

2015 Regular Session

HOUSE BILL NO. 233

BY REPRESENTATIVE ADAMS

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

ALCOHOLIC BEVERAGES: Authorizes the permitting and operation of microdistilleries in Louisiana

1 AN ACT

2 To amend and reenact R.S. 26:2(13) through (24), 71(A)(3)(d), 71.1(4)(a), 78(A), 79,  
3 80(A)(8), 86, 142, 271.2(4)(a), 278(A), 279, 280(A)(8), and 283 and to enact R.S.  
4 26:2(25) and (26), 71(A)(3)(e), and 71.3, relative to microdistillery permits; to  
5 provide for definitions; to establish criteria for microdistillery permitting; to provide  
6 for permit fees; to provide for the taxation of beverages produced by a microdistiller;  
7 to provide relative to Class A-Restaurant-Conditional permits; to provide relative to  
8 permit application requirements; to authorize microdistillers to reuse certain  
9 alcoholic beverage containers; to require microdistillers to receive approval from the  
10 state fire marshal; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 26:2(13) through (24), 71(A)(3)(d), 71.1(4)(a), 78(A), 79, 80(A)(8),  
13 86, 142, 271.2(4)(a), 278(A), 279, 280(A)(8), and 283 are hereby amended and reenacted  
14 and R.S. 26:2(25) and (26), 71(A)(3)(e), and 71.3 are hereby enacted to read as follows:

15 §2. Definitions

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

19 \* \* \*

20 (13) "Microdistiller" means any person who operates a microdistillery.

1            (14) "Microdistillery" means a retail outlet where a microdistiller engages  
2            in the distilling, making, blending, rectifying, or processing of any alcoholic  
3            beverage in Louisiana in quantities of not more than twelve thousand gallons per  
4            year for retail sale for consumption on or off the licensed premises in accordance  
5            with the provisions of this Chapter and regulations, if any, promulgated by the  
6            commissioner.

7            ~~(13)~~ (15) "Outlet" means a place where any person draws or removes any  
8            alcoholic beverage from its container for consumption on the premises.

9            ~~(14)~~ (16) "Package house-Class B" means a place consisting of no less than  
10           five hundred square feet of public habitable area which sells alcoholic beverages in  
11           factory sealed containers for transportation and consumption off the premises and  
12           where no person is allowed to tamper with or otherwise disrupt the manufacturer's  
13           seal on or about the licensed premises.

14           ~~(15)~~ (17) "Regulated beverage" means any alcoholic beverage.

15           ~~(16)~~ (18) "Solicitor" means any person who offers for sale or solicits any  
16           orders for the sale of any regulated beverage, other than in a regularly established  
17           and licensed place of business in this state, for delivery or shipment to any point in  
18           the state, whether done as owner, agent, or servant.

19           ~~(17)~~ (19) "Sparkling wine" means any effervescent alcoholic beverage  
20           derived from the juice of any fruit, or synthesis thereof, charged with carbon dioxide,  
21           either artificially or as the result of secondary fermentation within the container.

22           ~~(18)~~ (20) "Still wine" means any non-effervescent alcoholic beverage  
23           derived from the juice of any fruit, or synthesis thereof.

24           ~~(19)~~ (21) "Supplier" means any person, other than a wine producer, who  
25           manufactures, makes, blends, rectifies, distills, processes, or purchases alcoholic  
26           beverages outside the state of Louisiana and imports, sells, offers for sale, solicits  
27           orders for sale, distributes, or delivers such alcoholic beverages in Louisiana.

28           ~~(20)~~ (22) "Wholesale dealer" means a person who sells alcoholic beverages  
29           of high alcoholic content to licensed wholesale dealers or licensed retail dealers

1 exclusively, within the state or to any person for delivery beyond the borders of the  
 2 state to a licensed dealer in that state and who conducts a bona fide wholesale  
 3 business and maintains a warehouse or warehouses for the storage and warehousing  
 4 of alcoholic beverages of high alcoholic content in the area where domiciled and  
 5 licensed by the state, and conducts and maintains systematic and regular  
 6 solicitations, distribution, deliveries, and sales of the beverages to licensed retail  
 7 dealers located within the boundary of each parish, municipality, or geographic area,  
 8 as contractually defined between the wholesaler and his supplier, in which the  
 9 wholesale dealer makes any sale or delivery.

10 ~~(21)~~ (23) "Wine package house" means a place where a person sells only  
 11 sparkling wine and still wine in the original package or closed container, prepared  
 12 for transportation and consumption off the premises.

13 ~~(22)~~ (24) "Wine producer" means any person who, directly or indirectly,  
 14 personally or through any agency, cultivates and grows grapes, fruits, berries, honey,  
 15 or vegetables from which wine of an alcoholic content in excess of six percent by  
 16 volume is produced and bottled from a fermentation of such grapes, fruits, berries,  
 17 honey, or vegetables in Louisiana or outside the state for shipments to licensed  
 18 wholesale dealers within the state subject to the provisions of R.S. 26:364.

19 ~~(23)~~ (25) "Winery" means a plot of land located in Louisiana used to  
 20 cultivate and grow grapes, fruits, berries, honey, or vegetables for the purpose of  
 21 fermenting such grapes, fruits, berries, honey, or vegetables to produce and bottle  
 22 wine of an alcoholic content in excess of six percent by volume.

23 ~~(24)~~ (26) "Wine wholesaler" means any dealer who sells only sparkling wine  
 24 and still wine to other licensed wholesale dealers or to licensed retail dealers for  
 25 resale within the state.

26 \* \* \*

27 §71. Permits required; fees; exception

28 A. Except as provided in Subsections B and C of this Section, before  
 29 engaging in the business of manufacturing, supplying, or dealing in alcoholic

1 beverages, all persons shall obtain from the commissioner, according to established  
2 rules and regulations, a permit to conduct each separate business and shall pay the  
3 commissioner a fee not to exceed the amounts provided for in the following schedule  
4 and in accordance with regulations promulgated pursuant to the provisions of the  
5 Administrative Procedure Act for each year the permit is valid:

6 \* \* \*

7 (3) Retailers - (a) There shall be three types of Class A retail liquor permits:

8 \* \* \*

9 (d) Microdistiller, which authorizes the holder of a Retailers Class A permit  
10 to engage in the distilling, making, blending, rectifying, or processing of any  
11 alcoholic beverage in Louisiana at a single location in an amount not to exceed  
12 twelve thousand gallons per year, and which further authorizes the sale at retail of  
13 such distilled beverages from that location-one thousand dollars.

14 (e) A fee of one hundred dollars for each one hundred thousand dollars of  
15 gross retail liquor sales, after the first one hundred thousand dollars of gross retail  
16 liquor sales, shall be levied according to the schedule below which shall be in  
17 addition to those fees enumerated in Subparagraphs (a) and (b) of Paragraph (3) of  
18 this Subsection:

GROSS SALES	ADDITIONAL FEES
\$0.00 to \$99,999.99	-0-
\$100,000.00 to \$199,999.99	\$100.00
\$200,000.00 to \$299,999.99	\$200.00
\$300,000.00 to \$399,999.99	\$300.00
\$400,000.00 to \$499,999.99	\$400.00
\$500,000.00 to \$599,999.99	\$500.00
\$600,000.00 and over	\$600.00

27 \* \* \*

1 §71.1. Class A permit; definitions

2 The commissioner shall issue the following four types of Class A retail liquor  
3 permits:

4 \* \* \*

5 (4) Class A-Restaurant-Conditional:

6 (a) Any retail establishment holding a Class A-General permit issued  
7 pursuant to this Section may be issued a Class-A-Restaurant-Conditional permit,  
8 provided it meets the requirements of ~~R.S. 26:73(B)(1), (2), (3), (5), and (6)~~ R.S.  
9 26:73(C)(1)(a), (b), (c), and (d) during the hours from 7:00 a.m. until 11:00 p.m.  
10 each day of operation.

11 \* \* \*

12 §71.3. Microdistillery; retail sales for consumption on or off premises

13 A. Any person who has properly obtained a microdistiller's permit as  
14 provided for in R.S. 26:71, shall be authorized to engage in the distilling, making,  
15 blending, rectifying, or processing of any alcoholic beverage in Louisiana in a  
16 quantity not to exceed twelve thousand gallons during the licensed year. The holder  
17 of such permit shall also be authorized to sell the manufactured beverages at retail  
18 for consumption on or off the licensed premises, if the holder also has been issued  
19 a Retailer Class A permit.

20 B. The provisions of this Section shall not authorize the holder of a  
21 microdistiller's permit to sell the manufactured beverages at wholesale or to any  
22 wholesale dealer.

23 C. The microdistiller shall not sell any alcoholic beverages for transportation  
24 off the premises to any other licensed alcoholic beverage retail dealer.

25 D. Beverages produced by a microdistiller shall be taxed in the same manner  
26 and at the same rate as beverages produced by other manufacturers, as provided by  
27 law.

28 E. Notwithstanding the provisions of R.S. 26:149, microdistillers may reuse  
29 alcoholic beverage containers in connection with distilling and bottling operations.

1 F. Prior to commencing distilling operations, microdistillers shall obtain  
2 approval from the state fire marshal.

3 \* \* \*

4 §78. Content of application for permit; commissioner power as ex officio notary

5 A. Applications for state and local permits to engage in any business or  
6 operation regulated by this Chapter shall be in writing and sworn to, and shall  
7 contain the full name of the applicant, his social security number, his federal  
8 employer identification number, if applicable, his Louisiana Department of Revenue  
9 business account number, if applicable, his correct home address, and an accurate  
10 description and correct street address of the premises wherein the business or  
11 operation is to be conducted, which address shall be considered the proper address  
12 for all notices to the applicant or permittee required by this Chapter, and shall be  
13 accompanied by an affidavit of the applicant showing that he meets the qualifications  
14 and conditions set out in R.S. 26:80. ~~Original and renewal applications shall also be~~  
15 ~~accompanied by a signed sales tax clearance from the sales tax collection agency or~~  
16 ~~agencies in the parish in which the application is made, which clearance request shall~~  
17 ~~be processed within seven business days.~~

18 \* \* \*

19 §79. Submission of applications; delay

20 All applications for state permits shall be mailed or delivered to the  
21 commissioner in Baton Rouge, Louisiana, and all applications for local permits shall  
22 be mailed or delivered to the respective local authorities. An applicant shall mail or  
23 deliver both his applications for state and local permits within twenty-four hours of  
24 each other. If he fails to do so, his state application may be withheld and the permits  
25 denied. Upon receipt of an application, the commissioner or the local authorities, as  
26 the case may be, shall stamp the day, month, and year received, and the  
27 commissioner shall verify that the applicant does not owe the state or the political  
28 subdivision in which the business is located any delinquent sales taxes, penalties, or  
29 interest, excluding items under formal appeal pursuant to the applicable statutes.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 The commissioner and officers or employees specifically so authorized by the  
2 commissioner and local authorities may issue the permits immediately after proper  
3 investigation but, for a period of thirty-five days after issuance, such permits shall  
4 operate on a probationary basis subject to final action on, opposition to, or  
5 withholding of, the permits as hereinafter provided.

6 \* \* \*

7 §80. Qualifications of applicants for permits

8 A. Applicants for state and local permits of all kinds shall demonstrate that  
9 they meet all of the following qualifications and conditions:

10 \* \* \*

11 (8) Have not had a license or permit to sell or deal in alcoholic beverages,  
12 issued by the United States, any state, or by any political subdivision of a state  
13 authorized to issue permits or licenses, revoked within two years prior to the  
14 application, or been convicted or had a judgment of court rendered against the  
15 applicant involving the sale or service of alcoholic beverages by this or any other  
16 state or by the United States for two years prior to the application.

17 \* \* \*

18 §86. Authority of commissioner and local authorities to withhold permit

19 The commissioner with respect to state permits and municipal authorities and  
20 parish governing authorities with respect to local permits may withhold the issuance  
21 of permits in the manner and under the terms and conditions specified in this  
22 Chapter; ~~however, if a sales tax clearance is not issued, the permit shall be withheld.~~  
23 ~~Nevertheless, if the sales tax clearance request is not processed within the time~~  
24 ~~limitations provided in R.S. 26:78, the permit shall be issued if all other~~  
25 ~~qualifications are met by the applicant.~~

26 \* \* \*

27 §142. Distribution through wholesalers only

28 Except as provided for in ~~R.S. 26:85~~ R.S. 26:71.3, 85, 271.1, and 359, no  
29 alcoholic beverage produced or manufactured inside or outside of this state shall be

1 sold or offered for sale in Louisiana or shipped or transported into or within the state  
2 except to the holder of a wholesaler's permit and for delivery at the place of business  
3 of the wholesaler as shown in his permit.

4 \* \* \*

5 §271.2. Class A permit; definitions

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

8 \* \* \*

9 (4) Class A-Restaurant-Conditional:

10 (a) Any retail establishment holding a Class A-General permit issued  
11 pursuant to this Section may be issued a Class-A-Restaurant-Conditional permit  
12 provided it meets the requirements of ~~R.S. 26:73(B)(1), (2), (3), (5), and (6)~~ R.S.  
13 26:73(C)(1)(a), (b), (c), and (d) during the hours from 7:00 a.m. until 11:00 p.m.  
14 each day of operation.

15 \* \* \*

16 §278. Contents of application for permit; commissioner power as ex officio notary

17 A. Applications for state and local wholesaler or retailer permits shall be in  
18 writing and sworn to and shall contain the full name of the applicant, his social  
19 security number, his federal employer identification number, if applicable, his  
20 Louisiana Department of Revenue business account number, if applicable, his correct  
21 home address, and an accurate description and correct address of the premises  
22 wherein the business or operation is to be conducted, which address shall be  
23 considered the proper address for all notices to the applicant or permittee required  
24 by this Chapter, and shall be accompanied by an affidavit of the applicant showing  
25 that he meets the qualifications and conditions set out in R.S. 26:280, and that he has  
26 no interest in a retail dealer establishment in the case of applicants for wholesaler  
27 permits, and that he has no interest in a wholesaler dealer establishment in the case  
28 of applicants for retail dealer permits unless such interest was held prior to July 31,  
29 1946. ~~Original and renewal applications shall be accompanied by a signed sales tax~~



1 ~~clearance from the sales tax collection agency or agencies in the parish in which the~~  
2 ~~application is made, which clearance request shall be processed within seven~~  
3 ~~business days.~~

4 \* \* \*

5 §279. Submission of applications; delay

6 All applications for state permits shall be mailed or delivered to the  
7 commissioner in Baton Rouge at the state capitol, and all applications for local  
8 permits shall be mailed or delivered to the respective local authorities. An applicant  
9 shall mail or deliver his applications for state and local permits within twenty-four  
10 hours of each other. If he fails to do so, his state application may be withheld and  
11 the permits denied. Upon receipt of an application, the commissioner or the local  
12 authorities, as the case may be, shall stamp the day, month, and year received, and  
13 the commissioner shall verify that the applicant does not owe the state or the political  
14 subdivision in which the business is located any delinquent sales taxes, penalties, or  
15 interest, excluding items under formal appeal pursuant to applicable statutes. The  
16 commissioner and officers or employees specifically so authorized by the  
17 commissioner and local authorities may issue the permits immediately after proper  
18 investigation but, for a period of thirty-five days after receipt of the application, such  
19 permits shall operate on a probationary basis subject to final action on opposition to,  
20 or withholding of, the permit as hereinafter provided.

21 §280. Qualifications of applicants for permits

22 A. Applicants for state and local permits of all kinds shall demonstrate that  
23 they meet the following qualifications and conditions:

24 \* \* \*

25 (8) Have not had a license or permit to sell or deal in alcoholic beverages,  
26 issued by the United States, any state, or by any political subdivision of a state  
27 authorized to issue permits or licenses, revoked within two years prior to the  
28 application, or been convicted, or had a judgment of court rendered against the

1 applicant involving the sale or service of alcoholic beverages by this or any other  
2 state or by the United States for two years prior to the application.

3 \* \* \*

4 §283. Authority of commissioner and local authorities to withhold permits  
5 The commissioner with respect to state permits and municipal authorities or  
6 parish governing authorities with respect to local permits may withhold the issuance  
7 of permits in the manner and under the terms and conditions specified in this  
8 Chapter; ~~however, if a sales tax clearance has not been issued, the permit shall be~~  
9 ~~withheld. Nevertheless, if the sales tax clearance request is not processed within the~~  
10 ~~time limitation provided in R.S. 26:278, the permit shall be issued if all other~~  
11 ~~qualifications are met by the applicant.~~

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 233 Engrossed                                      2015 Regular Session                                      Adams

**Abstract:** Establishes a microdistillery permit for holders of a Retailers Class A permit and provides relative to fees and permit requirements.

Present law provides for definitions relative to alcoholic beverages.

Proposed law retains present law and adds definitions for the following:

- (1) "Microdistiller" means any person who operates a microdistillery.
- (2) "Microdistillery" means a retail outlet where a microdistiller engages in the distilling, making, blending, rectifying, or processing of any alcoholic beverage in La. in quantities of not more than 12,000 gallons per year for retail sale and consumption on or off the licensed premises.

Proposed law establishes a microdistiller permit of \$1,000, authorizes the holder of a Retailers Class A permit to obtain such permit, and further provides that alcoholic beverages sold by a microdistiller are taxed at the same rate and in the same manner as all other alcoholic beverages.

Proposed law prohibits the holder of a microdistiller permit from selling the manufactured beverages at wholesale or to any wholesale dealer or from selling to any other licensed retail dealer.

Proposed law authorizes a microdistiller to reuse alcoholic beverage containers in connection with distilling and bottling operations.

Proposed law requires a microdistiller to obtain approval from the state fire marshal prior to distilling operations.

Present law provides relative to the content requirements of an application for permit.

Proposed law retains present law except that it removes requirement that the original and renewal application be accompanied by a signed sales tax clearance from the collection agency in the parish which is required to be processed within seven days and removes relative provisions of present law regarding the authority for the commissioner to withhold the permit.

Present law provides relative to the submission requirements for applications.

Proposed law retains present law and further requires the commissioner to verify that the applicant does not owe any delinquent sale taxes, penalties, or interest to the political subdivision in which the business is located.

Present law provides relative to qualifications of applicants for permits.

Proposed law retains present law and extends the prohibition of being convicted or having a judgment of court rendered against a client involving the service of alcoholic beverages.

Present law provides exceptions relative to the distribution through wholesalers for alcoholic beverages produced or manufactured inside or outside the state.

Proposed law retains present law and extends the exception to microdistilleries.

(Amends R.S. 26:2(13-24), 71(A)(3)(d), 71.1(4)(a), 78(A), 79, 80(A)(8), 86, 142, 271.2(4)(a), 278(A), 279, 280(A)(8), and 283; Adds R.S. 26:2(25) and (26), 71(A)(3)(e), and 71.3)

#### Summary of Amendments Adopted by House

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

1. Make technical changes.
2. Authorize microdistillers of low and high alcoholic content to reuse alcoholic beverage containers in distilling and bottling operations.
3. Require the microdistiller of low and high alcoholic content to obtain approval from the fire marshal prior to distilling operations.
4. Remove provisions relative to requirements to submit a sales tax clearance with an original or renewal application for low and high alcoholic content permits and the related provisions requiring the commissioner to withhold the permit.
5. Provide an exception for microdistillers regarding the production or manufacturing of alcoholic beverages produced or manufactured inside or outside the state.
6. Require the commissioner to verify that an applicant of a low and high alcoholic content permit does not owe the political subdivision in which the business is located any delinquent taxes, penalties, or interest.