~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 11, 2009

**H. 3452**

Introduced by Reps. Bannister, Bales, Crawford, Limehouse, G.M. Smith, J.E. Smith and Frye

S. Printed 3/11/09--S.

Read the first time February 12, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3452) to amend Subarticle 11, Article 3, Chapter 6, Title 61, Code of Laws of South Carolina, 1976, relating to regulation of manufacturers of alcoholic liquors, so, 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 and inserting the following:

/ A BILL

TO AMEND TITLE 61, RELATING TO ALCOHOL AND ALCOHOLIC BEVERAGES, SO AS TO AUTHORIZE THE ESTABLISHMENT OF MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO SET FORTH REGULATIONS AND LIMITATIONS OF THE MICRO-DISTILLERIES, TO PROVIDE FOR BIENNIAL LICENSES AND FEES FOR MANUFACTURERS AND MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO PROVIDE PROCEDURES FOR TASTINGS AT MANUFACTURERS AND MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO PROVIDE FOR LIMITED RETAIL SALE AT MICRO-DISTILLERIES OF THEIR PRODUCTS; TO PROVIDE PROCEDURES FOR BEER TASTINGS AT ESTABLISHMENTS THAT ARE AUTHORIZED TO SELL BEER FOR OFF-PREMISES CONSUMPTION AND WHERE THE PRIMARY PRODUCT IS BEER OR WINE; AND TO PROVIDE PENALTIES FOR VIOLATIONS.

SECTION 1. Subarticle 11, Article 3, Chapter 6, Title 61 of the 1976 Code is amended to read:

“Subarticle 11

REGULATION OF MANUFACTURERS AND MICRO‑DISTILLERS

Section 61‑6‑1095. For the purposes of this subarticle:

(A) ‘Micro‑distillery’ means a manufacturer who distills, blends, and bottles alcoholic liquors on the licensed premises in this State with an alcohol content greater than seventeen percent and who produces a maximum quantity of one hundred twenty‑five thousand cases per year at the licensed premises.

(B) ‘Licensed premises’ means a location where the micro‑distillery or manufacturer is licensed pursuant to this subarticle for the manufacture, tasting, and retail sales of alcoholic liquors produced at the licensed location and includes those areas normally used by the licensee to conduct his business, and includes the producing areas, storage areas, tasting areas, selling areas, and parking lots.

(C) ‘Person’ means an individual, partnership, corporation, or other form of business.

Section 61‑6‑1100. ~~No~~A manufacturer may not own or operate more than one plant, establishment, or place of business for the manufacture of alcoholic liquors in any one county of this State, nor may he permit the drinking of alcoholic liquors on his premises, except as otherwise authorized by this subarticle.

Section 61‑6‑1110. The department may issue a manufacturer’s license to a person to manufacture alcoholic liquors in the State subject to the requirements of this chapter and a payment of a biennial manufacturer license fee of fifty thousand dollars. This section is not applicable to a micro‑distillery as defined and licensed pursuant to the provisions of this subarticle.

Section 61‑6‑1120. (A) The department may issue a micro‑distillery license to a person to operate one micro‑distillery in the State subject to the requirements of this chapter and payment of a biennial micro‑distillery license fee of five thousand dollars.

(B) A micro‑distillery is not required to obtain an additional manufacturing and retail liquor license required pursuant to this title.

Section 61‑6‑1130. (A) A micro‑distillery or manufacturer desiring to offer tastings and sales of alcoholic liquors to consumers at its licensed premises shall make application for a wholesaler’s license for these sales on forms prescribed by the department and shall remit taxes to the department for alcoholic liquors sold in an amount equal to taxes paid by wholesalers for the sale of alcoholic liquors.

(B) Alcoholic liquors produced and sold on a licensed premises pursuant to this subarticle must be taxed as provided in Chapter 33, Title 12. The micro‑distillery or manufacturer licensee shall maintain adequate records as determined by the department to ensure the collection of this tax.

Section 61‑6‑1140. A holder of a valid micro‑distillery or manufacturer license issued by the State may permit tastings and retail sales of the alcoholic liquors produced at the licensed premises subject to the following limitations and any other limitations provided in this subarticle:

(1) tastings by and sales to consumers must be held in conjunction with a tour by the consumer of the on‑site licensed premises;

(2) the micro‑distillery or manufacturer shall establish appropriate protocols to ensure that a consumer sold or served alcoholic liquors pursuant to this section is not under twenty-one years of age and that a consumer shall not attend more than one tasting in a day;

(3) the micro‑distillery or manufacturer shall dispense alcoholic liquors for tasting in quantities not greater than one‑half ounce per sample;

(4) the micro‑distillery or manufacturer may not dispense more than one and one‑half ounces to an individual consumer in one day;

(5) tastings and sales may occur only between the hours of nine A.M. and seven P.M., Monday through Saturday;

(6) the micro‑distillery or manufacturer may charge for alcoholic liquors consumed at a tasting, but must collect and remit the liquor by the drink excise tax pursuant to the provisions of Chapter 33, Title 12;

(7) tastings may not occur in conjunction with the service of food in a restaurant setting; and

(8) only brands of alcoholic liquors actually manufactured, distilled, or fermented at and distributed to wholesalers from the licensed premises may be sold or offered for tasting.

Section 61‑6‑1150. Authorization by this section of sales and tastings at licensed premises of a micro‑distillery or manufacturer is expressly intended for the promotion of education regarding production of alcoholic liquors in the State and not to create competition between producers and retailers. A holder of a valid micro‑distillery or manufacturer license issued by the State may:

(1) sell in any quantities the alcoholic liquors produced at the licensed premises to a wholesaler licensed by the State;

(2) transport in any quantities the alcoholic liquors produced at the licensed premises out of state for sale outside of the State;

(3) sell for retail at the licensed premises only in quantities of 750‑milliliter bottles the alcoholic liquors produced at the licensed premises, but only if the labels for the bottles are marked ‘not for resale’;

(4) sell for retail no more than three 750‑milliliter bottles of alcoholic liquors to a consumer in one business day;

(5) not allow consumption on the licensed premises of alcoholic liquors sold by the bottle at the licensed premises;

(6) maintain pricing of the alcoholic liquors sold at the licensed premises at a price approximating retail prices generally charged for identical alcoholic liquors in the county where the on‑site premises is located;

(7) in addition to the sale of alcoholic liquors as authorized by this section, sell items promoting the brand or brands of alcoholic liquors produced at that location in a room on the licensed premises separate from the locations of the tastings; and

(8) not sell or store goods, wares, or merchandise in or from the room in which alcoholic liquors are sold or tasted.

Section 61‑6‑1160. Except as otherwise provided in this title:

(A) a person who transports, possesses, or consumes alcoholic liquors and who violates a provision of this subarticle is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days; and

(B) a person licensed pursuant to this subarticle who violates a provision of this subarticle must:

(1) for a first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than thirty days, or both;

(2) for a second offense within three years of the first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than one hundred eighty days, or both; or

(3) for a third offense within three years of the first offense, be fined not less than five hundred dollars and have his license revoked permanently; and

(C) A person licensed pursuant to this subarticle who acts to avoid payment of the excise tax imposed on the serving of alcoholic liquor by the drink provided for in Chapter 33, Title 12 must be fined not less than one thousand dollars and have his license revoked permanently.”

SECTION 2. Section 12‑33‑210(A) of the 1976 Code is amended to read:

“Section 12‑33‑210. (A) The biennial license taxes on licenses granted pursuant to Title 61, in addition to all other license taxes, are as follows:

(1) manufacturer’s license: ~~one~~ fifty thousand dollars;

(2) wholesaler’s license: twenty thousand dollars;

(3) micro‑distillery license: five thousand dollars;

~~(3)~~ (4) retail dealer’s license: one thousand two hundred dollars; and

~~(4)~~ (5) special food manufacturer’s license: one thousand two hundred dollars.”

SECTION 3. Chapter 4, Title 61 of the 1976 Code is amended by adding the following:

“Section 61-4-960. The holder of a retail permit authorizing the sale of beer for off-premises consumption whose primary product is beer or wine may conduct, in accordance with department rulings or regulations, not more than twenty-four beer tastings at the retail location in a calendar quarter; provided that:

The tastings are conducted by the retailer or an agent or independent contractor of the retailer and are not conducted by a wholesaler, manufacturer or employee, agent, or independent contractor of a wholesaler or manufacturer;

(A) A wholesaler, manufacturer or employee, agent or independent contractor of a wholesaler or manufacturer is not prohibited from attending a tasting to provide information and offer educational material on the products to be sampled;

The products must be supplied by the retailer and shall not be donated or otherwise supplied at no or reduced cost by the manufacturer or wholesaler;

(B) No sample shall be offered from more than six products at a single tasting;

(C) No more than one container of each of the products to be sampled shall be open at any time during the tasting;

(D) Samples must not be more than three ounces for each product sampled;

(E) No person shall be served more than one sample of each product;

(F) No sample may be offered to, or allowed to be consumed by, an intoxicated person or a person under twenty-one years of age;

(G) No person participating in the sample shall be allowed to loiter on the premises where the tasting is held; and

(H) Except as otherwise provided in this title, a person violating the provisions of this section shall be assessed a fine of one hundred dollars for each violation. The revenue from these fines shall be directed to the Department of Revenue for supplementing funds required for the department’s activities concerning licensure and regulation of alcohol.”

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO 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:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Revenue indicates this bill will have no fiscal impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SUBARTICLE 11, ARTICLE 3, CHAPTER 6, TITLE 61, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REGULATION OF MANUFACTURERS OF ALCOHOLIC LIQUORS, SO AS TO INCLUDE REGULATION OF MICRO-DISTILLERS OF ALCOHOLIC LIQUORS ON LICENSED PREMISES, TO DEFINE NECESSARY TERMS, TO PROVIDE A BIENNIAL DISTILLERY LICENSE FEE, TO PROVIDE PROCEDURES FOR WHO MAY OBTAIN A LICENSE, TO PROVIDE RESTRICTIONS ON THE LICENSE, TO PROVIDE FOR APPLICATIONS FOR TASTINGS AND LIMITATIONS ON TASTINGS, AND TO PROVIDE A PENALTY FOR PERSONS WHO VIOLATE THE PROVISIONS OF THE SUBARTICLE.

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

SECTION 1. Subarticle 11, Article 3, Chapter 6, Title 61 of the 1976 Code is amended to read:

“Subarticle 11

REGULATION OF MANUFACTURERS AND MICRO‑DISTILLERS

Section 61‑6‑1095. For the purposes of this subarticle:

(1) ‘Micro‑distillery’ means a manufacturer who distills, blends, and bottles alcoholic liquors on the licensed premises in this State with an alcohol content greater than seventeen percent and who produces a maximum quantity of one hundred twenty‑five thousand cases per year at the licensed premises.

(2) ‘Licensed premises’ means a location where the micro‑distillery or manufacturer is licensed pursuant to this subarticle for the manufacture, tasting, and retail sales of alcoholic liquors produced at the licensed location and includes those areas normally used by the licensee to conduct his business and includes the producing areas, storage areas, tasting areas, selling areas, and parking lots.

(3) ‘Person’ means an individual, partnership, corporation, or other form of business.

Section 61‑6‑1100. ~~No~~A manufacturer may not own or operate more than one plant, establishment, or place of business for the manufacture of alcoholic liquors in any one county of this State, nor may he permit the drinking of alcoholic liquors on his premises.

Section 61‑6‑1110. The department may issue a manufacturer’s license to a person to manufacture alcoholic liquors in the State subject to the requirements of this chapter and a payment of a biennial distillery license fee of fifty thousand dollars. This section is not applicable to Section 61‑6‑1095.

Section 61‑6‑1120. (A) The department may issue a micro‑distillery license to a person to operate one micro‑distillery in the State subject to the requirements of this chapter and payment of a biennial micro‑distillery license fee of five thousand dollars.

(B) A micro‑distillery is not required to obtain an additional manufacturing and retail license required pursuant to this title.

Section 61‑6‑1130. (A) A micro‑distillery or manufacturer desiring to offer tasting and sale of alcoholic liquors to consumers at its licensed premises shall make application for a license for these sales on forms prescribed by the department and shall remit taxes to the department for alcoholic liquors sold in an amount equal to taxes paid by wholesalers for the sale of alcoholic liquors.

(B) Alcoholic liquors produced on a licensed premises pursuant to this subarticle must be taxed as provided in Chapter 33, Title 12. The micro‑distillery or manufacturer permittee shall maintain adequate records as determined by the department to ensure the collection of this tax.

Section 61‑6‑1140. A holder of a valid micro‑distillery or manufacturer license issued by the State may permit tastings and retail sales of the alcoholic liquors produced at the licensed premises subject to the following limitations and those provided in Section 61‑6‑1150:

(1) tastings by and sales to consumers must be held in conjunction with a tour by the consumer of the on‑site licensed premises;

(2) the micro‑distillery or manufacturer shall establish appropriate protocols to ensure that a consumer sold or served alcoholic liquors pursuant to this section is over the age of twenty‑one and that a consumer may not attend more than one tasting in a day;

(3) the micro‑distillery or manufacturer shall dispense alcoholic liquors for tasting in quantities not greater than one‑half ounce per sample;

(4) the micro‑distillery or manufacturer may not dispense more than one and one‑half ounces to an individual consumer in one day;

(5) tastings and sales may occur only between the hours of 9:00 a.m. and 7 p.m., Monday through Saturday;

(6) the micro‑distillery or manufacturer may charge for alcoholic liquors consumed at a tasting, but must collect the point of sale tax per drink and remit tax revenue to the general fund;

(7) tastings may not occur in conjunction with the service of food in a restaurant setting; and

(8) only brands of alcoholic liquors actually manufactured, distilled, or fermented at and distributed to wholesalers from the licensed premises may be sold or offered for tasting.

Section 61‑6‑1150. Authorization by this section of sales and tastings at licensed premises of a micro‑distillery or manufacturer is expressly intended for the promotion of education regarding production of alcoholic liquors in the State and not to create competition between producers and retailers. A holder of a valid micro‑distillery or manufacturer license issued by the State may:

(1) sell in any quantities the alcoholic liquors produced at the licensed premises to a wholesaler licensed by the State;

(2) transport in any quantities the alcoholic liquors produced at the licensed premises out of state for sale outside of the State;

(3) sell at the licensed premises only in quantities of 750‑milliliter bottles, the alcoholic liquors produced at the licensed premises but only if the labels for the bottles are marked ‘not for resale’;

(4) sell no more than three 750‑milliliter bottles of alcoholic liquors to a consumer in one business day;

(5) not allow consumption on the licensed premises of alcoholic liquors sold by the bottle at the licensed premises;

(6) maintain pricing of the alcoholic liquors sold at the licensed premises at a price approximating retail prices generally charged for identical alcoholic liquors in the county where the on‑site premises is located;

(7) in addition to the sale of alcoholic liquors as authorized by this section, sell items promoting the brand or brands of alcoholic liquors produced at that location in a separate room of the licensed premises; and

(8) not sell or store goods, wares, or merchandise in or sold in or from the room in which alcoholic liquors are sold or tasted.

Section 61‑6‑1160. Except as otherwise provided in this title, a person who transports, possesses, or consumes alcoholic liquors except in a manner permitted by this subarticle or a person who violates a provision of this subarticle is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. In addition, a person licensed to sell alcoholic liquors pursuant to the provisions of this subarticle who acts to avoid the payment of the excise tax imposed on the serving of alcoholic beverages by the drink provided for in Chapter 33, Title 12 or who violates another provision of this subarticle must:

(1) for a first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than thirty days, or both;

(2) for a second offense within three years of the first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than one hundred eighty days, or both;

(3) for a third offense within three years of the first offense, be fined not less than five hundred dollars and have his license revoked permanently; or

(4) for a violation involving the avoidance of taxes, be fined not less than one thousand dollars and permanent revocation of his license.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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