

Senate Bill 208

By: Senators Harbison of the 15th, Ray of the 48th, Paul of the 40th and Butler of the 55th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to enact the "Electronic Commerce Home Delivery Act of 2001"; to provide for
3 the marketing and sale of tobacco products, malt beverages, and wine by electronic
4 commerce retailers and the delivery of such products to consumers at their homes or
5 businesses in Georgia; to provide a purpose; to define terms; to provide for requirements for
6 electronic commerce retailers to sell and deliver tobacco products, malt beverages, and wine;
7 to require that any sale and delivery of malt beverages, wine, or tobacco products must
8 include more than \$50.00 in products other than malt beverages, wine, or tobacco products;
9 to prohibit the delivery of any malt beverages, wine, or tobacco products by electronic
10 commerce retailers into counties or municipalities in which retail sales of such products are
11 not authorized; to require electronic commerce retailers to delay delivery of malt beverages
12 or wine to consumers for at least four hours from the time the order is placed; to authorize
13 the Department of Revenue to promulgate rules and regulations for enforcement of this Act;
14 to provide for penalties for electronic commerce retailers for violations of laws related to
15 malt beverages and wine and persons under 21 and tobacco products and persons under 18;
16 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
17 for other purposes.

18 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

19 **SECTION 1.**

20 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
21 amended by adding at its end a new Chapter 15 to read as follows:

22 "CHAPTER 15

23 10-15-1.

1 This chapter shall be known and may be cited as the 'Electronic Commerce Home Delivery
2 Act of 2001.'

3 10-15-2.

4 The General Assembly finds, determines, and declares that electronic commerce represents
5 a new and growing aspect of the economy of Georgia. An important component of
6 electronic commerce involves the lawful sale of consumer goods for delivery in Georgia
7 via electronic means. The General Assembly further finds, determines, and declares that
8 new laws and regulations are necessary to control adequately the electronic sale and
9 delivery of regulated products to consumers of this state to protect the public health, safety,
10 revenue, and economy of Georgia and that this chapter is fully consistent with the powers
11 conferred upon the State of Georgia by the Twenty-first Amendment to the Constitution
12 of the United States.

13 10-15-3.

14 As used in this chapter, the term:

15 (1) 'Electronic commerce' means the marketing, advertising, purchasing, and selling of
16 goods and services using the Internet or other electronic means, including, but not limited
17 to, the telephone or facsimile.

18 (2) 'Electronic commerce retailer' means a retailer who uses electronic means to sell
19 goods or services to consumers and to arrange delivery of such goods or services in
20 vehicles operated and either owned or leased by the electronic commerce retailer.

21 (3) 'Electronic sale' means a commercial transaction whereby a consumer and an
22 electronic commerce retailer agree to the terms for the sale and purchase of goods or
23 services and execute a contract using the Internet or other electronic means, including,
24 but not limited to, the telephone or facsimile.

25 Any term used but not defined in this chapter and defined in Code Section 10-12-3 shall
26 have the meaning provided for that term in Code Section 10-12-3.

27 10-15-4.

28 Every electronic commerce retailer shall:

29 (1) Provide identification badges to drivers and other personnel actually making
30 deliveries to consumers. Such identification badges must contain a clear picture of the
31 individual, the name of the individual, and the name, address, and telephone number of
32 the electronic commerce retailer. The printed information on the identification badge
33 shall be of such size that it reasonably can be read upon presentation through a door
34 window or a peephole;

1 (2) Maintain insurance as required pursuant to Title 33 and Title 40. Each vehicle used
2 by the electronic commerce retailer to make deliveries shall contain a document
3 recording the name of the insurance carrier for the vehicle and the driver, the policy
4 number, the limits of the policy, and a telephone number for reporting claims;

5 (3) Develop and maintain a system for the consumer to report problems regarding the
6 sale or the delivery to the electronic commerce retailer by telephone or other electronic
7 means. The methods for reporting problems must be displayed on the delivery vehicle.

8 10-15-5.

9 (a) An electronic commerce retailer may market and sell tobacco products, malt beverages,
10 and wine via electronic commerce and deliver such products to Georgia consumers at their
11 homes or businesses, notwithstanding the provisions of Code Sections 3-5-28 and 3-6-26
12 or any other provision of law or regulation to the contrary, by strictly complying with the
13 following conditions:

14 (1) Meeting the definition of retailer as defined in Code Section 3-1-2;

15 (2) Holding one or more licenses pursuant to Article 2 of Chapter 5 or Article 2 of
16 Chapter 6 of Title 3;

17 (3) Engaging in electronic commerce and the electronic sale of consumer goods,
18 including tobacco products, malt beverages, or wine; and

19 (4) Holding one or more licenses pursuant to Code Section 26-2-25.

20 (b) Electronic commerce retailers who lawfully sell tobacco products, malt beverages, and
21 wine to consumers in Georgia through electronic commerce may sell and deliver tobacco
22 products or malt beverages or wine or any combination of the three directly to a consumer
23 so long as the delivery order, excluding malt beverages, wine, and tobacco products, has
24 a retail value exceeding \$50.00.

25 (c) Electronic commerce retailers who lawfully sell tobacco products, malt beverages, and
26 wine to consumers in Georgia through electronic commerce may deliver tobacco products,
27 malt beverages, and wine directly to any lawful purchasing consumer within the state, so
28 long as delivery is made by the electronic commerce retailer who must comply in all
29 respects with all applicable state laws including, but not limited to, those in Title 3, Article
30 7 of Chapter 12 of Title 16, Chapter 11 of Title 48, and the applicable rules and regulations
31 of the Department of Revenue.

32 (d) Electronic commerce retailers shall comply with all state laws and local ordinances
33 regulating the retail sale of tobacco products, malt beverages, and wine.

34 (e) Electronic commerce retailers shall not deliver any tobacco products, malt beverages,
35 or wine into any counties or municipalities in which the retail sales of such products are not
36 authorized.

1 (f) Electronic commerce retailers shall purchase all tobacco products, malt beverages, and
2 wine in accordance with state laws and local ordinances.

3 (g) All tobacco products, malt beverages, and wine marketed, sold, and delivered by an
4 electronic commerce retailer pursuant to this chapter shall be delivered from the electronic
5 retailer's licensed premises within this state to the consumer ordering such products and
6 shall not be shipped directly to consumers from outside this state.

7 (h) All deliveries authorized pursuant to this chapter shall be made in vehicles operated
8 and either owned or leased by the electronic commerce retailer and shall be made by
9 drivers who are at least 21 years of age.

10 (i) Electronic commerce retailers shall delay delivery of any malt beverages or wine to
11 consumers for at least four hours from the time the order is placed.

12 10-15-6.

13 In addition to those requirements in Code Sections 10-15-4 and 10-15-5, any electronic
14 commerce retailer delivering tobacco products, malt beverages, and wine must hold a local
15 retail license at the location of its licensed premises to which tobacco products, malt
16 beverages, and wine are delivered by licensed wholesalers and a local retail license in each
17 locality where deliveries are made. Notwithstanding the provisions of Article 3 of Chapter
18 5 and Article 3 of Chapter 6 of this title, no other local tobacco product or alcoholic
19 beverage licenses or permits shall be required to comply with this chapter.

20 10-15-7.

21 The Department of Revenue may promulgate such rules and regulations as are necessary
22 and appropriate for the enforcement of this chapter. Such rules and regulations shall
23 include, but shall not be limited to:

24 (1) Requirements for signature forms or other identification procedures to be used by
25 electronic commerce retailers to ensure that tobacco products, malt beverages, or wine
26 is delivered to consumers who meet the legal age requirements for the purchase of
27 tobacco products, malt beverages, or wine; and

28 (2) Procedures for electronic commerce retailers making deliveries throughout the state
29 across wholesaler territories that are appropriate and consistent with the intent and
30 purpose of Code Sections 3-5-30 through 3-5-34 and Code Section 3-6-22.

31 10-15-8.

32 Any electronic commerce retailer who violates Code Section 3-3-23 shall be subject to the
33 penalties in Code Section 3-3-23.1."

