

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 784

An Act to amend and reenact §§ 4.1-209, 4.1-215, 4.1-231, and 4.1-233 of the Code of Virginia, relating to alcoholic beverage control; limitations on manufacturers; exception.

[H 1721]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-209, 4.1-215, 4.1-231, and 4.1-233 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-209. Wine and beer licenses; advertising.

A. The Board may grant the following licenses relating to wine and beer:

1. Retail on-premises wine and beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and 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. However, with regard to a hotel classified by the Board as a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board;

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell wine and 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 sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

d. Persons operating as air carriers of passengers on regular schedules in foreign, interstate or intrastate commerce, which shall authorize the licensee to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth while in transit and in designated rooms of establishments of such carriers at airports in the Commonwealth, § 4.1-129 notwithstanding;

e. Hospitals, which shall authorize the licensee to sell wine and beer in the rooms of patients for their on-premises consumption only in such rooms, provided the consent of the patient's attending physician is first obtained;

f. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize the licensee to sell wine and beer in paper, plastic or similar disposable containers, during any event and immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas and additional locations designated by 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;

g. 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 capacity for more than 3,500 persons and is located in any county with a population between 65,000 and 70,000 or in a city with a population between 40,000 and 47,000. Such license shall authorize the licensee to sell wine and 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; and

h. 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 wine and 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 hall" 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.

2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer

in closed containers for off-premises consumption and to deliver the same to purchasers in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed one ounce by volume or (ii) a sample of beer not to exceed two ounces by volume, for on-premises consumption.

4. Convenience grocery store licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition, shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and to deliver the same to the purchasers, in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. *Except as provided in § 4.1-215*, a separate license shall be required for each day of each banquet or special event. For the purposes of this ~~subsection~~ *subdivision*, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer unchilled, only within the interior premises of the gift shop in closed containers for off-premises consumption and to deliver the wine and beer to purchasers in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

8. Gourmet brewing shop licenses, which shall authorize the licensee to sell to any person to whom wine or beer may be lawfully sold, ingredients for making wine or brewing beer, including packaging, and to rent to such persons facilities for manufacturing, fermenting, and bottling such wine or beer, for off-premises consumption in accordance with subdivision 6 of § 4.1-200.

9. Annual banquet licenses, to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

B. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms; and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery; and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

§ 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.

A. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages shall be granted to any (i) manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not; (ii) officer or director of any such manufacturer, bottler or wholesaler; (iii) partnership or corporation, where any partner or stockholder is an officer or director of any such manufacturer, bottler or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of alcoholic beverages; or (v) manufacturer, bottler or wholesaler of alcoholic beverages who has a financial interest in a corporation which has a retail license as a result of a holding company, which owns or has an interest in such manufacturer, bottler or wholesaler of alcoholic beverages. Nor shall such licenses be granted in any instances where such manufacturer, bottler or wholesaler and such retailer are under common control, by stock ownership or otherwise.

Notwithstanding any other provision of this title, a manufacturer of malt beverages or wine, *whether licensed in the Commonwealth or not*, may obtain a banquet license for a special event as provided in § 4.1-209 upon application to the Board provided that such event is (i) at a place approved by the Board

and (ii) conducted for the purposes of featuring and educating the consuming public about malt beverage or wine products. Such manufacturer shall be limited to no more than four banquet licenses for such special events per year. *Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event.*

B. This section shall not apply to:

1. Corporations operating dining cars, buffet cars, club cars or boats;
2. Brewery or winery licensees engaging in conduct authorized by subdivision A 5 of § 4.1-201;
3. Farm winery licensees engaging in conduct authorized by subdivision 5 of § 4.1-207;
4. Manufacturers, bottlers or wholesalers of alcoholic beverages who do not (i) sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail license or banquet license as described in subsection A and (ii) require, by agreement or otherwise, such person to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers; or

5. Wineries, farm wineries, or breweries engaging in conduct authorized by § 4.1-112.1.

C. The General Assembly finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques. The exceptions established by this section to the general prohibition against tied interests shall be limited to their express terms so as not to undermine the general prohibition and shall therefore be construed accordingly.

§ 4.1-231. Taxes on state licenses.

A. The annual fees 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, \$450; and if more than 5,000 gallons manufactured during such year, \$3,725;
 - b. Fruit distiller's license, \$3,725;
 - c. Banquet facility license or museum license, \$190;
 - d. Bed and breakfast establishment license, \$35;
 - e. Tasting license, \$40 per license granted; and
 - f. Equine sporting event license, \$130.
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, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;
 - b. Wholesale wine license, \$930 for any wholesaler who sells 150,000 gallons of wine or less per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and \$1,860 for any wholesaler who sells more than 300,000 gallons of wine per year;
 - c. Wine importer's license, \$370;
 - d. Retail off-premises winery license, \$145;
 - e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license; and
 - f. Wine shipper's license, \$65.
3. Beer licenses. For each:
 - a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;
 - b. Bottler's license, \$1,430;
 - c. Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;
 - d. Beer importer's license, \$370;
 - e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;
 - f. Retail off-premises beer license, \$120;
 - g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$300; and
 - h. Beer shipper's license, \$65.
4. Wine and beer licenses. For each:
 - a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$750;

- b. Retail on-premises wine and beer license to a hospital, \$145;
- c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$230;
- d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600;
- e. Banquet license, \$40 per license granted by the Board, *except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be \$100 per license*;
- f. Gourmet brewing shop license, \$230;
- g. Wine and beer shipper's license, \$65; and
- h. Annual banquet license, \$150.
- 5. Mixed beverage licenses. For each:
 - a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:
 - (i) With a seating capacity at tables for up to 100 persons, \$560;
 - (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
 - (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
 - b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs:
 - (i) With an average yearly membership of not more than 200 resident members, \$750;
 - (ii) With an average yearly membership of more than 200 but not more than 500 resident members, \$1,860; and
 - (iii) With an average yearly membership of more than 500 resident members, \$2,765.
 - c. Mixed beverage caterer's license, \$1,860-;
 - d. Mixed beverage special events license, \$45 for each day of each event-;
 - e. Mixed beverage club events licenses, \$35 for each day of each event-;
 - f. Annual mixed beverage special events license, \$560-;
 - g. Mixed beverage carrier license:
 - (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the Commonwealth by a common carrier of passengers by train;
 - (ii) \$560 for each common carrier of passengers by boat;
 - (iii) \$1,475 for each license granted to a common carrier of passengers by airplane-;
 - h. Annual mixed beverage amphitheater license, \$560;
 - i. Annual mixed beverage motor sports race track license, \$560; and
 - j. Annual mixed beverage banquet license, \$500.
- 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax imposed by this section on the license for which the applicant applied.

B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year, the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.

If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the number of gallons permitted to be manufactured shall be prorated in the same manner.

Should the holder of a distiller's license or a winery license to manufacture not more than 5,000 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 12 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;
 - 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; and
 - e. Beer shipper's license, \$10.
3. Wine. - For each:
 - a. Winery license, \$50;
 - b. Wholesale wine license, \$50;
 - c. Farm winery license, \$50; and
 - d. Wine shipper's license, \$10.
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, *except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be \$20 per license*;
 - d. Gourmet brewing shop license, \$150;
 - e. Wine and beer shipper's license, \$10; and
 - f. Annual banquet license, \$15.
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;
 - e. Mixed beverage club events licenses, \$10 for each day of each event;
 - f. Annual mixed beverage amphitheater license, \$300;
 - g. Annual mixed beverage motor sports race track license, \$300; and
 - h. Annual mixed beverage banquet license, \$75.

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

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

licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall be disregarded, which stated amount shall be the amount of wine purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax paid by such wholesale wine licensee.

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

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