

2015 Regular Session

SENATE BILL NO. 235

BY SENATOR MURRAY

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

ALCOHOLIC BEVERAGES. Provides relative to the regulation of alcoholic beverages.
(1/1/16)

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AN ACT

To amend and reenact R.S. 26:359(D), (E), (F), and (G) and to enact R.S. 26:359(B)(3), relative to regulation of alcoholic beverages; to provide for registration of certain wine producers, manufacturers, and retailers; to provide for registration of certain transporters; to authorize the secretary of Revenue to provide copies of certain records to the commissioner of the office of alcohol and tobacco; to provide certain civil penalties; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 26:359(D), (E), (F), and (G) are hereby amended and reenacted and R.S. 26:359(B)(3) is hereby enacted to read as follows:

§359. Distribution of alcoholic beverages through wholesalers only

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B.

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(3) In addition to the provisions of Paragraph (1) of this Subsection, prior to selling or shipping any sparkling wine or still wine directly to any consumer in Louisiana, a wine producer or manufacturer or retailer domiciled

1 outside of Louisiana shall register with the state office of alcohol and tobacco
2 control on a registration form promulgated by the commissioner. The
3 registration shall be renewed on an annual basis and updated within thirty days
4 of any change of any information contained on the registration form.

5 * * *

6 D.(1) ~~Except as provided in Paragraph (2) of this Subsection, any wine~~
7 ~~producer, manufacturer, or out of state retailer who sells and ships directly to a~~
8 ~~consumer in Louisiana pursuant to Subsection B of this Section shall, within twenty~~
9 ~~days after the end of each calendar month, file with the secretary of the Department~~
10 ~~of Revenue a statement showing the total number of bottles sold and shipped during~~
11 ~~the preceding calendar month, the sizes of those bottles, the name brand of each~~
12 ~~sparkling wine or still wine included in such shipments, the quantities of each~~
13 ~~sparkling wine or still wine included in such shipments, and the price of each item~~
14 ~~included in such shipments. All excise and sales and use taxes due to the state of~~
15 ~~Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection~~
16 ~~B of this Section shall be remitted by company check drawn on an account in the~~
17 ~~name of the permit holder or by electronic funds transfer at the time of the filing of~~
18 ~~the required statement, and copies of all invoices transmitted with each such~~
19 ~~shipment shall be attached to the statement. This statement shall be made on forms~~
20 ~~prescribed and furnished by the secretary of the Department of Revenue and shall~~
21 ~~include such other information as the secretary of the Department of Revenue may~~
22 ~~require.~~

23 (2) ~~Beginning on January 1, 2012, any~~ **Any** wine producer, manufacturer, or
24 ~~out of state~~ **out-of-state** retailer who sells and ships directly to a consumer in
25 Louisiana pursuant to Subsection B of this Section shall file a statement quarterly
26 indicating the amount of sparkling wine or still wine shipped to the state of Louisiana
27 with the secretary of the Department of Revenue. The statement shall be filed by
28 January twentieth, April twentieth, July twentieth, and October twentieth of each
29 calendar year and shall indicate the total number of bottles sold and shipped during

1 the preceding three-month period, the sizes of those bottles, the name brand of each
2 sparkling wine or still wine included in such shipments, the quantities of each
3 sparkling wine or still wine included in such shipments, and the price of each item
4 included in such shipments. All excise and sales and use taxes due to the state of
5 Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection
6 B of this Section shall be remitted by company check drawn on an account in the
7 name of the permit holder or by electronic funds transfer at the time of the filing of
8 the required statement, and copies of all invoices transmitted with each shipment
9 shall be attached to the statement. This statement shall be made on forms prescribed
10 and furnished by the secretary of the Department of Revenue and shall include such
11 other information as the secretary of the Department of Revenue may require.

12 (2) Upon the request of the commissioner, the secretary of the
13 Department of Revenue may provide copies of the annual application or
14 quarterly statements filed by any wine producer or manufacturer or any out-of-
15 state retailer selling or shipping wine directly to a Louisiana consumer.

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

19 (b) The commissioner shall promulgate rules in accordance with the
20 Administrative Procedure Act for transport registrants that shall include
21 regular reporting requirements related to size of containers and quantities of
22 sparkling wine and still wine contained in each shipment. The rules shall
23 include requirements that prevent sales and deliveries to underage persons.

24 (c) Any person who transports sparkling wine or still wine for direct
25 shipment into or out of the state in violation of this Section or the administrative
26 rules shall be subject to a civil penalty of up to twenty-five thousand dollars.

27 E. The provisions of R.S. 26:85, 142, 143, 348 through 350, 360, 364, and
28 365 shall not apply to wine producers, manufacturers, and retailers only in
29 connection with direct sales and shipments when authorized to engage in the

1 direct sale and shipment of sparkling wine or still wine under the provisions of
2 Subsection B of this Section.

3 F. Any retailer ~~of alcoholic beverages~~ **domiciled outside of Louisiana or**
4 **any wine producer or manufacturer** who violates any provision of this Section
5 shall be subject to a civil penalty in the amount of twenty-five thousand dollars. Any
6 retailer **domiciled outside of Louisiana or any wine producer or manufacturer**
7 that sells and ships directly to consumers in Louisiana pursuant to Subsection B of
8 this Section shall, on the application for authority to make such shipments filed with
9 the secretary of the Department of Revenue in accordance with Subsection C of this
10 Section, acknowledge in writing the civil penalty established in this Subsection and
11 shall consent to the imposition thereof upon violation of this Section. The secretary
12 may initiate and maintain a civil action in a court of competent jurisdiction to enjoin
13 any violation of this Section and to recover the civil penalty established in this
14 Subsection, together with all costs and attorney fees incurred by the secretary
15 incidental to any such action.

16 G. Upon determination by the secretary of the Department of Revenue **or by**
17 **the commissioner** that an illegal sale or shipment of alcoholic beverages has been
18 made to a consumer in Louisiana by either a wine producer, manufacturer, or retailer
19 of such alcoholic beverages, the secretary **or commissioner** shall notify both the
20 ~~Alcohol, Tobacco, Tax, and Trade Bureau~~ **Alcohol and Tobacco Tax and Trade**
21 **Bureau** of the United States Department of the Treasury and the licensing authority
22 for the state in which the wine producer, manufacturer, or retailer is domiciled that
23 a state law pertaining to the regulation of alcoholic beverages has been violated and
24 shall request those agencies to take appropriate action.

25 Section 2. This Act shall become effective on January 1, 2016; if vetoed by the
26 governor and subsequently approved by the legislature, this Act shall become effective on
27 January 1, 2016, or on the day following such approval by the legislature, whichever is later.

The original instrument was prepared by Cathy R. Wells. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tammy Crain-Waldrop.

DIGEST

SB 235 Reengrossed

2015 Regular Session

Murray

Present law requires that alcoholic beverages be distributed only through wholesalers.

Present law makes an exception for sparkling wine and still wine. Provides that such products may be sold and shipped directly to a consumer in Louisiana by the manufacturer or retailer domiciled inside or outside of Louisiana, or by a wine producer domiciled inside or outside of Louisiana, provided that all taxes levied have been paid in full and that all of the following apply:

- (1) The consumer is 21 years of age or older.
- (2) The sparkling wine or still wine is for that consumer's personal consumption.
- (3) The total amount of sparkling wine or still wine shipped in 750 ml bottles does not exceed 144 bottles per adult person per household address per calendar year.
- (4) The wine producer, manufacturer, or retailer engaging in such direct sales holds a valid wine producer's, manufacturer's, or retailer's license issued by the state of its domicile.
- (5) The package in which the sparkling wine or still wine is shipped is prominently labeled as containing beverage alcohol.
- (6) The package in which such sparkling wine or still wine is shipped is received by a person 21 years of age or older.
- (7) The package contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.
- (8) The wine producer, manufacturer, or retailer domiciled outside of Louisiana has complied with the provisions of present law relating to annual application and quarterly statement to the secretary of Revenue.
- (9) The seller or shipper who is a wine producer or manufacturer is not a party, directly or indirectly, to any agreement in which a wholesaler licensed by Louisiana has been granted the right to purchase and to sell any sparkling wine or still wine produced by the manufacturer.

Proposed law retains present law and adds a requirement that prior to selling or shipping any sparkling wine or still wine directly to a consumer in Louisiana, a wine producer or manufacturer or retailer domiciled outside Louisiana register with the state office of alcohol and tobacco control. The registration is required to be renewed annually and updated within 30 days of any change to the information contained on the form.

Present law provided that prior to 2012, a wine producer, manufacturer or out-of-state retailer selling directly to consumers in Louisiana had to file monthly statements with the secretary of Revenue regarding shipments.

Proposed law deletes present law.

Present law provides that beginning in 2012, wine producers, manufacturers and out-of-state retailers are required to file quarterly statements regarding shipments.

Proposed law retains present law.

Proposed law authorizes the secretary of Revenue to release to the commissioner of the office of alcohol and tobacco copies of annual applications and quarterly statements of wine producers, manufacturers and out-of-state retailers authorized to sell directly to consumers.

Proposed law requires any person who transports sparkling wine or still wine for direct shipment into or out of Louisiana to register with the commissioner. Requires the commissioner to promulgate rules for transport registrants that include regular reporting requirements related to size of containers and quantities of sparkling wine and still wine contained in each shipment. Requires the rules to also include requirements that prevent sales and deliveries to underage persons.

Proposed law provides that any person who transports sparkling wine or still wine for direct shipment into or out of Louisiana in violation of proposed law or rules shall be subject to a civil penalty of up to \$25,000.

Effective January 1, 2016.

(Amends R.S. 26:359(D), (E), (F), and (G); adds R.S. 26:359(B)(3))

Summary of Amendments Adopted by Senate

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

1. Removes brands and types of sparkling and still wine from the list of items that transporters are required to regularly report.
2. Removes authority to seize any movables used to transport sparkling wine or still wine into or out of LA.
3. Removes the Shipment Registration Fund from proposed law.

Senate Floor Amendments to engrossed bill

1. Legislative Bureau technical changes.