

2016 Regular Session

HOUSE BILL NO. 667

BY REPRESENTATIVE REYNOLDS

ALCOHOLIC BEVERAGES: Provides relative to distribution of alcoholic beverages

1 AN ACT

2 To amend and reenact R.S. 26:359(B)(1)(h) and (i), (2) and (3), (C), (D), (E), and (F) and
3 to enact R.S. 26:359(B)(4), relative to wine shipped directly to consumers; to provide
4 with respect to certain requirements for direct shipment sales; to provide for
5 exceptions; to authorize the commissioner to promulgate rules; to provide for permit
6 applications of certain wine producers, manufacturers, and retailers; to provide
7 permit fees; to specify the due date of a monthly statement; to provide for additional
8 penalties for violations; to provide for an effective date; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 26:359(B)(1)(h) and (i), (2) and (3), (C), (D), (E), and (F) are hereby
12 amended and reenacted and R.S. 26:359(B)(4) is hereby enacted to read as follows:

13 §359. Distribution of alcoholic beverages through wholesalers only

14 * * *

15 B.(1) Notwithstanding the provisions of Subsection A of this Section,
16 sparkling wine or still wine may be sold and shipped directly to a consumer in
17 Louisiana by the manufacturer or retailer of such beverage domiciled inside or
18 outside of Louisiana, or by a wine producer domiciled inside or outside of Louisiana,
19 provided both that all taxes levied have been paid in full and that all of the following
20 apply:

21 * * *

1 (h) The wine producer, manufacturer, or retailer domiciled outside of
2 Louisiana has complied with the provisions of Subsections B, C, and D of this
3 Section.

4 (i) The seller or shipper who is a wine producer or manufacturer is not a
5 party, directly or indirectly, to any agreement in which a wholesaler licensed by the
6 state of Louisiana has been granted the right to purchase and to sell any sparkling
7 wine or still wine produced by the manufacturer. This prohibition does not include
8 any sale of sparkling wine or still wine if the sale is perfected when the Louisiana
9 consumer is physically present on the premises of the wine producer or manufacturer
10 and completed by shipment to a the consumer in Louisiana otherwise made in
11 accordance with the provisions of this ~~Subsection~~ Section and the sparkling wine or
12 still wine bears a label, properly registered pursuant to R.S. 26:793(D), that is not
13 assigned by the wine producer or manufacturer to a wholesaler licensed in Louisiana
14 for sale by such wholesaler.

15 (2) ~~For all purposes under this Title, the point of sale for transactions made~~
16 ~~pursuant to this Subsection shall be the place of domicile of the wine producer,~~
17 ~~manufacturer, or retailer. Delivery to the consumer in Louisiana shall be deemed to~~
18 ~~have occurred upon the placing of such beverages into the possession of a common~~
19 ~~carrier for transport into the state of Louisiana.~~ In addition to the provisions in
20 Paragraph (1) of this Subsection, the commissioner may promulgate rules in
21 accordance with the Administrative Procedure Act governing the sale and shipment
22 of sparkling wine or still wine directly to a Louisiana consumer.

23 (3) In addition to the provisions of Paragraph (1) of this Subsection, prior to
24 selling or shipping any sparkling wine or still wine directly to any consumer in
25 Louisiana, a ~~wine producer or manufacturer or~~ retailer domiciled outside of
26 Louisiana shall ~~register~~ apply with the state office of alcohol and tobacco control for
27 a permit to engage in direct shipment of sparkling wine and still wine on a
28 ~~registration~~ an application form promulgated by the commissioner. The ~~registration~~
29 permit shall be renewed on an annual basis and updated within thirty days of any

1 change of any information contained on the ~~registration~~ application form. The
2 annual fee for such permit shall be one thousand five hundred dollars.

3 (4) In addition to the provisions of Paragraph (1) of this Subsection, prior to
4 selling or shipping any sparkling wine or still wine directly to any consumer in
5 Louisiana, a wine producer or manufacturer domiciled outside of Louisiana shall
6 apply with the state office of alcohol and tobacco control for a permit to engage in
7 direct shipment of sparkling wine and still wine on an application form promulgated
8 by the commissioner. The permit shall be renewed on an annual basis and updated
9 within thirty days of any change of any information contained on the application
10 form. The annual fee for such permit shall be two hundred fifty dollars.

11 C.(1) Any wine producer or manufacturer, domiciled outside of Louisiana,
12 of sparkling wine or still wine engaging in the direct sale and shipment of such
13 beverages under the provisions of ~~Subsection B~~ of this Section shall make an annual
14 application to the secretary of the Department of Revenue for authority to make such
15 shipments and shall pay an annual fee of one hundred fifty dollars to the Department
16 of Revenue prior to selling or shipping any sparkling wine or still wine to a
17 consumer in the state of Louisiana.

18 (2) Any retailer, domiciled outside of Louisiana, of sparkling wine or still
19 wine engaging in the direct shipment of such beverages under the provisions of
20 ~~Subsection B~~ of this Section shall make an annual application to the secretary of the
21 Department of Revenue for the authority to make such shipments and shall pay an
22 annual fee of one thousand five hundred dollars to the Department of Revenue prior
23 to selling or shipping any sparkling wine or still wine into the state of Louisiana.

24 (3) The annual application for authority to make such shipments shall be in
25 a written form specified by the secretary of the Department of Revenue, and shall
26 include the express agreement of the out-of-state wine producer, manufacturer, or ~~out~~
27 ~~of state~~ retailer to pay all excise and sales and use taxes assessed by the state of
28 Louisiana on the sparkling wine or still wine sold and shipped pursuant to ~~Subsection~~
29 ~~B~~ of this Section. A copy of the current out-of-state wine producer's, manufacturer's,

1 or ~~out-of-state~~ retailer's license issued to such out-of-state wine producer,
2 manufacturer, or ~~out-of-state~~ retailer by the state in which the wine producer,
3 manufacturer, or ~~out-of-state~~ retailer is domiciled shall be submitted to the secretary
4 of the Department of Revenue with the application. ~~No other permit or license shall~~
5 ~~be required of any such wine producer, manufacturer, or out-of-state retailer in~~
6 ~~connection with the direct shipment of sparkling wine or still wine pursuant to~~
7 ~~Subsection B of this Section.~~

8 D.(1) Any out-of-state wine producer, manufacturer, or ~~out-of-state~~ retailer
9 who sells and ships directly to a consumer in Louisiana pursuant to ~~Subsection B of~~
10 this Section shall file a statement ~~quarterly~~ monthly indicating the amount of
11 sparkling wine or still wine shipped to the state of Louisiana with the secretary of the
12 Department of Revenue. The statement shall be filed by ~~January twentieth, April~~
13 ~~twentieth, July twentieth, and October~~ the twentieth of each ~~calendar year~~ month and
14 shall indicate the total number of bottles sold and shipped during the preceding
15 month ~~three-month period~~, the sizes of those bottles, the name brand of each
16 sparkling wine or still wine included in such shipments, the quantities of each
17 sparkling wine or still wine included in such shipments, and the price of each item
18 included in such shipments. All excise and sales and use taxes due to the state of
19 Louisiana on the sparkling wine or still wine sold and shipped pursuant to ~~Subsection~~
20 ~~B of~~ this Section shall be remitted by company check drawn on an account in the
21 name of the permit holder or by electronic funds transfer at the time of the filing of
22 the required statement, and copies of all invoices transmitted with each shipment
23 shall be attached to the statement. This statement shall be made on forms prescribed
24 and furnished by the secretary of the Department of Revenue and shall include such
25 other information as the secretary of the Department of Revenue may require.

26 (2) Upon the request of the commissioner, the secretary of the Department
27 of Revenue may provide copies of the annual application or ~~quarterly~~ monthly
28 statements filed by any out-of-state wine producer or manufacturer or ~~any out-of-~~
29 ~~state~~ retailer selling or shipping wine directly to a Louisiana consumer.

1 (3)(a) Any person who transports sparkling wine or still wine for direct
2 shipment into or out of the state in accordance with this Section shall register with
3 the commissioner of the state office of alcohol and tobacco control.

4 (b) The commissioner shall promulgate rules in accordance with the
5 Administrative Procedure Act for transport registrants that shall include regular
6 reporting requirements related to size of containers and quantities of sparkling wine
7 and still wine contained in each shipment and any other reporting requirements
8 deemed necessary by the commissioner. The rules shall include requirements that
9 prevent sales and deliveries to underage persons.

10 (c) Any person who transports sparkling wine or still wine for direct
11 shipment into or out of the state in violation of this Section or the administrative
12 rules shall be subject to a civil penalty of up to twenty-five thousand dollars or the
13 seizure of any sparkling wine or still wine, or both.

14 E. The provisions of R.S. 26:85, 142, 143, 348 through 350, 360, 364, and
15 365 shall not apply to wine producers, manufacturers, and retailers only in
16 connection with direct sales and shipments when authorized to engage in the direct
17 sale and shipment of sparkling wine or still wine under the provisions of ~~Subsection~~
18 ~~B~~ of this Section.

19 F. Any out-of-state retailer ~~domiciled outside of Louisiana~~ or any wine
20 producer or manufacturer who violates any provision of this Section shall be subject
21 to a civil penalty in the amount of twenty-five thousand dollars. Any out-of-state
22 retailer ~~domiciled outside of Louisiana~~ or any wine producer or manufacturer that
23 sells and ships directly to consumers in Louisiana pursuant to ~~Subsection B~~ of this
24 Section shall, on the application for authority to make such shipments filed with the
25 secretary of the Department of Revenue and on the application for a permit filed with
26 the state office of alcohol and tobacco control in accordance with ~~Subsection C~~ of
27 this Section, acknowledge in writing the civil penalty established in this Subsection
28 and shall consent to the imposition thereof upon violation of this Section. The
29 secretary or the commissioner may initiate and maintain a civil action in a court of

1 competent jurisdiction to enjoin any violation of this Section and to recover the civil
 2 penalty established in this Subsection, together with all costs and attorney fees
 3 incurred by the secretary or the commissioner incidental to any such action.

4 Section 2. This Act shall become effective on July 1, 2016; if vetoed by the governor
 5 and subsequently approved by the legislature, this Act shall become effective on July 1,
 6 2016, or on the day following such approval by the legislature, whichever is later.

7 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 667 Engrossed

2016 Regular Session

Reynolds

Abstract: Provides for the sale of sparkling wine or still wine when a La. consumer is on the premises of the wine manufacturer or producer.

Present law allows wine manufacturers or producers to ship directly to consumers in La. when certain conditions are satisfied. Provides that present law does not include the sale of wine perfected on the premises of the producer or manufacturer and completed by shipment to a consumer in La.

Proposed law provides that the present law prohibition does not include the sale of wine if the sale is perfected when the La. consumer is physically present on the producer or manufacturer's premises and the wine bears a registered label that it not assigned to a La. licensed wholesaler. Authorizes the commissioner of alcohol and tobacco control to promulgate rules to govern the direct shipment of wine.

Present law requires wine producers, manufacturers, and retailers domiciled outside of La. to register with the office of alcohol and tobacco control prior to shipping wine directly to a La. consumer.

Proposed law requires those retailers to apply for a permit to engage in direct shipment, and provides for an annual permit fee of \$1,500. Requires those producers and manufacturers to apply for such a permit and provides for an annual fee of \$250.

Present law provides for the filing of a quarterly statement with the Dept. of Revenue indicating the amount of wine shipped directly to La. consumers.

Proposed law changes this requirement to a monthly statement, due on the 20th day of each month.

Present law provides for civil penalties up to \$25,000 for the transportation of wine in violation of present law.

Proposed law provides that violators shall be subject to the present law civil penalty, the seizure of sparkling or still wine, or both.

Effective July 1, 2016.

(Amends R.S. 26:359(B)(1)(h) and (i), (2) and (3), (C), (D), (E), and (F); Adds R.S. 26:359(B)(4))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Amends the conditions in which wine may be shipped directly to La. consumers, and authorizes the commissioner to promulgate rules governing the sale and shipment of wine directly to La. consumers.
2. Requires wine producers, manufacturers, and retailers to obtain a permit prior to selling or shipping wine directly to La. consumers, and provides for permit fees.
3. Changes the requirements regarding the filing of certain statements with the Dept. of Revenue.
4. Provides that persons transporting wine in violation of the law shall be subject to the present law civil penalty, the seizure of wine, or both.
5. Adds an effective date of July 1, 2016.