

2019 Regular Session

HOUSE BILL NO. 349

BY REPRESENTATIVE CARMODY

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 309, 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; to provide for an effective date; 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 309 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 \* \* \*

20 (j) Notwithstanding any provision of law to the contrary and subject to rules  
21 promulgated by the commissioner, a permit may be issued to a third party that has  
22 entered into a written agreement with a retail dealer for the delivery of alcoholic  
23 beverages pursuant to R.S. 26:309 if the third party and the written agreement meet  
24 all the requirements set forth in R.S. 26:309. Notwithstanding the provisions of R.S.

1           26:271(A)(2), the permit fee for the permit issued pursuant to this Subparagraph  
2           shall be one thousand five hundred dollars.

3                     (2) Class A-Restaurant:

4                     (a) A Class A-Restaurant permit shall be issued only to a "restaurant  
5                     establishment" as defined by R.S. 26:272(C)(1) or a dinner theater as defined in R.S.  
6                     26:241(5), and issued to a facility in conjunction with a Class "R" restaurant permit  
7                     under the provisions of R.S. 26:272.

8                     (b) Notwithstanding any provision of law to the contrary and subject to rules  
9                     promulgated by the commissioner, in addition to the authority to contract with a third  
10                    party as provided in R.S. 26:309, a permit may be issued to a "restaurant  
11                    establishment" enabling the delivery of restaurant prepared food and alcohol with its  
12                    own employees. Notwithstanding the provisions of R.S. 26:271(A)(2), the permit  
13                    fee for the permit issued pursuant to this Subparagraph shall be two hundred fifty  
14                    dollars.

15   \*       \*       \*

16           §271.4. Package House-Class B Permit

17                    Notwithstanding any provisions of law to the contrary and subject to rules  
18                    promulgated by the commissioner, in addition to the authority to contract with a third  
19                    party as provided in R.S. 26:309, a permit may be issued to a grocery store enabling  
20                    the delivery of alcohol with its own employees. Notwithstanding the provisions of  
21                    R.S. 26:271(A)(2), the permit fee for the permit issued pursuant to this Section shall  
22                    be two hundred fifty dollars.

23   \*       \*       \*

24           §274. Local permits

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

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

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

4   \*       \*       \*

5 §309. Alcoholic beverages delivery agreements; requirements; limitations

6           A. For purposes of this Section only, a third party delivery company shall be  
7 defined as a third party delivery service that is licensed to do business in the state of  
8 Louisiana, permitted with the office of alcohol and tobacco control, and uses their  
9 own W-2 employees for delivery. For all other alcohol delivery provisions of this  
10 Chapter, third party shall be the definition provided in R.S. 26:2 and 241.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24                   F.(1) The third party may receive orders and accept payment via the internet  
 25                   or through a mobile application or similar technology.

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

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

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

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

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

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

11          (b) The recipient is intoxicated.

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

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

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

19          G. A record of each delivery of alcoholic beverages shall be retained for  
20          three years from the date of delivery and made available to the commissioner of the  
21          office of alcohol and tobacco control upon request for the purpose of investigating  
22          and enforcing the provisions of this Title. The record of each delivery shall include:

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

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

26          (3) The name of the delivery agent and the date, time, and address of the  
27          delivery.

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

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

1                   H. The provisions of this Section shall not apply to the transportation or  
2                   delivery of sparkling wine or still wine made by a carrier in accordance with R.S.  
3                   26:359.

4                   I. The commissioner of the office of alcohol and tobacco control may  
5                   promulgate rules and regulations in accordance with the Administrative Procedure  
6                   Act to effectuate the provisions of this Section.

7                   J. Any permittee who violates the provisions of this Section shall be subject  
8                   to revocation of their permit by the commissioner.

9                   Section 2. This Act shall become effective upon signature by the governor or, if not  
10                  signed by the governor, upon expiration of the time for bills to become law without signature  
11                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
12                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
13                  effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_