

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 4.1-203, 4.1-207, 4.1-208, 4.1-223, and 4.1-231 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.1-14.01 and 4.1-207.1, relating to alcoholic beverage control; wine distribution licenses.

[H 2450]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-203, 4.1-207, 4.1-208, 4.1-223, and 4.1-231 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.1-14.01 and 4.1-207.1 as follows:

§ 3.1-14.01. Power of Commissioner; nonstock corporation to assist distribution of farm winery wine.

A. The Commissioner of Agriculture and Consumer Services shall establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207.

B. The board of directors of such corporation shall be composed of the Commissioner of Agriculture and Consumer Services and four members appointed by the Board of Agriculture and Consumer Services (the Board), including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when appointed to the Board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to it at least annually on its activities, including, but not limited to, reporting the quantity of wine distributed for each winery and farm winery during the preceding year.

§ 4.1-203. Separate license for each place of business; transfer or amendment; posting; expiration; carriers.

A. Each license granted by the Board shall designate the place where the business of the licensee will be carried on. Except as otherwise provided in §§ 4.1-207 and 4.1-208, a separate license shall be required for each separate place of business.

B. No license shall be transferable from one person to another, or from one location to another. The Board may permit a licensee to amend the classification of an existing license without complying with the posting and publishing procedures required by § 4.1-230 if the effect of the amendment is to reduce materially the privileges of an existing license. However, if (i) the Board determines that the amendment is a device to evade the provisions of this chapter, (ii) a majority of the corporate stock of a retail licensee is sold to a new entity, or (iii) there is a change of business at the premises of a retail licensee, the Board may, within thirty days of receipt of written notice by the licensee of a change in ownership or a change of business, require the licensee to comply with any or all of the requirements of § 4.1-230. If the Board fails to exercise its authority within the thirty-day period, the licensee shall not be required to reapply for a license. The licensee shall submit such written notice to the Secretary of the Board.

C. Each license shall be posted in a location conspicuous to the public at the place where the licensee carries on the business for which the license is granted.

D. The privileges conferred by any license granted by the Board, except for temporary licenses, banquet and mixed beverage special events licenses, shall continue until the last day of the twelfth month next ensuing or the last day of the designated month of expiration, except the license may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a license, by operation of law, voluntary surrender or order of the Board.

The Board may permit a licensee who fails to pay by midnight of the fifteenth day of the twelfth month or of the designated month of expiration, whichever is applicable, the required license tax covering the continuation or reissuance of his license, to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within thirty days following that date and is accompanied by a civil penalty of twenty-five dollars or ten percent of such tax, whichever is greater.

E. Subsections A and C shall not apply to common carriers of passengers by train, boat, or airplane.

ENROLLED

HB2450ER

§ 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, *including those granted pursuant to § 4.1-207.1*, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine *from one or more premises identified in the license*, 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.

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 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.

§ 4.1-207.1. Restricted wholesale wine licenses.

The Board may grant a wholesale wine license to a nonprofit, nonstock corporation created in accordance with § 3.1-14.01, which shall authorize the licensee to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this title and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2 of § 4.1-207.

§ 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 within a theme or amusement park owned and operated by the brewery or a parent, subsidiary or a company under common control of such brewery, or upon property of such brewery or a parent, subsidiary or a company under common control of such brewery contiguous to such premises, or in a development contiguous to such premises owned and operated by such brewery or a parent, subsidiary or a company under common control of such brewery; and (iii) persons outside the Commonwealth for resale outside the Commonwealth. Such license may also authorize individuals holding a brewery license

to operate a facility designed for and utilized exclusively for the education of persons in the manufacture of beer, including sampling by such individuals of beer products, within a theme or amusement park located upon the premises occupied by such 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. Provided, however, that such samples may be provided only to individuals for consumption on the premises of such facility and only to individuals to whom such products may be lawfully sold.

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~~ *the beer from one or more premises identified in the license*, 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 sight-seeing boats, or special or charter boats, 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 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 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.

7. Retail off-premises brewery licenses to persons holding a brewery license which shall authorize the licensee to 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.

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.

§ 4.1-223. Conditions under which Board shall refuse to grant licenses.

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision 3 b of subsection B of § 4.1-216 or (ii) *the nonprofit, nonstock corporation established pursuant to § 3.1-14.01 in exercising any privileges granted under § 4.1-207.1.*

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

5. Mixed beverage license to any member, agent or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § 4.1-231 is paid to the Board.

§ 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;

- 240 f. Equine sporting event license, \$130; and
 241 g. Motor car sporting event facility license, \$130.
 242 2. Wine licenses. For each:
 243 a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the
 244 license is granted, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;
 245 b (1). Wholesale wine license, \$185 for any wholesaler who sells 30,000 gallons of wine or less per
 246 year, \$930 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000
 247 gallons of wine per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than
 248 300,000 gallons of wine per year, and, \$1,860 for any wholesaler who sells more than 300,000 gallons
 249 of wine per year;
 250 b (2). *Wholesale wine license, including that granted pursuant to § 4.1-207.1, applicable to two or*
 251 *more premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied*
 252 *by the number of separate locations covered by the license;*
 253 c. Wine importer's license, \$370;
 254 d. Retail off-premises winery license, \$145;
 255 e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license;
 256 f. Wine shipper's license, \$65; and
 257 g. Day spa license, \$100.
 258 3. Beer licenses. For each:
 259 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which
 260 the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;
 261 b. Bottler's license, \$1,430;
 262 c (1). Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or
 263 less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of
 264 beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;
 265 c (2). *Wholesale beer license applicable to two or more premises, the annual state license tax shall*
 266 *be the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by*
 267 *the license;*
 268 d. Beer importer's license, \$370;
 269 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common
 270 carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by
 271 train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club
 272 cars operated daily in the Commonwealth;
 273 f. Retail off-premises beer license, \$120;
 274 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a
 275 town or in a rural area outside the corporate limits of any city or town, \$300; and
 276 h. Beer shipper's license, \$65.
 277 4. Wine and beer licenses. For each:
 278 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a
 279 common carrier of passengers by train, boat or airplane, \$300; for each such license to a common
 280 carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining
 281 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to
 282 a common carrier of passengers by airplane, \$750;
 283 b. Retail on-premises wine and beer license to a hospital, \$145;
 284 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
 285 grocery store license, \$230;
 286 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600;
 287 e. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the
 288 Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be
 289 \$100 per license;
 290 f. Gourmet brewing shop license, \$230;
 291 g. Wine and beer shipper's license, \$65; and
 292 h. Annual banquet license, \$150.
 293 5. Mixed beverage licenses. For each:
 294 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants
 295 located on premises of and operated by hotels or motels, or other persons:
 296 (i) With a seating capacity at tables for up to 100 persons, \$560;
 297 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
 298 (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
 299 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
 300 private, nonprofit clubs:

301 (i) With an average yearly membership of not more than 200 resident members, \$750;
 302 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
 303 \$1,860; and
 304 (iii) With an average yearly membership of more than 500 resident members, \$2,765.
 305 c. Mixed beverage caterer's license, \$1,860;
 306 d. Mixed beverage special events license, \$45 for each day of each event;
 307 e. Mixed beverage club events licenses, \$35 for each day of each event;
 308 f. Annual mixed beverage special events license, \$560;
 309 g. Mixed beverage carrier license:
 310 (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the
 311 Commonwealth by a common carrier of passengers by train;
 312 (ii) \$560 for each common carrier of passengers by boat;
 313 (iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
 314 h. Annual mixed beverage amphitheater license, \$560;
 315 i. Annual mixed beverage motor sports race track license, \$560; and
 316 j. Annual mixed beverage banquet license, \$500.
 317 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax
 318 imposed by this section on the license for which the applicant applied.
 319 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
 320 subject to proration to the following extent: If the license is granted in the second quarter of any year,
 321 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
 322 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
 323 three-fourths.
 324 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
 325 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
 326 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
 327 number of gallons permitted to be manufactured shall be prorated in the same manner.
 328 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
 329 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or
 330 winery license, such person shall pay for such unlimited license a license tax equal to the amount that
 331 would have been charged had such license been applied for at the time that the license to manufacture
 332 less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person
 333 shall be entitled to a refund of the amount of license tax previously paid on the limited license.
 334 Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than
 335 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest
 336 cent, multiplied by the number of months in the license period.
 337 C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state
 338 restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter,
 339 shall be liable to state merchants' license taxation and state restaurant license taxation and other state
 340 taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer
 341 wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license
 342 tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining
 343 the liability of a wholesale wine distributor to merchants' license taxation, and in computing the
 344 wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases
 345 shall be disregarded.
 346 **2. That an emergency exists and this act is in force from its passage.**
 347 **3. That the Commissioner of Agriculture and Consumer Services shall implement the provisions of**
 348 **this act consistent with an opinion of the Attorney General dated April 28, 2006 within 90 days of**
 349 **the effective date of this act.**
 350 **4. That the Alcoholic Beverage Control Board shall assist the Commissioner of Agriculture and**
 351 **Consumer Services in the formation and operation of the nonprofit, nonstock corporation**
 352 **established pursuant to § 3.1-14.01 of this act.**