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SENATE BILL NO. 642

Offered January 17, 2014

A BILL to amend and reenact §§ 4.1-111, 4.1-210, and 4.1-211 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-210.1, relating to alcoholic beverage control; temporary license for applicant for mixed beverage restaurant license; penalty.

Patron—McEachin

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-210, and 4.1-211 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-210.1 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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 7 (§ 33.1-351 et seq.) of Title 33.1 where such signs are located on commercial real estate as
72 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. Establish penalties for violation of the Mixed Beverage Annual Report (MBAR) by mixed
80 beverage restaurant licensees as follows:

81 a. For a MBAR of 42 percent or greater, but less than 45 percent:

82 (1) First offense: a written warning;

83 (2) Second offense within a five-year period: a 30-day license suspension or a 15-day license
84 suspension and the imposition of a monetary penalty equal to 50 percent of the average gross revenue
85 from one-half of one month's sale of mixed beverages based on the most recent 12-month MBAR. In
86 addition, the licensee shall be required to provide monthly reporting of food and mixed beverages sales
87 to the Board, together with a report of food and mixed beverages sales audited by a certified public
88 accountant for the following 12-month MBAR period;

89 (3) Third offense within a five-year period: one-year license suspension. At the conclusion of the
90 license suspension, the Board shall issue a temporary license in accordance with § 4.1-210.1 and
91 require the licensee to report monthly to the Board on its food and mixed beverages sales, together with
92 a report of food and mixed beverages sales at the end of the temporary license period, which report
93 shall be audited by a certified public accountant; and

94 (4) Fourth offense within a five-year period: license revocation.

95 b. For a MBAR Report of 35 percent or greater, but less than 42 percent:

96 (1) First offense: a 90-day license suspension or a 45-day license suspension and the imposition of a
97 monetary penalty equal to 50 percent of the average gross revenue from one-half of one month's sale of
98 mixed beverages based on the most recent 12-month MBAR. In addition, the licensee shall be required
99 to provide monthly reporting of food and mixed beverages sales to the Board, together with a report of
100 food and mixed beverages sales audited by a certified public accountant for the following 12-month
101 MBAR period;

102 (2) Second offense: one-year license suspension. At the conclusion of the license suspension, the
103 Board shall issue a temporary license in accordance with § 4.1-210.1 and require the licensee to report
104 monthly to the Board on its sales of food and mixed beverages, together with a report of food and
105 mixed beverages sales at the end of the temporary license period, which report shall be audited by a
106 certified public accountant; and

107 (3) Third offense within a five-year period: license revocation.

108 c. For a MBAR Report under 35 percent, the Board shall revoke the license for any first offense.

109 The Board, by regulation, may assess greater penalties than those set out herein against a licensee
110 for failure to meet the requirements of subdivisions A 1 (i) and (ii) of § 4.1-210, and in so doing shall
111 consider past performance with respect to MBAR violations as well as other violations and conduct that
112 adversely affect the public health, safety, or welfare.

113 No Board regulation adopted pursuant to this subdivision 15 shall authorize the Board's acceptance
114 of an offer in compromise by a licensee to pay a civil penalty in lieu of suspension or revocation.

115 C. The Board may promulgate regulations that:

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

applicant.

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

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

E. Courts shall take judicial notice of Board regulations.

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

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of §§ 4.1-124 and 4.1-210.1, the Board may grant the following licenses relating to mixed beverages:

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

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

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

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

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

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

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating a performing arts facility, (ii) a nonprofit corporation or association chartered by

182 Congress for the preservation of sites, buildings and objects significant in American history and culture,
183 or (iii) a duly organized nonprofit corporation that has been granted an exemption from federal taxation
184 under § 501(c)(3) of the U.S. Internal Revenue Code of 1986 that owns any rural event and
185 entertainment park or similar facility that has a minimum of 60,000 square feet of indoor exhibit space
186 and equine and other livestock show areas. The operation in all cases shall be upon premises owned by
187 such licensee or occupied under a bona fide lease the original term of which was for more than one
188 year's duration. Such license shall authorize the sale, on the dates of performances or events in
189 furtherance of the purposes of the nonprofit corporation or association, of alcoholic beverages, for
190 on-premises consumption in areas upon the licensed premises approved by the Board.

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

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

200 8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
201 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000
202 persons and is located in Prince William County or the City of Virginia Beach. Such license shall
203 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic
204 or similar disposable containers to patrons within all seating areas, concourses, walkways, concession
205 areas, or similar facilities, for on-premises consumption.

206 9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
207 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000
208 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize
209 the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar
210 disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or
211 similar facilities, for on-premises consumption.

212 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any
213 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on
214 1,200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed
215 beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events
216 or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing
217 areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization
218 of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the
219 premises in all areas and locations covered by the license.

220 11. Annual mixed beverage banquet licenses to duly organized private nonprofit fraternal, patriotic or
221 charitable membership organizations that are exempt from state and federal taxation and in charge of
222 banquets conducted exclusively for its members and their guests, which shall authorize the licensee to
223 serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of
224 the place designated in the license. Such license shall authorize the licensee to conduct no more than 12
225 banquets per calendar year.

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

231 13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an
232 outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the
233 licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled
234 events, as well as events or performances immediately subsequent thereto, to patrons in all dining
235 facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises
236 consumption.

237 14. Annual mixed beverage performing arts facility license to corporations or associations operating a
238 performing arts facility, provided the performing arts facility (i) is owned by a governmental entity; (ii)
239 is occupied by a for-profit entity under a bona fide lease, the original term of which was for more than
240 one year's duration; and (iii) has been rehabilitated in accordance with historic preservation standards.
241 Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for
242 on-premises consumption in areas upon the licensed premises approved by the Board.

243 B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, 11, 13, or 14 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.

§ 4.1-210.1. Mixed beverage restaurant temporary licenses; condition of granting annual license.

A. Beginning July 1, 2014, no annual license shall be granted by the Board pursuant to § 4.1-210 for any new applicant for a mixed beverage restaurant license. Notwithstanding subsection D of § 4.1-203, the Board shall grant a temporary license, not to exceed 180 days, to any new applicant for a mixed beverage restaurant license, provided (i) an application has been filed in accordance with the provisions of § 4.1-230 and (ii) there are no grounds on which the Board may refuse to grant a temporary license under the provisions of § 4.1-222 or 4.1-223.

B. If a temporary license is not granted, the applicant is entitled to a hearing solely on the issue of qualifications. The decision to refuse to grant a temporary license shall not be subject to a hearing.

C. If a temporary license is granted, at the end of the temporary license period, the licensee shall provide to the Board an audit of its sales of mixed beverages and food, which audit shall be conducted by a certified public accountant approved by the Board. If the audit reveals that (i) the gross receipts from the sale of food cooked or prepared and consumed on the premises and nonalcoholic beverages served on the premises of the licensee, after issuance of such license, amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food and (ii) the minimum monthly food sales as required by Board regulation have been met, the Board shall issue a mixed beverage restaurant license in accordance with § 4.1-210, provided that no grounds exist to deny licensure pursuant to § 4.1-222 or 4.1-223 or to suspend or revoke such license pursuant to § 4.1-225 or 4.1-226.

D. Notwithstanding any other provision law to the contrary, in the event a licensee holding a temporary mixed beverage restaurant license:

1. Fails to meet the requirements set forth in clauses (i) and (ii) of subsection C and the audit demonstrates that the licensee's ratio was 42 percent or greater, but less than 45 percent, the licensee shall not be issued a mixed beverage restaurant license, but may apply for another temporary mixed beverage restaurant license as provided herein. If, after the conclusion of 180 days on the second temporary mixed beverage restaurant license, the licensee fails to comply with the requirements of clauses (i) and (ii) of subsection C and the audit demonstrates that the licensee's ratio was 42 percent or greater, but less than 45 percent, the licensee shall not be issued a mixed beverage restaurant license. No further temporary license shall be granted to the applicant or to any other person at that location for a period of one year from expiration, and, if the application becomes the subject of a hearing, no temporary license may be granted; or

2. Fails to meet the requirements set forth in subsection C and the audit demonstrates that the licensee's ratio was less than 41 percent, the licensee shall not be issued a mixed beverage restaurant license. No further temporary license shall be granted to the applicant or to any other person at that location for a period of one year from expiration, and, if the application becomes the subject of a hearing, no temporary license may be granted.

E. A temporary license may be revoked summarily by the Board for any cause set forth in § 4.1-225 without complying with subsection A of § 4.1-227. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

§ 4.1-211. Temporary licenses.

Notwithstanding subsection D of § 4.1-203 and except as provided in § 4.1-210.1, the Board may grant a temporary license to any of the licensed retail operations authorized by §§ 4.1-206 through 4.1-210. A temporary license may be granted only after an application has been filed in accordance with the provisions of § 4.1-230 and in cases where the sole objection to granting a license is that the establishment will not be qualified in terms of the sale of food. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications. The decision to refuse to grant a temporary license shall not be subject to a hearing.

If a temporary license is granted, the Board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. If the audit indicates that the business is qualified, the license applied for may be granted. If the audit indicates that the business is not qualified, the applicant is entitled to a hearing. No further temporary license shall be granted to the applicant or to any other person at that location for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be granted.

A temporary license may be revoked summarily by the Board for any cause set forth in § 4.1-225 without complying with subsection A of § 4.1-227. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

305 2. That by July 1, 2016, the Alcoholic Beverage Control Board shall report to the Chairmen of the
306 House Committee on General Laws and the Senate Committee on Rehabilitation and Social
307 Services on the implementation of the provisions of this act.