

House Bill 879

By: Representatives Harrell of the 106th, Carpenter of the 4th, Powell of the 32nd, Stephens of the 164th, Frye of the 118th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated,
2 relating to provisions regarding the regulation of alcoholic beverages generally, so as to
3 provide for the legislative intent of the General Assembly to exercise strict regulatory control
4 over the three-tier system; to permit certain retailers to make deliveries of alcoholic
5 beverages in unbroken packages pursuant to specific terms and conditions; to provide for
6 definitions; to allow certain retailers to market, receive, and process orders for alcoholic
7 beverage products using electronic means owned, operated, or maintained by third parties;
8 to provide for the relationship between such retailers and third parties; to provide certain
9 requirements for individuals making deliveries on behalf of a retailer; to provide for
10 warrantless searches and seizures by certain agents and officers of the Department of
11 Revenue; to provide for training on sales and delivery of alcoholic beverages; to provide for
12 the commissioner of revenue to promulgate certain rules and regulations; to provide for
13 penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 1 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated, relating to
17 provisions regarding the regulation of alcoholic beverages generally, is amended by adding
18 two new Code sections to read as follows:

19 "3-3-1.1.

20 If any provision of this title or its application to any person or circumstance is determined
21 by a court or other authority of competent jurisdiction to be invalid or unconstitutional,
22 such provision shall be stricken and the remaining provisions shall be construed in
23 accordance with the intent of the General Assembly to further limit rather than expand
24 commerce in alcoholic beverages, and with respect to malt beverages, wine, and distilled
25 spirits, the remaining provisions shall be construed to enhance strict regulatory control over

26 the taxation, manufacture, distribution, and sale of alcoholic beverages through the
 27 three-tier regulatory system and the licensing laws imposed by this title."

28 "3-3-10.

29 (a) For purposes of this Code section, the term:

30 (1) 'Electronic means' means internet enabled technology and digital media, including,
 31 but not limited to, websites and consumer applications accessible through computers,
 32 smartphones, or other electronic devices.

33 (2) 'Employee' means a full-time or part-time employee or independent contractor of a
 34 packaged goods retailer who is at least 21 years of age.

35 (3) 'Packaged goods retailer' means a person licensed under this title as a retailer to sell
 36 alcoholic beverages in unbroken packages for consumption off the premises that is not:

37 (A) Licensed as a retail package liquor store;

38 (B) Licensed to manufacture alcoholic beverages; or

39 (C) A person that takes delivery of alcoholic beverages directly from a person licensed
 40 to manufacture alcoholic beverages.

41 (4) 'Proper identification' shall have the same meaning as provided in Code
 42 Section 3-3-23.

43 (5) 'Third party' means any person registered to do business in the state that has a
 44 contractual relationship with at least one packaged goods retailer. Such term shall
 45 include such person's employees and independent contractors.

46 (b) Notwithstanding any other provision of law, and except where prohibited by local
 47 ordinance or resolution, any packaged goods retailer may deliver to an address designated
 48 by an individual alcoholic beverages in unbroken packages lawfully sold to and purchased
 49 by such individual, subject to the following terms and conditions:

50 (1) The individual making the purchase shall, prior to ordering and purchasing alcoholic
 51 beverages for delivery, establish an account maintained by the packaged goods retailer
 52 that shall be available for inspection by the department;

53 (2) The retailer or employee shall process all payments made by the individual who is
 54 transacting the purchase with the packaged goods retailer;

55 (3) The packaged goods retailer, employee, or third party shall assemble, package, and
 56 fulfill each order at the licensed premises of the packaged goods retailer from inventory
 57 located at such licensed premises and shall not pull from the inventory of another retailer
 58 or licensed premises;

59 (4) Delivery shall be made by the packaged goods retailer, employee, or third party who:

60 (A) Is at least 21 years of age;

61 (B) Has a valid Georgia driver's license;

- 62 (C) Has undergone within the last 12 months a background check that includes a local
 63 and national criminal history and driving records and:
- 64 (i) Has not had more than three moving violations in the prior three-year period;
 65 (ii) Has not had a major traffic violation, as such term is defined in Code Section
 66 40-5-142, in the prior three-year period;
 67 (iii) Has not been convicted within the past seven years of driving under the influence
 68 of drugs or alcohol;
 69 (iv) Has not been convicted at any time of fraud, a sexual offense, the use of a motor
 70 vehicle to commit a felony, a crime involving property damage, a crime involving
 71 theft, a crime involving an act of violence, or a crime involving an act of terror; and
 72 (v) Does not have a match on the National Sex Offender Registry data base;
- 73 (D) Has undergone training approved by the department on sales and delivery of
 74 alcoholic beverages in this state;
- 75 (E) Shall not possess or handle as part of or during the delivery forms of compensation
 76 that are used to purchase or transact the sale of alcoholic beverages; and
- 77 (F) Does not receive compensation based upon whether an attempted delivery results
 78 in a completed transaction;
- 79 (5) Delivery shall be made by the packaged goods retailer, employee, or third party to
 80 an individual who is at least 21 years of age and presents proper identification verifying
 81 the age of such individual;
- 82 (6) At the time of delivery, the packaged goods retailer, employee, or third party shall
 83 verify the identity and age of the individual accepting delivery by validating the proper
 84 identification of the individual accepting delivery and obtaining his or her signature on
 85 a written or electronic acknowledgment of receipt of the order and certification of legal
 86 age to purchase alcoholic beverages. The packaged goods retailer, employee, or third
 87 party shall scan the proper identification of the individual accepting delivery and shall
 88 retain a record of such individual's name, date of birth, and signature that shall be
 89 available for inspection upon request;
- 90 (7) The packaged goods retailer, employee, or third party conducting the delivery shall
 91 refuse to make the delivery when the individual attempting to accept the delivery:
- 92 (A) Is less than 21 years of age;
 93 (B) Fails to produce proper identification verifying his or her age;
 94 (C) Fails to provide a signature that matches such proper identification; or
 95 (D) Appears intoxicated;
- 96 (8) All deliveries shall be inspected at the time of delivery by the individual accepting
 97 such delivery. The transaction shall be deemed complete upon acceptance of delivery of
 98 the alcoholic beverages and all sales shall be final;

99 (9) The delivery address shall be located within the local licensing jurisdiction of the
100 retailer; and

101 (10) The delivery shall take place only during the lawful times when alcoholic beverages
102 can be sold by the retailer for consumption off the premises.

103 (c) A packaged goods retailer may use electronic means to market, receive, and process
104 orders for alcoholic beverages it is licensed to sell placed by individuals who are at least
105 21 years of age, provided that any such orders shall be delivered in accordance with
106 subsection (b) of this Code section.

107 (d) A packaged goods retailer may market, receive, and process orders for alcoholic
108 beverages it is licensed to sell placed by individuals who are at least 21 years of age using
109 electronic means owned, operated, or maintained by a third party, provided that any such
110 orders shall be delivered in accordance with subsection (b) of this Code section and:

111 (1) The packaged goods retailer maintains control and responsibility over the sales
112 transaction and the transfer of the physical possession of alcoholic beverages to the
113 employee or third party conducting the delivery;

114 (2) The packaged goods retailer shall retain sole discretion to determine whether to
115 accept and complete an order or to reject an order;

116 (3) The purchase transaction takes place between the individual placing the order and the
117 packaged goods retailer and the packaged goods retailer appears as the merchant of
118 record at the time of purchase and on the receipt;

119 (4) Any credit or debit card information provided by the individual placing the order to
120 a third party for the purpose of transacting the purchase with the packaged goods retailer
121 is automatically directed to the packaged goods retailer;

122 (5) The packaged goods retailer that accepts the order receives the payment that is made
123 by the individual who is transacting the purchase with such retailer; and

124 (6) The delivery of alcoholic beverages to the individual who placed the order is made
125 by the packaged goods retailer, employee, or third party as provided for in paragraphs (4)
126 through (10) of subsection (b) of this Code section.

127 (e) The department shall develop a curriculum for or list of required elements of the sales
128 and delivery training required under subparagraph (b)(4)(D) of this Code section and shall
129 determine the providers approved to conduct such training. A packaged goods retailer or
130 third party may submit to the department a proposed program for such required training,
131 upon receipt of which the department shall have 15 days to approve, deny, or indicate what
132 modifications are necessary to such program.

133 (f) Persons appointed by the commissioner as special agents or enforcement officers of the
134 department shall, in addition to the powers and duties provided for in Code Section 3-2-30,
135 have the power to inspect, without a warrant, in a lawful manner any premises of the

136 retailer or any vehicle being used by the packaged goods retailer, employee, or third party
137 to make a delivery under this Code section for the purpose of:

138 (1) Determining if any of the provisions of this Code section or any rule or regulation
139 promulgated under its authority is being violated; or

140 (2) Securing evidence as may be needed for an administrative proceedings action, as
141 provided in this Code section or any other provisions of this title.

142 (g) The commissioner shall be authorized to promulgate and enforce such rules and
143 regulations as it may deem necessary to carry out or make effective the provisions of this
144 Code section, including, but not limited to, rules and regulations governing the training of
145 individuals making deliveries.

146 (h)(1) Upon a violation of any provision of this Code section or any rule or regulation
147 promulgated thereunder, the commissioner shall have the power to impose a fine upon
148 a packaged goods retailer not to exceed \$500.00 for each violation and to suspend for up
149 to 30 days for each violation the authorization provided by this Code section for the
150 packaged goods retailer to deliver alcoholic beverages or to use an employee or third
151 party to deliver alcoholic beverages. Any local governing authority of a municipality or
152 county that issues a license to a packaged goods retailer and allows for delivery of
153 alcoholic beverages by a packaged goods retailer, an employee, or a third party may
154 impose penalties upon a packaged goods retailer, provided that such penalties do not
155 exceed the amount of the fine or the number of delivery suspension days provided for in
156 this paragraph. Nothing in this paragraph shall be construed to allow the commissioner
157 or any local governing authority of a municipality or county to suspend or terminate the
158 authorization of a packaged goods retailer to sell alcoholic beverages on the licensed
159 premises as a result of a violation of this Code section.

160 (2) The penalties provided for in this Code section shall be in addition to any criminal
161 penalties that may otherwise be provided by law."

162 **SECTION 2.**

163 All laws and parts of laws in conflict with this Act are repealed.