

House Bill 397

By: Representatives Carpenter of the 4<sup>th</sup>, Evans of the 57<sup>th</sup>, Daniel of the 117<sup>th</sup>, Jones of the 25<sup>th</sup>, and Crowe of the 118<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 3 and 40 of the Official Code of Georgia Annotated, relating to alcoholic  
2 beverages and motor vehicles and traffic, respectively, so as to change certain provisions  
3 relating to delivery of alcoholic beverages for personal use; to change and provide for  
4 definitions; to expand the area in which packaged good retailers can deliver certain alcoholic  
5 beverages; to prohibit the use of personal delivery devices to make such deliveries; to  
6 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 3 of the Official Code of Georgia Annotated, relating to alcoholic beverages, is  
11 amended by revising Code Section 3-3-10, relating to delivery of malt beverages, wine, and  
12 distilled spirits for personal use, marketing, receiving, and processing orders, regulation, and  
13 penalty, as follows:

14 "3-3-10.

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

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- 16 (1) 'Air carrier' means a person that undertakes by any means, directly or indirectly, to  
17 provide air transportation.
- 18 (2) 'Carrier' means any person, including without limitation any motor carrier, freight  
19 forwarder, or air carrier, whose business is to transport goods or people while acting in  
20 the capacity as common, private, or contract transporter of a product or service using its  
21 facilities or those of other carriers.
- 22 (3) 'Electronic means' means internet enabled technology and digital media, including,  
23 but not limited to, websites and consumer applications accessible through computers,  
24 smartphones, or other electronic devices.
- 25 (4) 'Employee' means an individual who is:
- 26 (A) A full-time or part-time employee of a packaged goods retailer; and  
27 (B) Authorized to act as an agent of such packaged goods retailer.
- 28 (5) 'Freight forwarder' means a person holding itself out to the general public to provide  
29 transportation of property for compensation and in the ordinary course of its business:
- 30 (A) Assembles and consolidates, or provides for the assembly and consolidation of,  
31 shipments and performs or provides for break bulk and distribution operations of the  
32 shipments;
- 33 (B) Assumes responsibility for such transportation from the place of receipt to the  
34 place of destination; and
- 35 (C) Uses for any part of such transportation another freight forwarder, an air carrier,  
36 a motor carrier, or any other carrier.
- 37 (6) 'Motor carrier' means a person that provides for compensation motor vehicle  
38 transportation ~~for compensation~~ or transportation utilizing a personal delivery device.
- 39 (7) 'Network company' means a ride share network service or a business entity that  
40 maintains an online enabled application or platform used to facilitate delivery services  
41 in this state.

42 ~~(7)~~(8) 'Packaged goods retailer' means a person licensed under this title as a retailer to  
43 sell alcoholic beverages in unbroken packages for consumption off the premises that is  
44 not:

- 45 (A) A manufacturer or any other person licensed to manufacture alcoholic beverages;
- 46 (B) A carrier;
- 47 (C) A shipper; or
- 48 (D) A person that takes delivery of alcoholic beverages directly from a:
  - 49 (i) Retailer; or
  - 50 (ii) Manufacturer or any other person licensed to manufacture alcoholic beverages.

51 (9) 'Personal delivery device' shall have the same meaning as provided in Code Section  
52 40-1-1.

53 ~~(8)~~(10) 'Proper identification' shall have the same meaning as provided in Code Section  
54 3-3-23.

55 ~~(9)~~(11) 'Third party' means:

- 56 (A) Any person, including, but not limited to, a network company, that:
  - 57 (i) Is registered to do business in this state;
  - 58 (ii) Has a contractual relationship with a packaged goods retailer;
  - 59 (iii) Is authorized to act as an agent of such packaged goods retailer; and
  - 60 (iv) Is not a manufacturer, any other person licensed to manufacture alcoholic  
61 beverages, or an affiliate of such manufacturer or such other person; or
- 62 (B) Any full-time or part-time employee or independent contractor of any person,  
63 including, but not limited to, a network company, that:
  - 64 (i) Is registered to do business in this state;
  - 65 (ii) Has a contractual relationship with such third party as defined in subparagraph  
66 (A) of this paragraph;
  - 67 (iii) Is authorized to act as an agent of such third party as defined in subparagraph (A)  
68 of this paragraph; and

69 (iv) Is not a manufacturer, any other person licensed to manufacture alcoholic  
70 beverages, or an affiliate of such manufacturer or such other person.

71 (b) Notwithstanding any other provision of law, and except where prohibited by local  
72 ordinance or resolution, a packaged goods retailer may deliver malt beverages and wine in  
73 unbroken packages lawfully sold to and purchased by an individual for personal use and  
74 not for resale to an address designated by such individual, subject to the following terms  
75 and conditions:

76 (1) The individual making the purchase shall, prior to ordering and purchasing malt  
77 beverages and wine for delivery, establish an account maintained by the packaged goods  
78 retailer that shall be available for inspection by the department;

79 (2) The packaged goods retailer or employee shall process all payments made by the  
80 individual who is transacting the purchase with the packaged goods retailer prior to the  
81 malt beverages and wine leaving such packaged goods retailer's licensed premises for  
82 delivery;

83 (3) The packaged goods retailer, employee, or third party shall assemble, package, and  
84 fulfill each order at the licensed premises of the packaged goods retailer from inventory  
85 located at such licensed premises and shall not pull from the inventory of any other  
86 person, including another retailer or licensed premises;

87 (4) All malt beverages and wine that leave the licensed premises of the packaged goods  
88 retailer for delivery shall:

89 (A) Remain in the possession of the individual, either the packaged goods retailer, the  
90 employee, or the third party, that removed it from the licensed premises for delivery  
91 and shall not be transferred to any other person until the time of delivery in compliance  
92 with the requirements of this subsection or until the time of the return to the packaged  
93 goods retailer if delivery is not made;

- 94 (B) Only be transported in a vehicle or other transportation device containing products  
95 or goods traveling in intrastate commerce for delivery ~~in the local licensing jurisdiction~~  
96 within 25 miles of the licensed premises of such packaged goods retailer; and
- 97 (C) Not be carried, commingled, or stored with, or transported in any vehicle or other  
98 transportation device containing, products or goods traveling in interstate commerce for  
99 delivery;
- 100 (5) Delivery shall be made by the packaged goods retailer, employee, or third party who:
- 101 (A) Is at least 21 years of age;
- 102 (B) Has a valid Georgia driver's license;
- 103 (C) Has undergone within the last 12 months a background check that includes a local  
104 and national criminal history and driving records and:
- 105 (i) Has not had more than three moving violations in the prior three-year period;
- 106 (ii) Has not had a major traffic violation, as such term is defined in Code Section  
107 40-5-142, in the prior three-year period;
- 108 (iii) Has not been convicted within the past seven years of driving under the influence  
109 of drugs or alcohol;
- 110 (iv) Has not been convicted at any time of fraud, a sexual offense, the use of a motor  
111 vehicle or a personal delivery device to commit a felony, a crime involving property  
112 damage, a crime involving theft, a crime involving an act of violence, or a crime  
113 involving an act of terror; and
- 114 (v) Does not have a match on the National Sex Offender Registry data base;
- 115 (D) Has undergone training approved by the department on sales and delivery of malt  
116 beverages and wine in this state;
- 117 (E) Shall not possess or handle as part of or during the delivery forms of compensation  
118 that are used to purchase or transact the sale of malt beverages and wine;
- 119 (F) Does not receive compensation based upon whether an attempted delivery results  
120 in a completed transaction; and

- 121 (G) At all times during which the malt beverages and wine to be delivered are in the  
122 vehicle, transportation device, possession, or care of such packaged goods retailer,  
123 employee, or third party, shall not also have in his or her vehicle, transportation device,  
124 possession, or care any products or goods traveling in interstate commerce;
- 125 (6) Delivery shall be made by the packaged goods retailer, employee, or third party to  
126 an individual who is at least 21 years of age and presents proper identification verifying  
127 the age of such individual;
- 128 (7) At the time of delivery, the packaged goods retailer, employee, or third party shall  
129 verify the identity and age of the individual accepting delivery by validating the proper  
130 identification of the individual accepting delivery in person and obtaining his or her  
131 signature on a written or electronic acknowledgment of receipt of the order and  
132 certification of legal age to purchase malt beverages and wine. The packaged goods  
133 retailer, employee, or third party shall scan or otherwise verify the proper identification  
134 of the individual accepting delivery at the time of delivery and shall retain a record of  
135 such individual's name and date of birth that shall be available for inspection upon request  
136 for a minimum of three years;
- 137 (8) The packaged goods retailer, employee, or third party conducting the delivery shall  
138 refuse to make the delivery if:
- 139 (A) No individual is visibly present and available at the address to accept delivery; or  
140 (B) The individual visibly present and available attempting to accept the delivery:
- 141 (i) Is less than 21 years of age;  
142 (ii) Fails to produce proper identification verifying his or her age;  
143 (iii) Fails to provide a signature that matches such proper identification; or  
144 (iv) Is noticeably intoxicated;
- 145 (9) All deliveries shall be inspected at the time of delivery by the individual accepting  
146 such delivery. The transaction shall be deemed complete upon acceptance of delivery of  
147 the malt beverages and wine, and all sales shall be final;

148 (10) The delivery address shall be located within ~~the local licensing jurisdiction~~ 25 miles  
149 of the licensed premises of the packaged goods retailer;

150 (11) The delivery shall take place only during the lawful times when malt beverages and  
151 wine can be sold by the packaged goods retailer for consumption off the premises;

152 (12) The delivery shall be made only within the same calendar day on which the malt  
153 beverages and wine leave the licensed premises of the packaged goods retailer for  
154 delivery; and

155 (13) No delivery shall knowingly be made to any address or to any property that is part  
156 of:

157 (A) Any public or private elementary or secondary educational school, including  
158 without limitation any dormitory, housing, or common space located on the campus of  
159 any elementary or secondary educational school;

160 (B) Any prison, reformatory, and other correctional facilities;

161 (C) Any addiction or substance abuse facilities;

162 (D) Any locker, mailbox, package shipping location, or similar service or storage  
163 facility business; or

164 (E) Any retailer.

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

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

173 (1) The packaged goods retailer maintains control and responsibility over the sales  
174 transaction and the transfer of the physical possession of the malt beverages and wine

175 from the inventory of such packaged goods retailer to the individual conducting the  
176 delivery in accordance with subsection (b) of this Code section;

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

179 (3) The purchase transaction takes place between the individual placing the order and the  
180 packaged goods retailer and the packaged goods retailer appears as the merchant of  
181 record at all times, including at the time of purchase and at the time of receipt of the  
182 delivery;

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

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

188 (6) The delivery of malt beverages and wine to the individual who placed the order is  
189 made by the packaged goods retailer, employee, or third party in compliance with the  
190 requirements of subsection (b) of this Code section.

191 (d.1) Notwithstanding any other provision of law, and except where prohibited by local  
192 ordinance or resolution, a licensed retail package liquor store that is also a packaged goods  
193 retailer may deliver distilled spirits in unbroken packages lawfully sold to and purchased  
194 by an individual for personal use and not for resale in the same manner and under the same  
195 terms and conditions as provided in this Code section for the delivery of malt beverages  
196 and wine.

197 (e) The department shall develop a curriculum for or list of required elements of the sales  
198 and delivery training required under subparagraph (b)(4)(D) of this Code section and shall  
199 determine the providers approved to conduct such training. A packaged goods retailer or  
200 third party may submit to the department a proposed program for such required training,



201 upon receipt of which the department shall have 15 days to approve, deny, or indicate what  
202 modifications are necessary to such program.

203 (f) Persons appointed by the commissioner as special agents or enforcement officers of the  
204 department shall, in addition to the powers and duties provided for in Code Section 3-2-30,  
205 have the power to inspect, without a warrant, in a lawful manner any premises of the  
206 packaged goods retailer or any vehicle or other transportation device being used by the  
207 packaged goods retailer, employee, or third party to make a delivery under this Code  
208 section for the purpose of:

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

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

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

217 (h)(1) In addition to the commissioner's power to suspend, revoke, or cancel licenses,  
218 permits, or registrations issued pursuant to this title, upon a violation of any provision of  
219 this Code section or any rule or regulation promulgated thereunder, the commissioner  
220 shall have the power to impose a fine not to exceed \$500.00 for each violation and may  
221 suspend for up to 30 days for each violation the authorization provided by this Code  
222 section for the packaged goods retailer to deliver malt beverages and wine or to use an  
223 employee or third party to deliver malt beverages and wine. Any violation committed by  
224 an employee or a third party shall be attributed to and deemed to be an act taken by a  
225 packaged goods retailer for purposes of this Code section. A packaged goods retailer,  
226 employee, and third party may each be fined for the same violation. Nothing in this  
227 paragraph shall be construed to allow the commissioner to suspend or terminate the

228 authorization of a packaged goods retailer to sell malt beverages and wine on the licensed  
229 premises as a result of a violation of this Code section by a third party.

230 (2) Any local governing authority of a municipality or county that issues a license to a  
231 packaged goods retailer and allows for delivery of malt beverages and wine by a  
232 packaged goods retailer, an employee, or a third party may impose penalties upon a  
233 packaged goods retailer, employee, or third party, and may fine more than one person for  
234 the same violation, provided that such penalties do not exceed the amount of the fine or  
235 the number of delivery suspension days provided for in this paragraph. Nothing in this  
236 paragraph shall be construed to allow any local governing authority of a municipality or  
237 county to suspend or terminate the authorization of a packaged goods retailer to sell malt  
238 beverages and wine on the licensed premises as a result of a violation of this Code  
239 section.

240 (3) The penalties provided for in this Code section shall be in addition to any criminal  
241 penalties that may otherwise be provided by law."

242 **SECTION 2.**

243 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
244 amended by adding a new Code section to read as follows:

245 "40-6-324.1.

246 No person shall use a personal delivery device to transport any alcoholic beverages for  
247 purposes of delivery as provided for in Code Section 3-3-10."

248 **SECTION 3.**

249 This Act shall become effective upon its approval by the Governor or upon its becoming law  
250 without such approval.

251

**SECTION 4.**

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