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## HOUSE BILL NO. 1671

Offered January 17, 2020

A *BILL to amend and reenact §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; privileges of retail on-and-off premises and retail off-premises wine and beer licensees; sale of wine and beer through online food ordering platforms.*

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 Referred to Committee on General Laws
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-209. Wine and beer licenses; advertising.**

A. The Board may grant the following licenses relating to wine and beer:

1. Retail on-premises wine and beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. However, with regard to a hotel classified by the Board as (i) a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board or (ii) a limited service hotel, the Board may authorize the sale and consumption of alcoholic beverages in dining areas, private guest rooms, and other designated areas to persons to whom overnight lodging is being provided, for on-premises consumption in such rooms or areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises, provided that at least one meal is provided each day by the hotel to such guests. With regard to facilities registered in accordance with Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia as continuing care communities that are also licensed by the Board under this subdivision, any resident may, upon authorization of the licensee, keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas covered by the license. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201;

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell wine and beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them, for on-premises consumption when carrying passengers;

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

d. Persons operating as air carriers of passengers on regular schedules in foreign, interstate or intrastate commerce, which shall authorize the licensee to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth while in transit and in designated rooms of establishments of such carriers at airports in the Commonwealth, § 4.1-129 notwithstanding. For purposes of supplying its airplanes, as well as any airplane of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load wine and beer onto the same airplanes and to transport and store wine and beer at or in close proximity to the airport where the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of wine and beer may be stored and from which the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all wine and beer to be transported, stored, and delivered by its authorized representative;

e. Hospitals, which shall authorize the licensee to sell wine and beer in the rooms of patients for their on-premises consumption only in such rooms, provided the consent of the patient's attending physician is first obtained;

f. Persons operating food concessions at coliseums, stadia, racetracks or similar facilities, which shall authorize the licensee to sell wine and beer in paper, plastic or similar disposable containers or in single original metal cans, during any event and immediately subsequent thereto, to patrons within all seating

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HB1671

59 areas, concourses, walkways, concession areas and additional locations designated by the Board in such  
60 coliseums, stadia, racetracks or similar facilities, for on-premises consumption. Upon authorization of the  
61 licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the  
62 premises in all areas and locations covered by the license;

63 g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar  
64 facility which (i) has seating for more than 20,000 persons and is located in Prince William County or  
65 the City of Virginia Beach, (ii) has capacity for more than 3,500 persons and is located in the Counties  
66 of Albemarle, Alleghany, Augusta, Nelson, Pittsylvania, or Rockingham, or the Cities of Charlottesville,  
67 Danville, or Roanoke, or (iii) has capacity for more than 9,500 persons and is located in Henrico  
68 County. Such license shall authorize the licensee to sell wine and beer during the performance of any  
69 event, in paper, plastic or similar disposable containers or in single original metal cans, to patrons within  
70 all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises  
71 consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully  
72 acquired alcoholic beverages on the premises in all areas and locations covered by the license;

73 h. Persons operating food concessions at exhibition or exposition halls, convention centers or similar  
74 facilities located in any county operating under the urban county executive form of government or any  
75 city which is completely surrounded by such county, which shall authorize the licensee to sell wine and  
76 beer during the event, in paper, plastic or similar disposable containers or in single original metal cans,  
77 to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas,  
78 and such additional locations designated by the Board in such facilities, for on-premises consumption.  
79 Upon authorization of the licensee, any person may keep and consume his own lawfully acquired  
80 alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of  
81 this subsection, "exhibition or exposition hall" and "convention centers" mean facilities conducting  
82 private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet  
83 of floor space;

84 i. Persons operating a concert and dinner-theater venue on property fronting Natural Bridge School  
85 Road in Natural Bridge Station, Virginia, and formerly operated as Natural Bridge High School, which  
86 shall authorize the licensee to sell wine and beer during events to patrons or attendees within all seating  
87 areas, exhibition areas, concourses, walkways, concession areas, dining areas, and such additional  
88 locations designated by the Board in such facilities, for on-premises consumption. Persons licensed  
89 pursuant to this subdivision shall serve food, prepared on or off premises, whenever wine or beer is  
90 served; and

91 j. Historic cinema houses, which shall authorize the licensee to sell wine and beer, either with or  
92 without meals, during any showing of a motion picture to patrons to whom alcoholic beverages may be  
93 lawfully sold, for on-premises consumption. The privileges of this license shall be limited to the  
94 premises of the historic cinema house regularly occupied and utilized as such.

95 2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer  
96 in closed containers for off-premises consumption.

97 3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed  
98 containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any  
99 person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed two ounces by  
100 volume or (ii) a sample of beer not to exceed four ounces by volume, for on-premises consumption. The  
101 licensee may also give samples of wine and beer in designated areas at events held by the licensee for  
102 the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted.  
103 Additionally, with the consent of the licensee, farm wineries, wineries, breweries, and wholesale  
104 licensees may participate in tastings held by licensees authorized to conduct tastings, including the  
105 pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Notwithstanding  
106 Board regulations relating to food sales, the licensee shall maintain each year an average monthly  
107 inventory and sales volume of at least \$1,000 in products such as cheeses and gourmet food.

108 4. Convenience grocery store licenses, which shall authorize the licensee to sell wine and beer in  
109 closed containers for off-premises consumption.

110 5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which  
111 shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition,  
112 shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

113 6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or  
114 associations in charge of special events, which shall authorize the licensee to sell or give wine and beer  
115 in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms  
116 or areas. Licensees who are nonprofit corporations or associations conducting fundraisers (i) shall also  
117 be authorized to sell wine, as part of any fundraising activity, in closed containers for off-premises  
118 consumption to persons to whom wine may be lawfully sold and (ii) shall be limited to no more than  
119 one such fundraiser per year. Except as provided in § 4.1-215, a separate license shall be required for  
120 each day of each banquet or special event. For the purposes of this subdivision, when the location

named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer only within the interior premises of the gift shop in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold (i) a sample of wine not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume for on-premises consumption. The licensee may also give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted.

8. Gourmet brewing shop licenses, which shall authorize the licensee to sell to any person to whom wine or beer may be lawfully sold, ingredients for making wine or brewing beer, including packaging, and to rent to such persons facilities for manufacturing, fermenting, and bottling such wine or beer, for off-premises consumption in accordance with subdivision 6 of § 4.1-200.

9. Annual banquet licenses, to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

10. Fulfillment warehouse licenses, which shall authorize associations as defined in § 13.1-313 with a place of business located in the Commonwealth to (i) receive deliveries and shipments of wine or beer owned by holders of wine or beer shipper's licenses, (ii) store such wine or beer on behalf of the owner, and (iii) pick, pack, and ship such wine or beer as directed by the owner, all in accordance with Board regulations. No wholesale wine or wholesale beer licensee, whether licensed in the Commonwealth or not, or any person under common control of such licensee, shall acquire or hold any financial interest, direct or indirect, in the business for which any fulfillment warehouse license is issued.

11. Marketing portal licenses, which shall authorize agricultural cooperative associations organized under the provisions of the Agricultural Cooperative Association Act (§ 13.1-312 et seq.), with a place of business located in the Commonwealth, in accordance with Board regulations, to solicit and receive orders for wine or beer through the use of the Internet from persons in the Commonwealth to whom wine or beer may be lawfully sold, on behalf of holders of wine or beer shipper's licenses. Upon receipt of an order for wine or beer, the licensee shall forward it to a holder of a wine or beer shipper's license for fulfillment. Marketing portal licensees may also accept payment on behalf of the shipper.

12. Gourmet oyster house licenses, to establishments located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring and educating the consuming public about local oysters and other seafood products. Such license shall authorize the licensee to (i) give samples of or sell wine and beer in designated rooms and outdoor areas approved by the Board for consumption in such approved areas and (ii) sell wine and beer in closed containers for off-premises consumption. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person. The Board shall establish a minimum monthly food sale requirement of oysters and other seafood for such license. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

B. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms; and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery; and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

C. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may deliver such wine or beer in closed containers for off-premises consumption to such person's vehicle if located in a designated parking area of the retailer's premises where such person has electronically ordered wine or beer in advance of the delivery or (ii) if the licensee holds a

182 delivery permit issued pursuant to § 4.1-212.1, to such other locations as may be permitted by Board  
183 regulation.

184 *D. Notwithstanding any provision of law to the contrary, persons granted an on-and-off premises or*  
185 *off-premises wine and beer license pursuant to this section may sell such wine and beer in closed*  
186 *containers for off-premises consumption through an online food ordering platform. For purposes of this*  
187 *subsection, "online food ordering platform" means a website through which customers order and pay for*  
188 *food and wine or beer that is subsequently picked up by the customer from the retailer's licensed*  
189 *premises.*

190 ~~D.~~ E. Persons granted retail on-premises and on-and-off-premises wine and beer licenses pursuant to  
191 this section or subsection B of § 4.1-210 may conduct wine or beer tastings sponsored by the licensee  
192 for its customers for on-premises consumption. Such licensees may sell or give samples of wine and  
193 beer in designated areas at events held by the licensee for the purpose of featuring and educating the  
194 consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the  
195 licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized  
196 to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may  
197 be lawfully sold. Samples of wine shall not exceed two ounces per person. Samples of beer shall not  
198 exceed four ounces per person.

199 **§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

200 A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee  
201 shall:

202 1. Sell or serve any alcoholic beverage other than as authorized by law;  
203 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;  
204 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of  
205 this title;

206 4. Keep at the place described in his license any alcoholic beverage other than that which he is  
207 licensed to sell;

208 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

209 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by  
210 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink  
211 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by  
212 the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board  
213 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee  
214 from premixing containers of sangria, to which spirits may be added, to be served and sold for  
215 consumption on the licensed premises;

216 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper  
217 with the contents of any bottle or container of alcoholic beverage, except as provided by Board  
218 regulation adopted pursuant to subdivision B 11 of § 4.1-111;

219 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the  
220 purchaser without first advising such purchaser of the difference;

221 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages  
222 offered for sale;

223 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or  
224 obliterated;

225 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the  
226 licensed premises;

227 12. Allow any striptease act on the licensed premises;

228 13. Allow persons connected with the licensed business to appear nude or partially nude;

229 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty  
230 and in a position that is involved in the selling or serving of alcoholic beverages to customers.

231 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
232 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
233 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
234 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
235 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of  
236 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for  
237 quality control purposes;

238 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license  
239 whether the closure is broken or unbroken except in accordance with § 4.1-210.

240 The provisions of this subdivision shall not apply to the delivery of:

241 a. "Soju." For the purposes of this subdivision, "soju" means a traditional Korean alcoholic beverage  
242 distilled from rice, barley or sweet potatoes; or

243 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content

is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;

16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

17. Conceal any sale or consumption of any alcoholic beverages;

18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;

19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus;

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection D E of § 4.1-209; (iv) pursuant to subdivision A 11 of § 4.1-201; or (v) pursuant to any Board regulation. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

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

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

#### **§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.**

A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or employee shall consume any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subsection shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes.

B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not be deemed to be agents of the retail wine or beer licensee.

C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subsection; (iii) pursuant to subsection D E of § 4.1-209; (iv) pursuant to subdivision A 11 of § 4.1-201; or (v) pursuant to any Board regulation. Any gift permitted by this subsection shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subsection.

D. Any person convicted of a violation of this section shall be subject to a civil penalty in an amount not to exceed \$500.