~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 23, 2017

**S. 275**

Introduced by Senator Bennett

S. Printed 2/23/17--S. [SEC 2/28/17 2:17 PM]

Read the first time January 24, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 275) to amend Section 61‑4‑1515, as amended, Code of Laws of South Carolina, 1976, relating to breweries, samples and sales for on‑ and off, 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. Section 61‑4‑1515 of the 1976 Code, as last amended by Act 223 of 2014, is further amended to read:

“Section 61‑4‑1515. (A) A brewery ~~licensed~~ permitted in this State is authorized to offer samples of beer to consumers on its ~~licensed~~ permitted premises, provided that the beer is brewed on the ~~licensed~~ permitted premises with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the ~~licensed~~ permitted premises and the entire brewing process utilized at the ~~licensed~~ permitted premises;

(2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty‑one;

(3)(a) no more than a total of forty‑eight ounces of beer brewed at the ~~licensed~~ permitted premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period; and

(b) of that forty‑eight ounces of beer available to be sold to a consumer within a twenty‑four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on‑premises consumption;

(5) a brewery must sell the beer at the ~~licensed~~ permitted premises at a price approximating retail prices generally charged for identical beverages in the county where the ~~licensed~~ permitted premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

(a) driving under the influence;

(b) unlawful transport of an alcoholic container; and

(c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide department or DAODAS approved alcohol enforcement training for the employees who serve beer on the ~~licensed~~ permitted premises to consumers for on‑premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport, or consumption of beer by persons who are under the age of twenty‑one or who are intoxicated; and

(9) a brewery must maintain a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement in the amount of at least one million dollars for the biennial period for which it is ~~licensed~~ permitted. Within ten days of receiving its biennial ~~license~~ permit, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department’s alcohol beverage licensing section.

(B)(1) In addition to the sampling and sales provisions set forth in subsection (A), a brewery ~~licensed~~ permitted in this State is authorized to sell beer produced on its ~~licensed~~ permitted premises to consumers on site for on‑premises consumption within an area of its permitted and licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments. These establishments also may apply for a retail on‑premises consumption permit for the sale of beer and wine ~~of a producer~~ not produced on the licensed premises that has been purchased from a wholesaler through the three‑tier distribution chain set forth in Section 61‑4‑735 and Section 61‑4‑940.

(2) In addition to a retail on-premises consumption permit for the sale of beer and wine as authorized in this subsection, a brewery that has a Department of Health and Environmental Control approved and licensed food establishment on its premises as provided in Subsection (B)(1) may apply for a license to sell alcoholic liquor by the drink for on-premises consumption within a specified area of its licensed or permitted premises physically partitioned from the brewing operation and designated for the purpose of engaging substantially and primarily in the preparation and serving of meals. The brewery must:

(a) maintain compliance with all provisions of Section 61‑6‑1610 and all other provisions of Chapter 6 regulating the purchase and sale by food establishments of alcoholic liquor by the drink for on-premises consumption not inconsistent with other provisions of this section;

(b) not sell or allow the consumption of alcoholic liquor by the drink on that part of the brewery’s premises designated and permitted for the brewing operation;

(c) maintain the books, records, and bank accounts of the restaurant operation separately from the books, records, and bank accounts of the brewing operation, and allocate expenses common to both operations in a manner the brewery considers reasonable, when applicable; and

(d) maintain a physical partition between the brewing and food establishment operations. The physical partition may be a permanent wall or a divider permanently affixed to the premises in a manner that the general public may not freely enter the brewing operation, and may contain a door or doors which remain locked during hours when the brewery is not in operation.

(C) The department shall terminate and a brewery shall surrender each permit and license issued to the brewery pursuant to subsection (B) immediately following inspection, determination, and report by the division to the department that brewing operations have ceased on the brewery’s permitted premises. This includes the food establishment permits and licenses. Following reinstitution of brewing operations on the formerly permitted premises, a brewery may re-apply for the applicable permits and licenses authorized by subsection (B).

(D) The sale of beer that is brewed on the licensed premises for on‑premises consumption pursuant to subsection (B) must comply with the following provisions:

(1) all provisions of subsection (A) shall apply to sales under subsection (B) and this subsection, except subsection (A)(1), (3), and (4);

(2) the brewery must comply with all state and local laws concerning hours of operation applicable to eating and drinking establishments and other food service establishments holding permits to sell beer and wine for on‑premises consumption;

(3) the brewery must comply with the discount pricing provisions of Section 61‑4‑160, applicable to persons holding permits to sell beer and wine for on‑premises consumption;

(4) the brewery must sell the beer at a price approximating retail prices generally charged for identical beverages by on‑premises retailers in the county where the licensed premises are located; and

(5) a wholesaler must not provide and a brewery must not accept services, equipment, fixtures, or free beer prohibited by Section 61‑4‑940(B), except those items authorized by Section 61‑4‑940(C). Changes to the brewery laws pursuant to subsection (B) and this subsection do not alter or amend the structure of the three‑tier laws of this State, and the wholesalers and the breweries must not discriminate in pricing at the producer or wholesaler levels.

~~(D)~~(E) A brewery located in this State is authorized to sell beer on its ~~licensed~~ permitted premises for off‑premises consumption, provided that the sealed beer was brewed on the ~~licensed~~ brewery’s permitted premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

(1) the maximum amount of beer that may be sold to an individual per day for off‑premises consumption shall be equivalent to two hundred eighty‑eight ounces in total;

(2) the beer only shall be sold in conjunction with a tour by the consumer of the ~~licensed~~ permitted premises and the entire brewing process utilized at the ~~licensed~~ permitted premises;

(3) the beer sold is for personal use only and ~~cannot~~ must not be resold;

(4) the beer ~~cannot~~ must not be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

(5) the brewery must sell the beer at the ~~licensed~~ permitted premises at a price approximating retail prices generally charged for identical beverages in the county where the ~~licensed~~ permitted premises are located; and

(6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12‑21‑1020 and Section 12‑21‑1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

~~(E)~~(F) A brewpub permitted pursuant to Article 17, which is a retailer for purposes of Sections 61‑4‑735(D) and 61‑4‑940(D), may make application to the department for a brewery permit and the permits and licenses authorized pursuant to subsection (B) for the brewpub’s existing permitted premises. For these applications, the department shall waive newspaper notice and sign posting requirements, except the requirements shall not be waived for an alcoholic liquor by the drink application if the brewpub does not possess this license at the time of application. Excluding operations authorized pursuant to subsection (B), the department must not approve an application if the applicant or any principal or person acting directly or indirectly on behalf of the applicant would have ownership or financial interest in a wholesale or retail beer, wine, or alcoholic liquor operation following the issuance of the brewery permit. Contemporaneous with obtaining the brewery and applicable permits or licenses authorized pursuant to subsection (B), the applicant shall surrender the brewpub permit and the alcoholic liquor by the drink license previously issued for the premises.

(G) In addition to other applicable fines or penalties, a person ~~licensed~~ permitted as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three‑year period, the department must suspend the brewery ~~license~~ permit for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section.”

SECTION 2. Section 61-4-1720 of the 1976 Code is amended to read:

“Section 61-4-1720. The brewpub permit provided for in this article is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer’s and retailer’s permit. The sale of alcoholic liquors for consumption on the premises by the drink requires an appropriate license which may be issued to the holder of a brewpub permit who meets all other qualifications for the license under this title. A brewpub that becomes a brewery pursuant to Section 61-4-1515 must relinquish its brewpub permit in accordance with the requirements of that section.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

KATRINA F. SHEALY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by Senate Judiciary on February 21, 2017**

**State Expenditure**

This bill as amended allows a brewery with a DHEC licensed food establishment to apply for a permit to sell alcoholic liquor by the drink for on-premise consumption in a section physically partitioned from the brewing operation and designated for the primary purpose of engaging in the preparation and serving of meals. This bill also allows a permitted brewpub to convert to a brewery and obtain the permits and licenses allowed breweries. Brewpubs converting to breweries are required to surrender their existing brewpub and liquor by the drink permits contemporaneously with obtaining the new permits. The bill also clarifies that brewpubs are retail establishments, and therefore, subject to regulation as a third tier operation.

**Department of Revenue.** The department indicates this bill will have no expenditure impact on the general fund, other funds, or federal funds, as changes to the agency’s business rules and systems to allow for the permits can be accomplished without additional expenditures.

**Department of Health and Environmental Control.** The department currently inspects and issues permits for restaurants. Any change in the number of applications for permits and inspections is expected to be managed in the ordinary course of the agency’s business. However, an increase in the number of facilities requiring inspections may negatively affect the frequency with which restaurants are inspected. There is a $60 initial inspection fee to obtain a retail food establishment license, which provides funding for the retail food establishment inspection program at the agency.

**State Revenue**

DOR indicates the licensing options allowed under this bill would result in an increase in license and permit fees from $1,000 biennially to $2,700 for breweries with an on-premise beer and wine permit that add liquor by the drink. The fees for brewpubs with a liquor by the drink permit would remain unchanged at $3,900 biennially. Because of the difference in fees, existing brewpubs and new businesses may seek licensure as a brewery rather than a brewpub. Consequently, this bill would add $2,700 in general fund revenue for each existing brewpub that elects to obtain a license as a brewery with an on-premise beer and wine permit and a liquor by the drink permit, if the brewery licenses and permits are obtained before the brewpub permits expire. If the brewpub obtains brewery licenses and permits as its brewpub licenses are expiring, this bill would result in the business paying $2,700 instead of $3,900, a reduction in general fund revenue of $1,200 per licensee. DOR would also collect filing fees for permit applications of $200 to $300 an application, depending on the particular permit. There are approximately twelve brewpubs and thirty-two breweries licensed in South Carolina.

As the amount of revenue that may be generated from licenses and permits issued by DOR depends upon the business strategies of existing brewpubs and breweries and the number of new businesses obtaining the various licenses and permits, this bill’s revenue impact on the general fund is undetermined.

DHEC receives $60 as an initial license fee for establishments obtaining a retail food establishment license. DHEC retains the fee and uses it to support the agency’s retail food establishment inspection program. As the demand for licenses is unknown, this bill’s revenue impact on other funds is undetermined.

**Local Expenditure**

Local governments may experience an increase in applications for local licenses and permits, but local governments are expected to manage any increased activity with existing resources and in the ordinary course of business.

**Local Revenue**

Because local governments will have an unknown demand for local licenses and permits, the local revenue generated from license fees is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 61‑4‑1515, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BREWERIES, SAMPLES AND SALES FOR ON‑ AND OFF‑PREMISES CONSUMPTION, SO AS TO PROVIDE THAT A BREWERY BREWING AND SELLING BEER ON ITS LICENSED PREMISES IN THIS STATE MAY APPLY FOR A PERMIT TO SELL ALCOHOLIC LIQUOR BY THE DRINK FOR CONSUMPTION WITHIN A SPECIFIED AREA UNDER CERTAIN CONDITIONS, AND TO PROVIDE THAT A BREWPUB MAY APPLY FOR A BREWERY PERMIT PROVIDED THAT IT SURRENDERS ITS BREWPUB PERMIT AT THE TIME THE BREWERY PERMIT IS ISSUED.

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

SECTION 1. Section 61‑4‑1515 of the 1976 Code, as last amended by Act 223 of 2014, is further amended to read:

“Section 61‑4‑1515. (A) A brewery licensed in this State is authorized to offer samples of beer to consumers on its licensed premises, provided that the beer is brewed on the licensed premises with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty‑one;

(3)(a) no more than a total of forty‑eight ounces of beer brewed at the licensed premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period; and

(b) of that forty‑eight ounces of beer available to be sold to a consumer within a twenty‑four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on‑premises consumption;

(5) a brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

(a) driving under the influence;

(b) unlawful transport of an alcoholic container; and

(c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide department or DAODAS approved alcohol enforcement training for the employees who serve beer on the licensed premises to consumers for on‑premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport, or consumption of beer by persons who are under the age of twenty‑one or who are intoxicated; and

(9) a brewery must maintain liability insurance in the amount of at least one million dollars for the biennial period for which it is licensed. Within ten days of receiving its biennial license, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department’s alcohol beverage licensing section.

(B)(1) In addition to the sampling and sales provisions set forth in subsection (A), a brewery licensed in this State is authorized to sell beer produced on its licensed premises to consumers on site for on‑premises consumption within an area of its licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments. These establishments also may apply for a retail on‑premises consumption permit for the sale of beer and wine ~~of a producer~~ not produced on the licensed premises that has been purchased from a wholesaler through the three‑tier distribution chain set forth in Section 61‑4‑735 and Section 61‑4‑940.

(2) In addition to the retail on‑premises consumption permit for the sale of beer and wine authorized in this subsection, a brewery brewing and selling beer on its licensed premises in this State may apply for a permit to sell alcoholic liquor by the drink for consumption within a specified area of such licensed premises physically partitioned from the brewing operation and designated for the purpose of engaging substantially and primarily in the preparation and serving of meals, so long as:

(a) the brewery maintains compliance with all provisions of Section 61‑6‑1610 and other provisions of Chapter 6 regulating the purchase and sale by restaurants of alcoholic liquor by the drink for on‑premises consumption not inconsistent with other provisions of this section;

(b) the brewery does not sell or permit the consumption of alcoholic liquor by the drink on that part of the brewery’s licensed premises designated for the brewing operation;

(c) the brewery maintains the books, records, and bank accounts of the restaurant operation separately from the books, records, and bank accounts of the brewing operation, and may allocate expenses common to both operations in a manner the brewery considers reasonable; and

(d) the physical partition between the brewing and restaurant operations may be a permanent wall or a divider permanently affixed to the premises in a manner that the general public may not freely enter the brewing operation, must be at least eight feet in height, and may contain a door or doors which remain locked during hours when the brewery is not in operation.

(C) The department shall terminate and a brewery shall surrender each permit issued to the brewery pursuant to subsection (B) immediately following inspection, determination, and report by the division to the department that brewing operations have ceased on the brewery’s licensed premises. Following reinstitution of brewing operations on the licensed premises, the brewery may apply for the applicable permits authorized by subsection (B).

(D) The sale of beer that is brewed on the licensed premises for on‑premises consumption pursuant to subsection (B) must comply with the following provisions:

(1) all provisions of subsection (A) shall apply to sales under subsection (B) and this subsection, except subsection (A)(1), (3), and (4);

(2) the brewery must comply with all state and local laws concerning hours of operation applicable to eating and drinking establishments and other food service establishments holding permits to sell beer and wine for on‑premises consumption;

(3) the brewery must comply with the discount pricing provisions of Section 61‑4‑160, applicable to persons holding permits to sell beer and wine for on‑premises consumption;

(4) the brewery must sell the beer at a price approximating retail prices generally charged for identical beverages by on‑premises retailers in the county where the licensed premises are located; and

(5) a wholesaler must not provide and a brewery must not accept services, equipment, fixtures, or free beer prohibited by Section 61‑4‑940(B), except those items authorized by Section 61‑4‑940(C). Changes to the brewery laws pursuant to subsection (B) and this subsection do not alter or amend the structure of the three‑tier laws of this State, and the wholesalers and the breweries must not discriminate in pricing at the producer or wholesaler levels.

~~(D)~~(E) A brewery located in this State is authorized to sell beer on its licensed premises for off‑premises consumption, provided that the sealed beer was brewed on the licensed premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

(1) the maximum amount of beer that may be sold to an individual per day for off‑premises consumption shall be equivalent to two hundred eighty‑eight ounces in total;

(2) the beer only shall be sold in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(3) the beer sold is for personal use only and ~~cannot~~ must not be resold;

(4) the beer ~~cannot~~ must not be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

(5) the brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located; and

(6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12‑21‑1020 and Section 12‑21‑1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

~~(E)~~(F) A brewpub licensed pursuant to Article 17, which is a retailer for purposes of Sections 61‑4‑735(D) and 61‑4‑940(D), may make application to the department for a brewery permit and the permits authorized pursuant to subsection (B) for the brewpub’s existing licensed premises. For these applications, the department shall waive newspaper notice and sign posting requirements, except the requirements may not be waived for an alcoholic liquor by the drink application if the brewpub does not possess such a permit at the time of application. Excluding operations authorized pursuant to subsection (B), the department may not approve the applications if the applicant or any principal or person acting directly or indirectly on behalf of the applicant would have ownership or financial interest in a wholesale or retail beer, wine, or alcoholic liquor operation following brewery licensure. Contemporaneous with obtaining the brewery and applicable permits authorized pursuant to subsection (B), the applicant shall surrender the brewpub and the alcoholic liquor by the drink permits previously issued for the premises.

(G) In addition to other applicable fines or penalties, a person licensed as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three‑year period, the department must suspend the brewery license for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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