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**HOUSE BILL NO. 602**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact §§ 4.1-207, 4.1-209, and 18.2-323.1 of the Code of Virginia, relating to alcoholic beverage control; privileges of certain retail on-premises licensees.*

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Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-207, 4.1-209, and 18.2-323.1 of the Code of Virginia are amended and reenacted as follows:**

§ 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 (i) operate distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit juices only, which shall be used only for the fortification of wine produced by the licensee, and (ii) store wine in bonded warehouses on or off the licensed premises upon permit issued by the Board.

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

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

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

4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the licensee to sell wine at the place of business designated in the winery license, in closed containers, for off-premises consumption and to deliver the wine to the purchasers in accordance with Board regulations. All such deliveries of wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale or retail for the purpose of resale, § 4.1-326 notwithstanding, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine manufactured by the licensee and to sell and deliver or ship this wine, in accordance with Board regulations, to persons licensed to sell wine in the Commonwealth, § 4.1-326 notwithstanding and (b) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § 4.1-219.

Such licenses shall also authorize the licensee to sell wine at retail at the places of business designated in the licenses, which may include no more than five additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption, including delivery of such wine to purchasers in accordance with Board regulations. All such deliveries of wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee. *In addition, such licenses shall authorize the licensee to permit a patron who has purchased a bottle of wine from the licensee for on-premises consumption to remove from the licensed premises the unconsumed portion of the wine upon the patron's departure to his private residence or other private accommodations provided that (i) the*

59 *unconsumed portion of the wine remains in the original bottle, (ii) the seal of the bottle of wine is*  
60 *reattached in a reasonably secure manner by the licensee, and (iii) the bottle of wine is removed and*  
61 *transported in a manner consistent with Virginia law and Board regulations.*

62 § 4.1-209. Wine and beer licenses; advertising.

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

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

65 a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with  
66 or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas,  
67 private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such  
68 rooms and areas. However, with regard to a hotel classified by the Board as a resort complex, the Board  
69 may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex  
70 deemed appropriate by the Board. *In addition, such licenses shall authorize the licensee to permit a*  
71 *patron who has purchased a bottle of wine from the licensee for on-premises consumption to remove*  
72 *from the licensed premises the unconsumed portion of the wine upon the patron's departure to his*  
73 *private residence or other private accommodations provided that (i) the unconsumed portion of the wine*  
74 *remains in the original bottle, (ii) the seal of the bottle of wine is reattached in a reasonably secure*  
75 *manner by the licensee, and (iii) the bottle of wine is removed and transported in a manner consistent*  
76 *with Virginia law and Board regulations;*

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

80 c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee  
81 to sell wine and beer, either with or without meals, on such boats operated by them for on-premises  
82 consumption when carrying passengers;

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

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

90 f. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize  
91 the licensee to sell wine and beer in paper, plastic or similar disposable containers, during any event and  
92 immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession  
93 areas and additional locations designated by the Board in such coliseums, stadia or similar facilities, for  
94 on-premises consumption. Upon authorization of the licensee, any person may keep and consume his  
95 own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the  
96 license;

97 g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar  
98 facility which (i) has seating for more than 20,000 persons and is located in any county with a  
99 population between 210,000 and 216,000 or in any city with a population between 392,000 and 394,000,  
100 (ii) has capacity for more than 3,500 persons and is located in any county with a population between  
101 65,000 and 70,000 or in a city with a population between 40,000 and 47,000, or (iii) has capacity for  
102 more than 9,500 persons and is located in any county operated under the county manager form of  
103 government. Such license shall authorize the licensee to sell wine and beer during the performance of  
104 any event, in paper, plastic or similar disposable containers to patrons within all seating areas,  
105 concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon  
106 authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic  
107 beverages on the premises in all areas and locations covered by the license; and

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

118 2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer  
119 in closed containers for off-premises consumption and to deliver the same to purchasers in accordance  
120 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 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.

§ 18.2-323.1. Drinking while operating a motor vehicle; possession of open container while operating a motor vehicle and presumption; penalty.

A. It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway of this Commonwealth.

B. A rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger area of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed and (iii) the appearance, conduct, odor of alcohol, speech or other physical characteristic of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

For the purposes of this section:

"Open container" means any vessel containing an alcoholic beverage, except the originally sealed manufacturer's container. *Open container shall not include any bottle of wine resealed in accordance with subdivision 5 of § 4.1-207 or subsection A 1 a of § 4.1-209.*

"Passenger area" means the area designed to seat the driver of any motor vehicle, any area within the

182 reach of the driver, including an unlocked glove compartment, and the area designed to seat passengers.  
183 This term shall not include the trunk of any passenger vehicle, the area behind the last upright seat of a  
184 passenger van, station wagon, hatchback, sport utility vehicle or any similar vehicle, the living quarters  
185 of a motor home, or the passenger area of a motor vehicle designed, maintained or used primarily for  
186 the transportation of persons for compensation, including a bus, taxi, or limousine, while engaged in the  
187 transportation of such persons.  
188 C. A violation of this section is punishable as a Class 4 misdemeanor.