



April 14, 2020

VIA e-mail at director@dor.sc.gov

W. Hartley Powell
Director, South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Columbia, SC 29210

Re: Relief for the South Carolina Brewing Industry

Dear Director Powell:

As Executive Director of the South Carolina Brewers Guild, I again write on behalf of South Carolina's 92 operating breweries and brewpubs, their employees, and their families to request immediate assistance in aiding our industry, which is comprised completely of small businesses. I want to thank you and Governor McMaster for working to temporarily defer the payment of payroll, excise, retail, income, and other business taxes. Additionally, the suspension of the prohibition on drive-thru and curbside beer and wine takeaway in S.C. Code. Reg. § 7-702.5 has been of great use to our members as it allows for a balance between promoting commerce and respecting social distancing guidelines to aid in combatting COVID-19 exposure. While together all of these measures have been helpful to our members, unfortunately, if things remain unchanged, they will not be enough to provide the necessary relief to ensure longer-term stability for them.

Recently, the Brewers Association, the national trade association for all breweries and brewpubs in America, conducted a survey among members which contained some troubling findings. Among the most jarring: the majority of respondents did not think their small businesses could survive three months under the current conditions - with 46.4% saying they will likely only last between one and three months, and 12.7% saying they could stay afloat for only another one to four weeks. Not surprisingly, 65.7% of respondents had laid off staff as sales had an average drop of 68% across the board.¹

While those statistics on a national level are troubling enough, we recently conducted our own survey of our members in South Carolina, which unfortunately, showed even more concerning results.

- On average, sales are down by 70%. With about 45% showing sales declines over 80%.

¹ <https://www.brewersassociation.org/insights/brewery-sales-dropping-sharply-many-set-to-close/>

- 35% of all breweries have ceased production entirely, with 60% slowing it.
- About 70% of our members have been forced to lay off or furlough employees. By last count, the South Carolina brewing industry accounts for about 5,000 jobs.²

Most of these numbers are attributable to the fact that because of the way the beer laws are written in our state, most breweries and brewpubs have to have an on-premise component in order to be successful, which of course, under current guidelines, is not possible. That coupled with the shuttering of many retail establishments has also led to a massive slowdown in wholesaler purchases, leaving the only avenue to sell product as completely to-go out of the facility. While those statistics are troubling, perhaps the most concerning finding in the survey was that 80% of respondents do not think they can survive three months under the current conditions - with 15% saying they won't be able to stay open another one to four weeks and a whopping 65% saying they likely will only be able to stay open between one and three months.³

Our industry now stands at a crossroads. However, our respondents did overwhelmingly say that there is something that SCDOR can do to help stem the tide of these potential closings: that being to lift any prohibition on the home delivery or direct shipping of beer by breweries and brewpubs - as well as retailers. In fact, over half of our respondents reported that allowing such practices would allow them to hire back employees. On behalf of our members, I implore you to give this request due consideration for several of the reasons listed below:

(1) **It promotes social distancing guidelines and public safety.** Under Governor McMaster's Executive Order 2020-21, all South Carolina residents are requested to stay at home or work with few exceptions. Breweries and brewpubs are fortunate to be declared as essential businesses by both the Governor and the federal Cybersecurity and Infrastructure Security Agency due to their position in the food supply chain.⁴ While people will leave their homes on occasion for trips to the store for essential supplies, allowing breweries and brewpubs to deliver product or ship directly eliminates the need for added trips for individuals. This allows the businesses to continue making sales while promoting public safety in keeping people at home. Additionally, by setting up a system of online or telephonic ordering with payment taken in either way would allow for a completely contactless transaction which further promotes public safety in decreasing potential exposure. We understand that SCDOR might have concerns about allowing the delivery of alcohol as has been expressed in the past in various settings.

Like you, we are deeply concerned about the general sale to alcohol underage individuals and therefore as a matter of course, we would require identification at the

² https://www.postandcourier.com/health/covid19/most-sc-craft-brewers-will-be-forced-to-shut-within-months-without-more-relief-guild/article_654e4cec-79e4-11ea-915a-fbc87fe6f210.html

³ http://www.scbeer.org/uploads/6/5/0/8/65087761/guild_survey_results_041420.pdf

⁴ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

time of taking the order and at the time of delivery. We would also have proper record keeping so that appropriate taxes are paid to SCDOR at the stated time and have all delivery personnel be of sufficient age. In the case of direct shipping, we would require identification to match a credit card at the time of the transaction and a physical address. Attached, please find a proposal for how this would work. In total, allowing these practices would promote proper social distancing guidelines and allow greater public safety by keeping people at home with their families while allowing our members to better take care of theirs.

(2) Many other states have enacted similar emergency measures. We understand that this request is novel and that by in making it, we are asking SCDOR to reverse a held position. However, in providing for the relief requested for a temporary time due to the current crisis, South Carolina would be joining numerous other states that have already enacted similar measures in order to help its taxpaying small businesses make it through the pandemic. While many states already have such laws on the books (such as North Carolina and Ohio), the following states have already enacted these emergency measures: Arizona,⁵ Arkansas,⁶ California,⁷ Colorado,⁸ Connecticut,⁹ District of Columbia,¹⁰ Florida,¹¹ Illinois,¹² Indiana,¹³ Iowa,¹⁴ Kentucky,¹⁵

⁵ https://azliquor.gov/assets/documents/homepage_docs/EO2020-9.pdf

⁶ <https://www.dfa.arkansas.gov/news/details/restaurants-and-microbreweries-allowed-to-deliver?fbclid=IwAR0EomxID-gV8HeUNlutEealbbvCU2le9ne-slqjlCYCIDF2oAu3wx4B6jo>

⁷ <https://www.abc.ca.gov/guidance-by-license-type/>

⁸ <https://multimedia.getresponse.com/getresponse-BNcmV/documents/d3e109f1-4313-43a0-bc97-116fbc32c814.pdf>

⁹ https://portal.ct.gov/-/media/DCP/LIQUOR_CONTROL/Latest-Liquor-News-Alerts/7G_7T_IO.pdf?la=en

¹⁰ <https://abra.dc.gov/node/1467596>

¹¹ <http://www.myfloridalicense.com/DBPR/os/documents/DBPR%20FAQs%20re%20EO%2020-71.pdf>

¹² <https://www2.illinois.gov/ilcc/News/SiteAssets/Pages/COVID/Guidance%20on%20Temporary%20Delivery%20of%20Alcoholic%20Liquor.pdf>

¹³ <https://www.in.gov/atc/files/Memo%20-%20David%20Cook%20-%20Carryout%20and%20extension%20information.pdf>

¹⁴ <https://abd.iowa.gov/covid-19-updates#heading6>

¹⁵ <https://abc.ky.gov/ABC%20COVID19%20Alerts/ABC%20Order%202020-215.pdf>

Maine,¹⁶ Maryland,¹⁷ Massachusetts,¹⁸ Michigan,¹⁹ Missouri,²⁰ Montana,²¹ New Hampshire,²² New Jersey,²³ New York,²⁴ Oklahoma,²⁵ Oregon,²⁶ Vermont,²⁷ Virginia,²⁸ Washington,²⁹ and West Virginia.³⁰ The list is diverse - both in geography and in alcohol law treatment. We support the efforts in these states and ask South Carolina to join them in granting these requests to our breweries, brewpubs, and others in the hospitality industry.

(3) South Carolina has no direct laws banning these practices. One other consideration in granting the requested relief on a temporary basis is that South Carolina alcohol law does not speak directly to these practices. There are no statutes or regulations pertaining to breweries or brewpubs that speak specifically to home delivery or direct shipping to consumers. As you know, under Governor McMaster’s Executive Order 2020-10, SCDOR is given the ability to “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency.” Implicit in this directive is that cabinet agencies cannot only deal with existing regulations but also issue interpretations on issues that are not necessarily contained in the law. While we understand that usually in endorsing various trade practices, SCDOR looks for empowering language in the law, given the extreme

¹⁶ https://www.maine.gov/dafs/bablo/sites/maine.gov.dafs.bablo/files/inline-files/Info%20from%20Governor%20Mills%203%2018%20EO%20-%20closure%20of%20all%20on%20prem%20-%20on%20prem%20can%20sell%20to%20go_0.pdf

¹⁷ <https://governor.maryland.gov/wp-content/uploads/2020/03/Beverage-Delivery.pdf>

¹⁸ <https://www.mass.gov/doc/abcc-advisory-regarding-on-premises-licensees-selling-for-off-premises-consumption/download>

¹⁹ https://www.michigan.gov/documents/lara/Coronavirus_FAQ_683926_7.pdf

²⁰ <https://atc.dps.mo.gov/IndustryCircular/circular-atc-response-to-covid-19.pdf>

²¹ <https://mtrevenue.gov/wp-content/uploads/2020/03/2020-03-23-Guidance-for-Governors-Directive.pdf>

²² <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-6.pdf>

²³ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

²⁴ <https://sla.ny.gov/Restrictions-in-Response-to-COVID-19>

²⁵ <https://www.ok.gov/able/documents/statement%20on%20delivery.pdf>

²⁶ https://www.oregon.gov/olcc/docs/covid19/OLCC_COVID_Alcohol_FAQs.pdf

²⁷ <https://governor.vermont.gov/sites/scott/files/documents/Directive%204%20-%20Department%20of%20Liquor%20and%20Lottery%20-%20Delivery%20and%20Take-Out%20of%20Beverage%20Alcohol%20-%20Amended%20March%2020%2C%202020.pdf>

²⁸ <https://www.abc.virginia.gov/library/covid19/pdf/message-customers-and-industry-partners-32020.pdf?la=en>

²⁹ https://lcb.wa.gov/agency/covid-19_update

³⁰ <https://abca.wv.gov/Documents/Limited%20Home%20Delivery%20Advisory.do2.040220.pdf>

and unprecedented circumstances we now face, allowing the requested relief until the crisis abates would not break any laws or regulations or require suspension of enforcement mechanisms, but would instead be seen as a stopgap that helped small businesses in order to keep an industry afloat. Additionally, allowing these requested practices will ensure that breweries and brewpubs will not have to dump product due to spoilage, which allows them additional revenue and allows SCDOR added tax revenue in the future.

We believe that breweries and brewpubs are wonderful small and independent businesses that are good for our state's economy. Giving them added temporary rights - along with our retail partners³¹ - during this crisis is imperative to their survival so that they can continue to be what they always have been - job creators and community anchors. I respectfully request that you give these requests due consideration in this very difficult time and appreciate your continued support of our industry.

Sincerely yours,



Brook Bristow
Executive Director

BB/

cc: The Honorable Henry McMaster
State House
1100 Gervais Street
Columbia, South Carolina 29201

info@scbeer.org - (843) 410-8712

³¹ While we only are authorized to represent the brewing industry, we acknowledge that allowing these rights for retailers would also be beneficial as it opens up added revenue sources for them along with distribution partners.