

2019 Regular Session

SENATE BILL NO. 140

BY SENATOR CARTER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ALCOHOLIC BEVERAGES. Provides relative to alcohol delivery and allows the use of a third party marketer. (gov sig)

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AN ACT

To enact R.S. 26:2(27), (28), and (29), 153, 241 (25), (26), and (27) and 307, relative to the Alcoholic Beverage Control Law; to provide for the delivery of alcoholic beverages; to provide for requirements, restrictions and limitations; to provide for the marketing of alcoholic beverages through electronic means; to provide for electronic order processing; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 26:2(27), (28), and (29), 153, 241(25), (26), and (27) and 307 are hereby enacted to read as follows:

§2. Definitions

For purposes of this Chapter, the following terms have the respective meanings ascribed to them in this Section, unless a different meaning clearly appears from the context:

* * *

(27) "Electronic means" means internet-enabled technology and digital media including but not limited to websites and consumer applications accessible though smart phones and other mobile devices.

1 each order at the permitted premises where the order is processed using
2 inventory located at that premises that was purchased from a permitted
3 wholesale dealer.

4 (4) The deliveries to consumers are made only by the liquor retailer or
5 its employee and only to consumers at a residential or commercial address in
6 this state.

7 (5) The alcoholic beverages delivered are for personal consumption, not
8 intended for resale, and are in a manufactured sealed container. The delivery
9 of an "open alcoholic beverage container" as defined in R.S. 32:300 is
10 prohibited.

11 (6) The delivery is in a geographic area where the sale of alcoholic
12 beverages is lawful and in the parish where the liquor retailer's permitted
13 establishment is located. Deliveries shall be prohibited in any geographic area
14 where the sale of alcohol is prohibited by the local governing authority.

15 (7) The delivery is not to an address on a campus of any state college,
16 university, or technical college or institution, or an independent college or
17 university, or any elementary or secondary school.

18 (8) The delivery takes place during the hours that the authorized liquor
19 retailer's permitted establishment is open to the public.

20 (9) At the time of delivery, the liquor retailer or its employee verifies that
21 the recipient of the alcoholic beverage or beverages is not visibly intoxicated.

22 (10) At the time of delivery, the liquor retailer or employee verifies the
23 identity and age of the person accepting delivery of the order by validating a
24 state issued photo identification of the person or through use of a real-time age
25 verification system authorized by the commissioner. Additionally, a signature
26 of the person receiving the delivery acknowledging receipt of the delivery and
27 verifying their age shall be obtained.

28 (11) The liquor retailer keeps a record of all deliveries of alcoholic
29 beverages and retains the records for a time period of two years from the date

1 **of the delivery.**

2 **C.(1) The record of each delivery as required by Paragraph (B)(11) of**
3 **this Section shall include:**

4 **(a) The liquor retailer's name, address, and permit number.**

5 **(b) The name of the person who placed the order and the date, time, and**
6 **method of the order.**

7 **(c) The name of the employee making the delivery and the date, time,**
8 **and address of the delivery.**

9 **(d) The type, brand, and quantity of each alcoholic beverage delivered.**

10 **(e) The name, date of birth, and signature of the person that received the**
11 **delivery.**

12 **(2) The liquor retailer shall make the records available to the**
13 **commissioner of the office of alcohol and tobacco control upon request for the**
14 **purpose of investigating and enforcing the provisions of this Title.**

15 **D.(1) Notwithstanding any law, rule, or regulation to the contrary, a**
16 **liquor retailer may use electronic means to market the alcohol products it is**
17 **licensed to sell and to receive and process purchase orders placed by a consumer**
18 **of legal drinking age.**

19 **(2) Orders processed may be delivered to the consumer on the licensed**
20 **premises or at a residential or commercial address designated by the consumer**
21 **in accordance with Subsection B of this Section.**

22 **E. A liquor retailer may market, receive, and process orders for alcohol**
23 **products using electronic means owned, operated, and maintained by a third**
24 **party marketer provided that:**

25 **(1) The permittee maintains ultimate control and responsibility over the**
26 **sales transaction and transfer of physical possession of the alcoholic beverages.**

27 **(2) The permittee retains the sole discretion to determine whether to**
28 **accept and complete an order or reject it, and the permittee or its employee**
29 **reviews and accepts or rejects each order.**

1 **(3) The permittee retains the independence to determine which alcoholic**
2 **beverages are made available through electronic means and which alcoholic**
3 **beverages are made available for delivery to the consumer, and what will be the**
4 **price of each product.**

5 **(4) The purchase transaction takes place between the consumer and the**
6 **permittee and the permittee appears as the retailer.**

7 **(5) Any credit or debit card information provided by a consumer to the**
8 **third party for the purpose of transacting a purchase with a permittee is**
9 **automatically directed to the permittee such that the permittee appears as the**
10 **retailer at the time of purchase and on the receipt.**

11 **(6) The permittee, or its employee, processes the order at the premises**
12 **that accepts the order with all payments initiated by a consumer that is**
13 **transacting a purchase with the permittee.**

14 **(7) The alcoholic beverages are in the possession of the permittee prior**
15 **to the permittee's processing of payment of such products.**

16 **(8) The permittee, or its employee, assembles, packages, and fulfills each**
17 **order at the premises that accepted the order.**

18 **(9) Deliveries to consumers are made by the permittee, or by its**
19 **employee.**

20 **(10) At the time of delivery, the permittee, or its employee, verifies the**
21 **identity and age of the person accepting delivery of the order by validating a**
22 **state issued photo identification of the person or through use of a real-time age**
23 **verification system authorized by the commissioner. Additionally, a signature**
24 **of the person receiving the delivery acknowledging receipt of the delivery and**
25 **verifying their age shall be obtained.**

26 **F. The relationship between the permittee and third party marketer shall**
27 **be that of an independent contractor and neither party shall be deemed the**
28 **employee, agent, or joint venturer of the other party under any circumstances**
29 **or for any purposes.**

1 A. For purposes of this Section, the term "liquor retailer" or
2 "permittee" shall only include:

3 (1) Liquor retailers that meet the definition of "Package House-Class B"
4 provided in R.S. 26:2(13) and possess a Class B Retail Liquor Permit.

5 (2) Other liquor retailers that possess a permit that allows the sale of
6 alcoholic beverages for off-premise consumption.

7 B. Notwithstanding any law to the contrary, upon approval by the
8 commissioner, a liquor retailer may deliver, either on its licensed premises or
9 at a residential or commercial address designated by the consumer, alcohol
10 products lawfully sold to and purchased by the consumer. In the delivery of the
11 products, all of the following shall apply:

12 (1) The liquor retailer meets the definition of "Package House-Class B"
13 provided in R.S. 26:2(13) and possesses a Class B Retail Liquor Permit or the
14 liquor retailer possesses a permit that allows the retailer to sell alcoholic
15 beverages for off-premise consumption.

16 (2) The liquor retailer or its employee processes all payments initiated
17 by a consumer that is transacting the purchase with the liquor retailer.

18 (3) The liquor retailer or its employee assembles, packages, and fulfills
19 each order at the permitted premises where the order is processed using
20 inventory located at that premises that was purchased from a permitted
21 wholesale dealer.

22 (4) The deliveries to consumers are made only by the liquor retailer or
23 its employee and only to consumers at a residential or commercial address in
24 this state.

25 (5) The alcoholic beverages delivered are for personal consumption, not
26 intended for resale, and are in a manufactured sealed container. The delivery
27 of an "open alcoholic beverage container" as defined in R.S. 32:300 is
28 prohibited.

29 (6) The delivery is in a geographic area where the sale of alcoholic

1 beverages is lawful and in the parish where the liquor retailer's permitted
2 establishment is located. Deliveries shall be prohibited in any geographic area
3 where the sale of alcohol is prohibited by the local governing authority.

4 (7) The delivery is not to an address on a campus of any state college,
5 university, or technical college or institution, or an independent college or
6 university, or any elementary or secondary school.

7 (8) The delivery takes place during the hours that the authorized liquor
8 retailer's permitted establishment is open to the public.

9 (9) At the time of delivery, the liquor retailer or its employee verifies that
10 the recipient of the alcoholic beverage or beverages is not visibly intoxicated.

11 (10) At the time of delivery, the liquor retailer or employee verifies the
12 identity and age of the person accepting delivery of the order by validating a
13 state issued photo identification of the person or through use of a real-time age
14 verification system authorized by the commissioner. Additionally, a signature
15 of the person receiving the delivery acknowledging receipt of the delivery and
16 verifying their age shall be obtained.

17 (11) The liquor retailer keeps a record of all deliveries of alcoholic
18 beverages and retains the records for a time period of two years from the date
19 of the delivery.

20 C.(1) The record of each delivery as required by Paragraph (B)(11) of
21 this Section shall include:

22 (a) The liquor retailer's name, address, and permit number.

23 (b) The name of the person who placed the order and the date, time, and
24 method of the order.

25 (c) The name of the employee making the delivery and the date, time,
26 and address of the delivery.

27 (d) The type, brand, and quantity of each alcoholic beverage delivered.

28 (e) The name, date of birth, and signature of the person that received the
29 delivery.

1 (2) The liquor retailer shall make the records available to the
2 commissioner of the office of alcohol and tobacco control upon request for the
3 purpose of investigating and enforcing the provisions of this Title.

4 D. (1) Notwithstanding any law, rule, or regulation to the contrary, a
5 liquor retailer may use electronic means to market the alcohol products it is
6 licensed to sell and to receive and process purchase orders placed by a consumer
7 of legal drinking age.

8 (2) Orders processed may be delivered to the consumer on the licensed
9 premises or at a residential or commercial address designated by the consumer
10 in accordance with Subsection B of this Section.

11 E. A liquor retailer may market, receive, and process orders for alcohol
12 products using electronic means owned, operated, and maintained by a third
13 party marketer provided that:

14 (1) The permittee maintains ultimate control and responsibility over the
15 sales transaction and transfer of physical possession of the alcoholic beverages.

16 (2) The permittee retains the sole discretion to determine whether to
17 accept and complete an order or reject it, and the permittee or its employee
18 reviews and accepts or rejects each order.

19 (3) The permittee retains the independence to determine which alcoholic
20 beverages are made available through electronic means and which alcoholic
21 beverages are made available for delivery to the consumer, and what will be the
22 price of each product.

23 (4) The purchase transaction takes place between the consumer and the
24 permittee and the permittee appears as the retailer.

25 (5) Any credit or debit card information provided by a consumer to the
26 third party for the purpose of transacting a purchase with a permittee is
27 automatically directed to the permittee such that the permittee appears as the
28 retailer at the time of purchase and on the receipt.

29 (6) The permittee, or its employee, processes the order at the premises

1 that accepts the order with all payments initiated by a consumer that is
2 transacting a purchase with the permittee.

3 (7) The alcoholic beverages are in the possession of the permittee prior
4 to the permittee's processing of payment of such products.

5 (8) The permittee, or its employee, assembles, packages, and fulfills each
6 order at the premises that accepted the order.

7 (9) Deliveries to consumers are made by the permittee, or by its
8 employee.

9 (10) At the time of delivery, the permittee, or its employee, verifies the
10 identity and age of the person accepting delivery of the order by validating a
11 state issued photo identification of the person or through use of a real-time age
12 verification system authorized by the commissioner. Additionally, a signature
13 of the person receiving the delivery acknowledging receipt of the delivery and
14 verifying their age shall be obtained.

15 F. The relationship between the permittee and third party marketer shall
16 be that of an independent contractor and neither party shall be deemed the
17 employee, agent, or joint venturer of the other party under any circumstances
18 or for any purposes.

19 G. The commissioner may promulgate rules in accordance with the
20 Administrative Procedure Act related to the requirements and qualifications for
21 the delivery of alcohol products by liquor retailers as provided by this Section.

22 H. If any provision of this Section or its application to any person or
23 circumstance is determined by a court to be invalid or unconstitutional, the
24 remaining provisions shall be construed in accordance with the intent of the
25 legislature to further limit rather than expand commerce in alcoholic beverages
26 and to enhance strict regulatory control over taxation, distribution, and sale of
27 alcoholic beverages through the three-tier regulatory system imposed by the
28 Alcoholic Beverage Control Law upon all alcoholic beverages.

29 Section 2. The Louisiana State Law Institute is hereby authorized and directed to

1 arrange in alphabetical order and renumber the definitions provided in R.S. 26:2 and 241.

2 Section 3. This Act shall become effective upon signature by the governor or, if not
3 signed by the governor, upon expiration of the time for bills to become law without signature
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become
6 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka D. George.

DIGEST

SB 140 Original

2019 Regular Session

Carter

Proposed law authorizes the delivery of alcoholic beverages to consumers by businesses with a Class B Retail Liquor Permit (package houses) or a permit that allows the sale of alcoholic beverages for off-premise consumption. Applies to alcohol beverages of high and low alcohol content.

Proposed law provides that for purposes of proposed law, the term "liquor retailer" only includes:

- (1) Liquor retailers who possesses a Class B Retail Liquor Permit, do business in a place consisting of no less than 500 square feet of public habitable area, and sell alcoholic beverages in factory sealed containers for transportation and consumption off the premises, and where no person is allowed to tamper with or otherwise disrupt the manufacturer's seal on the alcoholic products while on the licensed premises.
- (2) Liquor retailers who possess a permit that allows the sale of alcoholic beverages for off-premise consumption.

Proposed law provides that, notwithstanding any law to the contrary, upon approval by the commissioner, a liquor retailer may deliver, either on its licensed premises or at a residential or commercial address designated by the consumer, alcohol products lawfully sold to and purchased by the consumer. Provides that in the delivery of the products, all of the following apply:

- (1) The liquor retailer possesses a Class B Retail Liquor Permit or the liquor retailer possesses a permit that allows the retailer to sell alcoholic beverages for off-premise consumption.
- (2) The liquor retailer or its employee processes all payments initiated by a consumer that is transacting the purchase with the liquor retailer.
- (3) The liquor retailer or its employee assembles, packages, and fulfills each order at the permitted premises where the order is processed using inventory located at that premises that was purchased from a permitted wholesale dealer.
- (4) The deliveries to consumers are made only by the liquor retailer or its employee and only to consumers at a residential or commercial address in this state.
- (5) The alcoholic beverages delivered are for personal consumption, not intended for resale, and are in a manufactured sealed container. The delivery of an "open

- alcoholic beverage container" is prohibited.
- (6) The delivery is in a geographic area where the sale of alcoholic beverages is lawful and in the parish where the liquor retailer's permitted establishment is located. Deliveries are prohibited in any geographic area where the sale of alcohol is prohibited by the local governing authority.
 - (7) The delivery is not to an address on a campus of any state college, university, or technical college or institution, or an independent college or university, or any elementary or secondary school.
 - (8) The delivery takes place during the hours that the authorized liquor retailer's permitted establishment is open to the public.
 - (9) At the time of delivery, the liquor retailer or its employee verifies that the recipient of the alcoholic beverages is not visibly intoxicated.
 - (10) At the time of delivery, the liquor retailer or employee verifies the identity and age of the person accepting delivery of the order by validating a state issued photo identification of the person or through use of a real-time age verification system authorized by the commissioner to the office of alcohol and tobacco control. Also, a signature of the person receiving the delivery acknowledging receipt of the delivery and verifying their age is obtained.
 - (11) The liquor retailer keeps a record of all deliveries of alcoholic beverages and retains the records for a time period of two years from the date of the delivery.

Proposed law provides that the liquor retailer's delivery records shall include:

- (1) The liquor retailer'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 employee making the delivery 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 that received the delivery.

Proposed law requires that the liquor retailer make the records available to the commissioner of the office of alcohol and tobacco control upon request for the purpose of investigating and enforcing the provisions of the law.

Proposed law provides that notwithstanding any law, rule, or regulation to the contrary, a liquor retailer may use electronic means to market the alcohol products it is licensed to sell and to receive and process purchase orders placed by a consumer of legal drinking age. Provides that orders processed may be delivered to the consumer on the licensed premises or at a residential or commercial address designated by the consumer in accordance with proposed law.

Proposed law provides that a liquor retailer may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party marketer if:

- (1) The permittee maintains ultimate control and responsibility over the sales transaction and transfer of physical possession of the alcoholic beverages.

- (2) The permittee retains the sole discretion to determine whether to accept and complete an order or reject it, and the permittee or its employee reviews and accepts or rejects each order.
- (3) The permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer, and what will be the price of each product.
- (4) The purchase transaction takes place between the consumer and the permittee and the permittee appears as the retailer.
- (5) Any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase with a permittee is automatically directed to the permittee such that the permittee appears as the retailer at the time of purchase and on the receipt.
- (6) The permittee, or its employee, processes the order at the premises that accepts the order with all payments initiated by a consumer that is transacting a purchase with the permittee.
- (7) The alcoholic beverages are in the possession of the permittee prior to the permittee's processing of payment of such products.
- (8) The permittee, or its employee, assembles, packages, and fulfills each order at the premises that accepted the order.
- (9) Deliveries to consumers are made by the permittee, or by its employee.
- (10) At the time of delivery, the permittee, or its employee, verifies the identity and age of the person accepting delivery of the order by validating a state issued photo identification of the person or through use of a real-time age verification system authorized by the commissioner. Additionally, a signature of the person receiving the delivery acknowledging receipt of the delivery and verifying their age shall be obtained.

Proposed law provides that the relationship between the permittee and third party marketer shall be that of an independent contractor and neither party shall be deemed the employee, agent, or joint venturer of the other party under any circumstances or for any purposes.

Proposed law authorizes the commissioner of the office of alcohol and tobacco control to promulgate rules in accordance with the APA related to the requirements and qualifications for the delivery of alcohol products by liquor retailers as provided by proposed law.

Proposed law provides that if any provision of proposed law or its application to any person or circumstance is determined by a court to be invalid or unconstitutional, the remaining provisions shall be construed in accordance with the intent of the legislature to further limit rather than expand commerce in alcoholic beverages and to enhance strict regulatory control over taxation, distribution, and sale of alcoholic beverages through the three-tier regulatory system imposed by the Alcoholic Beverage Control Law upon all beverage alcohol.

Authorizes and directs the Louisiana State Law Institute to arrange in alphabetical order and renumber the definitions in the law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 26:2(27), (28), and (29), 153, 241(25), (26), and (27) and 307)