delivery location.~~

37 ~~(3) A delivery network company shall not deliver alcoholic~~
38 ~~beverages to consumers on the grounds of a college or university.~~

39 (b) (1) On or before January 1, 2020, the department shall
40 develop a process by which it may review and approve a system

1 used by a delivery network company to ensure that it meets the
2 requirements of subdivision (a).

3 (2) Beginning January 1, 2020, a delivery network company
4 shall have a system, reviewed and approved by the department,
5 that meets the requirements of subdivision (a).

6 (3) The department may charge an original and annual fee in
7 an amount no greater than the amount required to cover the actual
8 and reasonable costs of administering the review and approval
9 program established by this section.

10 (e) For purposes of this section, “delivery network company”
11 means an organization, including, but not limited to, a corporation,
12 limited liability company, partnership, sole proprietor, or any other
13 entity, operating in California that provides, arranges, or in any
14 way facilitates prearranged delivery as an act of enrichment,
15 financial or otherwise, of goods or services using an online-enabled
16 application or platform to connect consumers with goods or service
17 and to have those goods or services delivered directly to the
18 consumer.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.