COMMITTEE REPORT

September 15, 2020

**S. 1099**

Introduced by Senators Talley, Shealy, Turner, Hutto, Sabb, Climer, McLeod, Gambrell, Johnson, Campsen, Scott, Williams and Reese

S. Printed 9/15/20--H.

Read the first time June 24, 2020.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (S. 1099) to amend the Code of Laws of South Carolina, 1976, by adding Section 61‑4‑942, so as to provide that a manufacturer, brewer, or importer, 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:

/ SECTION 1. Article 9, Chapter 4, Title 61 of the 1976 Code is amended by adding:

“Section 61‑4‑942. Notwithstanding any existing beer distribution agreement to the contrary, a manufacturer, brewer, or importer of beer shall not:

(1) coerce or require a wholesaler to gather or submit sales records, retail placement, price, discount, rebate, or other details for beer brands not manufactured, brewed, or imported by the manufacturer, brewer, or importer;

(2) mandate wholesaler employee hiring decisions or payment rates, including incentives;

(3) require a wholesaler to pay or contribute marketing, advertising, or other funds for control or expenditure by the manufacturer, brewer, or importer, except a wholesaler may agree, in writing and in advance of the payment or contribution, to spend or contribute wholesaler funds for a specified marketing or advertising plan or opportunity;

(4) ship, invoice or initiate an electronic funds transfer payment for any quantity of beer exceeding any order or forecast submitted by a wholesaler, or include in a beer sales invoice charges for any items other than beer, freight, fuel, cooperage, dunnage, pallets, and related deposits;

(5) invoice or initiate electronic funds transfer payment for point of sale advertising specialties or other items, except a manufacturer, brewer, or importer may place an order and invoice or initiate an electronic funds transfer payment for point of sale advertising specialties or other items pursuant to a specific written agreement between the wholesaler and the manufacturer, brewer, or importer made prior to the placement of an order;

(6) attribute risk of loss, ownership or other financial interest to a wholesaler for beer not in the wholesaler’s possession; or

(7) require a wholesaler to pay for development, installation, or use of any software owned or mandated by the manufacturer, brewer, or importer, except a wholesaler may be required to maintain data in a format compatible with data format standards adopted by a manufacturer, brewer, or importer.”

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

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Ways and Means Licenses, Fees and Other Taxes Subcommittee on September 4, 2020**

**State Expenditure and State Revenue**

This bill as amended provides seven actions which beer manufacturers, brewers and importers are prohibited from taking in business relations with wholesalers, with exceptions for written agreements between both parties. The provisions of this bill do not apply to existing distribution agreements between beer producers and wholesalers. The prohibited actions in this bill relate to marketing data and funding, shipping product quantities in excess of ordered quantities, and software requirements.

DOR indicates this bill will not change the agency’s responsibilities in regulating beer sales, nor will the bill impact tax collections, because it affects business relations between beer producers and wholesalers. Therefore, this bill will have no expenditure or revenue impact on the general fund, other funds, or federal funds.

**Introduced on February 12, 2020**

**State Expenditure and State Revenue**

This bill provides eight actions which beer manufacturers, brewers and importers are prohibited from taking in business relations with wholesalers. The provisions of this bill do not apply to existing distribution agreements between beer producers and wholesalers. The prohibited actions in this bill relate to marketing data and funding, shipping product quantities in excess of ordered quantities, and software requirements.

DOR indicates this bill will not change the agency’s responsibilities in regulating beer sales, nor will the bill impact tax collections, because it affects business relations between beer producers and wholesalers. Therefore, this bill will have no expenditure or revenue impact on the general fund, other funds, or federal funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61‑4‑942, SO AS TO PROVIDE THAT A MANUFACTURER, BREWER, OR IMPORTER OF BEER SHALL NOT REQUEST OR REQUIRE THAT A WHOLESALER SUBMIT CERTAIN INFORMATION FOR BEER BRANDS NOT MANUFACTURED, BREWED, OR IMPORTED BY THE MANUFACTURER, BREWER, OR IMPORTER; SHALL NOT MANDATE CERTAIN EMPLOYMENT MATTERS; SHALL NOT REQUEST OR REQUIRE A WHOLESALER TO PAY BEER BRAND MARKETING OR ADVERTISING FUNDS; SHALL NOT SHIP, INVOICE, OR INITIATE PAYMENT FOR ANY QUANTITY OF BEER IN EXCESS OF THAT FORECAST BY A WHOLESALER OR FOR ANY POINT OF SALE ADVERTISING OR OTHER ITEMS IN EXCESS OF THAT SPECIFIED BY THE WHOLESALER; SHALL NOT ATTRIBUTE ANY FINANCIAL INTEREST TO A WHOLESALER FOR BEER NOT IN THE WHOLESALER’S POSSESSION; SHALL NOT REQUEST OR REQUIRE A WHOLESALER TO PAY FOR CERTAIN MATTERS PERTAINING TO SOFTWARE OWNED OR MANDATED BY THE MANUFACTURER, BREWER, OR IMPORTER; AND SHALL NOT REQUIRE PAYMENT OF A PENALTY BY THE WHOLESALER FOR NONCOMPLIANCE WITH ANY REQUIREMENT OF THE MANUFACTURER, BREWER, OR IMPORTER, EXCLUDING CERTAIN FEES OR INTEREST.

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

SECTION 1. Article 9, Chapter 4, Title 61 of the 1976 Code is amended by adding:

“Section 61‑4‑942. Notwithstanding any existing beer distribution agreement to the contrary, a manufacturer, brewer, or importer of beer shall not:

(1) request or require a wholesaler to gather or submit sales records, retail placement, price, discount, rebate, or other details for beer brands not manufactured, brewed, or imported by the manufacturer, brewer, or importer;

(2) mandate wholesaler employee hiring decisions or payment rates, including incentives;

(3) request or require a wholesaler to pay or contribute beer brand marketing or advertising funds for control or expenditure by the manufacturer, brewer, or importer, except a wholesaler may agree and spend funds directly with marketers and advertisers to market and advertise beer brands within the wholesaler’s territory;

(4) ship, invoice or initiate electronic funds transfer payment for any quantity of beer exceeding any order or forecast submitted by a wholesaler, or include in a beer sales invoice charges for any items other than beer, freight, cooperage, dunnage, pallets, and related deposits;

(5) invoice or initiate electronic funds transfer payment for point of sale advertising specialties or other items exceeding an order placed by a wholesaler;

(6) attribute risk of loss, ownership or other financial interest to a wholesaler for beer not in the wholesaler’s possession;

(7) request or require a wholesaler to pay for development, installation, or use of any software owned or mandated by the manufacturer, brewer, or importer, except a wholesaler may be required to maintain electronic data in a format compatible with data format standards adopted by a manufacturer, brewer, or importer; or

(8) request or require a wholesaler to pay a fee or penalty, of any description, for noncompliance with any requirement of the manufacturer, brewer, or importer, excluding fees or interest for untimely payment.”

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

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