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**HOUSE BILL NO. 266**

Offered January 9, 2008

Prefiled January 2, 2008

*A BILL to amend and reenact §§ 4.1-111 and 4.1-210 of the Code of Virginia, relating to liquor sale calculations of mixed beverage restaurant licensees.*

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Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 4.1-111 and 4.1-210 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-111. Regulations of Board.**

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

**B. The Board shall promulgate regulations that:**

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. *Establish a system defining a uniform mixed beverage sale price based on volume of spirits sold. Such uniform sale price shall be used solely for the purposes of calculating gross receipts for mixed beverage restaurant licensees pursuant to § 4.1-210.*

**C. The Board may promulgate regulations that:**

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

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HB266

59 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the  
60 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of  
61 § 4.1-325.2.

62 D. Board regulations shall be uniform in their application, except those relating to hours of sale for  
63 licensees.

64 E. Courts shall take judicial notice of Board regulations.

65 F. The Board's power to regulate shall be broadly construed.

66 § 4.1-210. Mixed beverages licenses.

67 A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to  
68 mixed beverages:

69 1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed  
70 beverages for consumption in dining areas and other designated areas of such restaurant. Such license  
71 may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale  
72 of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the  
73 premises, after issuance of such license, amount to at least 45 percent of the gross receipts from the sale  
74 of mixed beverages and food. For the purposes of this paragraph, other designated areas shall include  
75 outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas  
76 may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such  
77 areas are under the control of the licensee and approved by the Board.

78 If the restaurant is located on the premises of a hotel or motel with not less than four permanent  
79 bedrooms where food and beverage service is customarily provided by the restaurant in designated areas,  
80 bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed  
81 beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell  
82 spirits packaged in original closed containers purchased from the Board for on-premises consumption to  
83 registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private  
84 rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale  
85 and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed  
86 appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own  
87 lawfully acquired spirits in bedrooms or private rooms.

88 If the restaurant is located on the premises of and operated by a private, nonprofit or profit club  
89 exclusively for its members and their guests, or members of another private, nonprofit or profit club in  
90 another city with which it has an agreement for reciprocal dining privileges, such license shall also  
91 authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club  
92 prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the  
93 Board and located on another portion of the premises of the same hotel or motel building, this fact shall  
94 not prohibit the granting of a license by the Board to such club qualifying in all other respects. The  
95 club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold  
96 to its members and guests and consumed on the premises shall amount to at least 45 percent of its gross  
97 receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club  
98 shall be excluded in any consideration of the qualifications of such restaurant for a license from the  
99 Board.

100 *For purposes of this subdivision, mixed beverage restaurant licensees shall use the uniform mixed*  
101 *beverage sale price, promulgated by the Board pursuant to § 4.1-111, in calculating gross receipts from*  
102 *the sale of mixed beverages.*

103 2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the  
104 business of providing food and beverages to others for service at private gatherings or at special events,  
105 which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption.  
106 The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic  
107 beverages served at gatherings and events referred to in this subdivision shall amount to at least 45  
108 percent of the gross receipts from the sale of mixed beverages and food.

109 3. Mixed beverage limited caterer's licenses, which may be granted only to a person regularly  
110 engaged in the business of providing food and beverages to others for service at private gatherings or at  
111 special events, not to exceed 12 gatherings or events per year, which shall authorize the licensee to sell  
112 and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of  
113 food cooked and prepared for service and nonalcoholic beverages served at gatherings and events  
114 referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of  
115 mixed beverages and food.

116 4. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in  
117 charge of a special event, which shall authorize the licensee to sell and serve mixed beverages for  
118 on-premises consumption in areas approved by the Board on the premises of the place designated in the  
119 license. A separate license shall be required for each day of each special event.

120 5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or

association operating a performing arts facility or (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture. The operation in either case shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the sale, on the dates of performances or events in furtherance of the purposes of the nonprofit corporation or association, of alcoholic beverages, for on-premises consumption in areas upon the licensed premises approved by the Board.

6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth.

7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer club license to sell and serve mixed beverages for on-premises consumption by club members and their guests in areas approved by the Board on the club premises. A separate license shall be required for each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar year.

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach. Such license shall authorize the licensee to sell alcoholic beverages 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.

9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize the licensee to sell alcoholic beverages 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.

10. Annual mixed beverage motor sports facility license to persons operating food concessions at any outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, 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.

11. Annual mixed beverage 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 mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year.

12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve no more than six varieties of liqueurs, which liqueurs shall be combined with coffee or other nonalcoholic beverages for consumption in dining areas of the restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall the sale of such liqueur-based drinks exceed 10 percent of the total annual gross sales.

B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, or 11 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.