~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 23, 2011

**S. 461**

Introduced by Senators Cleary, Sheheen, Lourie and Ford

S. Printed 3/23/11--S.

Read the first time January 27, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 461) to amend the Code of Laws of South Carolina, 1976, by adding Section 61-2-85, so as to provide that a holder of a permit that allows on-premises consumption beer, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting the following:

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

“Section 61‑2‑85. (A) For the purposes of this section,

(1) ‘Permit holder’ means a holder of a permit or license issued by the Department of Revenue that authorizes on‑premises consumption of beer, wine, or alcoholic liquor by the drink.

(2) ‘Practical means of glass collection’ means the existence of a financially feasible commercial or governmental recycling program or programs that allow a permit holder to contract for onsite pickup of glass or a local and non‑costly drop‑off location that accepts glass containers for recycling and that is easily available to a permit holder.

(3) ‘Recycling plan’ means a plan for recycling that provides for the separation, storage, collection, and recycling of recyclable beverage containers and their packaging that are sold on the premises of a permit holder, including, but not limited to, aluminum, plastic, glass beverage containers, and cardboard used to package, ship, or deliver the beverage containers. Recycling of glass containers shall not be required as part of a recycling plan if, as determined by the Department of Health and Environmental Control, in coordination with the Department of Revenue, no practical means of glass collection exists due to the geographical location of the permit holder.

(B) Each permit holder shall have and use a recycling plan for the collection and recycling of recyclable beverage containers and packaging sold on the premises by the permit holder, except for those permit holders in locations where the Department of Health and Environmental Control and the Department of Revenue have determined that no financially feasible collection of recyclable beverage containers and packaging is available due to the geographical location of a permit holder. Each recycling plan must:

(1) contain all elements included in a model recycling plan that shall be developed by the Department of Health and Environmental Control and made available on its website; or

(2) be at least as comprehensive as the model recycling plan.

(C) A permit holder, unless exempted, must certify as part of its permitting process with the Department of Revenue that a site-specific recycling plan has been prepared and will be made available upon demand to the Department of Revenue and the Department of Health and Environmental Control.

(1) A permit holder is exempted from glass container recycling if the permit holder provides, in writing, substantial evidence to the Department of Health and Environmental Control that no practical means of glass collection exists for the permit holder, and the permit holder has received, in writing, notification from the Department of Health and Environmental Control that the permit holder is exempt. A permit holder exempted from the glass container recycling requirement must certify to the Department of Revenue during the permitting process that the permit holder has and uses a recycling plan that does not include glass container recycling.

(2) A permit holder is exempted from having and using a recycling plan if the permit holder provides, in writing, substantial evidence to the Department of Health and Environmental Control that no financially feasible collection of recyclable beverage containers and packaging is available due to the geographical location of a permit holder, and has received, in writing, notification from the Department of Health and Environmental Control that the permit holder is exempt. A permit holder exempted from having and using a recycling plan must include the notification of exemption from the Department of Health and Environmental Control instead of the certification required in this section.

(3) A determination on a requested exemption shall remain in effect until the expiration date of the permit or license that is held or applied for by a permit holder.

(4) In making the determinations for exemptions, the Department of Health and Environmental Control shall consult with the Department of Revenue, and the Department of Revenue shall provide information that it may possess on the permit holder that is relevant to the determination of a requested exemption, such as the location of a permit holder and the types of permits or licenses held or applied for by a permit holder. The Department of Health and Environmental Control shall notify, in writing, the Department of Revenue on each exemption given to a permit holder.

(D) The Department of Health and Environmental Control shall annually perform a random audit of recycling plans and shall notify the Department of Revenue and the permit holder of a recycling plan that is not in compliance with the provisions of this section.

(E) A permit holder that fails to provide certification of a recycling plan in its permit application or renewal shall be assessed by the Department of Revenue:

(1) for a first offense, a fine of not less than two hundred dollars nor more than five hundred dollars;

(2) for a second offense within three years of the first offense, a fine of not less than five hundred dollars; or

(3) for a third or subsequent offense, a fine of not less than one thousand dollars.

(F) A permit holder whose recycling plan is determined to be noncompliant with the provisions of this section shall be assessed by the Department of Health and Environmental Control:

(1) for a first offense, a fine of not less than two hundred dollars nor more than five hundred dollars;

(2) for a second offense within three years of the first offense, a fine of not less than five hundred dollars; or

(3) for a third or subsequent offense, a fine of not less than one thousand dollars.

(G) For purposes of this section, communications and documents that are required to be transmitted in writing may also be transmitted by electronic transmission, if both the sender and receiver agree to electronic transmission.

(H) Failure of a permit holder to comply with the provisions of this section shall not be grounds for revocation or for non‑renewal of a permit authorized under Title 61.”

SECTION 2. Section 61‑2‑90 of the 1976 Code is amended to read:

“Section 61‑2‑90. (A) A person desiring a license or permit under this title must file with the department an application in writing on forms provided by the department containing a statement under oath setting forth:

(1) the name, address, date of birth, race, and nationality of the person applying for the license or permit;

(2) the exact location where the business is proposed to be operated;

(3) a description of the type of business to be operated;

(4) whether the applicant or an owner of the business 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;

(5) whether the applicant has been a legal resident of this State for at least thirty days before the date of application, and has maintained his principal place of abode in the State for at least thirty days before the date of application;

(6) other information required by the department to determine if the application meets all statutory requirements for the license or permit and to determine the true owners of the business seeking the license or permit.

(B) A person applying for or renewing a permit or license to allow on-premises consumption of beer, wine, or alcoholic liquor by the drink, unless exempt, must include in the application or renewal a written certification of a recycling plan required by Section 61‑2‑85. Written notification of an exemption from this requirement must be included in an application or renewal.

(C) The Department of Revenue shall annually provide by December fifteenth of each year to the Department of Health and Environmental Control an electronic database containing the names and addresses of all permit holders required to have a recycling plan.”

SECTION 3. Section 61-2-120 of the 1976 Code is amended to read:

“(A) Biennial licenses and permits issued under this title expire according to the county where the licensed location is situated. The expiration dates are the last day of:

(1) February in years which end in an:

(a) odd number for Allendale, Bamberg, Barnwell, Beaufort, and Berkeley Counties;

(b) even number for Charleston, Clarendon, Colleton, Dorchester, Georgetown, Hampton, Jasper, and Williamsburg Counties;

(2) May in years which end in an:

(a) odd number for Cherokee, Chester, Chesterfield, Darlington, Dillon, Fairfield, Florence, and Horry Counties;

(b) even number for Lancaster, Marion, Marlboro, Union, and York Counties;

(3) August in years which end in an:

(a) odd number for Calhoun, Kershaw, Lee, Orangeburg, and Sumter Counties;

(b) even number for Richland County;

(4) November in years which end in an:

(a) odd number for Abbeville, Aiken, Anderson, Edgefield, Greenville, and Greenwood Counties;

(b) even number for Laurens, Lexington, McCormick, Newberry, Oconee, Pickens, Saluda, and Spartanburg Counties.

(B) For a period of eight years from the issuance of a permit or license requiring certification of a recycling plan, each holder of an on‑premises consumption permit or license required to implement a recycling plan pursuant to Section 61‑2‑85 and Section 61‑2‑90 shall be allowed:

(1) a ten percent reduction on its biennial permit or license fee for every two years that the holder uses a required recycling plan that exempts the holder from recycling glass containers; or

(2) a twenty-five percent reduction on its biennial permit or license fee for every two years that the holder uses a recycling plan that includes recycling of glass containers.”

SECTION 4. Section 14-1-208(10) of the 1976 Code is amended to read:

“(10) ~~13.61~~ 12.81 percent to the Governor’s Task Force on Litter and in the expenditure of these funds, the provisions of Chapter 35 of Title 11 do not apply, and .8 percent to the Department of Health and Environmental Control and to the Department of Revenue, in equal amounts, for the supervision, implementation, and enforcement of recycling plans required pursuant to Section 61‑2‑85 and Section 61‑2‑90;”

SECTION 5. The Department of Health and Environmental Control and the Department of Revenue may promulgate regulations to implement these provisions.

SECTION 6. This act takes effect one year after approval by the Governor, except for SECTION 5, which shall be effective immediately upon signature of the Governor in order that the Department of Health and Environmental Control shall have a model recycling plan on its website prior to the effective date, and regulations may be promulgated by the Department of Health and Environmental Control and the Department of Revenue pending the effective date. If, as of the effective date of this act, the Department of Health and Environmental Control, in consultation with the Department of Revenue, has determined that no practical means of glass collection exists for a permit holder or no recycling market is financially feasible or geographically available to a permit holder, the provisions of the act concerning these requirements shall not be effective until a practical means of glass collection or a recycling market are readily available to a permit holder. /

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Revenue

The agency is in the process of reviewing the bill for its potential impact on its programs and expenditures.  This impact statement will be revised to include this information once the review and analysis is completed.

Department of Health & Environmental Control

This bill should have no impact on state general fund expenditures since it diverts one quarter of one percent of the 2% local accommodations tax (see Section 12-36-2630(3) toward the development and enforcement of this new program by DHEC. The department estimates the need for 1.00 FTE and an annual cost (to other funds) of $102,745 to operate the program.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this bill.

*Approved By:*

Harry Bell

Office of State Budget

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

Revenue from the local accommodations tax will be reduced by $198,962 and transferred to the Department of Health and Environmental Control and the Department of Revenue.

**Explanation**

Section 3 of this bill states one-half percent of the local accommodations tax levied pursuant to Section 12-36-2630(3) must be remitted annually in equal amounts to the Department of Health and Environmental Control and the Department of Revenue for supervision, implementation, and enforcement of the recycling plans required by Section 61-2-85 and Section 61-2-90. According to information from the Department of Revenue total accommodations tax collections for FY 2009-10 totaled $39,792,457. Transferring one-half percent of this fund to the Department of Health and Environmental Control and the Department of Revenue will reduce the local accommodations tax fund by $198,962.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61-2-85, SO AS TO PROVIDE THAT A HOLDER OF A PERMIT THAT ALLOWS ON-PREMISES CONSUMPTION OF BEER, WINE, OR ALCOHOLIC LIQUORS SHALL RECYCLE EACH RECYCLABLE BEVERAGE CONTAINER SOLD ON THE PREMISES IN ACCORDANCE WITH A MODEL RECYCLING PROGRAM DEVELOPED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; TO AMEND SECTION 61-2-90, RELATING TO REQUIRING AN APPROVED RECYCLING PLAN TO BE INCLUDED IN A PERMIT APPLICATION FOR ON-PREMISES CONSUMPTION; AND TO AMEND SECTION 6-4-20, RELATING TO THE USE OF ACCOMMODATIONS TAXES, SO AS TO PROVIDE FOR FUNDING FOR THE ADMINISTRATION AND IMPLEMENTATION OF THE MODEL RECYCLING PROGRAM.

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

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

“Section 61-2-85. (A) For the purposes of this section,

(1) ‘permit holder’ means a holder of a permit issued by the Department of Revenue that authorizes on-premises consumption of beer, wine, or alcoholic liquor by the drink;

(2) ‘practical means of glass collection’ means the existence of a financially feasible commercial or governmental recycling program or programs that allow a permit to contract for onsite pickup of glass or a local and non-costly drop-off location that accepts glass containers for recycling and that is easily available to a permit holder.

(3) ‘recycling plan’ means a plan for recycling that provides for the separation, storage, collection, and recycling of recyclable beverage containers and their packaging that are sold on the premises of a permit holder, including, but not limited to, aluminum, plastic, glass beverage containers, and cardboard used to package, ship, or deliver the beverage containers.

(B) (1) Each permit holder shall have a recycling plan for the collection and recycling of recyclable beverage containers and packaging sold on the premises by the permit holder. Each recycling plan must:

(a) contain all elements included in the model recycling plan that shall be developed by the Department of Health and Environmental Control and made available on its website; or

(b) be at least as comprehensive as the model recycling plan.

(2) A permit holder that provides substantial evidence to the Department of Health and Environmental Control that a practical means of collection of glass beverage containers does not exist may exempt glass collection from its recycling plan.

(C) A permit holder must certify as part of its permitting process with the Department of Revenue that a site specific recycling plan has been prepared and will be made available upon demand to the Department of Revenue and the Department of Health and Environmental Control.

(D) The Department of Health and Environmental Control shall annually perform a random audit of recycling plans and shall notify the Department of Revenue and the permit holder of a recycling plan that is not in compliance with the provisions of this section.

(E) A permit holder that fails to provide certification of a recycling plan in its permit application or renewal shall be assessed by the Department of Revenue:

(1) for a first offense, a fine of not less than two hundred dollars nor more than five hundred dollars;

(2) for a second offense within three years of the first offense, a fine of not less than five hundred dollars;

(3) for a third or subsequent offense, a fine of not less than one thousand dollars.

(F) A permit holder whose recycling plan is determined to be noncompliant with the provisions of this section shall be assessed by the Department of Health and Environmental Control:

(1) for a first offense, a fine of not less than two hundred dollars nor more than five hundred dollars;

(2) for a second offense within three years of the first offense, a fine of not less than five hundred dollars;

(3) for a third or subsequent offense, a fine of not less than one thousand dollars.

(G) Failure of a permit holder to comply with the provisions of this section shall not be grounds for revocation or for non-renewal of a permit authorized under Title 61.”

SECTION 2. Section 61-2-90 of the 1976 Code is amended to read:

“Section 61-2-90. (A) A person desiring a license or permit under this title must file with the department an application in writing on forms provided by the department containing a statement under oath setting forth:

(1) the name, address, date of birth, race, and nationality of the person applying for the license or permit;

(2) the exact location where the business is proposed to be operated;

(3) a description of the type of business to be operated;

(4) whether the applicant or an owner of the business 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;

(5) whether the applicant has been a legal resident of this State for at least thirty days before the date of application, and has maintained his principal place of abode in the State for at least thirty days before the date of application;

(6) other information required by the department to determine if the application meets all statutory requirements for the license or permit and to determine the true owners of the business seeking the license or permit.

(B) A person applying for or renewing a permit to allow on-premises consumption of beer, wine, or alcoholic liquor by the drink must include in the application or renewal a written certification of a recycling plan required by Section 61-2-85.

(C) The Department of Revenue shall annually provide by December fifteenth of each year to the Department of Health and Environmental Control an electronic database containing the names and addresses of all permit holders required to have a recycling plan.”

SECTION 3. Section 6-4-20 of the 1976 Code is amended to read:

“Section 6-4-20. (A) An accommodations tax account is created to be administered by the State Treasurer.

(B) At the end of each fiscal year and before August first a percentage, to be determined by the State Treasurer, must be withheld from those county areas collecting four hundred thousand dollars or more from that amount which exceeds four hundred thousand dollars from the tax authorized by Section 12‑36‑2630(3), and that amount must be distributed to assure that each county area receives a minimum of fifty thousand dollars. The amount withheld from those county areas collecting four hundred thousand dollars or more must be apportioned among the municipalities and the county in the same proportion as those units received quarterly remittances in Section 12‑36‑2630(3). If the total statewide collections from the local accommodations tax exceeds the statewide collections for the preceding fiscal year then this fifty thousand dollar figure must be increased by a percentage equal to seventy‑five percent of the statewide percentage increase in statewide collections for the preceding fiscal year. The difference between the fifty thousand dollars minimum and the actual collections within a county area must be distributed to the eligible units within the county area based on population as determined by the most recent United States census.

(C) At the end of each fiscal year and before August first, the State Treasurer shall distribute to each county area collecting more than fifty thousand dollars but less than four hundred thousand dollars an additional fifteen thousand dollars. If the total statewide collections from the local accommodations tax exceed the statewide collections for the preceding fiscal year, this fifteen thousand dollar figure must be increased by a percentage equal to seventy‑five percent of the statewide percentage increase in statewide collections for the preceding fiscal year. This amount must be distributed in the same manner as the fifty thousand dollars in subsection (B). The amount paid those qualified county areas under this subsection must be paid from the account created under this section.

(D) The amount withheld in excess must be distributed to the county areas whose collections exceed four hundred thousand dollars based on the ratio of the funds available to the collections by each county area.

(E) The accommodations tax funds received by a municipality or county in county areas collecting fifty thousand dollars or less are not subject to the tourism‑related provisions of this chapter.

(F) Two percent of the local accommodations tax levied pursuant to Section 12‑36‑2630(3) must be remitted quarterly and equally to the eleven agencies designated by law and regional organizations to administer multi‑county tourism programs in the state tourism regions as identified in the promotional publications of the South Carolina Department of Parks, Recreation and Tourism. This remittance is in addition to other funds that may be allocated to the agencies by local governments.

(G) One-half percent of the local accommodations tax levied pursuant to Section 12-36-2630(3) must be remitted annually in equal amounts to the Department of Health and Environmental Control and the Department of Revenue for supervision, implementation, and enforcement of the recycling plans required by Section 61-2-85 and Section 61-2-90.

(H) The State Treasurer may correct misallocations to counties and municipalities from accommodations tax revenues by adjusting subsequent allocations, but these adjustments may be made only in allocations made in the same fiscal year as the misallocation.”

SECTION 4. The Department of Health and Environmental Control and the Department of Revenue may promulgate regulations to implement these provisions.

SECTION 5. This act takes effect one year after approval by the Governor. However, if no glass container recycling market is available by the effective date, the provisions of the act concerning recycling of glass containers shall not be effective until three years after approval of the Governor.

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