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HOUSE BILL NO. 1659

Offered January 16, 1995

A BILL to amend and reenact §§ 4.1-100 and 4.1-210 of the Code of Virginia and to repeal § 4.1-114, relating to alcoholic beverage control; food-beverage ratio.

Patron—Robinson

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100 and 4.1-210 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-100. Definitions.

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition.

"Barrel" means any container or vessel having a capacity of more than forty-three ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than fifteen bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than forty-three ounces.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of bingo games or raffles conducted pursuant to Article 1.1 (§ 18.2-340.1 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such bingo games or raffles are being conducted while such games or raffles are being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means an establishment located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the

INTRODUCED

HB1659

60 premises where the owner or lessee manufactures wine that contains not more than fourteen percent
61 alcohol by volume. As used in this definition, the terms "owner" and "lessee" shall include a cooperative
62 formed by an association of individuals for the purpose of manufacturing wine. In the event such
63 cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the
64 land owned or leased by the individual members of the cooperative as long as such land is located in
65 the Commonwealth.

66 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty
67 items relating to history, original and handmade arts and products, collectibles, crafts, and floral
68 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure
69 where stock is displayed and offered for sale and which has facilities to properly secure any stock of
70 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered
71 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall
72 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be
73 considered a gift shop.

74 "Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage
75 facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and
76 beers of various types and sizes and related products such as cheeses and gourmet foods are habitually
77 furnished to persons.

78 "Government store" means a store established by the Board for the sale of alcoholic beverages.

79 "Hotel" means any duly licensed establishment, provided with special space and accommodation,
80 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has
81 four or more bedrooms. It shall also mean the person who operates such hotel.

82 "Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order
83 pursuant to this title.

84 "Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to
85 observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

86 "Licensee" means any person to whom a license has been granted by the Board.

87 "Licensed" means the holding of a valid license issued by the Board.

88 "Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona
89 fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments
90 specializing in full course meals with a single substantial entree.

91 "Member of a club" means a person who maintains his membership in the club by the payment of
92 monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof. It shall
93 also mean a lifetime member whose financial contribution is not less than ten times the annual dues of
94 resident members of the club, the full amount of such contribution being paid in advance in a lump
95 sum.

96 "Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of
97 spirits.

98 "Place or premises" means the real estate, together with any buildings or other improvements thereon,
99 designated in the application for a license as the place at which the manufacture, bottling, distribution,
100 use or sale of alcoholic beverages shall be performed, except that portion of any such building or other
101 improvement actually and exclusively used as a private residence.

102 "Public place" means any place, building, or conveyance to which the public has, or is permitted to
103 have, access, including restaurants, soda fountains, hotel dining areas, lobbies, and corridors of hotels,
104 and any highway, street, lane, park, or place of public resort or amusement.

105 The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private
106 meetings or private parties limited in attendance to members and guests of a particular group,
107 association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or
108 similar facilities while such restaurant is closed to the public and in use for private meetings or parties
109 limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such
110 building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in
111 use for private meetings or parties limited in attendance to employees and nonpaying guests of the
112 owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats
113 which are not licensed by the Board and on which alcoholic beverages are not sold.

114 "Residence" means any building or part of a building or structure where a person resides, but does
115 not include any part of a building which is not actually and exclusively used as a private residence, nor
116 any part of a hotel or club other than a private guest room thereof.

117 "Resort complex" means a facility with a hotel owning year-round sports and recreational facilities
118 located contiguously on the same property. The hotel must have a minimum of 250 private guest rooms
119 contained on not less than 100 acres. The Board may consider the purpose, characteristics, and operation
120 of the applicant establishment in determining whether it shall be considered as a resort complex. All
121 other pertinent qualifications established by the Board for a hotel operation shall be observed by such

122 licensee.

123 "Restaurant" means, for a beer, or wine and beer license, any establishment provided with special
124 space and accommodation, where, in consideration of payment, meals or other foods prepared on the
125 premises are regularly sold.

126 "Restaurant" means, for a mixed beverage license, an established place of business (i) where meals
127 with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees
128 for cooking, preparing, and serving such meals for consumption at tables in dining areas on the
129 premises, and includes establishments specializing in full course meals with a single substantial entree.

130 "Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale;
131 peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic
132 beverages.

133 "Special agent" means an employee of the Department of Alcoholic Beverage Control whom the
134 Board has designated as a law-enforcement officer pursuant to § 4.1-105.

135 "Special event" means an event sponsored by a duly organized nonprofit corporation or association
136 and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

137 "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable
138 water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and
139 gin, or any one or more of the last four named ingredients; but shall not include any such liquors
140 completely denatured in accordance with formulas approved by the United States government.

141 "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of
142 fruits or other agricultural products containing (i) sugar, including honey and milk, either with or
143 without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product
144 of distillation. The term includes any wine to which wine spirits have been added, as provided in the
145 Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an
146 alcohol content of twenty-one percent by volume.

147 "Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and
148 not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of
149 wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain
150 water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar
151 products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice
152 beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

153 "With or without meals" means the selling and serving of alcoholic beverages by retail licensees for
154 on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio
155 required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by
156 such retail licensee.

157 § 4.1-210. Mixed beverage licenses.

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

160 1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed
161 beverages for consumption in dining areas and other designated areas on the premises of such restaurant.
162 Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts
163 from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages
164 served on the premises, after issuance of such license, amount to at least forty-five percent of the gross
165 receipts from the sale of mixed beverages and food.

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

176 If the restaurant is located on the premises of and operated by a private, nonprofit or profit club
177 exclusively for its members and their guests, or members of another private, nonprofit or profit club in
178 another city with which it has an agreement for reciprocal dining privileges, such license shall also
179 authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club
180 prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the
181 Board and located on another portion of the premises of the same hotel or motel building, this fact shall
182 not prohibit the granting of a license by the Board to such club qualifying in all other respects. The

183 club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold
184 to its members and guests and consumed on the premises shall amount to at least forty-five percent of
185 its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to
186 such a club shall be excluded in any consideration of the qualifications of such restaurant for a license
187 from the Board.

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

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

198 4. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or
199 association operating a performing arts facility or (ii) a nonprofit corporation or association chartered by
200 Congress for the preservation of sites, buildings and objects significant in American history and culture.
201 The operation in either case shall be upon premises owned by such licensee or occupied under a bona
202 fide lease the original term of which was for more than one year's duration. Such license shall authorize
203 the sale, on the dates of performances or events in furtherance of the purposes of the nonprofit
204 corporation or association, of alcoholic beverages, for on-premises consumption in areas upon the
205 licensed premises approved by the Board.

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

210 B. The granting of any license under subdivisions 1 and 5 shall automatically include a license to
211 sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local
212 taxes required by §§ 4.1-231 and 4.1-233.

213 **2. That § 4.1-114 of the Code of Virginia is repealed.**