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SENATE BILL NO. 584

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 25, 2008)

(Patron Prior to Substitute—Senator Ticer)

A BILL to amend and reenact §§ 4.1-100, 4.1-324, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; prohibited acts by licensees; exceptions for sangria.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-324, and 4.1-325 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-100. Definitions.

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items

60 intended for human consumption consisting of a variety of such items of the types normally sold in
61 grocery stores.

62 "Day spa" means any commercial establishment that offers to the public both massage therapy,
63 performed by persons certified in accordance with § 54.1-3029, and barbering or cosmetology services
64 performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.

65 "Designated area" means a room or area approved by the Board for on-premises licensees.

66 "Dining area" means a public room or area in which meals are regularly served.

67 "Establishment" means any place where alcoholic beverages of one or more varieties are lawfully
68 manufactured, sold, or used.

69 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing
70 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the
71 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol
72 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing
73 area or agreements for purchasing grapes or other fruits from agricultural growers within the
74 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or
75 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this
76 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of
77 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm
78 winery, the term "farm" as used in this definition includes all of the land owned or leased by the
79 individual members of the cooperative as long as such land is located in the Commonwealth.

80 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty
81 items relating to history, original and handmade arts and products, collectibles, crafts, and floral
82 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure
83 where stock is displayed and offered for sale and which has facilities to properly secure any stock of
84 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered
85 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall
86 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be
87 considered a gift shop.

88 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may
89 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such
90 persons facilities for manufacturing, fermenting and bottling such wine or beer.

91 "Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage
92 facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and
93 beers of various types and sizes and related products such as cheeses and gourmet foods are habitually
94 furnished to persons.

95 "Government store" means a store established by the Board for the sale of alcoholic beverages.

96 "Hotel" means any duly licensed establishment, provided with special space and accommodation,
97 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has
98 four or more bedrooms. It shall also mean the person who operates such hotel.

99 "Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order
100 pursuant to this title.

101 "Internet wine retailer" means a person who owns or operates an establishment with adequate
102 inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone
103 orders are taken and shipped directly to consumers and which establishment is not a retail store open to
104 the public.

105 "Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to
106 observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

107 "Licensed" means the holding of a valid license issued by the Board.

108 "Licensee" means any person to whom a license has been granted by the Board.

109 "Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol
110 content of 25 percent by volume.

111 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol
112 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits
113 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit
114 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by
115 fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of
116 this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved
117 the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be
118 sold for on-premises consumption other than by mixed beverage licensees.

119 "Meal-assembly kitchen" means any commercial establishment that offers its customers, for
120 off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen
121 facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Board may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the Department of Alcoholic Beverage Control whom the

183 Board has designated as a law-enforcement officer pursuant to § 4.1-105.

184 "Special event" means an event sponsored by a duly organized nonprofit corporation or association
185 and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

186 "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable
187 water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and
188 gin, or any one or more of the last four named ingredients; but shall not include any such liquors
189 completely denatured in accordance with formulas approved by the United States government.

190 "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of
191 fruits or other agricultural products containing (i) sugar, including honey and milk, either with or
192 without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product
193 of distillation. The term includes any wine to which wine spirits have been added, as provided in the
194 Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an
195 alcohol content of 21 percent by volume.

196 "Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and
197 not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of
198 wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain
199 water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar
200 products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice
201 beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

202 "With or without meals" means the selling and serving of alcoholic beverages by retail licensees for
203 on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio
204 required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by
205 such retail licensee.

206 § 4.1-324. Illegal sale or keeping of alcoholic beverages by licensees; penalty.

207 A. No licensee or any agent or employee of such licensee shall:

208 1. Sell any alcoholic beverages of a kind other than that which such license or this title authorizes
209 him to sell;

210 2. Sell beer to which wine, spirits or alcohol has been added;

211 3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the
212 manufacture thereof under Board regulations, *except that a mixed beverage licensee may make sangria*
213 *that contains brandy, triple sec, or other similar spirits;*

214 4. Sell alcoholic beverages of a kind which such license or this title authorizes him to sell, but to
215 any person other than to those to whom such license or this title authorizes him to sell;

216 5. Sell alcoholic beverages which such license or this title authorizes him to sell, but in any place or
217 in any manner other than such license or this title authorizes him to sell;

218 6. Sell any alcoholic beverages when forbidden by this title;

219 7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic
220 beverages other than that which he is authorized to sell by such license or by this title;

221 8. Sell any beer to a retail licensee, except for cash, if the seller holds a brewery, bottler's or
222 wholesale beer license;

223 9. Sell any beer on draft and fail to display to customers the brand of beer sold or misrepresent the
224 brand of any beer sold;

225 10. Sell any wine for delivery within the Commonwealth to a retail licensee, except for cash, if the
226 seller holds a wholesale wine or farm winery license; or

227 11. Keep or allow to be kept or sell any vaporized form of an alcoholic beverage produced by an
228 alcohol vaporizing device.

229 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

230 § 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

231 A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee
232 shall:

233 1. Sell or serve any alcoholic beverage other than as authorized by law;

234 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;

235 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of
236 this title;

237 4. Keep at the place described in his license any alcoholic beverage other than that which he is
238 licensed to sell;

239 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

240 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
241 him except in a frozen drink dispenser of a type approved by the Board and in the case of wine, in
242 containers of a type approved by the Board pending automatic dispensing and sale of such wine.

243 *Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from*
244 *pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;*

7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage;

8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;

9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;

10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or obliterated;

11. Allow any immoral, lewd, obscene, indecent or profane conduct, language, literature, pictures, performance or materials on the licensed premises;

12. Allow any striptease act, or the like on the licensed premises;

13. Allow persons connected with the licensed business to appear nude or partially nude;

14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § 4.1-210.

The provisions of this subdivision shall not apply to the delivery of "soju". For the purposes of the previous sentence, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes;

16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

17. Conceal any sale or consumption of any alcoholic beverages;

18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;

19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus; or

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision.

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.