



HENRY McMASTER
GOVERNOR

September 29, 2020

The Honorable Scott Talley
612 Gressette Building
Columbia, South Carolina 29201

Dear Senator Talley:

I have signed into law R-166, S. 1099, which prohibits a manufacturer, brewer, or importer of beer from requiring a wholesaler to undertake certain actions.

As you know, the South Carolina Constitution expressly provides that, in exercising the police power of the State, “the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State.” S.C. Const. art. VIII-A, § 1. In passing S. 1099, it is my understanding that the General Assembly, pursuant to the aforementioned authority, has deemed it necessary and appropriate to prohibit certain acts or contractual arrangements related to the distribution of beer in this State. As expressed during the debate in the respective bodies, it appears that the General Assembly has equated certain contractual terms, practices, or arrangements regarding the distribution of beer to contracts of adhesion and essentially found them to be contrary to the public policy of this State.

Given that the constitution contains a clear textual commitment of authority to the General Assembly regarding the regulation of alcoholic beverages, a degree of deference is warranted since the legislature has endeavored to address policy matters within its prerogative. However, some have questioned whether S. 1099 may violate the prohibitions against the impairment of contracts contained in our state and federal constitutions, U.S. Const. art. I, § 10, cl. 1; S.C. Const. art I, § 4, at least to the extent this legislation could potentially apply not only to future contracts but also to existing agreements. Although these concerns ultimately were not shared by a majority of the members of the General Assembly, I believe that they raise reasonable questions and are a product of well-intentioned skepticism. Accordingly, I write briefly to address the same in the context of my review of S. 1099.

In short, while I agree that the General Assembly should take care to avoid the prospect of interfering with contracts between private parties, any such concerns must be viewed in light of the General Assembly’s constitutional authority to regulate the manufacture, sale, and retail of

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alcoholic beverages within this State. *See City of Rock Hill v. Harris*, 391 S.C. 149, 157 & n.2, 705 S.E.2d 53, 57 & n.2 (2011). To this end, the South Carolina Supreme Court has previously addressed similar claims in other contexts and noted that “there is ‘no substantial impairment of a contract where the subject of the contract is a highly regulated business whose history makes further regulation foreseeable.’” *Rick’s Amusement, Inc. v. State*, 351 S.C. 352, 361, 570 S.E.2d 155, 159 (2001) (quoting *Mibbs, Inc. v. S.C. Dep’t of Revenue*, 337 S.C. 601, 608, 524 S.E.2d 626, 629 (1999)). As our supreme court recently noted, although the State’s police power is not without limits, “the South Carolina Constitution contains a broad mandate to the General Assembly with respect to regulating the sale and retail of alcohol in South Carolina.” *Retail Servs. & Sys., Inc. v. S.C. Dep’t of Revenue*, 419 S.C. 469, 472, 799 S.E.2d 665, 666 (2017). Therefore, where, as here, the General Assembly regularly exercises its authority to regulate the manufacture, sale, and distribution of alcoholic beverages, I do not believe that this legislation poses a “substantial impairment” of a contract under South Carolina law.

In sum, notwithstanding the aforementioned concerns, I do not believe this bill is clearly unconstitutional in view of the policy interests expressed and addressed by the General Assembly. Nevertheless, I would encourage all interested parties to work with the General Assembly going forward to address any such issues in a cooperative manner. For the foregoing reasons, I have signed S. 1099 into law.

Yours very truly,



Henry McMaster