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SENATE BILL NO. 590

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 4.1-209.1 of the Code of Virginia, relating to alcoholic beverage control; third party shipment of wine and beer.*

Patron—Marsden

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That § 4.1-209.1 of the Code of Virginia is amended and reenacted as follows:**

§ 4.1-209.1. Direct shipment of wine and beer; shipper's license.

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section. Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such brands that an application has been filed for a shipper's license. The notice shall be in writing and in a form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section, including regulations that permit the holder of a shipper's license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or beer identified in such shipper's license.

B. Any applicant for a wine or beer shipper's license that does not own or have the right to control the distribution of the brands of wine, farm wine, or beer identified in such person's application may be issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its application for a shipper's license, and with any subsequent application for renewal thereof, the written consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor, that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery, or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such shipper licensee shall promptly file with the Board an amendment to its license eliminating any such withdrawn brand or brands from the shipper's license.

C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall be by approved common carrier only. The Board shall develop regulations pursuant to which common carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iii) the Board-approved common carrier to submit to the Board such information as the Board may prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location

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59 stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR
60 OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common
61 carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee
62 shall be liable only for their independent acts.

63 D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each
64 shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in
65 Virginia. *Notwithstanding the provisions of §§ 4.1-100 and 4.1-203, for purposes of this section, a third*
66 *party located off the licensed premises and under the direction and control of the Virginia wine or beer*
67 *shipper licensee may (i) solicit and receive orders for wine or beer; (ii) pack and ship wine or beer in*
68 *accordance with a license or other approval by the Commonwealth or the state where located; and (iii)*
69 *take other action as permitted by the Board.* The licensee shall collect the taxes due to the
70 Commonwealth and remit any excise taxes monthly to the Department of Alcoholic Beverage Control
71 and any sales taxes to the Department of Taxation.

72 E. Notwithstanding the provisions of § 4.1-203, the holder of a wine shipper license or beer shipper
73 license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month
74 club at in-state or out-of-state locations for which a license for on-premises consumption has been
75 issued, other than the place where the licensee carries on the business for which the license is granted.
76 For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an
77 agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license
78 and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell
79 and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month
80 for an agreed term of months.