

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 597

*An Act to amend and reenact §§ 3.2-102, 4.1-206.2, 4.1-223, 4.1-225.1, 4.1-231.1, and 4.1-310.1 of the Code of Virginia, relating to alcoholic beverage control; beer distribution.*

[H 2258]

Approved March 26, 2023

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

**1. That §§ 3.2-102, 4.1-206.2, 4.1-223, 4.1-225.1, 4.1-231.1, and 4.1-310.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 3.2-102. General powers and duties of the Commissioner.**

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products;

2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section; and

3. *Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for Virginia breweries and limited breweries. Such corporation shall provide wholesale beer distribution services for Virginia breweries and limited breweries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, (i) two of whom shall be an owner or manager of a Virginia beer wholesale licensee, (ii) one of whom shall be an owner or manager of a brewery or limited brewery licensee, and (iii) one of whom shall be an owner or manager of a brewery or limited brewery licensee that is not served by a wholesaler at the time such owner or manager is appointed to the board of directors. In making appointments to the board of directors, the Board shall consider nominations submitted by the Virginia Beer Wholesalers Association regarding members listed in clause (i) and nominations submitted by the Virginia Craft Brewers Guild regarding members listed in clauses (ii) and (iii). At least annually, such corporation shall be required to report to the Commissioner on its activities, including reporting the quantity of beer distributed for each brewery or limited brewery licensee during the preceding year. The Commissioner shall report such information to the General Assembly. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section; and*

4. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations.

#### **§ 4.1-206.2. Wholesale licenses.**

The Board may grant the following wholesale licenses:

1. Wholesale beer licenses, *including those granted pursuant to subdivision 2*, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the beer from one or more premises identified in the license, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

2. *Restricted wholesale beer licenses, which shall authorize a nonprofit, nonstock corporation created in accordance with subdivision B 3 of § 3.2-102 to provide wholesale beer distribution services to brewery and limited brewery licensees, provided that no more than 500 barrels of beer shall be distributed by the corporation to each licensee in any one calendar year. The corporation shall provide such distribution services in accordance with the terms of a written agreement with the brewery or limited brewery licensee, which shall comply with the provisions of this subtitle and Board regulations. The corporation shall receive all of the privileges of, and be subject to all laws and regulations governing, wholesale beer licenses granted under subdivision 1. The board of directors of such corporation shall develop procedures and guidelines related to the sale and delivery of beer by the corporation to holders of banquet and special events licenses when such events are located within the exclusive distribution territory of another wholesale beer licensee.*

3. Wholesale wine licenses, including those granted pursuant to subdivision 3 4, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine from one or more premises identified in the license, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

No wholesale wine licensee shall purchase wine for resale from a person outside the Commonwealth who does not hold a wine importer's license unless such wholesale wine licensee holds a wine importer's license and purchases wine for resale pursuant to the privileges of such wine importer's license.

3. 4. *Restricted wholesale wine licenses, which shall authorize a nonprofit, nonstock corporation created in accordance with subdivision B 2 of § 3.2-102 to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this subtitle and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2 3.*

#### **§ 4.1-223. Conditions under which Board shall refuse to grant licenses.**

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer, or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision B 3 b of § 4.1-216 or (ii) the nonprofit, nonstock corporation established pursuant to subdivision B 2 of § 3.2-102 in exercising any privileges granted under subdivision 4 of § 4.1-206.2.

3. Wholesale beer license ~~or wholesale wine license~~ to any (i) entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages; ~~any~~; (ii) subsidiary or affiliate of ~~such a~~ manufacturer; ~~of alcoholic beverages~~; (iii) officer, director, or principal stockholder of a manufacturer of alcoholic beverages; (iv) spouse of an officer, director, or principal stockholder of a manufacturer of alcoholic beverages; or ~~any~~ (v) person under common control with ~~such a~~ manufacturer of alcoholic beverages. This subdivision, however, shall not apply to ~~(i)~~ (a) any applicant for a wholesale beer or wine license filed pursuant to subdivision B 3 b of § 4.1-216 or ~~(ii)~~ (b) the nonprofit, nonstock corporation established pursuant to subdivision B ~~2~~ 3 of § 3.2-102 in exercising any privileges granted under subdivision ~~3~~ 2 of § 4.1-206.2.

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies, or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery, or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

~~3-~~ 4. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. 5. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

~~5-~~ 6. Mixed beverage license to any member, agent, or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

~~6-~~ 7. License authorized by this chapter until the license tax required by § 4.1-231.1 is paid to the Board.

#### **§ 4.1-225.1. Summary suspension in emergency circumstances; grounds; notice and hearing.**

A. Notwithstanding any provisions to the contrary in Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act or § 4.1-227 or 4.1-229, the Board may summarily suspend any license or permit if it has reasonable cause to believe that an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, has occurred on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises, and the Board finds that there exists a continuing threat to public safety and that summary suspension of the license or permit is justified to protect the health, safety, or welfare of the public.

B. Prior to issuing an order of suspension pursuant to this section, special agents of the Board shall conduct an initial investigation and submit all findings to the Secretary of the Board within 48 hours of any such act of violence. If the Board determines suspension is warranted, it shall immediately notify the licensee of its intention to temporarily suspend his license pending the outcome of a formal investigation. Such temporary suspension shall remain effective for a minimum of 48 hours. After the 48-hour period, the licensee may petition the Board for a restricted license pending the results of the formal investigation and proceedings for disciplinary review. If the Board determines that a restricted

license is warranted, the Board shall have discretion to impose appropriate restrictions based on the facts presented.

C. Upon a determination to temporarily suspend a license, the Board shall immediately commence a formal investigation. The formal investigation shall be completed within 10 days of its commencement and the findings reported immediately to the Secretary of the Board. If, following the formal investigation, the Secretary of the Board determines that suspension of the license is warranted, a hearing shall be held within five days of the completion of the formal investigation. A decision shall be rendered within 10 days of conclusion of the hearing. If a decision is not rendered within 10 days of the conclusion of the hearing, the order of suspension shall be vacated and the license reinstated. Any appeal by the licensee shall be filed within 10 days of the decision and heard by the Board within 20 days of the decision. The Board shall render a decision on the appeal within 10 days of the conclusion of the appeal hearing.

D. Service of any order of suspension issued pursuant to this section shall be made by a special agent of the Board in person and by certified mail to the licensee. The order of suspension shall take effect immediately upon service.

E. This section shall not apply to (i) temporary licenses granted under § 4.1-211 or temporary permits granted under § 4.1-212, either of which may be revoked summarily in accordance with § 4.1-211, or (ii) licenses granted pursuant to subdivision 7 or 8 of § 4.1-206.1 or subdivision 1 or 2 of § 4.1-206.2.

**§ 4.1-231.1. Fees on state licenses.**

A. (Contingent expiration date) The annual fees on state licenses shall be as follows:

1. Manufacturer licenses. For each:

a. Distiller's license and limited distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, \$490; if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, \$2,725; and if more than 36,000 gallons manufactured during such year, \$4,060;

b. Brewery license and limited brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, \$380; if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,350; and if more than 10,000 barrels manufactured during such year, \$4,690;

c. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$215, and if more than 5,000 gallons manufactured during such year, \$4,210;

d. Farm winery license, \$245 for any Class A license and \$4,730 for any Class B license;

e. Wine importer's license, \$460; and

f. Beer importer's license, \$460.

2. Wholesale licenses. For each:

a. (1) Wholesale beer license, \$1,005 for any wholesaler who sells 300,000 cases of beer a year or less, \$1,545 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$2,010 for any wholesaler who sells more than 600,000 cases of beer a year; and

(2) Wholesale beer license, *including a license granted pursuant to subdivision 2 of § 4.1-206.2*, applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision a (1), multiplied by the number of separate locations covered by the license;

b. (1) Wholesale wine license, \$240 for any wholesaler who sells 30,000 gallons of wine or less per year, \$1,200 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000 gallons of wine per year, \$1,845 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and \$2,400 for any wholesaler who sells more than 300,000 gallons of wine per year; and

(2) Wholesale wine license, *including that a license granted pursuant to subdivision 3 4 of § 4.1-206.2*, applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied by the number of separate locations covered by the license.

3. Retail licenses — mixed beverage. For each:

a. Mixed beverage restaurant license, granted to persons operating restaurants, including restaurants located on premises of and operated by casinos, hotels or motels, or other persons:

(1) With a seating capacity at tables for up to 100 persons, \$1,050;

(2) With a seating capacity at tables for more than 100 but not more than 150 persons, \$1,495;

(3) With a seating capacity at tables for more than 150 persons but not more than 500 persons, \$1,980;

(4) With a seating capacity at tables for more than 500 persons but not more than 1,000 persons, \$2,500; and

(5) With a seating capacity at tables for more than 1,000 persons, \$3,100;

b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs:

(1) With an average yearly membership of not more than 200 resident members, \$1,250;

(2) With an average yearly membership of more than 200 but not more than 500 resident members,

\$2,440; and

- (3) With an average yearly membership of more than 500 resident members, \$3,410;
- c. Mixed beverage casino license, \$3,100 plus an additional \$5 for each gaming station located on the premises of the casino gaming establishment. For the purposes of this subdivision, "gaming station" means each slot machine and each casino gaming table that is in active use, as determined annually on December 31;
- d. Mixed beverage caterer's license, \$1,990;
- e. Mixed beverage limited caterer's license, \$550;
- f. Mixed beverage carrier license:
  - (1) \$520 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;
  - (2) \$910 for each common carrier of passengers by boat;
  - (3) \$520 for each common carrier of passengers by bus; and
  - (4) \$2,360 for each license granted to a common carrier of passengers by airplane;
- g. Annual mixed beverage motor sports facility license, \$630;
- h. Limited mixed beverage restaurant license:
  - (1) With a seating capacity at tables for up to 100 persons, \$945;
  - (2) With a seating capacity at tables for more than 100 but not more than 150 persons, \$1,385; and
  - (3) With a seating capacity at tables for more than 150 persons, \$1,875;
- i. Annual mixed beverage performing arts facility license, \$630;
- j. Bed and breakfast license, \$100;
- k. Museum license, \$260;
- l. Motor car sporting event facility license, \$300;
- m. Commercial lifestyle center license, \$300;
- n. Mixed beverage port restaurant license, \$1,050; and
- o. Annual mixed beverage special events license, \$630.
4. Retail licenses — on-and-off-premises wine and beer. For each on-and-off premises wine and beer license, \$450.
5. Retail licenses — off-premises wine and beer. For each:
  - a. Retail off-premises wine and beer license, \$300;
  - b. Gourmet brewing shop license, \$320; and
  - c. Confectionery license, \$170.
6. Retail licenses — banquet, special event, and tasting licenses.
  - a. Per-day event licenses. For each:
    - (1) 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;
    - (2) Mixed beverage special events license, \$45 for each day of each event;
    - (3) Mixed beverage club events license, \$35 for each day of each event; and
    - (4) Tasting license, \$40.
  - b. Annual licenses. For each:
    - (1) Annual banquet license, \$300;
    - (2) Banquet facility license, \$260;
    - (3) Designated outdoor refreshment area license, \$300. However, for any designated outdoor refreshment area license issued pursuant to a local ordinance, the annual fee shall be \$3,000;
    - (4) Annual mixed beverage banquet license, \$630;
    - (5) Equine sporting event license, \$300; and
    - (6) Annual arts venue event license, \$300.
7. Retail licenses — marketplace. For each marketplace license, \$1,000.
8. Retail licenses — shipper, bottler, and related licenses. For each:
  - a. Wine and beer shipper's license, \$230;
  - b. Internet wine and beer retailer license, \$240;
  - c. Bottler license, \$1,500;
  - d. Fulfillment warehouse license, \$210;
  - e. Marketing portal license, \$285; and
  - f. Third-party delivery license, \$7,500, unless the licensee provides written certification to the Board that the licensee has no more than 25 delivery personnel, including employees, agents, and independent contractors that engage in direct-to-consumer alcoholic beverage delivery, in which case the license fee shall be \$2,500.
9. 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 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.

**§ 4.1-310.1. Delivery of wine or beer to retail licensee.**

Except as otherwise provided in this subtitle or in Board regulation, no wine or beer may be shipped or delivered to a retail licensee for resale unless such wine or beer has first been (i) delivered to the licensed premises of a wine or beer wholesaler and unloaded, (ii) kept on the licensed premises of the wholesaler for not less than four hours prior to reloading on a vehicle, and (iii) recorded in the wholesaler's inventory. Any holder of a restricted wholesale wine license issued pursuant to subdivision 3 4 of § 4.1-206.2 shall be exempt from the requirement set forth in clause (ii).

**2. That the provisions of this act shall become effective on July 1, 2024.**

**3. That the Commissioner of Agriculture and Consumer Services shall submit to the Alcohol and Tobacco Tax and Trade Bureau a request for a waiver from federal permitting requirements for the corporation established pursuant to subdivision B 3 of § 3.2-102 of the Code of Virginia, as amended by this act.**

**4. That the board of directors (the Board) of the nonprofit, nonstock corporation established pursuant to subdivision B 3 of § 3.2-102 of the Code of Virginia, as amended by this act, shall establish a transaction fee schedule for transactions completed by such corporation, which may include flat fees or fees based on a percentage of the sale. The Board may provide a transaction fee incentive for any brewery or limited brewery that utilizes materials or ingredients grown or processed in the Commonwealth, including malt, hops, grain, fruit, juice, vegetables, spices, yeast, enzymes, packaging, containers, labeling, and closures. The Board may limit the volume of beer sold per transaction.**

**5. That the provisions of clause (iv) of subdivision 3 of § 4.1-223 of the Code of Virginia, as amended by this act, shall not apply to the spouse of an officer, director, or principal stockholder of a brewery or limited brewery licensee that was granted such license prior to January 1, 2024.**