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HOUSE BILL NO. 1442

House Amendments in [] — February 10, 1996

A BILL to amend and reenact §§ 4.1-100, 4.1-103, 4.1-104, and 4.1-119 of the Code of Virginia, relating to alcoholic beverage control; sale of mixers by Board.

Patron—Bloxom

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-103, 4.1-104, and 4.1-119 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

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

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

75 "Gourmet brewing shop" means an establishment which sells to persons to whom beer may lawfully
76 be sold, ingredients for brewing beer, including packaging, and rents to such persons facilities for
77 manufacturing, fermenting and bottling such beer.

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

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

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

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

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

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

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

92 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol
93 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits
94 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit
95 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by
96 fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of
97 this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved
98 the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be
99 sold for on-premises consumption other than by mixed beverage licensees.

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

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

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

110 "Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials,
111 and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives
112 which are [~~usually~~ not commonly consumed unless] combined with alcoholic beverages [~~for~~
113 ~~consumption~~], whether or not such ingredients contain alcohol, and provided at least fifty-one percent
114 of such ingredients are made from Virginia products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.1-103. General powers of Board.

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries; ~~the procurement of which is exempt from Chapter 7 (§ 11-35 et seq.) of Title 11, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;~~

2. ~~Buy and sell any mixers;~~

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

183 4. 5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic
184 beverages to and from such warehouses;
185 5- 6. Lease, occupy and improve any land or building required for the purposes of this title;
186 6- 7. Purchase or otherwise acquire title to any land or building required for the purposes of this title
187 and sell and convey the same by proper deed, with the consent of the Governor;
188 7- 8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be
189 considered necessary or useful in carrying into effect the purposes of this title, including rectifying,
190 blending and processing plants. The Board may purchase, build, lease, and operate distilleries and
191 manufacture alcoholic beverages;
192 8- 9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages
193 to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed
194 thereon;
195 9- 10. Appoint every agent and employee required for its operations; require any or all of them to
196 give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage
197 the services of experts and professionals;
198 10- 11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
199 production of records, memoranda, papers and other documents before the Board or any agent of the
200 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
201 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take
202 testimony thereunder, and make summary decisions, subject to final decision by the Board, on
203 application of any party aggrieved;
204 11- 12. Make a reasonable charge for preparing and furnishing statistical information and
205 compilations to persons other than (i) officials, including court and police officials, of the
206 Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons
207 who have a personal or legal interest in obtaining the information requested if such information is not to
208 be used for commercial or trade purposes;
209 12- 13. Promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)
210 and § 4.1-111 of this chapter;
211 13- 14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation,
212 and sale of alcoholic beverages;
213 14- 15. Assess and collect civil penalties and civil charges for violations of this title and Board
214 regulations;
215 15- 16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;
216 16- 17. Establish minimum food sale requirements for all retail licensees; and
217 17- 18. Do all acts necessary or advisable to carry out the purposes of this title.
218 § 4.1-104. Purchases by the Board.
219 The purchasing of alcoholic beverages *and mixers*, the making of leases, and the purchasing of real
220 estate by the Board under the provisions of this title are exempt from the Virginia Public Procurement
221 Act (§ 11-35 et seq.).
222 § 4.1-119. Operation of government stores.
223 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and
224 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by
225 farm wineries, ~~and~~ vermouth, *and mixers*, in such counties, cities, and towns considered advisable by the
226 Board. The Board may discontinue any such store.
227 B. The Board shall fix the wholesale and retail prices at which the various classes, varieties and
228 brands of alcoholic beverages are sold in government stores. Differences in the cost of operating stores,
229 and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at
230 government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and
231 operating under the laws of the United States and regulations of the United States Department of
232 Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United
233 States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged
234 other authorized purchasers.
235 C. Alcoholic beverages at government stores shall be sold by employees of the Board, who shall
236 carry out the provisions of this title and Board regulations governing the operation of government stores
237 and the sale of alcoholic beverages.
238 D. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without
239 distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101
240 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.
241 E. All alcoholic beverages sold in government stores shall be in closed containers, sealed and affixed
242 with labels prescribed by the Board.
243 F. No alcoholic beverages shall be consumed in a government store by any person.
244 G. With respect to purchases by licensees at government stores, the Board shall accept in payment

245 for any purchase or series of purchases cash, electronic fund transfer, or check payable to the Board, in
246 the exact amount of any such purchase or series of purchases.

247 H. With respect to purchases by consumers at government stores, the Board shall accept cash in
248 payment for any purchase or series of purchases. The Board may adopt regulations which provide for
249 accepting a credit card or debit card as payment. Such regulations may provide for the collection, where
250 appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by
251 any consumer.

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