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SENATE BILL NO. 984

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 4.1-100, 4.1-207, and 4.1-231 of the Code of Virginia, relating to alcoholic beverage control; internet wine retailer license.

Patron—Edwards

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-207, and 4.1-231 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.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"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; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 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 43 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 charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 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 charitable gaming is being conducted while such gaming is 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

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59 alcoholic beverages.

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

64 "Day spa" means any commercial establishment that offers to the public both massage therapy,
65 performed by persons certified in accordance with § 54.1-3029, and barbering or cosmetology services
66 performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.

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

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

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

71 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing
72 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the
73 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol
74 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing
75 area or agreements for purchasing grapes or other fruits from agricultural growers within the
76 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or
77 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this
78 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of
79 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm
80 winery, the term "farm" as used in this definition includes all of the land owned or leased by the
81 individual members of the cooperative as long as such land is located in the Commonwealth.

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

90 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may
91 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such
92 persons facilities for manufacturing, fermenting and bottling such wine or beer.

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

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

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

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

103 "Internet wine retailer" means a person who owns or operates an establishment with adequate
104 inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone
105 orders are taken and shipped directly to consumers and which establishment is not a retail store open to
106 the public.

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

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

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

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

119 "Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona
120 fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments

specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

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

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

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

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies, and corridors of hotels, 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 (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 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.

182 "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of
183 fruits or other agricultural products containing (i) sugar, including honey and milk, either with or
184 without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product
185 of distillation. The term includes any wine to which wine spirits have been added, as provided in the
186 Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an
187 alcohol content of 21 percent by volume.

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

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

198 § 4.1-207. Wine licenses.

199 The Board may grant the following licenses relating to wine:

200 1. Winery licenses, which shall authorize the licensee to manufacture wine and to sell and deliver or
201 ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the
202 wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth
203 for resale outside the Commonwealth. In addition, such license shall authorize the licensee to (i) operate
204 distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit
205 juices only, which shall be used only for the fortification of wine produced by the licensee, and (ii)
206 store wine in bonded warehouses on or off the licensed premises upon permit issued by the Board.

207 2. Wholesale wine licenses, which shall authorize the licensee to acquire and receive deliveries and
208 shipments of wine and to sell and deliver or ship the wine, in accordance with Board regulations, in
209 closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside
210 the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for
211 sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for
212 ports of call of a foreign country or another state.

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

216 3. Wine importers' licenses, which shall authorize persons located within or outside the
217 Commonwealth to sell and deliver or ship wine, in accordance with Board regulations, in closed
218 containers, to persons in the Commonwealth licensed to sell wine at wholesale for the purpose of resale,
219 and to persons outside the Commonwealth for resale outside the Commonwealth.

220 4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the
221 licensee to sell wine at the place of business designated in the winery license, in closed containers, for
222 off-premises consumption.

223 5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18
224 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board
225 regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured
226 at wholesale for the purpose of resale, § 4.1-326 notwithstanding, or (iii) persons outside the
227 Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine
228 manufactured by the licensee and to sell and deliver or ship this wine, in accordance with Board
229 regulations, to persons licensed to sell wine in the Commonwealth, § 4.1-326 notwithstanding and (b)
230 store wine in bonded warehouses located on or off the licensed premises upon permits issued by the
231 Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or
232 Class B farm winery license in accordance with the limitations set forth in § 4.1-219.

233 Such licenses shall also authorize the licensee to sell wine at retail at the places of business
234 designated in the licenses, which may include no more than five additional retail establishments of the
235 licensee. Wine may be sold at these business places for on-premises consumption and in closed
236 containers for off-premises consumption.

237 6. *Internet wine retailer license, which shall authorize persons located within or outside the*
238 *Commonwealth to sell and ship wine, in accordance with § 4.1-112.1 and Board regulations, in closed*
239 *containers to persons in the Commonwealth to whom wine may be lawfully sold for off-premises*
240 *consumption. Such licensee shall not be required to comply with the monthly food sale requirement*
241 *established by Board regulations.*

242 § 4.1-231. Taxes on state licenses.

243 A. The annual fees on state licenses shall be as follows:

1. Alcoholic beverage licenses. For each:
 - a. 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, \$450; and if more than 5,000 gallons manufactured during such year, \$3,725;
 - b. Fruit distiller's license, \$3,725;
 - c. Banquet facility license or museum license, \$190;
 - d. Bed and breakfast establishment license, \$35;
 - e. Tasting license, \$40 per license granted;
 - f. Equine sporting event license, \$130; and
 - g. Motor car sporting event facility license, \$130.
2. Wine licenses. For each:
 - a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;
 - b. Wholesale wine license, \$185 for any wholesaler who sells 30,000 gallons of wine or less per year, \$930 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000 gallons of wine per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and, \$1,860 for any wholesaler who sells more than 300,000 gallons of wine per year;
 - c. Wine importer's license, \$370;
 - d. Retail off-premises winery license, \$145;
 - e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license;
 - f. Wine shipper's license, \$65; and
 - g. Day spa license, \$100; and
 - h. *Internet wine retailer license; \$150.*
3. Beer licenses. For each:
 - a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;
 - b. Bottler's license, \$1,430;
 - c. Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;
 - d. Beer importer's license, \$370;
 - e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;
 - f. Retail off-premises beer license, \$120;
 - g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$300; and
 - h. Beer shipper's license, \$65.
4. Wine and beer licenses. For each:
 - a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$750;
 - b. Retail on-premises wine and beer license to a hospital, \$145;
 - c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$230;
 - d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600;
 - e. 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 for events occurring on more than one day, which shall be \$100 per license;
 - f. Gourmet brewing shop license, \$230;
 - g. Wine and beer shipper's license, \$65; and
 - h. Annual banquet license, \$150.
5. Mixed beverage licenses. For each:
 - a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:
 - (i) With a seating capacity at tables for up to 100 persons, \$560;
 - (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and

305 (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
306 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
307 private, nonprofit clubs:
308 (i) With an average yearly membership of not more than 200 resident members, \$750;
309 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
310 \$1,860; and
311 (iii) With an average yearly membership of more than 500 resident members, \$2,765.
312 c. Mixed beverage caterer's license, \$1,860;
313 d. Mixed beverage special events license, \$45 for each day of each event;
314 e. Mixed beverage club events licenses, \$35 for each day of each event;
315 f. Annual mixed beverage special events license, \$560;
316 g. Mixed beverage carrier license:
317 (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the
318 Commonwealth by a common carrier of passengers by train;
319 (ii) \$560 for each common carrier of passengers by boat;
320 (iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
321 h. Annual mixed beverage amphitheater license, \$560;
322 i. Annual mixed beverage motor sports race track license, \$560; and
323 j. Annual mixed beverage banquet license, \$500.
324 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax
325 imposed by this section on the license for which the applicant applied.
326 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
327 subject to proration to the following extent: If the license is granted in the second quarter of any year,
328 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
329 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
330 three-fourths.
331 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
332 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
333 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
334 number of gallons permitted to be manufactured shall be prorated in the same manner.
335 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
336 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or
337 winery license, such person shall pay for such unlimited license a license tax equal to the amount that
338 would have been charged had such license been applied for at the time that the license to manufacture
339 less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person
340 shall be entitled to a refund of the amount of license tax previously paid on the limited license.
341 Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than
342 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest
343 cent, multiplied by the number of months in the license period.
344 C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state
345 restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter,
346 shall be liable to state merchants' license taxation and state restaurant license taxation and other state
347 taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer
348 wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license
349 tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining
350 the liability of a wholesale wine distributor to merchants' license taxation, and in computing the
351 wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases
352 shall be disregarded.