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HOUSE BILL NO. 945

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 27, 1998)

(Patrons Prior to Substitute—Delegates Dickinson and Diamonstein [HB 450])

A BILL to amend and reenact §§ 4.1-210, 4.1-230, 4.1-231, and 4.1-233 of the Code of Virginia, relating to alcoholic beverage control; mixed beverage licenses.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-210, 4.1-230, 4.1-231, and 4.1-233 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-210. Mixed beverage licenses.

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

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

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

If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on another portion of the premises of the same hotel or motel building, this fact shall not prohibit the granting of a license by the Board to such club qualifying in all other respects. The club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises shall amount to at least forty-five percent of its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

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

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

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

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

64 6. *Mixed beverage club event licenses, which shall authorize a club holding a beer or wine and beer*
65 *club license to sell and serve mixed beverages for on-premises consumption by club members and their*
66 *guests in areas approved by the Board on the club premises. A separate license shall be required for*
67 *each day of each club event. No more than twelve such licenses shall be granted to a club in any*
68 *calendar year.*

69 B. The granting of any license under subdivisions 1 ~~and~~ , 5 *and* 6 shall automatically include a
70 license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state
71 and local taxes required by §§ 4.1-231 and 4.1-233.

72 § 4.1-230. Applications for licenses; publication; notice to localities; fees; permits.

73 A. Every person intending to apply for any license authorized by this chapter shall file with the
74 Board an application on forms provided by the Board and a statement in writing, under oath, setting
75 forth any information required by the Board. Applications for banquet, tasting, ~~or~~ mixed beverage
76 special events, *or club events* licenses shall not be required to be under oath, but the information
77 contained therein shall be certified as true by the applicant.

78 B. In addition, each applicant for a license under the provisions of this chapter, except applicants for
79 banquet, tasting, ~~or~~ special events, *or club events* licenses issued under the provisions of Chapter 2 of
80 this title, or beer or wine importer's licenses located outside the Commonwealth, shall post a notice of
81 his application with the Board on the front door of the building, place or room where he proposes to
82 engage in such business for no more than thirty days and not less than ten days. Such notice shall be of
83 a size and contain such information as required by the Board.

84 The applicant shall cause a copy of such notice to be published at least once a week for two
85 consecutive weeks in a newspaper published in or having a general circulation in the county, city or
86 town wherein such applicant proposes to engage in such business. In the case of operators of boats,
87 dining cars, buffet cars, club cars, and airplanes, the posting and publishing of notice shall not be
88 required.

89 Except for applicants for banquet, tasting, ~~or~~ mixed beverage special events, *or club events* licenses,
90 the Board shall conduct a background investigation, to include a criminal history records search, on each
91 applicant for a license.

92 The Board shall notify the local governing body of each license application through the county or
93 city attorney or the chief law-enforcement officer of the locality. Local governing bodies shall submit
94 objections to the granting of a license within thirty days of the filing of the application.

95 C. Each applicant shall pay the required application fee at the time the application is filed. Each
96 license application fee shall be \$50, except for banquet, tasting, ~~or~~ mixed beverage special events, *or*
97 *mixed beverage club event* licenses, in which case the application fee shall be \$15. Application fees shall
98 be in addition to the state license tax required pursuant to § 4.1-231 and shall not be refunded.

99 D. Subsection A shall not apply to the continuance of licenses granted under this chapter.

100 E. Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the
101 Board. In the case of applications to solicit the sale of wine and beer or spirits, each application shall be
102 accompanied by a fee of \$125 and \$300, respectively. The fee for each such permit shall be subject to
103 proration to the following extent: If the permit is granted in the second quarter of any year, the fee shall
104 be decreased by one-fourth; if granted in the third quarter of any year, the fee shall be decreased by
105 one-half; and if granted in the fourth quarter of any year, the fee shall be decreased by three-fourths.
106 Each such permit shall expire on June 30 next succeeding the date of issuance, unless sooner suspended
107 or revoked by the Board. Such permits shall confer upon their holders no authority to make solicitations
108 in the Commonwealth as otherwise provided by law.

109 The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for
110 applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied
111 by the number of months for which the permit is granted.

112 The fee for a keg registration permit shall be \$50 annually.

113 The fee for a permit for the storage of lawfully acquired alcoholic beverages not under customs bond
114 or internal revenue bond in warehouses located in the Commonwealth shall be \$200 annually.

115 § 4.1-231. Taxes on state licenses.

116 A. The annual taxes on state licenses shall be as follows:

117 1. Alcoholic beverage licenses. For each:

118 a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured
119 during the year in which the license is granted, \$350; and if more than 5,000 gallons manufactured
120 during such year, \$2,860;

121 b. Fruit distiller's license, \$2,860;

- 122 c. Banquet facility license, \$145;
- 123 d. Bed and breakfast establishment license, \$25; and
- 124 e. Tasting license, \$30 per license granted.
- 125 2. Wine licenses. For each:
- 126 a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the
- 127 license is granted, \$350, and if more than 5,000 gallons manufactured during such year, \$2,860;
- 128 b. Wholesale wine license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per
- 129 year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine
- 130 per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year;
- 131 c. Wine importer's license, \$285;
- 132 d. Retail off-premises winery license, \$110; and
- 133 e. Farm winery license, \$145.
- 134 3. Beer licenses. For each:
- 135 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which
- 136 the license is granted, \$1,650, and if more than 10,000 barrels manufactured during such year, \$3,300;
- 137 b. Bottler's license, \$1,100;
- 138 c. Wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less,
- 139 and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a
- 140 year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year;
- 141 d. Beer importer's license, \$285;
- 142 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common
- 143 carrier of passengers by train or boat, \$110; for each such license to a common carrier of passengers by
- 144 train or boat, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club
- 145 cars operated daily in the Commonwealth;
- 146 f. Retail off-premises beer license, \$90; and
- 147 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a
- 148 town or in a rural area outside the corporate limits of any city or town, \$230.
- 149 4. Wine and beer licenses. For each:
- 150 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a
- 151 common carrier of passengers by train, boat or airplane, \$230; for each such license to a common
- 152 carrier of passengers by train or boat, \$230 per annum for each of the average number of boats, dining
- 153 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to
- 154 a common carrier of passengers by airplane, \$575;
- 155 b. Retail on-premises wine and beer license to a hospital, \$110;
- 156 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
- 157 grocery store license, \$175;
- 158 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$460;
- 159 e. Banquet license, \$30 per license granted by the Board; and
- 160 f. Gourmet brewing shop license, \$175.
- 161 5. Mixed beverage licenses. For each:
- 162 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants
- 163 located on premises of and operated by hotels or motels, or other persons:
- 164 (i) With a seating capacity at tables for up to 100 persons, \$430;
- 165 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$750; and
- 166 (iii) With a seating capacity at tables for more than 150 persons, \$1,100.
- 167 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
- 168 private, nonprofit clubs:
- 169 (i) With an average yearly membership of not more than 200 resident members, \$575;
- 170 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
- 171 \$1,430; and
- 172 (iii) With an average yearly membership of more than 500 resident members, \$2,125.
- 173 c. Mixed beverage caterer's license, \$1,430.
- 174 d. Mixed beverage special events license, \$35 for each day of each event.
- 175 e. *Mixed beverage club event licenses, \$25 for each day of each event.*
- 176 ~~e. f.~~ Annual mixed beverage special events license, \$430.
- 177 ~~f. g.~~ Mixed beverage carrier license:
- 178 (i) \$145 for each of the average number of dining cars, buffet cars or club cars operated daily in the
- 179 Commonwealth by a common carrier of passengers by train;
- 180 (ii) \$430 for each common carrier of passengers by boat; and
- 181 (iii) \$1,135 for each license granted to a common carrier of passengers by airplane.
- 182 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax

183 imposed by this section on the license for which the applicant applied.

184 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
185 subject to proration to the following extent: If the license is granted in the second quarter of any year,
186 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
187 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
188 three-fourths.

189 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
190 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
191 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
192 number of gallons permitted to be manufactured shall be prorated in the same manner.

193 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
194 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or
195 winery license, such person shall pay for such unlimited license a license tax equal to the amount that
196 would have been charged had such license been applied for at the time that the license to manufacture
197 less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person
198 shall be entitled to a refund of the amount of license tax previously paid on the limited license.

199 Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than
200 twelve months shall be equal to one-twelfth of the taxes required by subsection A computed to the
201 nearest cent, multiplied by the number of months in the license period.

202 C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state
203 restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter,
204 shall be liable to state merchants' license taxation and state restaurant license taxation and other state
205 taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer
206 wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license
207 tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining
208 the liability of a wholesale wine distributor to merchants' license taxation, and in computing the
209 wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases
210 shall be disregarded.

211 § 4.1-233. Taxes on local licenses.

212 A. In addition to the state license taxes, the annual local license taxes which may be collected shall
213 not exceed the following sums:

214 1. Alcoholic beverages. - For each:

215 a. Distiller's license, \$1,000; no local license shall be required for any person who manufactures not
216 more than 5,000 gallons of alcohol or spirits, or both, during such license year;

217 b. Fruit distiller's license, \$1,500;

218 c. Bed and breakfast establishment license, \$40; and

219 d. Tasting license, \$5 per license granted.

220 2. Beer. - For each:

221 a. Brewery license, \$1,000;

222 b. Bottler's license, \$500;

223 c. Wholesale beer license, in a city, \$250, and in a county or town, \$75; and

224 d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer
225 license in a city, \$100, and in a county or town, \$25.

226 3. Wine. - For each:

227 a. Winery license, \$1,000; and

228 b. Wholesale wine license, \$50.

229 4. Wine and beer. - For each:

230 a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail
231 off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery
232 store license, in a city, \$150, and in a county or town, \$37.50;

233 b. Hospital license, \$10;

234 c. Banquet license, \$5 for each license granted; and

235 d. Gourmet brewing shop license, \$150.

236 5. Mixed beverages. - For each:

237 a. Mixed beverage restaurant license, including restaurants located on the premises of and operated
238 by hotels or motels, or other persons:

239 (i) With a seating capacity at tables for up to 100 persons, \$200;

240 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and

241 (iii) With a seating capacity at tables for more than 150 persons, \$500.

242 b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;

243 c. Mixed beverage caterer's license, \$500; and

244 d. Mixed beverage special events licenses, \$10 for each day of each event.

245 *e. Mixed beverage club event licenses, \$10 for each day of each event.*

246 B. Common carriers. - No local license tax shall be either charged or collected for the privilege of
247 selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the
248 Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises
249 consumption only.

250 C. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in
251 the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local
252 retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,
253 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
254 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
255 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
256 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
257 taxes authorized by this chapter.

258 The governing body of any county, city or town, in adopting an ordinance under this section, shall
259 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
260 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
261 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
262 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
263 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
264 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale
265 merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall
266 be disregarded, which stated amount shall be the amount of wine purchases which would be necessary
267 to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax
268 paid by such wholesale wine licensee.

269 D. Delivery. - No county, city or town shall impose any local alcoholic beverages license tax on any
270 wholesaler for the privilege of delivering alcoholic beverages in the county, city or town when such
271 wholesaler maintains no place of business in such county, city or town.

272 E. Application of county tax within town. - Any county license tax imposed under this section shall
273 not apply within the limits of any town located in such county, where such town now, or hereafter,
274 imposes a town license tax on the same privilege.