~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 4A (Doc. Path council\ms\7449ahb11)

Amt. No. 5A (Doc. Path council\ms\7447ahb11)

May 26, 2011

**H. 3295**

Introduced by Rep. Herbkersman

S. Printed 5/19/11--S.

Read the first time February 2, 2011.

**A** **BILL**

TO AMEND SECTION 61‑6‑1820, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRITERIA FOR A NONPROFIT ORGANIZATION TO OBTAIN A LICENSE TO SELL ALCOHOLIC LIQUORS BY THE DRINK, SO AS TO PROVIDE THAT UNDER CERTAIN CONDITIONS A HOMEOWNERS ASSOCIATION, CHARTERED AS A NONPROFIT ORGANIZATION BY THE SECRETARY OF STATE, WHOSE MEMBERSHIP IS LIMITED TO INDIVIDUALS WHO OWN PROPERTY IN THE RESIDENTIAL COMMUNITY AND WHOSE AFFAIRS ARE GOVERNED BY A BOARD OF DIRECTORS ELECTED BY THE MEMBERSHIP, IS ALSO ELIGIBLE FOR SUCH A LICENSE.

Amend Title To Conform

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

SECTION 1. Section 61-6-20 of the 1976 Code, as last amended by Act 320 of 2008, is further amended to read:

“Section 61-6-20. As used in the ABC Act, unless the context clearly requires otherwise:

(1)(a) ‘Alcoholic liquors’ or ‘alcoholic beverages’ means any spirituous malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors or a compound or mixture of them by whatever name called or known which contains alcohol and is used as a beverage, but does not include:

(i) wine when manufactured or made for home consumption and which is not sold by the maker of the wine or by another person; or

(ii) a beverage declared by statute to be nonalcoholic or nonintoxicating.

(b) ‘Alcoholic liquor by the drink’ or ‘alcoholic beverage by the drink’ means a drink poured from a container of alcoholic liquor, without regard to the size of the container for consumption on the premises of a business licensed pursuant to Article 5 of this chapter.

(2) ‘Bona fide engaged primarily and substantially in the preparation and serving of meals’ means a business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:

(a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;

(b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and

(c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

(3) ‘Homeowners association chartered as a nonprofit by the Secretary of State’ means an organization that has been recognized as a nonprofit by the Secretary of State, whose membership is limited to individuals who own property in the residential community, and whose affairs are governed by a board of directors elected by the membership. No member, officer, agent, or employee of the association may be paid a salary or other form of compensation from any of the profit of the sale of alcoholic beverages, except as may be voted on at a meeting of the governing body, nor shall the salaries or compensation be in excess of reasonable compensation for the services actually performed. Additionally, a ‘homeowners association chartered as a nonprofit by the Secretary of State’ must abide by all alcoholic liquor regulations that apply to a nonprofit organization, as defined by Section 61‑6‑20(7), except that upon dissolution of the ‘homeowners association chartered as a nonprofit by the Secretary of State’, the remaining assets, if any, may be distributed to its members. A ‘homeowners association chartered as a nonprofit by the Secretary of State’ is eligible to be licensed under this chapter only at facilities located within the boundaries of the homeowners association.

(4) ‘Manufacturer’ means a person operating a plant or place of business in this State for distilling, rectifying, brewing, fermenting, blending, or bottling alcoholic liquors.

~~(4)~~(5) ‘Furnishing lodging’ means those businesses which rent accommodations for lodging to the public on a regular basis consisting of not less than twenty rooms.

~~(5)~~(6) ‘Minibottle’ means a sealed container of fifty milliliters or less of alcoholic liquor.

~~(6)~~(7) ‘Nonprofit organization’ means an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.

~~(7)~~(8) ‘Producer’, as used in the ABC Act, means a manufacturer, distiller, rectifier, blender, or bottler of alcoholic liquors and includes an importer of alcoholic liquors engaged in importing alcoholic liquors into the United States.

~~(8)~~(9) ‘Producer representative’ means a person who is a citizen of this State, who maintains his principal place of abode in this State, and who is registered with the department pursuant to Article 7 of this chapter as the South Carolina representative of a registered producer.

~~(9)~~(10) ‘Registered producer’ means a producer who is registered with the department pursuant to Article 7 of this chapter.

~~(10)~~(11) ‘Retail dealer’ means a holder of a license issued under the provisions of Article 3 of this chapter, other than a manufacturer or wholesaler.

~~(11)~~(12) ‘Wholesaler’ means a person who purchases, acquires, or imports from outside this State or who purchases or acquires from a manufacturer in the State alcoholic liquors for resale.”

SECTION 2. Section 61-6-1820(1) of the 1976 Code, as last amended by Act 70 of 2003, is further amended to read:

“(1) The applicant is a bona fide nonprofit organization, a homeowners association chartered as a nonprofit organization by the Secretary of State, or the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging.”

SECTION 3. Chapter 6, Title 61 of the 1976 Code is amended by adding:

“Section 61‑6‑2015. (A) A temporary permit to sell beer and wine for on‑premises consumption for a period not to exceed twenty‑four hours without regard to the days or hours of these sales is hereby authorized. This permit may be issued by the department for the same fees provided in Section 61‑4‑500 for a retail beer and wine permit, including an application fee. This permit shall be considered a biennial temporary permit, and may be issued to those holders of a permit to sell beer and wine for off‑premises consumption during periods other than Sunday who have within the licensed premises a separate food service establishment serving prepared food for on‑premises consumption. The permit to sell beer and wine for on‑premises consumption during the twenty‑four hour period shall apply only to this separate food service establishment.

(B) The department may require such proof of qualifications for the issuance of these permits as it considers necessary, and these permits may be issued only to qualified applicants located in a county or municipality which pursuant to Section 61‑6‑2010 has successfully held a referendum allowing the possession, sale, and consumption of alcoholic liquors by the drink for a period not to exceed twenty‑four hours.”

SECTION 4. Section 61-6-2010 of the 1976 Code, as last amended by Act 353 of 2008, is further amended by adding:

“(G) A business establishment located within a building on the grounds of an international airport in this State where the possession, sale, and consumption of alcoholic liquors by the drink is permitted on its licensed premises may apply for and receive a temporary permit authorized by this section, notwithstanding any other requirements of this section to the contrary, to allow the possession, sale, and consumption of alcoholic liquors by the drink for a period not to exceed twenty‑four hours on its licensed premises if any county within the territory of the airport district which operates the international airport or any municipality located within the territory of the district has approved, by referendum, the issuance of these temporary permits.”

SECTION 5. (1) Section 61‑4‑550 of the 1976 Code, as last amended by Act 259 of 2010, is further amended to read:

“Section 61-4-550. (A) The department may issue permits ~~to nonprofit organizations~~ running for a period not exceeding fifteen days for a fee of ten dollars per day. ~~For purposes of this section, a “nonprofit organization” is an entity which is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purposes, and which is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19). It also includes political parties and their affiliates duly certified by the Secretary of State.~~ These special permits may be issued only for locations at fairs and special functions.

(B) The department shall require the applicant to obtain a criminal records check conducted by the State Law Enforcement Division within ninety days prior to an ~~initial~~ application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before. ~~For a subsequent application, the applicant is not required to obtain a new criminal records check unless:~~

~~(1)~~ ~~more than two years have elapsed since the most recent criminal records check was conducted; or~~

~~(2)~~ ~~the nonprofit organization has added or replaced a principal. For purposes of this section, all principals are deemed to be the applicant.~~

(C) ~~The department shall require the applicant to notify in writing a minimum of fifteen days prior to the first day of a fair or special function the sheriff, or sheriff’s designee, of the county in which the fair or special function is to be located. Upon request of the applicant, the sheriff may waive the fifteen day notification requirement. A timely objection within seventy‑two hours of the receipt of the notice by the sheriff, or his official designee, submitted in writing to the department is sufficient grounds to deny the application.~~ The department shall require the applicant to complete the law enforcement notification provision contained in an application form and submit it with the application. The law enforcement notification provision shall be prepared by the department for inclusion in the application and, at a minimum, must contain sufficient information to inform the department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary permit application and given an opportunity to object.

(D) ~~Organizations granted permits pursuant to this section are subject to penalties imposed pursuant to violations of Article 1, Chapter 4, Title 61.~~ The department may issue up to twenty-five temporary permits to sell beer and wine on one application for special functions in a twelve-month period to the same applicant, if that applicant is also applying for up to twenty-five temporary licenses to sell alcoholic liquors by the drink, pursuant to Section 61-6-2000(D). This does not prohibit the applicant from applying for additional special permits within the same twelve-month period.”

(2) Section 61-6-2000 of the 1976 Code, as last amended by Act 259 of 2010, is further amended to read:

“Section 61-6-2000. (A) ~~Notwithstanding another provision of this article, the department may issue to a nonprofit organization a temporary license to sell alcoholic liquor by the drink at a special function for a period not to exceed twenty‑four hours. A qualifying nonprofit organization may sell tickets at the door. The application for this temporary license must include a statement by the applicant as to the nature and date of the special function at which alcoholic liquor by the drink is to be sold, as well as other information required by the department. The department shall charge a nonrefundable filing fee of thirty‑five dollars for processing each event on the application. The department may deny the application if the completed application and filing fee are not submitted at least fifteen days before the date of the special function, but upon request by the applicant, the department may waive this requirement.~~ In addition to the licenses authorized pursuant to the provisions of subarticle 1 of this article, the department may also issue a temporary license to a nonprofit organization, as defined in Section 61-6-20, which authorizes that nonprofit organization to purchase and to sell alcoholic liquors by the drink for a period not to exceed twenty-four hours at a single social occasion. The nonprofit organization may sell tickets for the social occasion to non-members. Notwithstanding another provision of this article, the issuance of this license authorizes the nonprofit organization to purchase alcoholic liquors from licensed retail dealers in the same manner that a person with a biennial license issued pursuant to subarticle 1 of this article purchases its alcoholic liquors. The department shall charge a nonrefundable filing fee of thirty‑five dollars for processing each event on the application. The temporary license application must include a statement by the applicant as to the nature and date of the special function at which the alcoholic liquors are to be sold. The department in its discretion may specify the terms and conditions of the license, pursuant to existing statutes and regulations governing these applications.

(B) The department shall require the applicant to obtain a criminal background check conducted by the State Law Enforcement Division within ninety days prior to an ~~initial~~ application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before. ~~For a subsequent application, the applicant is not required to obtain a new criminal records check unless:~~

~~(1)~~ ~~more than two years have elapsed since the most recent criminal records check was conducted; or~~

~~(2)~~ ~~the nonprofit organization has added or replaced a principal. For purposes of this section, all principals are deemed to be the applicant.~~

(C) ~~The department shall require the applicant to notify in writing within fifteen days the sheriff, or the sheriff’s designee, of the county in which the special function is to be located. Upon request of the applicant, the sheriff may waive the fifteen day notification requirement. A timely objection within seventy‑two hours of receipt of the notice by the sheriff, or his official designee, submitted in writing to the department is sufficient grounds to deny the application.~~ The department shall require the applicant to complete the law enforcement notification contained in an application form and submit it with the application. The law enforcement notification provision shall be prepared by the department for inclusion in the application and, at a minimum, must contain sufficient information to inform the department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary license application and given an opportunity to object.

(D) The department may issue up to twenty‑five temporary licenses on one application for special functions in a twelve‑month period to the same nonprofit organization. This does not prohibit the nonprofit organization from applying for additional temporary licenses within the same twelve‑month period.

~~(E)~~ ~~For purposes of this section, “nonprofit organization” is an entity that is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purpose, and is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19). It also includes a political party or affiliate of a political party duly certified by the Secretary of State.~~

~~(F)~~ ~~Organizations granted permits pursuant to this section are subject to penalties imposed pursuant to violations of Article 13, Chapter 6, Title 61.~~”

(3) Notwithstanding the general effective date of this act, this section takes effect on July 1, 2011.

SECTION 6. Chapter 4, Title 61 of the 1976 Code is amended by adding:

“Section 61‑4‑630. Notwithstanding any other provision of law, an establishment possessing a beer and wine permit that is located in a county or municipality that has conducted a favorable referendum allowing the sale and consumption of alcoholic liquors by the drink on Sunday under the provisions of Section 61‑6‑2010, during those same hours authorized by permits issued under Section 61‑6‑2010, may sell, possess, and permit the consumption of beer and wine on the premises.”

SECTION 7. Section 61‑6‑1035 of the 1976 Code is amended to read:

“Section 61‑6‑1035. Notwithstanding the provisions of Section 61‑6‑1500, the sampling of wines containing over sixteen percent by volume of alcohol, cordials, and other distilled spirits sold in a retail alcoholic liquor store is authorized if the sampling is conducted as follows:

(1) No sample may be offered from more than four products at ~~any~~ one time.

(2) The sample is limited to products from no more than one wholesaler at one time.

(3) No more than one bottle of each of the four products to be sampled may be opened.

~~(3)~~(4) The sampling must be held in a designated tasting area of the retail liquor store and all open bottles must be visible at all times. All open bottles must be removed at the conclusion of the tasting.

~~(4)~~(5) Samples must be less than one‑half ounce for each product sampled.

~~(5)~~(6) No person may be served more than one sample of each product.

~~(6)~~(7) No sampling may be offered for longer than four hours.

~~(7)~~(8) At least ten days before the sampling, a letter detailing the specific date and hours of the sampling must be mailed first class to the South Carolina Law Enforcement Division. The letter must include a copy of a certificate of liability insurance for the manufacturer, the retail establishment, or its agent, conducting the tastings.

~~(8)~~(9) No sample may be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of twenty‑one years. This person must not be allowed to loiter on the store premises.

~~(9)~~(10) The tastings must be conducted by the manufacturer, retailer, or an agent of the manufacturer or retailer, and must not be conducted by a wholesaler, ~~retailer, or~~ an employee of a wholesaler ~~or retailer~~, or an agent of a wholesaler.

~~(10)~~(11) No retail alcoholic liquor store may offer more than one sampling per day.

(12) All product samples used for tastings must be purchased by the retailer from a South Carolina Licensed Wholesaler as required by 61-6-100 (3).

(13) All associated costs for the tasting must be paid for by the manufacturer, the retailer, or its agent, conducting the tasting.”

SECTION 8. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑