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SENATE BILL NO. 591

Offered January 24, 2000

A BILL to amend and reenact §§ 4.1-100 and 4.1-207 of the Code of Virginia, relating to alcoholic beverage control; farm wineries.

Patron—Norment

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-100 and 4.1-207 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-100. Definitions.

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition.

"Barrel" means any container or vessel having a capacity of more than forty-three ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than fifteen bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than forty-three ounces.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means an establishment located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than ~~fourteen~~ ^{fourteen} percent

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60 percent alcohol by volume. As used in this definition, the terms "owner" and "lessee" shall include a
61 cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event
62 such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of
63 the land owned or leased by the individual members of the cooperative as long as such land is located
64 in the Commonwealth.

65 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty
66 items relating to history, original and handmade arts and products, collectibles, crafts, and floral
67 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure
68 where stock is displayed and offered for sale and which has facilities to properly secure any stock of
69 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered
70 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall
71 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be
72 considered a gift shop.

73 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may
74 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such
75 persons facilities for manufacturing, fermenting and bottling such wine or beer.

76 "Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage
77 facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and
78 beers of various types and sizes and related products such as cheeses and gourmet foods are habitually
79 furnished to persons.

80 "Government store" means a store established by the Board for the sale of alcoholic beverages.

81 "Hotel" means any duly licensed establishment, provided with special space and accommodation,
82 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has
83 four or more bedrooms. It shall also mean the person who operates such hotel.

84 "Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order
85 pursuant to this title.

86 "Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to
87 observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

88 "Licensed" means the holding of a valid license issued by the Board.

89 "Licensee" means any person to whom a license has been granted by the Board.

90 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol
91 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits
92 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit
93 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by
94 fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of
95 this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved
96 the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be
97 sold for on-premises consumption other than by mixed beverage licensees.

98 "Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona
99 fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments
100 specializing in full course meals with a single substantial entree.

101 "Member of a club" means (i) a person who maintains his membership in the club by the payment of
102 monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii)
103 a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal
104 descendants of a bona fide member, whether alive or deceased, of a national or international
105 organization to which an individual lodge holding a club license is an authorized member in the same
106 locality. It shall also mean a lifetime member whose financial contribution is not less than ten times the
107 annual dues of resident members of the club, the full amount of such contribution being paid in advance
108 in a lump sum.

109 "Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of
110 spirits.

111 "Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials,
112 and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives
113 which are not commonly consumed unless combined with alcoholic beverages, whether or not such
114 ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a
115 Virginia corporation.

116 "Place or premises" means the real estate, together with any buildings or other improvements thereon,
117 designated in the application for a license as the place at which the manufacture, bottling, distribution,
118 use or sale of alcoholic beverages shall be performed, except that portion of any such building or other
119 improvement actually and exclusively used as a private residence.

120 "Public place" means any place, building, or conveyance to which the public has, or is permitted to
121 have, access, including restaurants, soda fountains, hotel dining areas, lobbies, and corridors of hotels,

and any highway, street, lane, park, or place of public resort or amusement.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Board may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Special agent" means an employee of the Department of Alcoholic Beverage Control whom the Board has designated as a law-enforcement officer pursuant to § 4.1-105.

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of twenty-one percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by such retail licensee.

§ 4.1-207. Wine licenses.

The Board may grant the following licenses relating to wine:

1. Winery licenses, which shall authorize the licensee to manufacture wine and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth. In addition, such license shall authorize the licensee to operate

183 distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit
184 juices only, which shall be used only for the fortification of wine produced by the licensee.

185 2. Wholesale wine licenses, which shall authorize the licensee to acquire and receive deliveries and
186 shipments of wine and to sell and deliver or ship the wine, in accordance with Board regulations, in
187 closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside
188 the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for
189 sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for
190 ports of call of a foreign country or another state.

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

194 3. Wine importers' licenses, which shall authorize persons located within or outside the
195 Commonwealth to sell and deliver or ship wine, in accordance with Board regulations, in closed
196 containers, to persons in the Commonwealth licensed to sell wine at wholesale for the purpose of resale,
197 and to persons outside the Commonwealth for resale outside the Commonwealth.

198 4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the
199 licensee to sell wine at the place of business designated in the winery license, in closed containers, for
200 off-premises consumption and to deliver or ship the wine to the purchasers in accordance with Board
201 regulations.

202 5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing
203 ~~fourteen~~ ^{fourteen} ~~eighteen~~ percent or less of alcohol by volume and to sell, deliver or ship the wine, in
204 accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the
205 wine so manufactured at wholesale or retail for the purpose of resale, § 4.1-326 notwithstanding, or (iii)
206 persons outside the Commonwealth. In addition, the licensee may acquire and receive deliveries and
207 shipments of wine manufactured by the licensee and to sell and deliver or ship this wine, in accordance
208 with Board regulations, to persons licensed to sell wine in the Commonwealth, § 4.1-326
209 notwithstanding.

210 Such licenses shall also authorize the licensee to sell wine at retail at the places of business
211 designated in the licenses, which may include no more than two additional retail establishments of the
212 licensee. Wine may be sold at these business places for on-premises consumption and in closed
213 containers for off-premises consumption, including delivery and shipment of such wine to purchasers in
214 accordance with Board regulations.