

2019 Regular Session

HOUSE BILL NO. 349

BY REPRESENTATIVE CARMODY

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

ALCOHOLIC BEVERAGES: Provides relative to the delivery of alcoholic beverages

1 AN ACT

2 To amend and reenact R.S. 26:271.2(2) and 274(A) and to enact R.S. 26:271.2(1)(j), 271.4,
3 and 307, relative to the delivery of alcoholic beverages; to provide relative to the
4 delivery of alcoholic beverages of low alcoholic content, sparkling wine, and still
5 wine; to provide for agreements between certain retail dealers and a third party for
6 the delivery of alcoholic beverages; to provide for the delivery of alcoholic
7 beverages by a third party and establishments with certain alcohol beverage permits;
8 to provide for delivery restrictions; to provide for recordkeeping; to provide for fees;
9 to provide for permits; to provide for requirements and limitations; to provide for
10 rulemaking authority; to provide relative to the liability of a third-party delivery
11 agent; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 26:271.2(2) and 274(A) are hereby amended and reenacted and R.S.
14 26:271.2(1)(j), 271.4, and 307 are hereby enacted to read as follows:

15 §271.2. Class A permit; definitions

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

18 (1) Class A- General:

19 * * *

1 §274. Local permits

2 A.(1) Parishes and municipalities may issue and require local permits similar
3 to those issued by the commissioner and may charge and collect fees therefor. No
4 parish or municipality shall require permits of any commercial airline which has
5 been issued a Class B retailer permit.

6 (2) Parishes and municipalities may issue and require local permits similar
7 to those issued by the commissioner for the delivery of alcoholic beverages by
8 grocery stores, restaurants, and third parties.

9 * * *

10 §307. Alcoholic beverages delivery agreements; requirements; limitations

11 A. Notwithstanding any provision of law to the contrary, a retail dealer
12 possessing a valid Class A-General retail permit as provided in R.S. 26:271.2, a
13 Class "R" restaurant permit as provided in R.S. 26:272, or a package house-Class B,
14 as defined in R.S. 26:241(13), permit as provided in this Chapter may enter into a
15 written agreement with a third party for the use of an internet or mobile application
16 or similar technology platform to facilitate the sale of alcoholic beverages for
17 delivery to consumers for personal consumption within this state and the third party
18 may deliver alcoholic beverages to the consumer.

19 B. An alcoholic beverage delivery agreement between a retail dealer and a
20 third party shall require all of the following:

21 (1) Only alcoholic beverages purchased from a wholesale dealer licensed
22 pursuant to this Chapter are offered for delivery.

23 (2) Only alcoholic beverages of low alcoholic content, beer, sparkling wine
24 as defined in R.S. 26:2(19), and still wine as defined in R.S. 26:2(20) are offered for
25 delivery.

26 (3) Only alcoholic beverages intended for personal consumption and
27 delivered in a manufacturer sealed container are offered for delivery. "Manufacturer
28 sealed container" as used in this Paragraph shall mean the original sealed container

1 that is filled with the alcoholic beverage at the permitted facility by the manufacturer
2 as defined in R.S. 26:2(12) and 241(10).

3 (4) Alcoholic beverages are delivered only on the days and during the hours
4 the retail dealer is authorized to sell or serve alcoholic beverages.

5 (5) Alcoholic beverages are delivered only in those areas where the sale of
6 alcoholic beverages is permitted. Delivery of alcoholic beverages in an area where
7 the sale of alcoholic beverages has been prohibited by a referendum vote is
8 prohibited.

9 (6) No alcoholic beverages shall be delivered to a state college, university,
10 or technical college or institute or an independent college or university located in this
11 state.

12 (7) No alcoholic beverages shall be delivered to any public playground or
13 building used primarily as a church, synagogue, public library, or school.

14 (8) No alcoholic beverages shall be delivered more than ten miles from the
15 place of purchase.

16 (9) All orders for the delivery of alcoholic beverages shall also contain food.

17 (10) The alcoholic beverages of all deliveries which are refused by a third
18 party shall be returned to the place of purchase.

19 (11) Alcoholic beverages are delivered only by a person that meets all of the
20 following requirements:

21 (a) The person is eighteen years of age or older.

22 (b) The person is an employee for which the third party shall be required to
23 file an Internal Revenue Service Form W-2.

24 (c) The person possesses a valid server permit as provided in R.S. 26:931 et
25 seq.

26 (12) The retail dealer shall manage and control the sale of alcoholic
27 beverages including but not be limited to all of the following:

28 (a) Determining the alcoholic beverages to be offered for sale through a third
29 party's internet or mobile application platform or similar technology.

1 (b) Determining the price at which alcoholic beverages are offered for sale
2 or sold through a third party's internet or mobile application platform or similar
3 technology.

4 (c) Accepting or rejecting all orders placed for alcoholic beverages through
5 a third party's internet or mobile application platform or similar technology.

6 (d) Collecting and remitting all applicable state and local taxes.

7 C. A retail dealer shall enter into an alcoholic beverage delivery agreement
8 with a third party only when the third party meets all of the following requirements:

9 (1) The third party is properly registered and authorized to conduct business
10 in Louisiana.

11 (2) The third party holds a valid Louisiana alcoholic beverage permit issued
12 pursuant to R.S. 26:271.2(1)(j).

13 (3) The third-party delivery service shall maintain a general liability
14 insurance policy with a liquor liability endorsement in an amount no less than one
15 million dollars per occurrence for the duration of the agreement with the retail dealer
16 and shall provide proof of coverage to the retail dealer.

17 (4) The third party is able to monitor the routes of its employees during
18 deliveries.

19 (5) The third party conducts an interview and a background check of all
20 persons that will deliver alcoholic beverages.

21 D. A retail dealer may pay a third party a fee for its services and a third party
22 may charge a reasonable delivery fee for orders delivered by the third party. A third
23 party may act as an agent of a retail dealer in the collection of payments from the
24 sale of alcoholic beverages, but the full amount of each order must be handled in a
25 manner that gives the retail dealer control over the ultimate receipt of the payment
26 from the consumer.

27 E.(1) The third party may receive orders and accept payment via the internet
28 or through a mobile application or similar technology.

1 (2) At the time of delivery of alcoholic beverages, the third party's delivery
2 agent shall obtain the recipient's signature and verify the age of the recipient through
3 the use of an electronic age verification device that shall be approved by the
4 commissioner. Such device shall be capable of all of the following:

5 (a) Verifying proof of age through technology of a magnetic card reader or
6 an alternative technology capable of verifying proof of age.

7 (b) Reading a valid state-issued driver's license, a valid state issued
8 identification card, a valid military identification card, or a valid passport.

9 (c) Storing the recipient's name, age, date of birth, the expiration date of the
10 identification, and the date and time that the identification was scanned.

11 (3) The third party's delivery agent shall refuse delivery and return the
12 alcoholic beverages to the place of purchase if:

13 (a) The recipient does not produce a valid and current form of identification
14 as provided in R.S. 26:286(A)(1).

15 (b) The recipient is intoxicated.

16 (c) There is reason to doubt the authenticity or correctness of the recipient's
17 identification.

18 (d) The recipient refuses to sign for the receipt of the delivery.

19 (4) A third-party delivery agent who delivers alcoholic beverages, but fails
20 to comply with the provisions of Paragraphs (2) and (3) of this Subsection and
21 administrative rules promulgated pursuant to this Section, shall be vicariously liable
22 for damages incurred as a result of the failure to comply.

23 F. A record of each delivery of alcoholic beverages shall be retained for
24 three years from the date of delivery and made available to the commissioner of the
25 office of alcohol and tobacco control upon request for the purpose of investigating
26 and enforcing the provisions of this Title. The record of each delivery shall include:

27 (1) The retail dealer's name, address, and permit number.

28 (2) The name of the person who placed the order and the date, time, and
29 method of the order.

1 (3) The name of the delivery agent and the date, time, and address of the
2 delivery.

3 (4) The type, brand, and quantity of each alcoholic beverage delivered.

4 (5) The name, date of birth, and signature of the person who received the
5 delivery.

6 G. The provisions of this Section shall not apply to the transportation or
7 delivery of sparkling wine or still wine made by a carrier in accordance with R.S.
8 26:359.

9 H. The commissioner of the office of alcohol and tobacco control may
10 promulgate rules and regulations in accordance with the Administrative Procedure
11 Act to effectuate the provisions of this Section.

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 349 Reengrossed 2019 Regular Session Carmody

Abstract: Provides for the delivery of low alcohol content beverages by certain retail dealers or a third party that meets certain requirements, and provides for the regulation and requirements in this regard.

Present law authorizes parishes and municipalities to issue and require local permits similar to those issued by the commissioner.

Proposed law retains present law and expands local permit authority to include an alcohol delivery permit.

Proposed law adds additional ATC-issued permits for the delivery of low alcohol content beverages by restaurants, grocery stores, holders of a package house-Class B permit, and third parties.

Proposed law sets fee amounts for ATC-issued permits for the delivery of low alcohol content beverages by restaurants, grocery stores, holders of a package house-Class B permit, and third parties.

Proposed law provides the following restrictions on alcohol deliveries:

- (1) Only alcohol purchased from a Louisiana wholesale dealer can be offered for delivery.
- (2) Only alcoholic beverages of low alcoholic content, beer, sparkling wine, and still wine can be offered for delivery.

- (3) Alcohol deliveries are only offered during the hours and days the retailer is authorized to sell or serve alcoholic beverages.
- (4) All alcohol deliveries must contain a food order as well.
- (5) Deliveries can only be taken to areas where the sale of alcoholic beverages is permitted.

Proposed law requires that deliveries are conducted by a person that meets the following requirements:

- (1) A person who is 18 years of age or older.
- (2) A person who possesses a valid server permit.
- (3) A person who is an employee for which the third party is required to file certain IRS forms.

Proposed law requires that a delivery agent must refuse delivery and return the beverages to the place of purchase if:

- (1) The recipient does not have a valid form of identification.
- (2) The recipient is intoxicated.
- (3) The recipient refuses to sign for the receipt of the delivery.
- (4) There is reason to doubt the authenticity of the form of identification.

Proposed law further provides that a delivery agent who fails to comply with these provisions of proposed law shall be held vicariously liable for damages incurred as a result of the failure to comply.

Proposed law requires that the retail dealer, grocery store, or restaurant keep records of all deliveries of alcoholic beverages for three years.

Proposed law shall not be applied to the provisions of present law regarding the transportation or delivery of sparkling wine or still wine through wholesalers.

Proposed law requires third-party delivery services to maintain general liability insurance with a liquor liability endorsement in the amount of no less than one million dollars per occurrence.

(Amends R.S. 26:271.2(2) and 274(A); Adds R.S. 26:271.2(1)(j), 271.4, and 307)

Summary of Amendments Adopted by House

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

1. Reduce the fees of the proposed law permits for alcohol delivery issued by ATC.
2. Provide that proposed law does not apply to the transportation or delivery of sparkling wine and still wine through wholesalers.
3. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Add holders of package house-Class B permits to the parties permitted to deliver alcoholic beverages.
3. Require third-party delivery services to maintain general liability insurance with a liquor liability endorsement.
4. Delete the requirement that interviews of persons that will deliver alcoholic beverages be conducted in person.
5. Remove the requirement that the age verification device be capable of storing the gender of the recipient of the alcohol delivery.