~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 30, 2013

**H. 4136**

Introduced by Reps. Ballentine, Bannister, Rutherford, Stavrinakis and Cole

S. Printed 5/30/13--H.

Read the first time May 16, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4136) to amend the Code of Laws of South Carolina, 1976, by adding Section 61‑6‑1305 so as to provide that a wholesaler of alcoholic liquors and wine may, 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 by striking all after the enacting words and inserting:

/ SECTION 1. Subarticle 13, Article 3, Chapter 6, Title 61 of the 1976 Code is amended by adding:

“Section 61‑6‑1305. A wholesaler may donate alcoholic liquors and wine to a 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(7) nonprofit organization and to a political party, its affiliate, and a candidate campaign committee registered with the State Ethics Commission, pursuant to the applicable contribution limitations set forth in Section 8‑13‑1314, licensed under the provisions of Section 61‑6‑2000 for the sole purpose of consumption at the licensed event. The qualifying entity may accept alcoholic liquors and wine donations. All donated products not consumed at the event must be returned to the wholesaler upon the conclusion of the event.”

SECTION 2. Section 61‑4‑735 of the 1976 Code is amended to read:

“Section 61‑4‑735. (A) Except as provided in Sections 61‑4‑720 and 61‑4‑730, a manufacturer of wine, vintner, winery, an entity, or a person who sells these products, or a person or entity who imports these products produced outside the United States must not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a wholesale permit issued under Section 61‑4‑500, and a holder of a wholesale permit may not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a retail or wholesale permit, unless that person is the American producer or the primary American source of supply of that wine as defined in Section 61‑4‑340.

(B) Except as provided in ~~subsection~~ subsections (C) and (D), a manufacturer of wine, vintner, winery, importer, or wholesaler of wine, or a person acting on his behalf must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free wine, or service. The holder of a retail permit or a person acting on his behalf may not accept, directly or indirectly, any equipment, fixtures, free wine, or service referred to in this subsection from a manufacturer of wine, winery, importer, or wholesaler of wine, except as provided in ~~subsection~~ subsections (C) and (D).

(C) A wholesaler may furnish at no charge to the holder of a retail permit draft wine equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, product displays as provided under 27 Code of Federal Regulations, Section 6.83, and point of sale advertising specialties. A wholesaler also may furnish the following services to a retailer: cleaning wine lines, rotating stock, affixing price tags to wine products, building wine displays, setting boxes, conduct not more than two wine tastings in accordance with department rulings or regulations, developing shelf schematics, stocking shelves, providing wine party wagon for temporary use, and assist in wine resets a maximum of three times a year for any store having a retail permit during the hours of 8:00 a.m. to 8:00 p.m. Resets are defined as being a change in the location of the wine department within a store or a rearrangement of the products on shelves within the store’s wine department, which involves more than one wholesaler’s products. All wholesalers must be notified in writing of any resets being requested by a retail store at least fourteen days prior to the reset.

(D) A wholesaler of wine may donate wine to a 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(7) nonprofit organization and to a political party, its affiliate, and a candidate campaign committee registered with the State Ethics Commission, pursuant to the applicable contribution limitations set forth in Section 8‑13‑1314, licensed under the provisions of Section 61‑4‑550 for the sole purpose of consumption at the licensed event. The qualifying entity may accept wine donations. All donated products not consumed at the event must be returned to the wholesaler upon the conclusion of the event.

(E) A producer, winery, vintner, and importer of wine are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. For the purpose of this section, a manufacturer or producer of wine is declared to be a tier one business, a wholesaler or an importer owned solely by a wholesaler is declared to be a tier two business, and a retailer is declared to be a tier three business. Except as provided in Sections 61‑4‑720 and 61‑4‑730, a person or entity in the wine business on one tier or a person acting directly or indirectly on his behalf may not have ownership or financial interest in a wine business operation on another tier. This limitation does not apply to the interest held on July 1, 1993, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business. Notwithstanding this prohibition or the prohibition contained in Section 61‑4‑940~~(D)~~(E), a manufacturer or importer of beer or wine may own in whole or in part a business that holds an on‑premises retail beer and wine permit provided that:

(1) All beverages to be handled or sold by the retail dealer must be purchased from licensed wholesalers and purchased on the same terms and conditions as do other retail dealers.

(2) Sales of any product produced or distributed by the manufacturer or importer must not exceed ten percent of the annual gross sales of beer or wine by the retail permit holder.

~~(E)~~(F) A manufacturer, producer, importer, or wholesaler of wine may discount product price based on quantity purchases if all discounts are on price only, appear on the sales records, and are available to all retail customers.

~~(F)~~(G) Nothing in this section affects or prohibits the ownership or the operation of a licensed winery in this State that produces, provides taste samples, sells, delivers, or ships domestic wine as authorized and in accordance with the provisions of Sections 61‑4‑720 and 61‑4‑730.”

SECTION 3. Section 61‑4‑940 of the 1976 Code, as last amended by Act 231 of 2010, is further amended to read:

“Section 61‑4‑940. (A) A manufacturer or brewer of beer, ale, porter, or other malt beverages or a person who imports these products produced outside the United States must not sell, barter, exchange, transfer, or deliver for resale beer to a person not having a wholesale permit issued under Section 61‑4‑500, and a holder of a wholesale permit must not sell, barter, exchange, transfer, or deliver for resale beer to a person not having a retail or wholesale permit.

(B) Except as provided in ~~subsection~~ subsections (C) and (D), a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer, or service. The holder of a retail permit, or a person acting on his behalf, must not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in this subsection from a manufacturer, brewer, importer, or wholesaler of beer, except as provided in ~~subsection~~ subsections (C) and (D). With the consent of a holder of a retail permit, the wholesaler may store for a temporary period at the permit holder’s licensed location equipment primarily utilized by the wholesaler in delivery and stocking of beer including, but not limited to, pallets, carts, and hand trucks.

(C) A wholesaler may furnish at no charge to the holder of a retail permit draft beer equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, party wagons for temporary use, and point of sale advertising specialties. A wholesaler may furnish at no charge to the holder of a retail permit product displays pursuant to the provisions of 27 C.F.R.~~,~~ Section 6.83, excluding electronic refrigeration equipment. A wholesaler also may furnish the following services to a retailer: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products, and building beer displays.

(D) A wholesaler of beer may donate beer to a 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(7) nonprofit organization and to a political party, its affiliate, and a candidate campaign committee registered with the State Ethics Commission, pursuant to the applicable contribution limitations set forth in Section 8‑13‑1314, licensed under the provisions of Section 61‑4‑550 for the sole purpose of consumption at the licensed event. The qualifying entity may accept beer donations. All donated products not consumed at the event must be returned to the wholesaler upon the conclusion of the event.

(E) A manufacturer, brewer, and importer of beer are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier. This limitation does not apply to the interest held on July 1, 1980, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business.

~~(E)~~(F) A manufacturer, brewer, importer, or wholesaler of beer may discount product price based on quantity purchases if all discounts are on price only, appear on the sales records, and are available to all customers.

~~(F)~~(G) No person or entity in the beer business on one tier may require a person or entity in the beer business on another tier to advertise or participate in a discount or special promotion or furnish the items delineated in subsection (C).”

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61‑6‑1305 SO AS TO PROVIDE THAT A WHOLESALER OF ALCOHOLIC LIQUORS AND WINE MAY DONATE ALCOHOLIC LIQUORS AND WINE TO CERTAIN NONPROFIT ORGANIZATIONS AND TO A POLITICAL PARTY, ITS AFFILIATE, AND A CANDIDATE CAMPAIGN COMMITTEE LICENSED UNDER THE PROVISIONS OF SECTION 61‑6‑2000, TO PROVIDE FOR THE ACCEPTANCE OF THE DONATED ALCOHOLIC LIQUOR AND WINE, AND TO PROVIDE FOR THE RETURN TO THE WHOLESALER OF UNCONSUMED PRODUCTS AT THE CONCLUSION OF THE EVENT; TO AMEND SECTION 61‑4‑735, RELATING TO REGULATION OF PRACTICES BETWEEN WINE MANUFACTURERS, IMPORTERS, WHOLESALERS, AND RETAILERS, SO AS TO PROVIDE THAT A WHOLESALER OF WINE MAY DONATE WINE TO CERTAIN NONPROFIT ORGANIZATIONS AND TO A POLITICAL PARTY, ITS AFFILIATE, AND A CANDIDATE CAMPAIGN COMMITTEE LICENSED UNDER THE PROVISIONS OF SECTION 61‑4‑550, TO PROVIDE FOR THE ACCEPTANCE OF THE DONATED WINE, AND TO PROVIDE FOR THE RETURN TO THE WHOLESALER OF THE UNCONSUMED PRODUCTS AT THE CONCLUSION OF THE EVENT; TO AMEND SECTION 61‑4‑940, AS AMENDED, RELATING TO PRACTICES BETWEEN MANUFACTURER, WHOLESALER, AND RETAILER OF BEER PRODUCTS, SO AS TO PROVIDE THAT A WHOLESALER OF BEER MAY DONATE BEER TO CERTAIN NONPROFIT ORGANIZATIONS AND TO A POLITICAL PARTY, ITS AFFILIATE, AND A CANDIDATE CAMPAIGN COMMITTEE LICENSED UNDER THE PROVISIONS OF SECTION 61‑4‑550, TO PROVIDE FOR THE ACCEPTANCE OF THE DONATED BEER PRODUCTS, AND TO PROVIDE FOR THE RETURN TO THE WHOLESALER OF THE UNCONSUMED PRODUCTS AT THE CONCLUSION OF THE EVENT.

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

SECTION 1. Subarticle 13, Article 3, Chapter 6, Title 61 of the 1976 Code is amended by adding:

“Section 61‑6‑1305. A wholesaler may donate alcoholic liquors and wine to a 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(7) nonprofit organization and to a political party, its affiliate, and a candidate campaign committee registered with the State Ethics Commission, licensed under the provisions of Section 61‑6‑2000 for the sole purpose of consumption at the licensed event. The qualifying entity may accept alcoholic liquors and wine donations. All donated products not consumed at the event must be returned to the wholesaler upon the conclusion of the event.”

SECTION 2. Section 61‑4‑735 of the 1976 Code is amended to read:

“Section 61‑4‑735. (A) Except as provided in Sections 61‑4‑720 and 61‑4‑730, a manufacturer of wine, vintner, winery, an entity, or a person who sells these products, or a person or entity who imports these products produced outside the United States must not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a wholesale permit issued under Section 61‑4‑500, and a holder of a wholesale permit may not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a retail or wholesale permit, unless that person is the American producer or the primary American source of supply of that wine as defined in Section 61‑4‑340.

(B) Except as provided in ~~subsection~~ subsections (C) and (D), a manufacturer of wine, vintner, winery, importer, or wholesaler of wine, or a person acting on his behalf must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free wine, or service. The holder of a retail permit or a person acting on his behalf may not accept, directly or indirectly, any equipment, fixtures, free wine, or service referred to in this subsection from a manufacturer of wine, winery, importer, or wholesaler of wine, except as provided in ~~subsection~~ subsections (C) and (D).

(C) A wholesaler may furnish at no charge to the holder of a retail permit draft wine equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, product displays as provided under 27 Code of Federal Regulations, Section 6.83, and point of sale advertising specialties. A wholesaler also may furnish the following services to a retailer: cleaning wine lines, rotating stock, affixing price tags to wine products, building wine displays, setting boxes, conduct not more than two wine tastings in accordance with department rulings or regulations, developing shelf schematics, stocking shelves, providing wine party wagon for temporary use, and assist in wine resets a maximum of three times a year for any store having a retail permit during the hours of 8:00 a.m. to 8:00 p.m. Resets are defined as being a change in the location of the wine department within a store or a rearrangement of the products on shelves within the store’s wine department, which involves more than one wholesaler’s products. All wholesalers must be notified in writing of any resets being requested by a retail store at least fourteen days prior to the reset.

(D) A wholesaler of wine may donate wine to a 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(7) nonprofit organization and to a political party, its affiliate, and a candidate campaign committee registered with the State Ethics Commission licensed under the provisions of Section 61‑4‑550 for the sole purpose of consumption at the licensed event. The qualifying entity may accept wine donations. All donated products not consumed at the event must be returned to the wholesaler upon the conclusion of the event.

(E) A producer, winery, vintner, and importer of wine are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. For the purpose of this section, a manufacturer or producer of wine is declared to be a tier one business, a wholesaler or an importer owned solely by a wholesaler is declared to be a tier two business, and a retailer is declared to be a tier three business. Except as provided in Sections 61‑4‑720 and 61‑4‑730, a person or entity in the wine business on one tier or a person acting directly or indirectly on his behalf may not have ownership or financial interest in a wine business operation on another tier. This limitation does not apply to the interest held on July 1, 1993, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business. Notwithstanding this prohibition or the prohibition contained in Section 61‑4‑940~~(D)~~(E), a manufacturer or importer of beer or wine may own in whole or in part a business that holds an on‑premises retail beer and wine permit provided that:

(1) All beverages to be handled or sold by the retail dealer must be purchased from licensed wholesalers and purchased on the same terms and conditions as do other retail dealers.

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(B) Except as provided in ~~subsection~~ subsections (C) and (D), a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer, or service. The holder of a retail permit, or a person acting on his behalf, must not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in this subsection from a manufacturer, brewer, importer, or wholesaler of beer, except as provided in ~~subsection~~ subsections (C) and (D). With the consent of a holder of a retail permit, the wholesaler may store for a temporary period at the permit holder’s licensed location equipment primarily utilized by the wholesaler in delivery and stocking of beer including, but not limited to, pallets, carts, and hand trucks.

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~~(F)~~(G) No person or entity in the beer business on one tier may require a person or entity in the beer business on another tier to advertise or participate in a discount or special promotion or furnish the items delineated in subsection (C).”

SECTION 4. This act takes effect upon approval by the Governor.

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