

2020 Regular Session

SENATE BILL NO. 178

BY SENATOR ALLAIN

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

ALCOHOLIC BEVERAGES. Provides relative to the delivery of alcoholic beverages.
(gov sig)

1 AN ACT

2 To amend and reenact R.S. 26:271.2(2)(b), 271.4, and 308(A), (B), (C)(1), (2), (8) and
3 (11)(b), (D), (E), and (F)(1), and to enact R.S. 26:241(26), relative to the delivery of
4 alcoholic beverages; to provide for third party delivery companies and platforms; to
5 provide for delivery agreements; to provide for requirements; to provide for
6 limitations; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 26:271.2(2)(b), 271.4, and 308(A), (B), (C)(1), (2), (8) and (11)(b),
9 (D), (E), and (F)(1) are hereby amended and reenacted and R.S. 26:241(26) is hereby
10 enacted to read as follows:

11 §241. Definitions

12 The following terms have the respective meanings ascribed to them except
13 in those instances where the context indicates a different meaning:

14 * * *

15 **(26) "Third party platform" means a third party service that is licensed**
16 **to do business in the state of Louisiana that performs work with its own**
17 **employees or agents for which the platform is required to file an Internal**

1 **Revenue Service Form W-2 or 1099.**

2 * * *

3 §271.2. Class A permit; definitions

4 The commissioner shall issue the following four types of Class A retail
5 permits for beverages of low alcoholic content:

6 * * *

7 (2) Class A-Restaurant:

8 * * *

9 (b) Notwithstanding any provision of law to the contrary and subject to rules
10 promulgated by the commissioner, in addition to the authority to contract with a third
11 party **delivery company or a third party platform** as provided in R.S. 26:308, a
12 permit may be issued to a "restaurant establishment" enabling the delivery of
13 restaurant prepared food and alcohol **malt beverages, sparkling wine, and still**
14 **wine, as defined in R.S. 26:2 and 241** with its own employees **or agents for which**
15 **the retailer is required to file an Internal Revenue Service Form W-2 or 1099.**

16 Notwithstanding the provisions of R.S. 26:271(A)(2), the permit fee for the permit
17 issued pursuant to this Subparagraph shall be two hundred fifty dollars.

18 * * *

19 §271.4. Package house-Class B permit

20 Notwithstanding any provisions of law to the contrary and subject to rules
21 promulgated by the commissioner, in addition to the authority to contract with a third
22 party **delivery company or a third party platform** as provided in R.S. 26:308, a
23 permit may be issued to a grocery store enabling the delivery of alcohol **as defined**
24 **in R.S. 26:2(1) and 241(1)(a)** with its own employees **or agents for which the**
25 **retailer is required to file an Internal Revenue Service Form W-2 or 1099.**

26 Notwithstanding the provisions of R.S. 26:271(A)(2), the permit fee for the permit
27 issued pursuant to this Section shall be two hundred fifty dollars.

28 * * *

29 §308. Alcoholic beverages delivery agreements; requirements; limitations

1 A. For purposes of this Section only, a third party delivery company shall be
2 defined as a third party delivery service that is licensed to do business in the state of
3 Louisiana, permitted with the office of alcohol and tobacco control, and uses their
4 own ~~W-2~~ employees **or agents** for **which the third party delivery company or a**
5 **third party platform is required to file an Internal Revenue Service Form W-2**
6 **or 1099 for** delivery. For all other alcohol delivery provisions of this Chapter, third
7 party shall be the definition provided in R.S. 26:2 and 241.

8 B. Notwithstanding any provision of law to the contrary, a retail dealer
9 possessing a valid Class A-General retail permit as provided in R.S. 26:271.2, a
10 Class "R" restaurant permit as provided in R.S. 26:272, or a package house-Class B,
11 as defined in R.S. 26:241, permit as provided in this Chapter may enter into a written
12 agreement with a third party **delivery company or a third party platform** for the
13 use of an internet or mobile application or similar technology platform to facilitate
14 the sale of alcoholic beverages for delivery to consumers for personal consumption
15 within this state and the third party **delivery company or a third party platform**
16 may deliver alcoholic beverages to the consumer.

17 C. An alcoholic beverage delivery agreement between a retail dealer and a
18 third party shall require all of the following:

19 (1) Only alcoholic beverages purchased from a wholesale dealer licensed
20 pursuant to this Chapter ~~Title~~ are offered for delivery.

21 (2)~~(a)~~ Only alcoholic beverages ~~of low alcoholic content, beer, sparkling~~
22 ~~wine~~ as defined in R.S. 26:2~~(1)~~, and ~~still wine as defined in R.S. 26:241(1)(a)~~ are
23 offered for delivery **from the licensed premises of a package house-Class B**
24 **permit holder.**

25 **(b) Only malt beverages, sparkling wine, and still wine, as defined in R.S.**
26 **26:2 and 241 are offered for delivery from the licensed premises of a restaurant**
27 **permit holder.**

28 * * *

29 (8) ~~No~~ **(a) For any parish having a population of less than one hundred**

1 **thousand according to the latest federal decennial census, no** alcoholic beverages
2 shall be delivered more than ~~ten~~ **twenty-five** miles from the place of purchase.

3 **(b) For any parish having a population of greater than one hundred**
4 **thousand according to the latest federal decennial census, no alcoholic beverages**
5 **shall be delivered more than ten miles from the place of purchase.**

6 * * *

7 (11) Alcoholic beverages are delivered only by a person that meets all of the
8 following requirements:

9 * * *

10 (b) The person is an employee **or agent** for which the third party **delivery**
11 **company or a third party platform** shall be required to file an Internal Revenue
12 Service Form W-2 **or 1099**.

13 * * *

14 D. A retail dealer shall enter into an alcoholic beverage delivery agreement
15 with a third party **delivery company or a third party platform** only when the third
16 party meets all of the following requirements:

17 (1) The third party **delivery company or a third party platform** is properly
18 registered and authorized to conduct business in Louisiana.

19 (2) The third party **delivery company or a third party platform** holds a
20 valid Louisiana alcoholic beverage permit issued pursuant to R.S. 26:271.2(1)(j).

21 (3) The ~~third-party~~ **third party** delivery ~~service~~ **company or a third party**
22 **platform** shall maintain a general liability insurance policy with a liquor liability
23 endorsement in an amount no less than one million dollars per occurrence for the
24 duration of the agreement with the retail dealer and shall provide proof of coverage
25 to the retail dealer.

26 (4) The third party **delivery company or a third party platform** is able to
27 monitor the routes of its employees **or agents** during **alcoholic beverage** deliveries.

28 (5) The third party **delivery company or a third party platform** conducts
29 an interview and a background check of all persons that will deliver alcoholic

1 beverages.

2 E. A retail dealer may pay a third party delivery company or a third party
 3 platform a fee for its services and a third party may charge a reasonable delivery fee
 4 for orders delivered by the third party delivery company or a third party platform.
 5 A third party delivery company properly licensed pursuant to this Section or its
 6 authorized agent may act as an agent of a retail dealer in the collection of payments
 7 from the sale of alcoholic beverages, but the full amount of each order must be
 8 handled in a manner that gives the retail dealer control over the ultimate receipt of
 9 the payment from the consumer. A third party delivery company or a third party
 10 platform properly licensed pursuant to this Section or its authorized agent may
 11 also act as an agent of a retail dealer for the purposes of processing, assembling,
 12 packaging, and fulfilling alcoholic beverage orders for delivery from the
 13 retailer's licensed premises. No additional permit shall be required of a retail
 14 dealer who has contracted with a third party delivery company properly
 15 licensed pursuant to this Section for the purpose of processing, assembling,
 16 packaging, and fulfilling alcoholic beverage orders for delivery from the
 17 retailer's licensed premises.

18 F.(1) The third party delivery company or a third party platform may
 19 receive orders and accept payment via the internet or through a mobile application
 20 or similar technology.

21 * * *

22 Section 2. This Act shall become effective upon signature by the governor or, if not
 23 signed by the governor, upon expiration of the time for bills to become law without signature
 24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 26 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 Alan Miller.

DIGEST

SB 178 Engrossed

2020 Regular Session

Allain

Present law adds additional ATC-issued permits for the delivery of low alcohol content beverages by restaurants, grocery stores, holders of a package house-Class B permit, and third parties, and sets the amount of the fees for such permits.

Proposed law removes the limitation on delivery to only low alcohol content beverages for package house-Class B permit.

Proposed law provides that only malt beverages, sparkling wine, and still wine may be delivered from the licensed premises of a restaurant permit holder.

Present law defines a "third party delivery company" as a third party delivery service that is licensed to do business in the state of La., permitted with ATC, and uses their own W-2 employees for delivery.

Proposed law retains present law but also provides that a third party delivery company may also utilize the service of agents that receive an IRS Form 1099 as proof of compensation for their services. Persons that receive an IRS Form 1099 are considered independent contractors and not employees.

Proposed law defines a "third party platform" as a third party service that is licensed to do business in the state of Louisiana that performs work with its own employees or agents for which the platform is required to file an IRS Form W-2 or 1099.

Present law prohibits alcoholic beverages from being delivered more than 10 miles from the place of purchase.

Proposed law expands the delivery area from 10 miles to 25 miles from the place of purchase in a parish having a population of less than 100,000 according to the latest federal decennial census.

Proposed law provides that a third party delivery company, third party platform, or its authorized agent may also act as an agent of a retail dealer for the purposes of processing, assembling, packaging, and fulfilling alcoholic beverage orders for delivery from the retailer's licensed premises with no additional permit required of a retail dealer who has contracted with a third party delivery company or third party platform for the purpose of processing, assembling, packaging, and fulfilling alcoholic beverage orders for delivery from the retailer's licensed premises.

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

(Amends R.S. 26:271.2(2)(b), 271.4, and 308(A), (B), (C)(1), (2), (8) and (11)(b), (D), (E), and (F)(1); adds R.S. 26:241(26))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Adds definition for "third party platform".
2. Adds authority for a third party platform to perform the same services as a

third party delivery company.

3. Extends the delivery area for places of purchase located in parish with a population under 100,000 from 10 to 25 miles.
4. Changes proposed law to retain present law provision requiring a liquor liability endorsement on the third party delivery company's general liability insurance company and adds some requirement for third party platform.
5. Changes proposed law from allowing alcoholic beverage delivery agreement between a retail dealer and a third party to include the delivery of beverages of high and low alcohol content to allowing delivery of beverages of high and low content from a package house-Class B permit holder and malt beverages, sparkling wine, and still wine from a restaurant permit holder.