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HOUSE BILL NO. 2367

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 4.1-204 and 4.1-212.1 of the Code of Virginia, relating to alcoholic beverage control; delivery permits.

Patron—Knight

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-204 and 4.1-212.1 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-204. Records of licensees; inspection of records and places of business.**

A. Manufacturers, bottlers or wholesalers. — Every licensed manufacturer, bottler or wholesaler shall keep complete, accurate and separate records in accordance with Board regulations of all alcoholic beverages purchased, manufactured, bottled, sold or shipped by him, and the applicable tax required by § 4.1-234 or 4.1-236, if any.

B. Retailers. — Every retail licensee shall keep complete, accurate and separate records, in accordance with Board regulations, of all purchases of alcoholic beverages, the prices charged such licensee therefor, and the names and addresses of the persons from whom purchased. Every retail licensee shall also preserve all invoices showing his purchases for a period as specified by Board regulations. He shall also keep an accurate account of daily sales, showing quantities of alcoholic beverages sold and the total price charged by him therefor. Except as otherwise provided in subsection D, such account need not give the names or addresses of the purchasers thereof, except as may be required by Board regulation for the sale of alcoholic beverages in kegs. In the case of persons holding retail licenses which require sales of food to determine their qualifications for such licenses, the records shall also include purchases and sales of food and nonalcoholic beverages.

Notwithstanding the provisions of subsection F, electronic records of retail licensees may be stored off site, provided that such records are readily retrievable and available for electronic inspection by the Board or its special agents at the licensed premises. However, in the case that such electronic records are not readily available for electronic inspection on the licensed premises, the retail licensee may obtain Board approval, for good cause shown, to permit the retail licensee to provide the records to a special agent of the Board within three business days or less, as determined by the Board, after a request is made to inspect the records.

C. Common carriers. — Common carriers of passengers by train, boat, or airplane shall keep records of purchases and sales of alcoholic beverages and food as required by Board regulation.

D. Wine shippers and beer shippers. — Every wine shipper licensee and every beer shipper licensee shall keep complete, accurate, and separate records in accordance with Board regulations of all shipments of wine or beer to persons in the Commonwealth. Such licensees shall also remit on a monthly basis an accurate account stating whether any wine, farm wine, or beer products were sold and shipped and, if so, stating the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is shipped.

E. Delivery permittees. — Every holder of a delivery permit issued pursuant to § 4.1-212.1 shall keep complete, accurate, and separate records for a period of at least two years in accordance with Board regulations of all deliveries of wine or beer to persons in the Commonwealth. Such permittees shall also remit on a monthly basis an accurate account that sets forth records shall include (i) the brands of wine and beer sold, (ii) the total quantities of wine and beer sold and, (iii) the total price charged for such wine and beer. Such records shall include, and (iv) the names and, addresses, and signatures of the purchasers to whom the wine and beer is delivered. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report to the Board for that month; however, every permittee must submit a report to the Board no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months. Such purchaser signatures may be in an electronic format. Permittees shall remit such records on a monthly basis for any month during which the permittee makes a delivery for which the permittee is required to collect and remit taxes due to the Commonwealth pursuant to subsection D of § 4.1-212.1.

F. Inspection. — The Board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth and to the premises of both (i) every wine shipper licensee and beer shipper licensee and (ii) every delivery permittee wherever located where alcoholic beverages

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59 are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting
60 such place and all records, invoices and accounts therein. The Board may engage the services of
61 alcoholic beverage control authorities in any state to assist with the inspection of the premises of a wine
62 shipper licensee, a beer shipper licensee, or delivery permittee, or any applicant for such license or
63 permit.

64 For purposes of a Board inspection of the records of any retail licensees, "reasonable hours" means
65 the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public
66 substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee
67 is open to the public. At any other time of day, if the retail licensee's records are not available for
68 inspection, the retailer shall provide the records to a special agent of the Board within 24 hours after a
69 request is made to inspect the records.

70 **§ 4.1-212.1. Permits; delivery of wine and beer; regulations of Board.**

71 A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is
72 authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the
73 Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and
74 farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers
75 within the Commonwealth for personal consumption.

76 B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at
77 retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm
78 winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine,
79 and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within
80 the Commonwealth for personal consumption.

81 C. All such deliveries shall be to consumers within the Commonwealth for personal consumption
82 only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by *either (i)*
83 *the owner or any agent, officer, director, shareholder or employee of the permittee or (ii) an independent*
84 *contractor of the permittee, provided that the permittee has entered into a written agreement with the*
85 *independent contractor establishing that the permittee shall be vicariously liable for any violations of*
86 *this section committed by the independent contractor relating to any deliveries of beer, wine, or farm*
87 *wine made on behalf of the permittee.* No more than four cases of wine nor more than four cases of
88 beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be
89 lawfully sold; except that the permittee may deliver more than four cases of wine or more than four
90 cases of beer if he notifies the Department in writing at least one business day in advance of any such
91 delivery, which notice contains the name and address of the intended recipient. The Board may adopt
92 such regulations as it reasonably deems necessary to implement the provisions of this section. Such
93 regulations shall include provisions that require ~~(i)~~ (a) the recipient to demonstrate, upon delivery, that
94 he is at least 21 years of age; and ~~(ii)~~ (b) the recipient to sign an electronic or paper form or other
95 acknowledgement of receipt as approved by the Board.

96 D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each
97 delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the
98 taxes due to the Commonwealth and remit any excise taxes monthly to the Authority and any sales taxes
99 to the Department of Taxation, *if such taxes have not already been paid.*