

2018 Regular Session

SENATE BILL NO. 489 (Substitute of Senate Bill No. 246 by Senator Morrish)

BY SENATOR MORRISH

ALCOHOLIC BEVERAGES. Provides relative to the delivery of alcoholic beverages.
(8/1/18)

1 AN ACT

2 To enact R.S. 26:271.2(1)(j) and 307, relative to the delivery of alcoholic beverages of low

3 alcoholic content and wine; to provide relative to the delivery of sparkling wine and

4 still wine; to provide for agreements between certain retail dealers and a third party

5 for the delivery of alcoholic beverages; to provide for the delivery of alcoholic

6 beverages by a third party; to provide for delivery restrictions; to provide for

7 recordkeeping; to provide for fees; to provide for requirements; to provide for

8 applicability; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 26:271.2(1)(j) and 307 are hereby enacted to read as follows:

11 §271.2. Class A permit; definitions

12 The commissioner shall issue the following four types of Class A retail

13 permits for beverages of low alcoholic content:

14 (1) Class A- General:

15 * * *

16 (j) Notwithstanding any provision of law to the contrary and subject to

17 rules promulgated by the commissioner, a permit may be issued to a third party

1 that has entered into a written agreement with a retail dealer for the delivery
2 of alcoholic beverages pursuant to R.S. 26:307 if the third party and the written
3 agreement meet all the requirements set forth in R.S. 26:307.

4 * * *

5 §307. Alcoholic beverages delivery agreements; requirements; limitations

6 A. Notwithstanding any provision of law to the contrary, a retail dealer
7 possessing a valid Class A-General retail permit as provided in R.S. 26:271.2 or
8 a Class "R" restaurant permit as provided in R.S. 26:272 issued pursuant to
9 this Chapter may enter into a written agreement with a third party for the use
10 of an internet or mobile application or similar technology platform to facilitate
11 the sale of alcoholic beverages for delivery to consumers for personal
12 consumption within this state and the third party may deliver alcoholic
13 beverages to the consumer.

14 B. An alcoholic beverage delivery agreement between a retail dealer and
15 a third party shall require all of the following:

16 (1) Only alcoholic beverages purchased from a wholesale dealer licensed
17 pursuant to this Chapter are offered for delivery.

18 (2) Only alcoholic beverages of low alcoholic content, sparkling wine as
19 defined in R.S. 26:2(19), and still wine as defined in R.S. 26:2(20) are offered for
20 delivery.

21 (3) Only alcoholic beverages intended for personal consumption and
22 delivered in a manufacturer sealed container are offered for delivery.
23 "Manufacturer sealed" as used in this Section shall mean the original sealed
24 container that is filled with the alcoholic beverage at the permitted facility by
25 the manufacturer as defined in R.S. 26:2 and 241.

26 (4) Alcoholic beverages are delivered only on the days and during the
27 hours the retail dealer is authorized to sell or serve alcoholic beverages.

28 (5) Alcoholic beverages are delivered only in those areas where the sale
29 of alcoholic beverages is permitted. Delivery of alcoholic beverages in an area

1 where the sale of alcoholic beverages has been prohibited by a referendum vote
2 is prohibited.

3 (6) No alcoholic beverages shall be delivered to a state college, university,
4 or technical college or institute or an independent college or university located
5 in this state.

6 (7) No alcoholic beverages are delivered more than fifteen miles from the
7 place of purchase.

8 (8) All orders for the delivery of alcoholic beverages contain food. No
9 alcoholic beverages shall be delivered unless the order for such alcoholic
10 beverages also contains food.

11 (9) The alcoholic beverages of all deliveries refused by a third party shall
12 be returned to the place of purchase.

13 (10) Alcoholic beverages are delivered only by a person that meets all of
14 the following:

15 (a) The person is eighteen years of age or older.

16 (b) The person is an employee for which the third party shall be required
17 to file an Internal Revenue Service Form W-2.

18 (c) The person possesses a valid server permit as provided in R.S. 26:931
19 et seq.

20 (11) The retail dealer shall manage and control the sale of alcoholic
21 beverages. Such responsibilities shall include but not be limited to:

22 (a) Determine the alcoholic beverages to be offered for sale through a
23 third party's internet or mobile application platform or similar technology.

24 (b) Determine the price at which alcoholic beverages are offered for sale
25 or sold through a third party's internet or mobile application platform or
26 similar technology.

27 (c) Accept or reject all orders placed for alcoholic beverages through a
28 third party's internet or mobile application platform or similar technology.

29 (d) Collect and remit all applicable state and local taxes.

1 C. A retail dealer shall enter into an alcoholic beverage delivery
2 agreement with a third party only when that party meets all of the following:

3 (1) The third party is properly registered and authorized to conduct
4 business in Louisiana.

5 (2) The third party holds a valid Louisiana alcoholic beverage permit
6 issued pursuant to R.S. 26:271.2(1)(j).

7 (3) The third party maintains not less than two million dollars in liquor
8 liability insurance for the duration of the agreement with the retail dealer and
9 provides proof of coverage to the retail dealer.

10 (4) The third party is able to monitor the routes of its employees during
11 deliveries.

12 (5) The third party conducts an in-person interview and a background
13 check on all employees that will deliver alcoholic beverages.

14 D. A retail dealer may pay a third party a fee for its services and a third
15 party may charge a reasonable delivery fee for orders delivered by the third
16 party. A third party may act as an agent of a retail dealer in the collection of
17 payments from the sale of alcoholic beverages, but the full amount of each order
18 must be handled in a manner that gives the retail dealer control over the
19 ultimate receipt of the payment from the consumer.

20 E.(1) The third party may receive orders and accept payment via the
21 internet or through a mobile application or similar technology.

22 (2) At the time of delivery of alcoholic beverages, the third party's
23 delivery agent shall obtain the recipient's signature and verify the age of the
24 recipient through the use of an electronic age verification device that shall be
25 approved by the commissioner. Such device shall be capable of all of the
26 following:

27 (a) Verifying proof of age through technology of a magnetic card reader
28 or an alternative technology capable of verifying proof of age.

29 (b) Reading a valid state issued driver's license, a valid state issued

1 identification card, a valid military identification card, or a valid passport.

2 (c) Storing the recipient's name, age, date of birth, and gender, the
3 expiration date of the identification, and the date and time that the
4 identification was scanned.

5 (3) The third party's delivery agent shall refuse delivery and return the
6 alcoholic beverages to the place of purchase if:

7 (a) The recipient does not produce a valid and current form of
8 identification as provided in R.S. 26:286(A)(1).

9 (b) The recipient is intoxicated.

10 (c) There is reason to doubt the authenticity or correctness of the
11 recipient's identification.

12 (d) The recipient refuses to sign for the receipt of the delivery.

13 F. A record of each delivery of alcoholic beverages shall be kept for two
14 years from the date of delivery and made available to the commissioner of the
15 office of alcohol and tobacco control upon request for the purpose of
16 investigating and enforcing the provisions of this Title. The record of each
17 delivery shall include:

18 (1) The retail dealer's name, address, and permit number.

19 (2) The name of the person who placed the order and the date, time, and
20 method of the order.

21 (3) The name of the delivery agent and the date, time, and address of the
22 delivery.

23 (4) The type, brand, and quantity of each alcoholic beverage delivered.

24 (5) The name, date of birth, and signature of the person who received the
25 delivery.

26 G. The provisions of this Section shall not apply to transportation or
27 delivery by a carrier that performs transportation subject to the jurisdiction of
28 49 U.S.C. § 13501 et seq., regardless of whether the specific transportation or
29 delivery is subject to such jurisdiction.

1 **H. The commissioner of the office of alcohol and tobacco control may**
 2 **promulgate rules and regulations in accordance with the Administrative**
 3 **Procedure Act to effectuate the provisions of this Section.**

The original instrument was prepared by Ashley Menou. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

SB 489 Reengrossed

2018 Regular Session

Morrish

Proposed law allows a Class A-General retail permit to be issued to a third party that has entered into a written agreement with a retail dealer for the delivery of alcoholic beverages if certain conditions are met.

Proposed law authorizes retail dealers who hold a Class A-General retail permit or a Class "R" restaurant permit to provide delivery services of beverages of low alcoholic content and sparkling and still wines to its customers within the state.

Proposed law provides that the holder of a retail dealer permit may enter into a written agreement with a third party for the use of an internet or mobile application to facilitate the sale of alcoholic beverages for delivery to consumers for personal consumption within the state.

Proposed law requires an alcoholic beverage delivery agreement between a retail dealer and a third party to meet certain listed conditions.

Proposed law provides that a third party must meet all of the following requirements to enter into an alcoholic beverages delivery agreement with a retail dealer:

- (1) Properly registered and authorized to conduct business in Louisiana.
- (2) Holds a valid Louisiana alcoholic beverage permit issued pursuant to proposed law.
- (3) Maintains not less than two million dollars in liquor liability insurance for the duration of the agreement with the retail dealer and provides proof of coverage to the retail dealer.
- (4) Has the ability to monitor the routes of its employees during deliveries.
- (5) Conducts an in-person interview and a background check on all employees that will deliver alcoholic beverages.

Proposed law provides that a retail dealer may pay a third party a fee for its services and a third party may charge a reasonable delivery fee for orders delivered by the third party.

Proposed law provides that a third party may act as an agent of a retail dealer in the collection of payments from the sale of alcoholic beverages, but the full amount of each order must be handled in a manner that gives the retail dealer control over the ultimate receipt of the payment.

Proposed law provides that the third party may receive orders and accept payment via the internet or through a mobile application or similar technology.

Proposed law provides that at the time of delivery, the third party's delivery agent shall

obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device that is approved by the commissioner. Such device must meet certain requirements.

Proposed law provides that delivery of alcoholic beverages shall be refused if:

- (1) The recipient does not produce a valid and current form of identification.
- (2) The recipient is intoxicated.
- (3) There is reason to doubt the authenticity or correctness of the recipient's identification.
- (4) The recipient refuses to sign for the receipt of the delivery.

Proposed law provides that records of each delivery shall be kept for a period of two years from the date of delivery and made available to the commissioner upon request. Further provides that the record for each delivery shall contain all of the following:

- (1) The retail dealer's name, address, and permit number.
- (2) The name of the person who placed the order and the date, time, and method of the order.
- (3) The name of the delivery agent and the date, time, and address of the delivery.
- (4) The type, brand, and quantity of each alcoholic beverage delivered.
- (5) The name, date of birth, and signature of the person who received the delivery.

Proposed law specifies that provisions of proposed law relating to delivery agreements do not apply to certain interstate carriers.

Effective August 1, 2018.

(Adds R.S. 26:271.2(1)(j) and 307)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Limits scope to beverages of low alcoholic content, sparkling and still wine.
2. Authorizes issuance of permits to third parties who have entered into written agreements with a retail dealer for the delivery of low alcoholic content beverages, sparkling and still wines pursuant to rules promulgated by the commissioner.
3. Limits delivery to only those products delivered in a manufacturer sealed container.
4. Defines "manufacturer sealed".
5. Prohibits delivery of low alcoholic content beverages and sparkling and still wines more than 15 miles from the place of purchase.
6. Requires all orders for delivery to contain food.

7. Adds additional requirements that must be contained in each alcoholic beverages delivery agreement.
8. Adds additional requirements for third parties that wish to enter into alcoholic beverage delivery agreements with retail dealers.
9. Adds additional requirements for third party delivery agents.
10. Exempts certain interstate carriers.
11. Makes technical corrections.