

## **LEGISLATIVE UPDATE ...**

*News You Can Use From the South Carolina Retail Association*



## **South Carolina's 2006 Legislative Session**

The South Carolina General Assembly returned to Columbia, Tuesday January 10<sup>th</sup> 2006 to convene the second year of a two- year Legislative session.

The session has been very busy with issues left on the table from last year coupled with new topics that have evolved over the summer and fall. Such topics include issues from the aftermath of Hurricanes, Katrina, Rita and Ophelia. Out of those natural disasters, we have seen changes to the price gouging laws, disaster response issues, and port issues regarding gasoline and petroleum products, trucking priorities during times of a natural disaster and security needs.

South Carolina will have elections in 2006 with the House of Representatives up for re-election. Hot topics for re-election campaigns are in the forefront. The most burning of those issues is to provide some property tax relief for homeowners in South Carolina.

In addition, other major issues have consumed the General Assembly to include worker's compensation reform, changes to eminent domain laws, property tax relief and budget hearings. It is the first time in several years that South Carolina has forecasted a revenue surplus and how to spend those dollars has bogged down the House Ways and Means Committee.

Other issues of interest to the retailer that is part of the legislative debate include alcohol coupons, pseudoephedrine/ DMX restrictions, and possible cigarette tax increases.

Below you will find bills that were carried over to the 2006 session plus a brief description of legislative issues seen in the 2006 session.

## **Property Tax Reform –H. 4449 H. 4450 Rep. Bobby Harrell**

Property tax reform bills have been adopted in the House of Representatives and sent to the Senate. The House bills were referred to the Senate Finance Committee where Chairman Leatherman has promised “a thorough review” of the House passed proposals. The Senate’s proposed constitutional amendment (S.960) has been placed in special order status on the calendar.

The House plan would strip 85% of property taxes from owner-occupied homes and raise the state sales tax to 7% (groceries are exempt from this sales tax increase). The House voted to abolish residential property taxes that pay for school, city and county operations. The House plan does not remove property tax for bond repayment. The plan also eliminates reassessment.

The Senate Judiciary Committee plan imposes a cap on reassessment increases and gives each county the option to override that change by a vote of the elected county council. The Senate plan also provides for the option of changing to a point of sale reassessment system, whereby homes are reassessed only when they are sold or improved. Currently, all property is reassessed every five years. **The Senate Judiciary and Finance Subcommittee on Property Tax** agreed to a two cent sales tax increase (except on food), the creation of a \$125 million reserve fund, a rollback on sales tax on food from five percent to two percent, and an income tax credit for renters. In addition, the Committee agreed to reduce property taxes on school operations only for owner occupied homes and personal vehicles.

## **Retail Trucks in Times of Disaster**

We have recently seen the effects that natural disasters can have on both our state and our nation. One of the most critical aspects to recovery in the times of disaster is the ability of retailers to get delivery trucks carrying necessities to the disaster areas. Whether these trucks are carrying plywood, ice, water or medicine it is essential that stores located in disaster areas have the items that consumers need to survive and begin recovery efforts. Too often, retail trucks are being prohibited from delivering these supplies and are turned back. In response to similar situations, Florida enacted legislation allowing retail delivery trucks to travel to disaster areas.

SCRA has met with the SC Attorney General to discuss this matter with him. He was supportive and requested we work with him on this legislation.

## **Price Gouging Rep. H. 4316- Bobby Harrell**

The South Carolina Attorney General asked the state legislature in to add a provision that allows the attorney general to use the price-gouging law if the president or another governor declares an emergency or disaster that results in an abnormal disruption in South Carolina's gasoline supplies.

Under current law, the price-gouging act, which carries fines and possible jail time, takes effect only if South Carolina's governor or the president declares an emergency or disaster in the state. Because Gov. Mark Sanford did not declare an emergency when prices surged after Hurricane Katrina, McMaster used the state's civil laws to follow up on allegations of unusually high gasoline prices.

## **Worker's Compensation Reform/ Second Injury Fund- H. 4427 Rep. Harry Cato**

The House Labor Commerce and Industry Committee are debating Workers' Compensation Reform. They are debating the merits of the Governor's Task Force on Worker's Compensation Reform report, as well as collecting testimony from all concerned parties. Some of the proposals under discussion include the abolition of the Second Injury Fund and the reversal of the Brown v. Bi-Lo and Tiller v. National Health Care decisions. The Full Committee is debating the bill. The main points under contention are the non-dissolution of the Second Injury Fund (the bill currently states it will be absolved in 2012 if the claims against the fund exceed \$8 million); the cap on defense attorney's fees at \$4500.00; and the requirement that a Commissioner use AMA guidelines to determine a claimant's award. The Senate has referred Workers' Compensation legislation to the Senate Judiciary Committee. Senator McConnell announced the subcommittee members but has not set a date for their first meeting.

## **Coupons H. 4768 -Rep. Jim Harrison**

This bill limits IRC's (Instant redeemable coupons) to two dollars and takes the wholesaler completely out of the redemption process. It prohibits scan-backs, and scan-downs (rebates paid to the retailer for sales recorded by a scanner at POS). The bill also requires that the retailer report on its sales return and pay sales taxes computed on the amount it receives as a payment or a reimbursement for the coupon or the price reduction. Violations will be subject to a civil fine of \$100 per coupon violation.

## **Blue Laws- H. 3647- Rep. Ted Pitts**

This bill was carried over from last year and retains its place on the Senate calendar.

The bill eliminates throughout the state Blue Law provisions that restrict the sale of certain items and prohibit certain work and other activities on Sundays. The legislation provides that an employee of a business that operates on Sunday have the option of refusing to work until 1:30 p.m. on Sunday, if the employee is conscientiously opposed to Sunday work. This conscientious objector provision does not apply to employees, including support, maintenance, repair, and other service personnel, of a manufacturing establishment or a research and development operation that by its nature or for economic reasons involves processes requiring continuous and uninterrupted operation. The legislation makes no changes to provisions that prohibit or otherwise regulate the sale of alcoholic liquors, beer, or wine on Sunday.

## **Pseudoephedrine- H.3692 -Rep. Joann Brady**

The bill was recently sent to the Senate floor with a minority report on the bill requested by Senator Brad Hutto (D- Orangeburg). This minority report requires the bill go to the contested calendar where it must sit for six legislative days before it can be set for special order for consideration. Many changes were made to the bill by SCRA when the bill went to the Senate. SCRA was able to change the language that required the log be sent to law enforcement every 60 days, to retaining the logs for two years and only have to make them available upon request. Those records can be destroyed after two years. SCRA also changed the language to make violations meet the knowingly and willing standards. Below is a synopsis of the bill.

- The bill requires sole ingredient products to be offered for retail if sold in blister packaging and may not be offered for retail sale by self-service but only from behind a counter or barrier

- no sale in any single over the counter sale more than three packages of any product containing ephedrine or pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number
- Persons selling products shall require the purchaser to produce a photo ID showing DOB and require the purchaser sign a written log or electronic log showing date of transaction, name of the person, the person's address, the amount of the compound, mixture, or preparation.

- The log must be made available upon request to the State Law Enforcement Agency within 24 hours of the request. The logs may be destroyed after that two-year period.

- A person who willfully and knowingly violates these requirements is guilty of a misdemeanor; and

First offense- fined not more than \$500

Second offense- fined not more than \$1000 or imprisoned not more than six months

A meth awareness or education program, which must include the provisions of this section, is prima facie evidence that the store has complied with the provision of the section.

The bill will also include a sunset provision after 5 years.

## **Commons Sense Consumption Act –H. 3613- Rep. Herb Kirsh**

The Common Sense Consumption Act is a bill that is supported by many associations in its original form. The bill as written originally is a weight gain or obesity bill where a manufacturer, packer, distributor, carrier, holder, marketer, seller is not liable in an action resulting in weight gain or health conditions resulting from the person's long-term purchase or consumption of food or nonalcoholic beverages.

\*\*The bill was amended to state that the bill only applies to those manufacturers, packers, distributors, carriers, holders, sellers, or marketers of foods that does not comply with the content and nutritional labeling disclosures provisions with the FDA. It also states that a retail establishment that serves food and nonalcoholic beverages complies with the provisions by making information available upon request to the consumer.

## **Retail Facilities Revitalization Act -H. 3841- Rep. Scott Talley**

Representative Scott Talley's bill creates an incentive for the renovation, improvements, and redevelopment of abandoned retail or wholesale facility sites located in SC. A taxpayer who made these improvements would be eligible for one of two tax credits. They carried over the bill to await a fiscal impact statement from the Department of Revenue and to possibly entertain further amendments to further lower the threshold of a "site" but would change the tax credit section if lowered. The bill currently gives:

1. A credit against real property taxes levied by local governments equal to 25% of the rehabilitation expenses; or
2. a credit against any state income taxes imposed equal to 25% of the rehabilitation expenses.
3. The definition of "eligible site" from a shopping mall or freestanding site to 50,000 square feet.

## **YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2005 -H. 3243 just signed into law by Gov. Sanford**

Under this bill, it is unlawful for a person to sell, furnish, give, distribute, purchase for, or provide a minor under the age of 18 a tobacco product.

The bill also provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is not required from an individual who the person reasonably believes to be over 27 years of age. The bill further provides that a retail distributor of tobacco products must provide training to its employees about selling tobacco related products. Any retail establishment that does not provide training is subject to a fine of not more than \$1,000 dollars.

The bill makes it unlawful for a person under 18 to possess a tobacco product. Exceptions are made for people under 18 who make certain deliveries.

Violations are misdemeanors triable exclusively in either municipal or magistrate court. For a first offense, the penalty is a fine of not less than \$100 dollars. For a second offense, which occurs within three years of the first offense, the penalty is a fine of not less than \$200 dollars. For third and subsequent offenses, which occur within three years of the first offense, the penalty is a fine of not less than \$300 dollars. In lieu of these penalties, the court may require an individual who is less than 18 who illegally purchases or possesses a tobacco product to perform not less than 24 hours of community service for the first offense and not less than 40 hours of community service for a second or subsequent offense. A person who is less than 18 may have his or her record expunged upon becoming 18 if the person has paid the fine imposed and successfully completed any court-ordered community service. A violation of the provisions of this bill does not violate an establishment's beer and wine permit and is not a ground for revocation or suspension of a beer and wine permit. In addition, a conviction does not affect a person's eligibility for a LIFE Scholarship or any other state sponsored scholarship program.

### **“Identity Theft Protection Act” –H. 4297- Rep. Herb Kirsh**

This legislation is very comprehensive and defines many terms such as consumer, consumer report, personal identifying information, proper ID, records, security breach, security freeze, and records.

- Defines how a social security number may be properly used and not used;
- Defines how a consumer credit-reporting agency shall handle written request for a security freeze by a consumer;
- Defines how a business conducting business in SC shall maintain or possess Personal Identifying information of a consumer resident of this state and defines violations;
- Defines terms of collecting social security numbers; and
- Defines when a person is guilty of financial fraud.

SCRA will carefully monitor this bill.

### **Eminent Domain Proposals -H . 3204- Rep. Tracy Edge**

Members of both the House and Senate are working to adopt new restrictions on public development of private property rights in the wake of a recent court ruling giving local government's broader authority to condemn private property if it is in the public's interest. Eminent domain is the power of a governmental entity to take private real estate for public use, with or without the permission of the owner. There is a joint resolution proposal being debated that would submit to the voters in the next general election whether or not to amend the State Constitution concerning the exercise of the power of eminent domain by public bodies. The proposed amendment deletes certain county specific provisions in the State Constitution. The proposed amendment provides that private property must not be taken if at the time of the condemnation the public body condemning the property intends to convey any interest in the real property to another private party with specified exceptions. The proposed amendment further provides for just compensation for the owner of real property if a land use law reduces its fair market value.

**Income Tax Credit for Milk Producers Passed last year on the last day of session.** It states the following:

Section 12-6-3580. (A) A resident taxpayer engaged in the business-producing milk for sale is allowed a refundable income tax credit based on the amount of milk produced and sold. The credit may be claimed against the taxes due pursuant to Section 12-6-510 or 12-6-530. The credit is allowed when USDA Class 1 price of fluid milk in South Carolina drops below the production price anytime during the taxable year.

(B) The Department of Agriculture shall promulgate regulations to implement the provisions of this section, including the establishment of the production price, which must consider the following factors, including but not limited to:

- (1) The average price of milk in the top five states where milk is imported to South Carolina;
- (2) The average transportation cost of importing milk from those five states, and
- (3) The cost of production in South Carolina.

(C) (1) each qualifying taxpayer is eligible for a ten thousand dollar tax credit based on the production and sale of the first five hundred thousand pounds of milk sold below the (2) For each additional five hundred thousand pounds of milk sold below production price, there is allowed an additional credit on five thousand dollars also prorated on a quarterly basis.

(D) If no taxes are due, or the credit exceeds the tax liability of the taxpayer for the taxable year, the amount of the credit or excess over the tax liability refunded to the taxpayer. The South Carolina Commissioner of Agriculture shall certify to the Department of Revenue that producers claiming credits have met the eligibility requirements provided in the section.

(E) The credit allowed pursuant to this section must be reviewed after it has been in place for two taxable years.