

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 (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 are delivered more than ten miles from the place
13 of purchase.

14 (9) All orders for the delivery of alcoholic beverages shall also contain food.
15 No alcoholic beverages shall be delivered unless the order for such alcoholic
16 beverages also contains 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 maintains not less than two million dollars in liquor
14 liability insurance for the duration of the agreement with the retail dealer and
15 provides proof of coverage to the retail dealer.

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

18 (5) The third party conducts an in-person interview and a background check
19 on all persons that will deliver alcoholic beverages.

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

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

28 (2) At the time of delivery of alcoholic beverages, the third party's delivery
29 agent shall obtain the recipient's signature and verify the age of the recipient through

1 the use of an electronic age verification device that shall be approved by the
2 commissioner. Such device shall be capable of all of the following:

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

5 (b) Reading a valid state issued driver's license, a valid state issued
6 identification card, a valid military identification card, or a valid passport.

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

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

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

13 (b) The recipient is intoxicated.

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

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

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

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

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

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

28 (3) The name of the delivery agent and the date, time, and address of the
29 delivery.

- 1 (4) The type, brand, and quantity of each alcoholic beverage delivered.
- 2 (5) The name, date of birth, and signature of the person who received the
- 3 delivery.
- 4 G. The provisions of this Section shall not apply to the transportation or
- 5 delivery of sparkling wine or still wine made by a carrier in accordance with R.S.
- 6 26:359.
- 7 H. The commissioner of the office of alcohol and tobacco control may
- 8 promulgate rules and regulations in accordance with the Administrative Procedure
- 9 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 Engrossed

2019 Regular Session

Carmody

Abstract: Provides for the delivery of low alcohol content beverages by a third party, restaurant, or grocery store, 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 alcohol delivery permit.

Proposed law adds additional ATC issued permits for the delivery of low alcohol content beverages by restaurants, grocery stores, and third parties.

Proposed law sets fee amounts for ATC issued permits for the delivery of low alcohol content beverages by restaurants, grocery stores, 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 restaurants 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.

(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.