Indicates Matter Stricken

Indicates New Matter

Committee Report

January 24, 2024

H. 4364

Introduced by Reps. W. Newton, Davis, Rutherford, Bernstein, M. M. Smith, Ott, Brittain, Guest, Hewitt, Elliott, Stavrinakis, Bradley, Wooten, Murphy, Herbkersman, Leber, Sessions, Caskey, Rose, Mitchell, Brewer, Guffey, Hardee, Collins, Gatch, B. Newton, Pace, Bauer and Bailey

S. Printed 01/24/24--H.

Read the first time April 25, 2023

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The committee on House Judiciary

To whom was referred a Bill (H. 4364) to amend the South Carolina Code of Laws by amending Section 61‑2‑170, relating to drive‑through or curbside service of alcoholic beverages, so as to provide certain, 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, SECTION 5, by striking Section 61-6-1570(A)(2) and (3) and inserting:

(2) requires a customer to provide a valid government-issued identification at the time of pick up;

(3) prohibits the use of curbside delivery or pick up service by an intoxicated person or a person under the age of twenty-one; and

(4) requires the employee delivering sealed containers of alcoholic liquors to a customer’s vehicle to be twenty-one years or older.

Renumber sections to conform.

Amend title to conform.

WESTON NEWTON for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill authorizes DOR to issue a license or permit allowing a retailer to offer curbside delivery or pick up through curbside delivery of sealed containers of beer and wine or alcoholic liquors if the retailer:

has a clearly designated curbside area near or adjacent to its business;

requires a customer to provide a valid government-issued identification at the time of pick up;

prohibits the use of curbside delivery or curbside pick-up service by an intoxicated person or a person under the age of twenty-one; and

requires the employee delivering to a customer’s vehicle to be eighteen years or older for beer or wine, and twenty-one years or older for alcoholic liquors.

This bill also authorizes DOR to issue a license allowing a retailer to deliver or hire a delivery service to deliver sealed packages of beer and wine or alcoholic liquors for personal consumption, provided the delivery does not occur on certain specified premises. A delivery service or retailer delivering beer and wine must apply to DOR for a biennial delivery service license, which authorizes the delivery of beer and wine that has been purchased from a retailer through the three-tier distribution chain. A delivery service or retailer delivering alcoholic liquors must apply for a separate biennial delivery service license, which authorizes the delivery of alcoholic liquors that have been purchased from a retailer that holds a retail dealers’ license and has purchased the alcoholic liquors from a wholesaler. A delivery service or retailer applying for a delivery service license must:

pay a nonrefundable $400 license fee;

be at least twenty-one years of age;

provide a criminal history background check conducted by SLED; and

maintain a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement in the amount of at least $1,000,000 for the biennial period of the license.

An individual who delivers beer and wine or alcoholic liquors for a retail dealer or delivery service must:

be at least twenty‑one years of age;

not have a felony conviction within the last ten years, as confirmed by a background check conducted by the delivery service prior to being hired; and

undergo training as provided or approved by the DAODAS and as administered by the retail dealer, delivery service, or a DAODAS-approved training program.

This bill also gives DOR the discretion to impose a monetary penalty upon a retailer or the holder of a delivery service license for violations of the provisions of this bill, as well as for violations of any other regulations pertaining to beer and wine or alcoholic liquors, in lieu of suspension or revocation of licenses. The amount of any penalty imposed must be no less than $25 dollars and no more than $1,000, and any fines collected must be credited to the General Fund.

Department of Revenue. This bill will have no expenditure impact for DOR. The department indicates that it has processes in place to update its forms, website information, and system functions, and anticipates that any expenses can be managed with existing appropriations.

Administrative Law Court. This bill provides that a beer and wine or alcoholic liquors retailer or the holder of a delivery service license may request a contested case hearing for a fine imposed for violations of the provisions of the bill in front of the ALC, pursuant to the South Carolina Revenue Procedures Act and the Administrative Procedures Act. ALC reports that they currently hear cases from DOR regarding violations issued against retailers and anticipates that any additional cases resulting from the provisions of this bill can be managed with existing resources.

State Law Enforcement Division. SLED previously indicated that the provisions of the bill will make it more difficult for the agency to monitor and enforce laws prohibiting the purchase and possession of alcohol by underaged persons. SLED anticipates that the bill will increase expenses by an amount up to $2,014,000 in FY 2024-25 for the agency to comply with its mandated alcohol enforcement duties and responsibilities. Of this amount, $822,000 is for 8.0 additional FTEs with annual salary and fringe benefits to carry out the day-to-day enforcement functions and to perform additional monitoring and undercover operations. Of the remaining amount, $320,000 is for recurring expenses including fuel, maintenance, and ongoing costs. SLED also anticipates the need for an additional $871,000 for one-time equipment costs, including vehicles, uniforms, protective gear, weapons, computers, and academy expenses. Expenses will decrease to $1,142,000 each year thereafter for the new FTEs and recurring equipment costs. SLED reports that the agency will request a General Fund appropriation increase to fund the expenses. We will update this section of the impact statement if the agency provides an updated response.

Department of Alcohol and Other Drug Abuse Services. This bill requires an individual who delivers beer and wine or alcoholic liquors for a retail dealer or delivery service to undergo training as provided or approved by DAODAS and as administered by the retail dealer, delivery service, or a DAODAS-approved training program. DAODAS anticipates that this required training may be done under PREP, a particular curriculum used by the local alcohol and provider system, or any other approved training curricula approved by DAODAS. Therefore, the bill will have no expenditure impact on DAODAS since any expenses can be managed within existing appropriations.

State Revenue

This bill authorizes DOR to issue a license or permit allowing a retailer to offer curbside delivery or pick up through curbside delivery of sealed containers of beer and wine or alcoholic liquors. However, the fee for this new license or permit has not been determined. The bill also provides that applicants for the new beer and wine or alcoholic liquors delivery licenses must pay a nonrefundable application fee of $400. RFA is unable to estimate the number of new licenses that will be issued pursuant to this bill and the amount of any monetary penalties. Therefore, the revenue impact to the General Fund is undetermined and will depend upon the fee, number of licenses issued, and any monetary penalties.

The bill also requires applicants for a delivery service license to provide a criminal history background check conducted by SLED. We anticipate that the bill may increase the number of background checks that SLED will be required to perform. SLED previously indicated that the total cost for a criminal records search is $51.75, of which $25 is retained by SLED. The vendor, Identogo, receives $13.50, and the remainder of the fee, $13.25, is remitted to the FBI. Pursuant to Section 23-3-115(A), revenue generated by criminal records checks performed by SLED up to an amount of $4,461,000 must be deposited in the General Fund. Any revenue over that amount is retained by SLED. Based upon a three-year historical average, SLED was previously able to retain an average of $10,375,000 from background checks for its $25 portion of the fee. Assuming a similar pattern in future years and since this amount is over the $4,461,000 amount that is allocated to the General Fund pursuant to proviso, we anticipate that Other Funds of SLED will increase by an undetermined amount in FY 2024-25 as a result of the potential increase in background checks. There will be no increase to the General Fund for this portion of the bill.

RFA anticipates that this bill will have a minimal impact on beer, wine, and liquor sales and resulting sales and alcohol tax revenues. Although we anticipate the provisions of this bill may cause a shift in the manner in which consumers purchase beer, wine, or alcoholic liquors, the provisions of the bill are not expected to result in a material expansion of beer, wine, or alcoholic liquor purchases.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 61‑2‑170, RELATING TO DRIVE‑THROUGH OR CURBSIDE SERVICE OF ALCOHOLIC BEVERAGES, SO AS TO PROVIDE CERTAIN EXCEPTIONS; BY ADDING SECTION 61‑4‑45 SO AS TO PROVIDE THAT THE DEPARTMENT MAY ISSUE CERTAIN LICENSES OR PERMITS ALLOWING A RETAILER TO OFFER CERTAIN CURBSIDE DELIVERY OR PICK UP; BY ADDING SECTION 61‑4‑280 SO AS TO PROVIDE THAT A RETAIL DEALER MAY HIRE A DELIVERY SERVICE TO DELIVER CERTAIN BEER AND WINE AND TO PROVIDE FOR REQUIREMENTS; BY ADDING SECTION 61‑6‑1570 SO AS TO PROVIDE THAT THE DEPARTMENT MAY ISSUE CERTAIN LICENSES OR PERMITS ALLOWING A RETAILER TO OFFER CERTAIN CURBSIDE DELIVERY OR PICK UP; AND BY ADDING SECTION 61‑6‑1580 SO AS TO PROVIDE THAT A RETAIL DEALER MAY HIRE A DELIVERY SERVICE TO DELIVER CERTAIN ALCOHOLIC LIQUORS AND TO PROVIDE FOR REQUIREMENTS.

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

SECTION 1. The General Assembly finds and declares that:

(A) The State has a substantial interest in regulating beverages containing alcohol, including alcoholic liquor, beer, ale, porter, wine, and other similar malt or fermented beverages as defined and licensed for retail sale pursuant to Sections 61‑4‑10 and 61‑6‑20, collectively referenced as “beverages containing alcohol” in these legislative findings, of the S.C. Code; the activities of manufacturers, importers, wholesalers, and retailers; the safe delivery of beverages containing alcohol to the state's consumers; and the influences that affect the consumption levels of beverages containing alcohol by the people of the State.

(B) The State has a substantial interest in exercising its police powers to promote the public health, safety, and welfare of the State by regulating the business of retail sales and delivery of beverages containing alcohol in the manner and to the extent allowed by law to promote and preserve public health and safety through legitimate, nonprotectionistic measures, which include regulating and controlling transactions in this State involving beverages containing alcohol and the means and manner in which licensed retailers and third parties may deliver beverages containing alcohol to the state’s qualifying consumers.

(C) Selling and delivering beverages containing alcohol from retailers outside the State directly to residents of this State poses a serious threat to the state’s efforts to prevent underage drinking, to state revenue collections, and to the public health and safety of the state’s residents.

(D) By this act, the General Assembly intends to promote the public health, safety, and welfare of residents of this State with laws intended to strictly regulate beverages containing alcohol by preserving and promoting a robust, stable system of distribution of beverages containing alcohol to the public, that does not provide for economic protectionism. Excessive use of beverages containing alcohol has wide ranging deleterious health effects, including death. The General Assembly acknowledges that, according to the United States Centers for Disease Control, during the period from 2011‑2015 an average of 1,679 of this state’s residents suffered alcohol‑attributed deaths due to excessive alcohol use and the rate of binge drinking in this State is ranked among the highest in the nation. The General Assembly acknowledges that, according to the National Highway Traffic Safety Administration, this State had two hundred eighty‑five alcohol impaired driving fatalities in 2019, which accounted for twenty‑eight percent of the total traffic fatalities in the State. Attributed deaths due to alcohol‑impaired driving in this State is ranked among the highest in the nation.

(E) This act has been enacted pursuant to the authority granted to the State by the Twenty‑first Amendment to the Constitution of the United States, the powers reserved to the states under the Tenth Amendment to the United States Constitution, and the inherent powers of the State under the Constitution of the State of South Carolina, 1895, and the statutes promulgated thereunder. It is the intent of the General Assembly that this act does all of the following:

(1) further regulate and control transactions in this State as to beverages containing alcohol under the control and supervision of the Department of Revenue;

(2) strictly regulate transactions involving beverages containing alcohol by fostering moderation and responsibility in the use and consumption of beverages containing alcohol;

(3) promote and assure the public’s interest in fair and efficient distribution and quality control of beverages containing alcohol in this State;

(4) promote orderly marketing of beverages containing alcohol;

(5) prevent unfair business practices, discrimination, and undue control of one segment of the alcoholic beverage industry by any other segment;

(6) foster vigorous and healthy competition in the alcoholic beverage industry and protect the interests of consumers against fraud and misleading practices in the sale of beverages containing alcohol and avoid problems associated with indiscriminate price cutting and excessive advertising of beverages containing alcohol;

(7) provide for an orderly system of public revenues by facilitating the collection and accountability of state and local excise taxes;

(8) facilitate the collection of state and local revenue;

(9) maintain trade stability and provide for the continuation of control and orderly processing by the State over the regulation of retail locations licensed to sell beverages containing alcohol and the process of selling and delivering beverages containing alcohol to the state’s consumers;

(10) ensure that the Department of Revenue and State Law Enforcement Division are able to monitor licensed operations through on‑site inspections to confirm compliance with state law and that any beverages containing alcohol shipped into, distributed, and sold throughout this State:

(a) have registered for sale in this State with the Department of Revenue, as prescribed by law;

(b) are not subject to a government‑mandated or supplier‑initiated recall;

(c) are not counterfeit;

(d) are labeled in conformance with applicable laws, rules, and regulations;

(e) can be inspected and tested by the Department of Revenue or the State Law Enforcement Division; and

(f) are not prohibited by this State;

(11) promote and maintain a sound, stable, and viable three‑tier system of distribution of beverages containing alcohol to the public; and

(12) ensure that statutes and regulations relating to beverages containing alcohol exist to serve the interests of the State of South Carolina and its citizens rather than to serve or protect the interests of market participants by adopting protectionistic measures with no demonstrable connection to the state’s legitimate interests in regulating beverages containing alcohol.

SECTION 2. Section 61‑2‑170 of the S.C. Code is amended to read:

Section 61‑2‑170. Except as otherwise provided for in Section 61‑4‑45 and Section 61‑6‑1570, the department may not generate license fees to be deposited in the general fund of the State through the issuance of licenses or permits for on or off premises consumption which authorize alcoholic liquors, beer, or wine to be sold on a drive‑through or curb service basis.

SECTION 3. Article 1, Chapter 4, Title 61 of the S.C. Code is amended by adding:

Section 61‑4‑45. (A) The department may issue a license or permit allowing a retailer to offer curbside delivery or pick up through curbside service of beer or wine if the retailer:

(1) has a clearly designated curbside area abutting or adjacent to or in close proximity to its business;

(2) requires a customer to provide a valid government‑issued identification at the time of pick up;

(3) prohibits the use of curbside delivery or curbside pick up service by an intoxicated person or a person under the age of twenty‑one; and

(4) requires the employee delivering sealed containers of beer or wine to a customer’s vehicle to be eighteen years or older.

(B) This section may not be interpreted to authorize:

(1) the curbside delivery or pick up through curbside service of open containers of beer or wine;

(2) the delivery of beer or wine beyond the premises authorized in subsection (A)(1), including delivery through a third‑party delivery service or the retailer;

(3) the drive‑through pick up of beer or wine; or

(4) the curbside delivery or pick up through curbside service of containers of beer or wine that, at the time of delivery or service to a customer’s vehicle, are chilled.

(C) As used in this section, “retailer” means a person or entity licensed under this title as a retailer authorized to sell beer, ale, porter, and wine in sealed containers for off‑premises consumption or on‑premises consumption and does not include a manufacturer or any other person or entity licensed to manufacture beer and wine.

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

Section 61‑4‑280. (A) As used in this section:

(1) “Customer” means an individual who is at least twenty‑one years of age and who purchases products from a licensed retail dealer through the use of the Internet, mobile applications, or other similar technology.

(2) “Delivery” means local delivery of beer or wine made by a retail dealer or delivery service employees or independent contractors. Delivery by a retail dealer or delivery service must be made on the same day the beer and wine are collected from the retail dealer and may not be interstate or further hired, including to a common carrier.

(3) “Delivery service” means a third party that delivers items from a retail dealer to consumers for personal consumption and not for resale using employees or independent contractors to facilitate the delivery. A “delivery service” also may facilitate delivery through technology services that connect customers with retail dealers through the use of the Internet, mobile applications, and other similar technology.

(4) “Recipient” means an individual who is at least twenty‑one years of age, who is physically present at the address designated by the customer, and who is receiving the intended delivery from the delivery service or retail dealer.

(5) “Retail dealer” means a person or entity licensed under this title as a retailer authorized to sell beer, ale, porter, and wine in sealed containers for off‑premises consumption or on‑premises consumption and does not include a manufacturer or any other person or entity licensed to manufacture beer or wine.

(6) “Sealed container” means a vessel containing beer or wine, which has not been opened, tampered with, uncapped or unsealed subsequent to its original filling and airtight sealing by the manufacturer, importer, or retail dealer.

(7) “Third party” means any individual, partnership, association, company, limited liability company, corporation, or other entity or group who is licensed to do business in this State, regardless of the state of residency, that has a contractual relationship with at least one licensed retail dealer, and who is not an employee of the retail dealer.

(B) Notwithstanding any other provision of law, a retail dealer may hire a delivery service to deliver sealed packages of beer and wine for personal consumption and a retail dealer may itself deliver sealed packages of beer and wine for personal consumption. Delivery shall not occur on the premises of any church, school, or playground, as those terms are defined in Section 61‑6‑120, within any residence hall or dormitory on a college or university campus in this State, or within the premises of licensed on‑premises retailers, excluding hotels. For purposes of determining whether the area for the delivery of beer and wine is permissible, the Department of Revenue shall make available the addresses of active licensed on‑premises retailers upon which the delivery service or retail dealer may reasonably rely in furtherance of prohibiting such delivery.

(C) The delivery service or retail dealer must apply to the department for a biennial license which authorizes the delivery of beer and wine that has been purchased from a retailer through the three‑tier distribution chain set forth in Sections 61‑4‑735 and 61‑4‑940. The department shall grant the license if the applicant:

(1) pays a nonrefundable four hundred dollar license fee;

(2) is at least twenty‑one years of age;

(3) affirms whether the applicant or any officer or director, as may be required to be disclosed in the license application, has been involved in the sale of alcoholic liquors, beer, or wine in this or another state and whether he has had a license or permit suspended or revoked;

(4) except for applicants that are publicly traded companies or subsidiaries of the same, provides a criminal history background check conducted by the State Law Enforcement Division at the time of application. The background check must prove that the individual has not been convicted of any crime involving the sale or distribution of beer, wine, or alcoholic liquors within the last eight years and has not been convicted of any felony within the last ten years; and

(5) maintains 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 permitted.

(D) Nothing in this section shall be construed to require a company that only provides technology services to a retail dealer to obtain a delivery service license if the company does not employ or contract with delivery drivers, but merely provides software or an application that connects consumers and licensed retail dealers.

(E) A person with ownership or financial interest in a delivery service licensee may not hold or maintain concurrent ownership or financial interest in beer or wine business operations on the manufacturer tier‑one, or tier‑two wholesaler operations, except as provided in Section 61‑4‑735(D) or Section 61‑4‑940(D).

(F) Each individual who delivers beer and wine for a retail dealer or delivery service must be at least twenty‑one years of age, must not have a felony conviction within the last ten years, as confirmed by a background check conducted by the delivery service prior to being hired, and must undergo training to deliver alcoholic liquors as provided or approved by the Department of Alcohol and Other Drug Abuse Services and as administered by the retail dealer, delivery service, or a Department of Alcohol and Other Drug Abuse Services approved training program.

(G)(1) A licensed retail dealer may market, receive, and process orders for beer and wine products under this section using electronic means owned, operated, and maintained by a third party, provided that:

(a) the retail dealer maintains ultimate control and responsibility over the sales transaction and transfer of physical possession of the beer and wine to the delivery service employee or independent contractor;

(b) the retail dealer retains the sole discretion to determine whether to accept and complete a sales transaction or reject it;

(c) the retail dealer retains the independence to determine which beer and wine are made available for ordering through electronic means, which beer and wine are made available for delivery to the recipient at the address designated by the customer, and to independently set the price of such products;

(d) the sales transaction takes place between the customer and the retail dealer, and the retail dealer appears as the merchant of record;

(e) any credit or debit card information provided by a customer to the third party for the purpose of transacting a purchase with a retail dealer is automatically directed to the retail dealer such that the retail dealer appears as the merchant of record at the time of purchase and on the receipt;

(f) the retail dealer, or an employee of the retail dealer, processes by the licensed premises that accepts the order, all payments initiated by a customer that is transacting a purchase with the retail dealer; and

(g) the beer and wine are in the possession of the retail dealer prior to the retail dealer’s processing of payment for such products.

(2) The relationship between the retail dealer and delivery service must be one of independent contractors, and neither party shall be deemed the employee, agent, or joint venturer of the other party under any circumstances or for any purpose; provided that the retail dealer and delivery service may operate under the same parent company or otherwise share common ownership.

(H) Licensed retail dealers or third parties shall maintain records of beer and wine sales delivered by third parties for a period of three years. The records must document the chain of custody of the beer and wine sold by retail dealers and delivered by third parties and shall include the retail dealer’s name, deliverer’s name, recipient’s name, date of birth, type and number of identification presented, delivery address and signature. Upon request, the records must be made available to the department, within a reasonable period of time, in the manner prescribed by the department.

(I) The retail dealer or delivery service shall assemble, package, and fulfill each order for delivery at the licensed premises of the retail dealer from inventory located at such licensed premises and shall not retrieve inventory from any other of the retail dealer's locations or of any other person or entity, including another retail dealer.

(J) All beer, ale, porter, and wine that leave the licensed premises of the retail dealer for delivery:

(1) shall remain in the possession of the retail dealer or delivery service employee or independent contractor who removed it from the licensed premises for delivery and may not be transferred to any other person until the time of delivery in compliance with this section or the return to the retail dealer's licensed premises the same day removed if delivery is not made; and

(2) shall not be carried with, comingled with, stored with, or transported in any vehicle or other transportation device containing products or goods traveling in interstate commerce.

(K) A retail dealer must not deliver or sell for delivery and a delivery service must not deliver beer or wine to any location or recipient beyond the United States Postal Service five‑digit ZIP code or a contiguous ZIP code of the selling retail dealer’s licensed premises.

(L) A retail dealer or delivery service licensee may only deliver beer and wine within the time allowed for lawful sales and consumption in the jurisdiction, subject to local option laws in the county for the licensed retail dealer, and as provided in Section 61‑4‑120. Also, at the time of delivery, a retail dealer or delivery service employee or independent contractor must: (i) use some form of electronic or current state‑of‑the‑art age verification software technology requiring the recipient to provide photographic identification reflecting a date of birth to verify the recipient is at least twenty‑one years of age, and must obtain the recipient's signature, or (ii) if the available software technology is not operable at the point of delivery, then manually record or document the deliverer’s name, the recipient’s name, date of birth, type and number of identification presented and signature before transferring possession of the beer and wine to the intended recipient.

(M) A retail dealer and delivery service shall refuse delivery and return the beer and wine to the retail dealer’s licensed premises on the same date of collection and attempted delivery when the recipient is not present or:

(1) is less than twenty‑one years of age;

(2) fails to produce valid identification;

(3) appears to be intoxicated; or

(4) the retail dealer or delivery service employee or independent contractor is unable to scan and retain, or manually record or document the recipient’s name, date of birth, type of identification presented and signature.

(N) Each retail dealer or delivery service that delivers beer and wine must monetarily incentivize its employees or independent contractors to return beer and wine to the retail dealer's licensed premises if the delivery is refused by the recipient or pursuant to subsection (M).

(O) A customer order made through a delivery service licensee or directly through a retail dealer shall result in a sale deemed to have been made on the retail dealer’s licensed premises.

(P)(1) For violations of this section, and for a violation of any regulation pertaining to beer or wine, the department may, in its discretion, impose a monetary penalty upon a retail dealer or the holder of a delivery service license in lieu of suspension or revocation. The amount of any penalty imposed must be no less than twenty‑five dollars and no more than one thousand dollars. The fine is subject to a hearing as provided in the South Carolina Revenue Procedures Act and the Administrative Procedures Act.

(2) The department in its discretion may suspend payment of a fine or a monetary penalty imposed under this section. Any fines collected pursuant to this section must be credited to the general fund.

(3) If the department imposes a monetary penalty under this section which is not paid or a contested case hearing is not requested within thirty days after demand by the department, the license or licenses may be suspended or revoked by the department.

(4) Penalties provided for in this section are in addition to any fines and penalties imposed by law or by any court of competent jurisdiction for violation of the laws of this State.

(5) In addition to the penalties provided in this subsection, the department may revoke the delivery license of an entity or person failing to comply with any requirements hereof.

SECTION 5. Article 5, Chapter 6, Title 61 of the S.C. Code is amended by adding:

Section 61‑6‑1570. (A) The department may issue a license or permit allowing a retailer to offer curbside delivery or pick up through curbside service of alcoholic liquors if the retailer:

(1) has a clearly designated curbside area abutting or adjacent to or in close proximity to its business;

(2) the delivery of beer or wine beyond the premises authorized in item (1), including delivery through a third‑party delivery service or the retailer; or

(3) the drive‑through pick up of beer or wine.

(B) This section may not be interpreted to authorize:

(1) the curbside delivery or pick up through curbside service of open containers of alcoholic liquors;

(2) the delivery of alcoholic liquors beyond the premises authorized in subsection (A)(1), including delivery through a third‑party delivery service or the retailer;

(3) the drive‑through pick up of alcoholic liquors; or

(4) the curbside delivery or pick up through curbside service of containers of alcoholic liquors that, at the time of delivery or service to a customer's vehicle, are chilled.

(C) As used in this section, “retailer” means a person or entity licensed under this title as a retailer authorized to sell alcoholic liquors in sealed containers for off‑premises consumption and does not include a manufacturer or any other person or entity licensed to manufacture alcoholic liquors.

SECTION 6. Article 5, Chapter 6, Title 61 of the S.C. Code is amended by adding:

Section 61‑6‑1580. (A) As used in this section:

(1) “Customer” means an individual who is at least twenty‑one years of age and who purchases products from a licensed retail dealer through the use of the Internet, mobile applications, or other similar technology.

(2) “Delivery” means local delivery of alcoholic liquors made by a retail dealer or delivery service employees or independent contractors. Delivery by a retail dealer or delivery service must be made on the same day the alcoholic liquor is collected from the retail dealer and may not be interstate or further hired, including to a common carrier.

(3) “Delivery service” means a third party that delivers items from a retail dealer to consumers for personal consumption and not for resale using employees or independent contractors to facilitate the delivery. A “delivery service” also may facilitate delivery through technology services that connect customers with retail dealers through the use of the Internet, mobile applications, and other similar technology.

(4) “Recipient” means an individual who is at least twenty‑one years of age, who is physically present at the address designated by the customer, and who is receiving the intended delivery from the delivery service or retail dealer.

(5) “Retail dealer” means a person or entity licensed under this title as a retailer authorized to sell alcoholic liquors in sealed containers for off‑premises consumption and does not include a manufacturer or any other person or entity licensed to manufacture alcoholic liquors.

(6) “Sealed container” means a vessel containing alcoholic liquors, which has not been opened, tampered with, uncapped or unsealed subsequent to its original filling and airtight sealing by the manufacturer or importer.

(7) “Third party” means any individual, partnership, association, company, limited liability company, corporation, or other entity or group who is licensed to do business in this State, regardless of the state of residency, that has a contractual relationship with at least one licensed retail dealer, and who is not an employee of the retail dealer.

(B) Notwithstanding any other provision of law, a retail dealer may hire a delivery service to deliver sealed packages of alcoholic liquors for personal consumption and a retail dealer may itself deliver sealed packages of alcoholic liquors for personal consumption. Delivery shall not occur on the premises of any church, school, or playground, as those terms are defined in Section 61‑6‑120, within any residence hall or dormitory on a college or university campus in this State, or within the premises of licensed on‑premises retailers, excluding hotels. For purposes of determining whether the area for the delivery of alcoholic liquors is permissible, the Department of Revenue shall make available the addresses of active licensed on‑premises retailers upon which the delivery service or retail dealer may reasonably rely in furtherance of prohibiting such delivery.

(C) The delivery service or retail dealer must apply to the department for a biennial license which authorizes the delivery of alcoholic liquors that have been purchased from a retailer that holds a retail dealers’ license as defined in Section 61‑6‑100(3) and that has purchased the alcoholic liquors from a wholesaler as required by this chapter. The department shall grant the license if the applicant:

(1) pays a nonrefundable four‑hundred‑dollar‑license fee;

(2) is at least twenty‑one years of age;

(3) affirms whether the applicant or any officer or director, as may be required to be disclosed in the license application, has been involved in the sale of alcoholic liquors, beer, or wine in this or another state and whether he has had a license or permit suspended or revoked;

(4) except for applicants that are publicly traded companies or subsidiaries of the same, provides a criminal history background check conducted by the State Law Enforcement Division at the time of application. The background check must prove that the individual has not been convicted of any crime involving the sale or distribution of beer, wine, or alcoholic liquors within the last eight years and has not been convicted of any felony within the last ten years; and

(5) maintains 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 permitted.

(D) Nothing in this section shall be construed to require a company that only provides technology services to a retail dealer to obtain a delivery service license if the company does not employ or contract with delivery drivers, but merely provides software or an application that connects consumers and licensed retail dealers.

(E) A person with ownership or financial interest in a delivery service licensee may not hold or maintain concurrent ownership or financial interest in a business operation that holds either a manufacturers’ license or a wholesalers’ license, except as authorized pursuant to any provision of this chapter.

(F) Each individual who delivers alcoholic liquors for a retail dealer or delivery service must be at least twenty‑one years of age, must not have a felony conviction within the last ten years, as confirmed by a background check conducted by the delivery service prior to being hired, and must undergo training to deliver alcoholic liquors as provided or approved by the Department of Alcohol and Other Drug Abuse Services and as administered by the retail dealer, delivery service, or a Department of Alcohol and Other Drug Abuse Services approved training program.

(G)(1) A licensed retail dealer may market, receive, and process orders for alcoholic liquors under this section using electronic means owned, operated, and maintained by a third party, provided that:

(a) the retail dealer maintains ultimate control and responsibility over the sales transaction and transfer of physical possession of the alcoholic liquors to the delivery service employee or independent contractor;

(b) the retail dealer retains the sole discretion to determine whether to accept and complete a sales transaction or reject it;

(c) the retail dealer retains the independence to determine which alcoholic liquors are made available for ordering through electronic means, which alcoholic liquors are made available for delivery to the recipient at the address designated by the customer, and to independently set the price of such products;

(d) the sales transaction takes place between the customer and the retail dealer, and the retail dealer appears as the merchant of record;

(e) any credit or debit card information provided by a customer to the third party for the purpose of transacting a purchase with a retail dealer is automatically directed to the retail dealer such that the retail dealer appears as the merchant of record at the time of purchase and on the receipt;

(f) the retail dealer, or an employee of the retail dealer, processes by the licensed premises that accepts the order, all payments initiated by a customer that is transacting a purchase with the retail dealer; and

(g) the alcoholic liquors are in the possession of the retail dealer prior to the retail dealer's processing of payment for such products.

(2) The relationship between the retail dealer and delivery service must be one of independent contractors, and neither party shall be deemed the employee, agent, or joint venturer of the other party under any circumstances or for any purpose; provided, that the retail dealer and delivery service may operate under the same parent company or otherwise share common ownership.

(H) Licensed retail dealers or third parties shall maintain records of alcoholic liquor sales delivered by third parties for a period of three years. The records must document the chain of custody of the alcoholic liquors sold by retail dealers and delivered by third parties and shall include the retail dealer’s name, deliverer’s name, recipient’s name, date of birth, type and number of identification presented, delivery address and signature. Upon request, the records must be made available to the department, within a reasonable period of time, in the manner prescribed by the department.

(I) The retail dealer or delivery service shall assemble, package, and fulfill each order for delivery at the licensed premises of the retail dealer from inventory located at such licensed premises and shall not retrieve inventory from any other of the retail dealer’s locations or of any other person or entity, including another retail dealer.

(J) All alcoholic liquors that leave the licensed premises of the retail dealer for delivery:

(1) shall remain in the possession of the retail dealer or delivery service employee or independent contractor who removed it from the licensed premises for delivery and may not be transferred to any other person until the time of delivery in compliance with this section or the return to the retail dealer's licensed premises the same day removed if delivery is not made; and

(2) shall not be carried with, comingled with, stored with, or transported in any vehicle or other transportation device containing products or goods traveling in interstate commerce.

(K) A retail dealer must not deliver or sell for delivery and a delivery service must not deliver alcoholic liquors to any location or recipient beyond the United States Postal Service five‑digit ZIP code or a contiguous ZIP code of the selling retail dealer's licensed premises.

(L) A retail dealer or delivery service licensee may only deliver alcoholic liquors within the time allowed for lawful sales and consumption in the jurisdiction, subject to local option laws in the county for the licensed retail dealer, and as provided in Section 61‑6‑1500 and Article VIII‑A of the Constitution of the State of South Carolina. Also, at the time of delivery, a retail dealer or delivery service employee or independent contractor must: (i) use some form of electronic or current state‑of‑the‑art age verification software technology requiring the recipient to provide photographic identification reflecting a date of birth to verify the recipient is at least twenty‑one years of age, and must obtain the recipient's signature, or (ii) if the available software technology is not operable at the point of delivery, then manually record or document the deliverer’s name, the recipient’s name, date of birth, type and number of identification presented and signature before transferring possession of the alcoholic liquors to the intended recipient.

(M) A retail dealer and delivery service shall refuse delivery and return the alcoholic liquors to the retail dealer's licensed premises on the same date of collection and attempted delivery when the recipient is not present or:

(1) is less than twenty‑one years of age;

(2) fails to produce valid identification;

(3) appears to be intoxicated; or

(4) the retail dealer or delivery service employee or independent contractor is unable to scan and retain, or manually record or document the recipient’s name, date of birth, type of identification presented and signature.

(N) Each retail dealer or delivery service that delivers alcoholic liquors must monetarily incentivize its employees or independent contractors to return alcoholic liquors to the retail dealer's licensed premises if the delivery is refused by the recipient or pursuant to subsection (M).

(O) A customer order made through a delivery service licensee or directly through a retail dealer shall result in a sale deemed to have been made on the retail dealer’s licensed premises.

(P)(1) For violations of this section, and for a violation of any regulation pertaining to alcoholic liquors, the department may, in its discretion, impose a monetary penalty upon a retail dealer or the holder of a delivery service license in lieu of suspension or revocation. The amount of any penalty imposed must be no less than twenty‑five dollars and no more than one thousand dollars. The fine is subject to a hearing as provided in the South Carolina Revenue Procedures Act and the Administrative Procedures Act.

(2) The department in its discretion may suspend payment of a fine or a monetary penalty imposed under this section. Any fines collected pursuant to this section must be credited to the general fund.

(3) If the department imposes a monetary penalty under this section which is not paid or a contested case hearing is not requested within thirty days after demand by the department, the license or licenses may be suspended or revoked by the department.

(4) Penalties provided for in this section are in addition to any fines and penalties imposed by law or by any court of competent jurisdiction for violation of the laws of this State.

(5) In addition to the penalties provided in this subsection, the department may revoke the delivery license of an entity or person failing to comply with any requirements hereof.

SECTION 7. If any provision of this act, or its application to any person or circumstance, is determined by a court or other authority of competent jurisdiction to be invalid or unconstitutional, that provision must be stricken and the remaining provisions must be construed in accordance with the intent of the General Assembly to further limit rather than expand commerce in beverages containing alcohol, and with respect to such beverages, the remaining provisions must be construed to enhance strict regulatory control over the taxation, importation, production, distribution, sale, and delivery of beverages containing alcohol through the three‑tier regulatory system and the licensing laws imposed by this act.

SECTION 8. This act takes effect one hundred twenty days after approval by the Governor.

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