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SENATE BILL NO. 680

Offered January 20, 2006

A BILL to amend and reenact §§ 4.1-201, 4.1-206, 4.1-212, and 4.1-221.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-201.1, relating to alcoholic beverage control; permissible conduct by manufacturers and wine or beer wholesalers; tastings; service items and novelties.

Patron—Saslaw

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-201, 4.1-206, 4.1-212, and 4.1-221.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 4.1-201.1 as follows:

§ 4.1-201. Conduct not prohibited by this title; limitation.

~~A. This title shall not~~ *Nothing in this title or any Board regulation adopted pursuant thereto shall prohibit:*

1. Any club licensed under this chapter from keeping for consumption by its members any alcoholic beverages lawfully acquired by such members, provided the alcoholic beverages are not sold, dispensed or given away in violation of this title.

2. Any person from having grain, fruit or fruit products and any other substance, when grown or lawfully produced by him, distilled by any distillery licensee, and selling the distilled alcoholic beverages to the Board or selling or shipping them to any person outside of the Commonwealth in accordance with Board regulations. However, no alcoholic beverages so distilled shall be withdrawn from the place where distilled except in accordance with Board regulations.

3. Any person licensed to manufacture and sell, or either, in the Commonwealth or elsewhere, alcoholic beverages other than wine or beer, from soliciting and taking orders from the Board for such alcoholic beverages.

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers from other breweries owned by such person or the sale, delivery or shipment of such beer, in accordance with Board regulations to (i) persons licensed to sell 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.

5. The granting of any retail license to a brewery or winery licensee, or to an applicant for such license, or to a lessee of such person, a wholly owned subsidiary of such person, or its lessee, provided the places of business or establishments for which the retail licenses are desired are located upon the premises occupied or to be occupied by such winery or brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary.

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

7. The receipt by a farm winery or winery licensee of deliveries and shipments of wine in closed containers from other wineries or farm wineries located inside or outside the Commonwealth, or the receipt by a winery licensee or farm winery licensee of deliveries and shipments of spirits distilled from fruit or fruit juices in closed containers from distilleries located inside or outside the Commonwealth to be used only for the fortification of wine produced by the licensee in accordance with Board regulations, or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

8. The receipt by a fruit distillery licensee of deliveries and shipments of alcoholic beverages made from fruit or fruit juices in closed containers from other fruit distilleries owned by such licensee, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to persons outside of the Commonwealth for resale outside of the Commonwealth.

9. Any farm winery or winery licensee from shipping or delivering its wine in closed containers to

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59 another farm winery or winery licensee for the purpose of additional bottling in accordance with Board
60 regulations and the return of the wine so bottled to the manufacturing farm winery or winery licensee.

61 10. Any farm winery or winery licensee from selling and shipping or delivering its wine in closed
62 containers to another farm winery or winery licensee, the wine so sold and shipped or delivered to be
63 used by the receiving licensee in the manufacture of wine. Any wine received under this subsection shall
64 be deemed an agricultural product produced in the Commonwealth for the purposes of § 4.1-219, to the
65 extent it is produced from fresh fruits or agricultural products grown or produced in the Commonwealth.
66 The selling licensee shall provide to the receiving licensee, and both shall maintain complete and
67 accurate records of, the source of the fresh fruits or agricultural products used to produce the wine so
68 transferred.

69 11. *Any manufacturer of alcoholic beverages, including any vendor authorized by such manufacturer,*
70 *whether or not licensed in the Commonwealth, from selling service items bearing alcoholic brand*
71 *references to on-premises retail licensees or prohibit any such retail licensee from displaying the service*
72 *items on the premises of his licensed establishment. Each such retail licensee purchasing such service*
73 *items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a*
74 *period of not less than two years from the date of each sale of the service items. As used in this*
75 *subdivision, "service items" mean articles of tangible personal property normally used by the employees*
76 *of on-premises retail licensees to serve alcoholic beverages to customers including, but not limited to,*
77 *glasses, napkins, buckets, and coasters.*

78 12. *Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in*
79 *the Commonwealth, from distributing to retail licensees and their employees novelties and specialties,*
80 *including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage*
81 *advertising. Such items may be distributed to retail licensees in quantities equal to the number of*
82 *employees of the retail establishment. Thereafter, such employees may wear or display the items on the*
83 *licensed premises.*

84 B. No deliveries or shipments of alcoholic beverages to persons outside the Commonwealth for resale
85 outside the Commonwealth shall be made into any state the laws of which prohibit the consignee from
86 receiving or selling the same.

87 § 4.1-201.1. *Conduct not prohibited by this title; tastings conducted by manufacturers and wine or*
88 *beer wholesalers.*

89 A. *Manufacturers of alcoholic beverages, whether or not licensed in the Commonwealth, and wine or*
90 *beer wholesalers, may conduct tastings of alcoholic beverages within hotels, restaurants, and clubs*
91 *licensed for on-premises consumption provided:*

92 1. *The tastings are conducted only by (i) employees of such manufacturers or wholesalers or (ii)*
93 *authorized representatives of such manufacturers or wholesalers, which authorized representatives have*
94 *obtained a permit in accordance with subdivision A 15 of § 4.1-212;*

95 2. *Such employees or agents are present while the tastings are being conducted;*

96 3. *No category of alcoholic beverage products is offered to consumers unless the retail licensee on*
97 *whose premises the tasting is conducted is licensed to sell that category of alcoholic beverage product;*

98 4. *All alcoholic beverage products used in the tasting are served to the consumer by employees of*
99 *the retail licensee;*

100 5. *The quantity of alcoholic beverages provided to any person during the tasting does not exceed five*
101 *ounces of wine, 12 ounces of beer, or two ounces of spirits; and*

102 6. *All alcoholic beverage products used in the tasting are purchased from the retail licensee on*
103 *whose premises the tasting is conducted; except that no more than \$100 may be expended by or on*
104 *behalf of any such manufacturer or wholesaler at any retail licensed premises during any 24-hour*
105 *period.*

106 B. *Manufacturers, wholesalers and their agents shall keep complete records of each tasting*
107 *authorized by this section for a period of not less than two years, which records shall include the date*
108 *and place of each tasting conducted and the dollar amount expended by the manufacturer, wholesaler or*
109 *his agent in the purchase of the alcoholic beverages used in the tasting.*

110 § 4.1-206. Alcoholic beverage licenses.

111 The Board may grant the following licenses relating to alcoholic beverages generally:

112 1. Distillers' licenses, which shall authorize the licensee to manufacture alcoholic beverages other
113 than wine and beer, and to sell and deliver or ship the same, in accordance with Board regulations, in
114 closed containers, to the Board and to persons outside the Commonwealth for resale outside the
115 Commonwealth.

116 2. Fruit distillers' licenses, which shall authorize the licensee to manufacture any alcoholic beverages
117 made from fruit or fruit juices, and to sell and deliver or ship the same, in accordance with Board
118 regulations, in closed containers, to the Board and to persons outside the Commonwealth for resale
119 outside the Commonwealth.

120 3. Banquet facility licenses to volunteer fire departments and volunteer rescue squads, which shall

authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any person, and bona fide members and guests thereof, otherwise eligible for a banquet license. However, lawfully acquired alcoholic beverages shall not be purchased or sold by the licensee or sold or charged for in any way by the person permitted to use the premises. Such premises shall be a fire or rescue squad station or both, regularly occupied as such and recognized by the governing body of the county, city or town in which it is located. Under conditions as specified by Board regulation, such premises may be other than a fire or rescue squad station, provided such other premises are occupied and under the control of the fire department or rescue squad while the privileges of its license are being exercised.

4. Bed and breakfast licenses, which shall authorize the licensee to serve alcoholic beverages in dining areas, private guest rooms and other designated areas to persons to whom overnight lodging is being provided, with or without meals, for on-premises consumption only in such rooms and areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises.

5. Tasting licenses, which shall authorize the licensee to sell or give samples of alcoholic beverages of the type specified in the license in designated areas at events held by the licensee. A tasting license shall be issued for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. A separate license shall be required for each day of each tasting event. *No tasting license shall be required for conduct authorized by § 4.1-201.1.*

6. Museum licenses, which may be issued to nonprofit museums exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, which shall authorize the licensee to (i) permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any bona fide member and guests thereof and (ii) serve alcoholic beverages on the premises of the licensee to any bona fide member and guests thereof. However, alcoholic beverages shall not be sold or charged for in any way by the licensee. The privileges of this license shall be limited to the premises of the museum, regularly occupied and utilized as such.

7. Equine sporting event licenses, which may be issued to organizations holding equestrian, hunt and steeplechase events, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by patrons thereof during such event. However, alcoholic beverages shall not be sold or charged for in any way by the licensee. The privileges of this license shall be (i) limited to the premises of the licensee, regularly occupied and utilized for equestrian, hunt and steeplechase events and (ii) exercised on no more than four calendar days per year.

8. Day spa licenses, which shall authorize the licensee to (i) permit the consumption of lawfully acquired wine or beer on the premises of the licensee by any bona fide customer of the day spa and (ii) serve wine or beer on the premises of the licensee to any such bona fide customer; however, the licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served or consumed. The privileges of this license shall be limited to the premises of the day spa regularly occupied and utilized as such.

§ 4.1-212. Permits required in certain instances.

A. The Board may grant the following permits which shall authorize:

1. Wine and beer salesmen representing any out-of-state wholesaler engaged in the sale of wine and beer, or either, to sell or solicit the sale of wine or beer, or both in the Commonwealth.

2. Any person having any interest in the manufacture, distribution or sale of spirits or other alcoholic beverages to solicit any mixed beverage licensee, his agent, employee or any person connected with the licensee in any capacity in his licensed business to sell or offer for sale such spirits or alcoholic beverages.

3. Any person to keep upon his premises alcoholic beverages which he is not authorized by any license to sell and which shall be used for culinary purposes only.

4. Any person to transport lawfully purchased alcoholic beverages within, into or through the Commonwealth, except that no permit shall be required for any person shipping or transporting into the Commonwealth a reasonable quantity of alcoholic beverages when such person is relocating his place of residence to the Commonwealth in accordance with § 4.1-310.

5. Any person to keep, store or possess any still or distilling apparatus.

6. The release of alcoholic beverages not under United States custom bonds or internal revenue bonds stored in Board approved warehouses for delivery to the Board or to persons entitled to receive them within or outside of the Commonwealth.

7. The release of alcoholic beverages from United States customs bonded warehouses for delivery to the Board or to licensees and other persons enumerated in subsection B of § 4.1-131.

8. The release of alcoholic beverages from United States internal revenue bonded warehouses for delivery in accordance with subsection C of § 4.1-132.

182 9. A secured party or any trustee, curator, committee, conservator, receiver or other fiduciary
183 appointed or qualified in any court proceeding, to continue to operate under the licenses previously
184 issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board
185 deems appropriate.

186 10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which
187 may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment
188 lien or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a
189 sheriff, personal representative, receiver or other officer acting under authority of a court having
190 jurisdiction in the Commonwealth, or by any secured party as defined in subdivision (a) (72) of
191 § 8.9A-102 of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who
192 are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the
193 Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the
194 Board may prescribe.

195 11. Any person who purchases at a foreclosure, secured creditor's or judicial auction sale the
196 premises or property of a person licensed by the Board and who has become lawfully entitled to the
197 possession of the licensed premises. Such permit shall be temporary and shall (i) confer the privileges of
198 any licenses held by the previous owner to the extent determined by the Board and (ii) authorize the
199 permittee to continue to operate the establishment to the same extent as a person holding such licenses
200 for a period not to exceed 60 days or for such longer period as determined by the Board. Such
201 temporary permit may be issued in advance, conditioned on the above requirements.

202 12. The sale of wine and beer in kegs by any person licensed to sell wine or beer, or both, at retail
203 for off-premises consumption.

204 13. The storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue
205 bond in warehouses located in the Commonwealth.

206 14. The storage of wine by a licensed winery or farm winery under internal revenue bond in
207 warehouses located in the Commonwealth.

208 15. *Authorized representatives of any (i) manufacturer of alcoholic beverages, whether or not*
209 *licensed in the Commonwealth, or (ii) wine or beer wholesaler to conduct tastings in accordance with*
210 *§ 4.1-201.1. A permit issued pursuant to this subdivision shall be valid for at least one year, unless*
211 *sooner suspended or revoked by the Board in accordance with § 4.1-229.*

212 B. Nothing in subdivision 9, 10, or 11 shall authorize any brewery, winery or affiliate or a subsidiary
213 thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale
214 licensee in the event of a default, except to the extent authorized by subdivision B 3 a of § 4.1-216.

215 § 4.1-221.1. Limitation of tasting licenses.

216 Samples of alcoholic beverages given or sold by a licensee shall not exceed two ounces per person
217 of each product tasted, provided that (i) in the case of wine or beer, no more than four products shall be
218 offered or (ii) in the case of spirits, no more than two products shall be offered. Tasting licenses for
219 mixed beverages shall only be issued for events to be held in localities which have approved the sale of
220 mixed beverages pursuant to § 4.1-124. No license shall be issued to any person to whom issuance of a
221 retail license is prohibited. No more than four tasting licenses annually shall be issued to any person.
222 *The provisions of this section shall not apply to tastings conducted pursuant to § 4.1-201.1.*