

South Carolina General Assembly
124th Session, 2021-2022

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Bill 3772

~~Indicates Matter Stricken~~

Indicates New Matter

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AMENDED

March 11, 2021

H. 3772

Introduced by Reps. Bernstein, G.M. Smith, Stavrinakis, Herbkersman, Rutherford, Elliott, Collins, W. Newton, Bannister, M.M. Smith, Brittain, Murray, Gilliard, Hewitt, Fry, Erickson, Bradley, Martin, Kirby, Davis, Kimmons, Garvin and Alexander

S. Printed 3/11/21--H.

Read the first time January 28, 2021.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61-4-280 SO AS TO ALLOW A RETAIL DEALER LICENSED TO SELL BEER AND WINE IN THIS STATE TO USE A DELIVERY SERVICE, OR ITS OWN EMPLOYEES OR INDEPENDENT CONTRACTORS TO FACILITATE THE DELIVERY OF CERTAIN BEER AND WINE, TO PROVIDE FOR A DELIVERY LICENSE, TO SPECIFY CERTAIN DELIVERY PROHIBITIONS AND OTHER REQUIREMENTS FOR THE DELIVERY OF SUCH BEER AND WINE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds and declares that:

(A) The State has a substantial interest in regulating beverages containing alcohol, including beer, ale, porter, wine, and other similar malt or fermented beverages containing not in excess of sixteen percent alcohol by volume, as defined and licensed for retail sale pursuant to Sections 61-4-10 and 61-4-770 (collectively referenced as "beer and wine") of the 1976 Code; the activities of manufacturers, importers, wholesalers, and retailers; the safe delivery of beer and wine to the state's consumers; and the influences that affect the consumption levels of beer and wine by the people of the State.

(B) The State has a substantial interest in exercising its police power to promote the public health, safety, and welfare of the State by regulating the business of retail sales and delivery of beer and wine in the manner and to the extent allowed by law to promote and preserve public health and safety through legitimate, nonprotectionist measures, which include regulating and controlling beer and wine transactions in this State and the means and

manner in which licensed retailers and third parties may deliver beer and wine to the state's qualifying consumers.

(C) Selling and delivering beer and wine from retailers outside the State directly to residents of this State poses a serious threat to the state's efforts to prevent underage drinking, to state revenue collections, and to the public health and safety of the state's residents.

(D) By this act, the General Assembly intends to promote the public health, safety, and welfare of residents of this State with laws intended to strictly regulate beer and wine by preserving and promoting a robust, stable system of distribution of beverages containing alcohol to the public, that does not provide for economic protectionism. Excessive use of beer and wine has wide ranging deleterious health effects, including death. The General Assembly acknowledges that, according to the United States Centers for Disease Control, during the period from 2011-2015 an average of 1,679 of this state's residents suffered alcohol attributed deaths due to excessive alcohol use and the rate of binge drinking in this State is ranked among the highest in the nation. The General Assembly acknowledges that, according to the National Highway Traffic Safety Administration, this State had two hundred eighty-five alcohol impaired driving fatalities in 2019, which accounted for twenty-eight percent of the total traffic fatalities in the State. Attributed deaths due to alcohol-impaired driving in this State is ranked among the highest in the nation.

(E) This act has been enacted pursuant to the authority granted to the State by the Twenty-first Amendment to the Constitution of the United States, the powers reserved to the states under the Tenth Amendment to the United States Constitution, and the inherent powers of the State under the Constitution of the State of South Carolina, 1895, and the statutes promulgated thereunder. It is the intent of the General Assembly that this act do all of the following:

- (1) further regulate and control transactions in this State as to beverages containing alcohol under the control and supervision of the Department of Revenue;
- (2) strictly regulate alcoholic beverages transactions by fostering moderation and responsibility in the use and consumption of beverages containing alcohol;
- (3) promote and assure the public's interest in fair and efficient distribution and quality control of alcoholic beverages in this State;
- (4) promote orderly marketing of alcoholic beverages;
- (5) prevent unfair business practices, discrimination, and undue control of one segment of the alcoholic beverages industry by any other segment;
- (6) foster vigorous and healthy competition in the alcoholic beverage industry and protect the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages and avoid problems associated with indiscriminate price cutting and excessive advertising of alcoholic beverages;
- (7) provide for an orderly system of public revenues by facilitating the collection and accountability of this state and local excise taxes;
- (8) facilitate the collection of state and local revenue;
- (9) maintain trade stability and provide for the continuation of control and orderly processing by the State over the regulation of alcoholic beverages retail locations and the process of selling and delivering alcoholic beverages to the state's consumers;
- (10) ensure that the Department of Revenue and State Law Enforcement Division are able to monitor licensed operations through on-site inspections to confirm compliance with state law and that any alcoholic beverages shipped into, distributed, and sold throughout this State:

- (a) have registered for sale in this State with the Department of Revenue, as prescribed by law;
 - (b) are not subject to a government-mandated or supplier-initiated recall;
 - (c) are not counterfeit;
 - (d) are labeled in conformance with applicable laws, rules, and regulations;
 - (e) can be inspected and tested by the Department of Revenue or the State Law Enforcement Division; and
 - (f) are not prohibited by this State;
- (11) promote and maintain a sound, stable, and viable three-tier system of distribution of beverages containing alcohol to the public; and
- (12) ensure that statutes and regulations relating to alcoholic beverages exist to serve the interests of the State of South Carolina and its citizens rather than to serve or protect the interests of market participants by adopting protectionist measures with no demonstrable connection to the state's legitimate interests in regulating alcoholic beverages.

SECTION 2. Article 1, Chapter 4, Title 61 of the 1976 Code is amended by adding:

"Section 61-4-280. (A) As used in this section:

- (1) 'Customer' means an individual who is at least twenty-one years of age and who purchases products from a licensed retail dealer through the use of the Internet, mobile applications, or other similar technology.
- (2) 'Delivery' means local delivery of beer or wine made by a retail dealer or delivery service employees or independent contractors. Delivery by a delivery service must be made on the same day the beer and wine is collected from the retail dealer and may not be interstate or further hired, including to a common carrier.
- (3) 'Delivery service' means a third party that delivers items from a retail dealer to consumers for personal consumption and not for resale using employees or independent contractors to facilitate the delivery. A 'delivery service' also may facilitate delivery through technology services that connect customers with retail dealers through the use of the Internet, mobile applications, and other similar technology.
- (4) 'Recipient' means an individual who is at least twenty-one years of age, who is physically present at the address designated by the customer, and who is receiving the intended delivery from the delivery service.
- (5) 'Retail dealer' means a person or entity licensed under this title as a retailer authorized to sell beer, ale, porter, and wine in sealed containers for off-premises consumption or on-premises consumption and does not include a manufacturer or any other person or entity licensed to manufacture beer and wine.
- (6) 'Sealed container' means a vessel containing beer or wine, which has not been opened, tampered with, uncapped or unsealed subsequent to its original filling and airtight sealing by the manufacturer, importer, or retail dealer.
- (7) 'Third party' means any individual, partnership, association, company, limited liability company, corporation, or other entity or group who is licensed to do business in this State, regardless of the state of residency, that has a contractual relationship with at least one licensed retail dealer, and who is not an employee of the retail dealer.

(B) Notwithstanding any other provision of law, a retail dealer may hire a delivery service to deliver sealed packages of beer and wine for personal consumption. A retail dealer may itself deliver sealed packages of beer and wine for personal consumption upon payment of a fee equal to that charged for a delivery service permit and proof of alcohol liability insurance in the amount of at least one million dollars. Delivery shall not occur on the

premises of any church, school, or playground, as those terms are defined in Section 61-6-120, within any residence hall or dormitory on a college or university campus in this State, or within the premises of licensed on-premises retailers, excluding hotels. For purposes of determining whether the area for the delivery of beer and wine is permissible, the Department of Revenue shall make available to the delivery service the addresses of active licensed on-premises retailers upon which the delivery service may reasonably rely in furtherance of prohibiting such delivery.

(C) The delivery service must apply to the department for a biennial license which authorizes the delivery service to deliver beer and wine that has been purchased from a retailer through the three-tier distribution chain set forth in Sections 61-4-735 and 61-4-940. The department shall grant the license if the applicant:

- (1) pays a nonrefundable four hundred dollar license fee;
- (2) is at least twenty-one years of age;
- (3) affirms whether the applicant or any officer or director, as may be required to be disclosed in the license application, has been involved in the sale of alcoholic liquors, beer, or wine in this or another state and whether he has had a license or permit suspended or revoked;
- (4) except for applicants that are publicly traded companies or subsidiaries of the same, provides a criminal history background check conducted by the State Law Enforcement Division at time of application. The background check must prove that the individual has not been convicted of any crime involving the sale or distribution of beer, wine, or liquor within the last eight years and has not been convicted of any felony within the last ten years; and
- (5) maintains a general liability insurance policy in the amount of at least one million dollars for the biennial period for which it is permitted.

(D) Nothing in this section shall be construed to require a company that only provides technology services to a retail dealer to obtain a delivery service license if the company does not employ or contract with delivery drivers, but merely provides software or an application that connects consumers and licensed retail dealers.

(E) A person with a controlling interest in a delivery service licensee may not hold or maintain concurrent ownership or financial interest in beer or wine business operations on the manufacturer tier-one, or tier-two wholesaler operations as described in Section 61-4-940(D) or Section 61-4-735(D).

(F) Each individual who delivers beer and wine for a retail dealer or delivery service must be at least twenty-one years of age, must not have a felony conviction within the last ten years, as confirmed by a background check conducted by the delivery service prior to being hired, and must undergo certification and training to deliver beer and wine as provided by the department and as administered by the retail dealer or delivery service.

(G)(1) A licensed retail dealer may market, receive, and process orders for beer and wine products under this section using electronic means owned, operated, and maintained by a third party, provided that:

- (a) the retail dealer maintains ultimate control and responsibility over the sales transaction and transfer of physical possession of the beer and wine to the delivery service employee or independent contractor;
- (b) the retail dealer retains the sole discretion to determine whether to accept and complete a sales transaction or reject it;
- (c) the retail dealer retains the independence to determine which beer and wine are made available for ordering through electronic means, which beer and wine are made available for delivery to the recipient at the address designated by the customer, and to independently set the price of such products;
- (d) the sales transaction takes place between the customer and the retail dealer and the retail dealer appears as the merchant of record;

- (e) any credit or debit card information provided by a customer to the third party for the purpose of transacting a purchase with a retail dealer is automatically directed to the retail dealer such that the retail dealer appears as the merchant of record at the time of purchase and on the receipt;
 - (f) the retail dealer, or an employee of the retail dealer, processes by the licensed premise that accepts the order, all payments initiated by a customer that is transacting a purchase with the retail dealer; and
 - (g) the beer and wine are in the possession of the retail dealer prior to the retail dealer's processing of payment for such products.
- (2) The relationship between the retail dealer and delivery service must be one of independent contractors, and neither party shall be deemed the employee, agent, or joint venturer of the other party under any circumstances or for any purpose.
- (H) Licensed retail dealers or third parties shall maintain records of beer and wine sales delivered by third parties for a period of three years. The records must document the chain of custody of the beer and wine sold by retail dealers and delivered by third parties. Upon request, the records must be made available to the department, within a reasonable period of time, in the manner prescribed by the department.
- (I) The retail dealer or delivery service shall assemble, package, and fulfill each order for delivery at the licensed premises of the retail dealer from inventory located at such licensed premises and shall not retrieve inventory from any other of the retail dealer's locations or of any other person or entity, including another retail dealer.
- (J) All beer, ale, porter, and wine that leave the licensed premises of the retail dealer for delivery:
- (1) shall remain in the possession of the retail dealer or delivery service employee or independent contractor who removed it from the licensed premises for delivery and may not be transferred to any other person until the time of delivery in compliance with this section or the return to the retail dealer's licensed premises the same day removed if delivery is not made; and
 - (2) shall not be carried with, comingled with, stored with, or transported in any vehicle or other transportation device containing products or goods traveling in interstate commerce.
- (K) A retailer dealer or delivery service must not deliver more than five hundred seventy-six ounces of beer plus nine liters of wine to any recipient in a calendar day.
- (L) A retail dealer must not deliver or sell for delivery and a delivery service must not deliver beer or wine to any location or recipient beyond the United States Postal Service five digit ZIP code or a contiguous ZIP code of the selling retail dealer's licensed premises.
- (M) A retail dealer or delivery licensee only may deliver beer and wine within the time allowed for lawful sales and consumption in the jurisdiction, and subject to local option laws in the county for the licensed retail dealer. Also, at the time of delivery, a delivery service licensee must have some form of electronic or current state of the art age verification software technology available at the point of delivery, must require the recipient to provide valid photographic identification to verify the recipient is at least twenty-one years of age, and must obtain the recipient's signature.
- (N) A retail dealer and delivery service shall refuse delivery and return the beer and wine to the retail dealer's licensed premises on the same date of collection and attempted delivery when the recipient is not present or:
- (1) is less than twenty-one years of age;
 - (2) fails to produce valid identification; or
 - (3) appears to be intoxicated.

(O) Each retail dealer who delivers beer and wine or delivery service must monetarily incentivize its employees or independent contractors to return beer and wine to the retail dealer's licensed premises if the delivery is refused by the recipient or pursuant to subsection (N).

(P) A customer order made through a delivery service licensee shall result in a sale deemed to have been made on the retail dealer's licensed premises.

(Q)(1) For violations of this section, and for a violation of any regulation pertaining to beer or wine, the department may, in its discretion, impose a monetary penalty upon a retail dealer or the holder of a delivery service license beer or wine permit in lieu of suspension or revocation. The amount of any penalty imposed must be no less than twenty-five dollars and no more than one thousand dollars. The fine is subject to a hearing as provided in the South Carolina Revenue Procedures Act and the Administrative Procedures Act.

The department in its discretion may suspend payment of a fine or a monetary penalty imposed under this section. Any fines collected pursuant to this section must be credited to the general fund.

(2) If the department imposes a monetary penalty under this section which is not paid or a contested case hearing is not requested within thirty days after demand by the department, the license or licenses may be suspended or revoked by the department.

(3) Penalties provided for in this section are in addition to any fines and penalties imposed by law or by any court of competent jurisdiction for violation of the laws of this State.

(4) In addition to the penalties provided in this subsection, the department may revoke the delivery license of an entity or person failing to comply with any requirements hereof."

SECTION 3. If any provision of this act, or its application to any person or circumstance, is determined by a court or other authority of competent jurisdiction to be invalid or unconstitutional, that provision must be stricken and the remaining provisions must be construed in accordance with the intent of the General Assembly to further limit rather than expand commerce in beverages containing alcohol, and with respect to such beverages, the remaining provisions must be construed to enhance strict regulatory control over the taxation, importation, production, distribution, sale, and delivery of beverages containing alcohol through the three-tier regulatory system and the licensing laws imposed by this act.

SECTION 4. This act takes effect September 1, 2021.

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