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SENATE BILL NO. 884

Senate Amendments in [] — February 8, 2018

A BILL to amend and reenact §§ 4.1-230, 4.1-231, and 4.1-332 of the Code of Virginia, relating to alcoholic beverage control.

Patron Prior to Engrossment—Senator McDougle

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-230, 4.1-231, and 4.1-332 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-230. Applications for licenses; publication; notice to localities; fees; permits.

A. Every person intending to apply for any license authorized by this chapter shall file with the Board an application on forms provided by the Board and a statement in writing, under oath, setting forth any information required by the Board. Applications for banquet, tasting, mixed beverage special events, or club events licenses shall not be required to be under oath, but the information contained therein shall be certified as true by the applicant.

Applicants for retail licenses for establishments that serve food or are otherwise required to obtain a food establishment permit from the Department of Health or an inspection by the Department of Agriculture and Consumer Services shall provide a copy of such permit, proof of inspection, proof of a pending application for such permit, or proof of a pending request for such inspection. If the applicant provides a copy of such permit, proof of inspection, proof of a pending application for a permit, or proof of a pending request for an inspection, a license may be issued to the applicant. If a license is issued on the basis of a pending application or inspection, such license shall authorize the licensee to purchase alcoholic beverages in accordance with the provisions of this title; however, the licensee shall not sell or serve alcoholic beverages until a permit is issued or an inspection is completed.

B. In addition, each applicant for a license under the provisions of this chapter, except applicants for annual banquet, banquet, tasting, special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, delivery permit, annual arts venue, or museum licenses issued under the provisions of Chapter 2 (§ 4.1-200 et seq.), or beer or wine importer's licenses, shall post a notice of his application with the Board on the front door of the building, place or room where he proposes to engage in such business for no more than 30 days and not less than 10 days. Such notice shall be of a size and contain such information as required by the Board, including a statement that any objections shall be submitted to the Board not more than 30 days following initial publication of the notice required pursuant to this subsection.

The applicant shall also cause notice to be published at least once a week for two consecutive weeks in a newspaper published in or having a general circulation in the county, city or town wherein such applicant proposes to engage in such business. Such notice shall contain such information as required by the Board, including a statement that any objections to the issuance of the license be submitted to the Board not later than 30 days from the date of the initial newspaper publication. In the case of wine or beer shipper's licensees, wine and beer shipper's licensees, delivery permittees or operators of boats, dining cars, buffet cars, club cars, and airplanes, the posting and publishing of notice shall not be required.

Except for applicants for annual banquet, banquet, tasting, mixed beverage special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, beer or wine importer's, annual arts venue, or museum licenses, the Board shall conduct a background investigation, to include a criminal history records search, which may include a fingerprint-based national criminal history records search, on each applicant for a license. However, the Board may waive, for good cause shown, the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership.

Except for applicants for wine shipper's, beer shipper's, wine and beer shipper's licenses, and delivery permits, the Board shall notify the local governing body of each license application through the county or city attorney or the chief law-enforcement officer of the locality. Local governing bodies shall submit objections to the granting of a license within 30 days of the filing of the application.

C. Each applicant shall pay the required application fee at the time the application is filed. Each license application fee, including annual banquet and annual mixed beverage banquet, shall be \$65 \$195, plus the actual cost charged to the Department of State Police by the Federal Bureau of Investigation or

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60 the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of
61 Investigation or the Central Criminal Records Exchange for each criminal history records search required
62 by the Board, except for banquet, tasting, ~~mixed beverage special events~~, or mixed beverage club events
63 licenses, in which case the application fee shall be \$15. *The application fee for banquet special event*
64 *and mixed beverage special event licenses shall be \$45.* Application fees shall be in addition to the state
65 license fee required pursuant to § 4.1-231 and shall not be refunded.

66 D. Subsection A shall not apply to the continuance of licenses granted under this chapter; however,
67 all licensees shall file and maintain with the Board a current, accurate record of the information required
68 by the Board pursuant to subsection A and notify the Board of any changes to such information in
69 accordance with Board regulations.

70 E. Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the
71 Board. In the case of applications to solicit the sale of wine and beer or spirits, each application shall be
72 accompanied by a fee of \$165 and \$390, respectively. The fee for each such permit shall be subject to
73 proration to the following extent: If the permit is granted in the second quarter of any year, the fee shall
74 be decreased by one-fourth; if granted in the third quarter of any year, the fee shall be decreased by
75 one-half; and if granted in the fourth quarter of any year, the fee shall be decreased by three-fourths.
76 Each such permit shall expire on June 30 next succeeding the date of issuance, unless sooner suspended
77 or revoked by the Board. Such permits shall confer upon their holders no authority to make solicitations
78 in the Commonwealth as otherwise provided by law.

79 The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for
80 applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied
81 by the number of months for which the permit is granted.

82 The fee for a keg registration permit shall be \$65 annually.

83 The fee for a permit for the storage of lawfully acquired alcoholic beverages not under customs bond
84 or internal revenue bond in warehouses located in the Commonwealth shall be \$260 annually.

85 **§ 4.1-231. Taxes on state licenses.**

86 A. The annual fees on state licenses shall be as follows:

87 1. Alcoholic beverage licenses. For each:

88 a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured
89 during the year in which the license is granted, \$450; if more than 5,000 gallons but not more than
90 36,000 gallons manufactured during such year, \$2,500; and if more than 36,000 gallons manufactured
91 during such year, \$3,725;

92 b. Fruit distiller's license, \$3,725;

93 c. Banquet facility license or museum license, \$190;

94 d. Bed and breakfast establishment license, \$35;

95 e. Tasting license, \$40 per license granted;

96 f. Equine sporting event license, \$130;

97 g. Motor car sporting event facility license, \$130;

98 h. Day spa license, \$100;

99 i. Delivery permit, \$120 if the permittee holds no other license under this title;

100 j. Meal-assembly kitchen license, \$100;

101 k. Canal boat operator license, \$100;

102 l. Annual arts venue event license, \$100;

103 m. Art instruction studio license, \$100; and

104 n. Commercial lifestyle center license, \$300.

105 2. Wine licenses. For each:

106 a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the
107 license is granted, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;

108 b. (1) Wholesale wine license, \$185 for any wholesaler who sells 30,000 gallons of wine or less per
109 year, \$930 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000
110 gallons of wine per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than
111 300,000 gallons of wine per year, and, \$1,860 for any wholesaler who sells more than 300,000 gallons
112 of wine per year;

113 (2) Wholesale wine license, including that granted pursuant to § 4.1-207.1, applicable to two or more
114 premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied by
115 the number of separate locations covered by the license;

116 c. Wine importer's license, \$370;

117 d. Retail off-premises winery license, \$145, which shall include a delivery permit;

118 e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license, each of
119 which shall include a delivery permit;

120 f. Wine shipper's license, ~~\$95~~ \$230; and

121 g. Internet wine retailer license, \$150.

3. Beer licenses. For each:
- a. Brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, \$350; if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150; and if more than 10,000 barrels manufactured during such year, \$4,300;
 - b. Bottler's license, \$1,430;
 - c. (1) Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;
 - (2) Wholesale beer license applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by the license;
 - d. Beer importer's license, \$370;
 - e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;
 - f. Retail off-premises beer license, \$120, which shall include a delivery permit;
 - g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$300, which shall include a delivery permit;
 - h. Beer shipper's license, \$95 \$230; and
 - i. Retail off-premises brewery license, \$120, which shall include a delivery permit.
4. Wine and beer licenses. For each:
- a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$750;
 - b. Retail on-premises wine and beer license to a hospital, \$145;
 - c. Retail on-premises wine and beer license to a historic cinema house, \$200;
 - d. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$230, which shall include a delivery permit;
 - e. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600, which shall include a delivery permit;
 - f. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215, which shall be \$100 per license;
 - g. Gourmet brewing shop license, \$230;
 - h. Wine and beer shipper's license, [\$95 \$230] ;
 - i. Annual banquet license, \$150;
 - j. Fulfillment warehouse license, \$120;
 - k. Marketing portal license, \$150; and
 - l. Gourmet oyster house license, \$230.
5. Mixed beverage licenses. For each:
- a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:
 - (i) With a seating capacity at tables for up to 100 persons, \$560;
 - (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
 - (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
 - b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs:
 - (i) With an average yearly membership of not more than 200 resident members, \$750;
 - (ii) With an average yearly membership of more than 200 but not more than 500 resident members, \$1,860; and
 - (iii) With an average yearly membership of more than 500 resident members, \$2,765.
 - c. Mixed beverage caterer's license, \$1,860;
 - d. Mixed beverage limited caterer's license, \$500;
 - e. Mixed beverage special events license, \$45 for each day of each event;
 - f. Mixed beverage club events licenses, \$35 for each day of each event;
 - g. Annual mixed beverage special events license, \$560;
 - h. Mixed beverage carrier license:
 - (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the

Commonwealth by a common carrier of passengers by train;
(ii) \$560 for each common carrier of passengers by boat;
(iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
i. Annual mixed beverage amphitheater license, \$560;
j. Annual mixed beverage motor sports race track license, \$560;
k. Annual mixed beverage banquet license, \$500;
l. Limited mixed beverage restaurant license:
(i) With a seating capacity at tables for up to 100 persons, \$460;
(ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$875;
(iii) With a seating capacity at tables for more than 150 persons, \$1,330;
m. Annual mixed beverage motor sports facility license, \$560; and
n. Annual mixed beverage performing arts facility license, \$560.
6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax imposed by this section on the license for which the applicant applied.

B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year, the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.

If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the number of gallons permitted to be manufactured shall be prorated in the same manner.

Should the holder of a distiller's license or a winery license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.

Notwithstanding the foregoing, the tax on each license granted or reissued for a period other than 12, 24, or 36 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period, and then increased by five percent. Such tax shall not be refundable, except as provided in § 4.1-232.

C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.

D. In addition to the taxes set forth in this section, a fee of \$5 may be imposed on any license purchased in person from the Board if such license is available for purchase online.

§ 4.1-332. Nonpayment of excise tax on beer, wine coolers, and wine; additional penalties.

A. No person shall sell (i) beer or wine coolers to retailers or consumers without paying the excise tax imposed by § 4.1-236 or (ii) wine to retailers or consumers without paying the excise tax imposed by subsection A of § 4.1-234. No retailer shall purchase, receive, transport, store or sell any beer or wine coolers, or wine on which such retailer has reason to know such tax has not been paid and may not be paid.

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

B. In addition to subsection A, on each manufacturer, bottler or wholesaler who fails to make any return and pay the full amount of the tax required by § 4.1-236 or subsection A of § 4.1-234, as applicable, there shall be imposed a civil penalty to be added to the tax in the amount of five percent of the proper tax due if the failure is for not more than thirty days, with an additional five percent for each additional thirty days, or fraction thereof, during which the failure continues. Such civil penalty shall not exceed twenty-five percent in the aggregate. In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any excise tax due on beer and wine coolers, or wine, a civil penalty of fifty percent of the amount of the proper tax due shall be assessed. All penalties and interest shall be payable to the Board and if not so paid shall be collectible in the same manner as if they were a part of the tax imposed.

C. After reasonable notice to the manufacturer, bottler, wholesaler or retailer, the Board may suspend

245 or revoke the license of the manufacturer, bottler, wholesaler or retailer who has failed to make any
246 return or to pay the full amount of the excise tax.

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