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HOUSE BILL NO. 795

House Amendments in [] — February 2, 2000

A BILL to amend and reenact §§ 4.1-208, 4.1-210, 4.1-231, and 4.1-233 of the Code of Virginia, relating to alcoholic beverage control; annual mixed beverage amphitheater licenses.

Patrons—Wagner and Purkey

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-208, 4.1-210, 4.1-231, and 4.1-233 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-208. Beer licenses.

The Board may grant the following licenses relating to beer:

1. Brewery licenses, which shall authorize the licensee to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with Board regulations, in closed containers to (i) persons licensed to sell the beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale, only as provided in subdivision B 4 of § 4.1-216, (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

2. Bottlers' licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer in closed containers and to bottle, sell and deliver or ship it, in accordance with Board regulations to (i) wholesale beer licensees for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

3. Wholesale beer licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship it, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

4. Beer importers' licenses, which shall authorize persons licensed within or outside the Commonwealth to sell and deliver or ship beer into the Commonwealth, in accordance with Board regulations, in closed containers, to persons in the Commonwealth licensed to sell beer at wholesale for the purpose of resale.

5. Retail on-premises beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas.

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them for on-premises consumption when carrying passengers.

c. Persons operating boats for which certificates as a sight-seeing carrier by boat, or a special or charter party by boat have been issued by the Department of Motor Vehicles pursuant to § 46.2-2607, which shall authorize the licensee to sell beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers.

d. Grocery stores located in any town or in a rural area outside the corporate limits of any city or town, which shall authorize the licensee to sell beer for on-premises consumption in such establishments. No license shall be granted unless it appears affirmatively that a substantial public demand for such licensed establishment exists and that public convenience and the purposes of this title will be promoted by granting the license.

e. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize the licensee to sell beer, in paper, plastic, or similar disposable containers, during the performance of professional sporting exhibitions, events or performances immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas, and additional locations designated by

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the Board in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

f. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which (i) has seating for more than 20,000 persons and is located in any county with a population between 210,000 and 216,000 or in any city with a population between 392,000 and 394,000 or (ii) has seating for more than 3,500 persons and is located in any county with a population between 65,000 and 70,000. Such license shall authorize the licensee to sell beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

g. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or exposition halls" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

6. Retail off-premises beer licenses, which shall authorize the licensee to sell beer in closed containers for off-premises consumption and to deliver or ship the beer to purchasers in accordance with Board regulations.

7. Retail off-premises brewery licenses to persons holding a brewery license which shall authorize the licensee to (i) sell beer at the place of business designated in the brewery license, in closed containers which shall include growlers and other reusable containers, for off-premises consumption and (ii) deliver or ship the beer to purchasers in accordance with Board regulations.

8. Retail on-and-off premises beer licenses to persons enumerated in subdivisions 5 a and d, which shall accord all the privileges conferred by retail on-premises beer licenses and in addition, shall authorize the licensee to sell beer in closed containers for off-premises consumption and to deliver or ship the beer to purchasers in accordance with Board regulations.

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas on the premises of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least forty-five percent of the gross receipts from the sale of mixed beverages and food.

If the restaurant is located on the premises of a hotel or motel with not less than four permanent bedrooms where food and beverage service is customarily provided by the restaurant in designated areas, bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell spirits packaged in original closed containers purchased from the Board for on-premises consumption to registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own lawfully acquired spirits in bedrooms or private rooms.

If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on another portion of the premises of the same hotel or motel building, this fact shall not prohibit the granting of a license by the Board to such club qualifying in all other respects. The club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises shall amount to at least forty-five percent of its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to

such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least forty-five percent of the gross receipts from the sale of mixed beverages and food.

3. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in charge of a special event, which shall authorize the licensee to sell and serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. A separate license shall be required for each day of each special event.

4. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating a performing arts facility or (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture. The operation in either case shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the sale, on the dates of performances or events in furtherance of the purposes of the nonprofit corporation or association, of alcoholic beverages, for on-premises consumption in areas upon the licensed premises approved by the Board.

5. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth.

6. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer club license to sell and serve mixed beverages for on-premises consumption by club members and their guests in areas approved by the Board on the club premises. A separate license shall be required for each day of each club event. No more than twelve such licenses shall be granted to a club in any calendar year.

7. *Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in any county with a population between 210,000 and 216,000 or in any city with a population between 392,000 and 394,000. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. [Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.]*

B. The granting of any license under subdivisions 1, 5 and, 6, or 7 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

§ 4.1-231. Taxes on state licenses.

A. The annual taxes on state licenses shall be as follows:

1. Alcoholic beverage licenses. For each:

a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, \$350; and if more than 5,000 gallons manufactured during such year, \$2,860;

b. Fruit distiller's license, \$2,860;

c. Banquet facility license or museum license, \$145;

d. Bed and breakfast establishment license, \$25;

e. Tasting license, \$30 per license granted; and

f. Equine sporting event license, \$100.

2. Wine licenses. For each:

a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$350, and if more than 5,000 gallons manufactured during such year, \$2,860;

b. Wholesale wine license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year;

c. Wine importer's license, \$285;

d. Retail off-premises winery license, \$110; and

e. Farm winery license, \$145.

183 3. Beer licenses. For each:

184 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which
185 the license is granted, \$1,650, and if more than 10,000 barrels manufactured during such year, \$3,300;

186 b. Bottler's license, \$1,100;

187 c. Wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less,
188 and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a
189 year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year;

190 d. Beer importer's license, \$285;

191 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common
192 carrier of passengers by train or boat, \$110; for each such license to a common carrier of passengers by
193 train or boat, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club
194 cars operated daily in the Commonwealth;

195 f. Retail off-premises beer license, \$90; and

196 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a
197 town or in a rural area outside the corporate limits of any city or town, \$230.

198 4. Wine and beer licenses. For each:

199 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a
200 common carrier of passengers by train, boat or airplane, \$230; for each such license to a common
201 carrier of passengers by train or boat, \$230 per annum for each of the average number of boats, dining
202 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to
203 a common carrier of passengers by airplane, \$575;

204 b. Retail on-premises wine and beer license to a hospital, \$110;

205 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
206 grocery store license, \$175;

207 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$460;

208 e. Banquet license, \$30 per license granted by the Board; and

209 f. Gourmet brewing shop license, \$175.

210 5. Mixed beverage licenses. For each:

211 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants
212 located on premises of and operated by hotels or motels, or other persons:

213 (i) With a seating capacity at tables for up to 100 persons, \$430;

214 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$750; and

215 (iii) With a seating capacity at tables for more than 150 persons, \$1,100.

216 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
217 private, nonprofit clubs:

218 (i) With an average yearly membership of not more than 200 resident members, \$575;

219 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
220 \$1,430; and

221 (iii) With an average yearly membership of more than 500 resident members, \$2,125.

222 c. Mixed beverage caterer's license, \$1,430.

223 d. Mixed beverage special events license, \$35 for each day of each event.

224 e. Mixed beverage club events licenses, \$25 for each day of each event.

225 f. Annual mixed beverage special events license, \$430.

226 g. Mixed beverage carrier license:

227 (i) \$145 for each of the average number of dining cars, buffet cars or club cars operated daily in the
228 Commonwealth by a common carrier of passengers by train;229 (ii) \$430 for each common carrier of passengers by boat; ~~and~~230 (iii) \$1,135 for each license granted to a common carrier of passengers by airplane; *and*231 *h. Annual mixed beverage amphitheater license, \$430.*232 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax
233 imposed by this section on the license for which the applicant applied.234 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
235 subject to proration to the following extent: If the license is granted in the second quarter of any year,
236 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
237 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
238 three-fourths.239 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
240 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
241 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
242 number of gallons permitted to be manufactured shall be prorated in the same manner.243 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
244 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or

winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.

Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than twelve months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period.

C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.

§ 4.1-233. Taxes on local licenses.

A. In addition to the state license taxes, the annual local license taxes which may be collected shall not exceed the following sums:

1. Alcoholic beverages. - For each:

a. Distiller's license, \$1,000; no local license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits, or both, during such license year;

b. Fruit distiller's license, \$1,500;

c. Bed and breakfast establishment license, \$40;

d. Museum license, \$10;

e. Tasting license, \$5 per license granted; and

f. Equine sporting event license, \$10.

2. Beer. - For each:

a. Brewery license, \$1,000;

b. Bottler's license, \$500;

c. Wholesale beer license, in a city, \$250, and in a county or town, \$75; and

d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license in a city, \$100, and in a county or town, \$25.

3. Wine. - For each:

a. Winery license, \$1,000; and

b. Wholesale wine license, \$50.

4. Wine and beer. - For each:

a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, in a city, \$150, and in a county or town, \$37.50;

b. Hospital license, \$10;

c. Banquet license, \$5 for each license granted; and

d. Gourmet brewing shop license, \$150.

5. Mixed beverages. - For each:

a. Mixed beverage restaurant license, including restaurants located on the premises of and operated by hotels or motels, or other persons:

(i) With a seating capacity at tables for up to 100 persons, \$200;

(ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and

(iii) With a seating capacity at tables for more than 150 persons, \$500.

b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;

c. Mixed beverage caterer's license, \$500;

d. Mixed beverage special events licenses, \$10 for each day of each event; and

e. Mixed beverage club events licenses, \$10 for each day of each event; and

f. Annual mixed beverage amphitheater license, \$300.

B. Common carriers. - No local license tax shall be either charged or collected for the privilege of selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises consumption only.

C. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,

306 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
307 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
308 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
309 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
310 taxes authorized by this chapter.

311 The governing body of any county, city or town, in adopting an ordinance under this section, shall
312 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
313 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
314 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
315 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
316 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
317 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale
318 merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall
319 be disregarded, which stated amount shall be the amount of wine purchases which would be necessary
320 to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax
321 paid by such wholesale wine licensee.

322 D. Delivery. - No county, city or town shall impose any local alcoholic beverages license tax on any
323 wholesaler for the privilege of delivering alcoholic beverages in the county, city or town when such
324 wholesaler maintains no place of business in such county, city or town.

325 E. Application of county tax within town. - Any county license tax imposed under this section shall
326 not apply within the limits of any town located in such county, where such town now, or hereafter,
327 imposes a town license tax on the same privilege.