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SENATE BILL NO. 1165

Offered January 14, 2015

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A BILL to amend and reenact §§ 4.1-111 and 4.1-212 of the Code of Virginia, relating to alcoholic beverage control; farm wine produced by educational institutions exclusively for research and educational purposes; permit required.

 Patron—McWaters

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-111 and 4.1-212 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

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59 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
60 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage
61 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages
62 may not be lawfully sold. Such regulations shall:

63 a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i)
64 the general prohibition against tied interests between retail licensees and manufacturers or wholesale
65 licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of
66 wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the
67 general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and
68 retail licensees as set forth in Board regulation; and

69 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the
70 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under
71 Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate
72 as defined in § 55-526, but only in accordance with this title.

73 14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer
74 pursuant to an agreement with a brand owner not under common control with the manufacturing
75 brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require
76 that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a
77 written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board
78 are maintained by the parties.

79 15. *Prescribe the terms and conditions under which institutions of higher education holding a permit*
80 *under subdivision A 18 of § 4.1-212 may manufacture wine for research and educational purposes, and*
81 *establish requirements for the form, content, and retention of all records and accounts by such*
82 *institutions and the inspection thereof by the Board or its special agents during reasonable hours.*

83 C. The Board may promulgate regulations that:

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

90 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the
91 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of
92 § 4.1-325.2.

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

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

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

97 **§ 4.1-212. Permits required in certain instances.**

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

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

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

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

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

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

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

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

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

119 9. A secured party or any trustee, curator, committee, conservator, receiver or other fiduciary
120 appointed or qualified in any court proceeding, to continue to operate under the licenses previously

issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board deems appropriate.

10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in subdivision (a)(73) of § 8.9A-102 of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the Board may prescribe.

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

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

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

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

15. Any person to conduct tastings in accordance with § 4.1-201.1, provided that such person has filed an application for a permit in which the applicant represents (i) that he or she is under contract to conduct such tastings on behalf of the alcoholic beverage manufacturer or wholesaler named in the application; (ii) that such contract grants to the applicant the authority to act as the authorized representative of such manufacturer or wholesaler; and (iii) that such contract contains an acknowledgment that the manufacturer or wholesaler named in the application may be held liable for any violation of § 4.1-201.1 by its authorized representative. A permit issued pursuant to this subdivision shall be valid for at least one year, unless sooner suspended or revoked by the Board in accordance with § 4.1-229.

16. Any person who, through contract, lease, concession, license, management or similar agreement (hereinafter referred to as the contract), becomes lawfully entitled to the use and control of the premises of a person licensed by the Board to continue to operate the establishment to the same extent as a person holding such licenses, provided such person has made application to the Board for a license at the same premises. The permit shall (i) confer the privileges of any licenses held by the previous owner to the extent determined by the Board and (ii) be valid for a period of 120 days or for such longer period as may be necessary as determined by the Board pending the completion of the processing of the permittee's license application. No permit shall be issued without the written consent of the previous licensee. No permit shall be issued under the provisions of this subdivision if the previous licensee owes any state or local taxes, or has any pending charges for violation of this title or any Board regulation, unless the permittee agrees to assume the liability of the previous licensee for the taxes or any penalty for the pending charges. An application for a permit may be filed prior to the effective date of the contract, in which case the permit when issued shall become effective on the effective date of the contract. Upon the effective date of the permit, (a) the permittee shall be responsible for compliance with the provisions of this title and any Board regulation and (b) the previous licensee shall not be held liable for any violation of this title or any Board regulation committed by, or any errors or omissions of, the permittee.

17. Any sight-seeing carrier or contract passenger carrier as defined in § 46.2-2000 transporting individuals for compensation to a winery, brewery, or restaurant, licensed under this chapter and authorized to conduct tastings, to collect the licensee's tasting fees from tour participants for the sole purpose of remitting such fees to the licensee.

18. Any accredited public or private institution of higher education to operate a farm winery under the conditions set forth in this subdivision and in accordance with Board regulations. The permit shall provide that such institutions (i) shall not sell the wine so manufactured or otherwise use the wine for any other purpose except for research and educational purposes and (ii) store the wine on premises of the farm winery that shall be separate and apart from all other facilities of the institution.

B. Nothing in subdivision 9, 10, or 11 shall authorize any brewery, winery or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale

182 licensee in the event of a default, except to the extent authorized by subdivision B 3 a of § 4.1-216.