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SENATE BILL NO. 1414

Offered January 14, 2009

A BILL to amend and reenact §§ 4.1-210, 4.1-231, 4.1-233, and 4.1-320 of the Code of Virginia, relating to alcoholic beverage control; rural event mixed beverage license established.

Patron—Puller

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-210, 4.1-231, 4.1-233, and 4.1-320 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-210. Mixed beverages 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 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 45 percent of the gross receipts from the sale of mixed beverages and food. For the purposes of this paragraph, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board.

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 45 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 45 percent of the gross receipts from the sale of mixed beverages and food.

3. Mixed beverage limited 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, not to exceed 12 gatherings or events per year, 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 45 percent of the gross receipts from the sale of mixed beverages and food.

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

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

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

75 7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer
76 club license to sell and serve mixed beverages for on-premises consumption by club members and their
77 guests in areas approved by the Board on the club premises. A separate license shall be required for
78 each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar
79 year.

80 8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
81 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000
82 persons and is located in Prince William County or the City of Virginia Beach. Such license shall
83 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic
84 or similar disposable containers to patrons within all seating areas, concourses, walkways, concession
85 areas, or similar facilities, for on-premises consumption.

86 9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
87 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000
88 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize
89 the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar
90 disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or
91 similar facilities, for on-premises consumption.

92 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any
93 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on
94 1,200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed
95 beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events
96 or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing
97 areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization
98 of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the
99 premises in all areas and locations covered by the license.

100 11. Annual mixed beverage banquet licenses to duly organized private nonprofit fraternal, patriotic or
101 charitable membership organizations that are exempt from state and federal taxation and in charge of
102 banquets conducted exclusively for its members and their guests, which shall authorize the licensee to
103 serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of
104 the place designated in the license. Such license shall authorize the licensee to conduct no more than 12
105 banquets per calendar year.

106 12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve
107 dessert wines as defined by Board regulation and no more than six varieties of liqueurs, which liqueurs
108 shall be combined with coffee or other nonalcoholic beverages, for consumption in dining areas of the
109 restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall
110 the sale of such wine or liqueur-based drinks exceed 10 percent of the total annual gross sales.

111 13. *Annual mixed beverage rural event facility licenses to persons operating food and beverage*
112 *services at any rural event and entertainment park or similar facility owned by a duly organized*
113 *nonprofit corporation that has been granted an exemption from federal taxation under § 501 (c) of the*
114 *U.S. Internal Revenue Code of 1986 and has a minimum of 60,000 square feet of indoor exhibit space,*
115 *equine and other livestock show areas and is located in Caroline County. Such license shall authorize*
116 *the licensee to serve or sell alcoholic beverages during scheduled events or performances immediately*
117 *subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways, concession*
118 *areas or similar facilities, for on-premises consumption.*

119 B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, ~~or~~ 11, or 13 shall automatically
120 include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay

the state and local taxes required by §§ 4.1-231 and 4.1-233.

§ 4.1-231. Taxes on state licenses.

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;

g. Motor car sporting event facility license, \$130;

h. Day spa license, \$100;

i. Delivery permit, \$120 if the permittee holds no other license under this title;

j. Meal-assembly kitchen license, \$100; and

k. Canal boat operator license, \$100.

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. (1) 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;

(2) Wholesale wine license, including that granted pursuant to § 4.1-207.1, applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied by the number of separate locations covered by the license;

c. Wine importer's license, \$370;

d. Retail off-premises winery license, \$145, which shall include a delivery permit;

e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license, each of which shall include a delivery permit;

f. Wine shipper's license, \$65; and

g. 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. (1) 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;

(2) Wholesale beer license applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by the license;

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, which shall include a delivery permit;

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, which shall include a delivery permit; 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;

182 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
 183 grocery store license, \$230, which shall include a delivery permit;
 184 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600, which shall
 185 include a delivery permit;
 186 e. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the
 187 Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be
 188 \$100 per license;
 189 f. Gourmet brewing shop license, \$230;
 190 g. Wine and beer shipper's license, \$65; and
 191 h. Annual banquet license, \$150.
 192 5. Mixed beverage licenses. For each:
 193 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants
 194 located on premises of and operated by hotels or motels, or other persons:
 195 (i) With a seating capacity at tables for up to 100 persons, \$560;
 196 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
 197 (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
 198 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
 199 private, nonprofit clubs:
 200 (i) With an average yearly membership of not more than 200 resident members, \$750;
 201 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
 202 \$1,860; and
 203 (iii) With an average yearly membership of more than 500 resident members, \$2,765.
 204 c. Mixed beverage caterer's license, \$1,860;
 205 d. Mixed beverage limited caterer's license, \$500;
 206 e. Mixed beverage special events license, \$45 for each day of each event;
 207 f. Mixed beverage club events licenses, \$35 for each day of each event;
 208 g. Annual mixed beverage special events license, \$560;
 209 h. Mixed beverage carrier license:
 210 (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the
 211 Commonwealth by a common carrier of passengers by train;
 212 (ii) \$560 for each common carrier of passengers by boat;
 213 (iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
 214 i. Annual mixed beverage amphitheater license, \$560;
 215 j. Annual mixed beverage motor sports race track license, \$560;
 216 k. Annual mixed beverage banquet license, \$500; and
 217 l. Limited mixed beverage restaurant license:
 218 (i) With a seating capacity at tables for up to 100 persons, \$460;
 219 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$875; and
 220 (iii) With a seating capacity at tables for more than 150 persons, \$1,330; and
 221 m. Annual mixed beverage rural event facility license, \$560.
 222 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax
 223 imposed by this section on the license for which the applicant applied.
 224 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
 225 subject to proration to the following extent: If the license is granted in the second quarter of any year,
 226 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
 227 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
 228 three-fourths.
 229 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
 230 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
 231 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
 232 number of gallons permitted to be manufactured shall be prorated in the same manner.
 233 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
 234 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or
 235 winery license, such person shall pay for such unlimited license a license tax equal to the amount that
 236 would have been charged had such license been applied for at the time that the license to manufacture
 237 less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person
 238 shall be entitled to a refund of the amount of license tax previously paid on the limited license.
 239 Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than
 240 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest
 241 cent, multiplied by the number of months in the license period.
 242 C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state
 243 restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter,

shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.

§ 4.1-233. Taxes on local licenses.

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

1. Alcoholic beverages. - For each:

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

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

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

d. Museum license, \$10;

e. Tasting license, \$5 per license granted;

f. Equine sporting event license, \$10;

g. Day spa license, \$20;

h. Motor car sporting event facility license, \$10;

i. Meal-assembly kitchen license, \$20; and

j. Canal boat operator license, \$20.

2. Beer. - For each:

a. Brewery license, \$1,000;

b. Bottler's license, \$500;

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

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

e. Beer shipper's license, \$10.

3. Wine. - For each:

a. Winery license, \$50;

b. Wholesale wine license, \$50;

c. Farm winery license, \$50; and

d. Wine shipper's license, \$10.

4. Wine and beer. - For each:

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

b. Hospital license, \$10;

c. Banquet license, \$5 for each license granted, 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 \$20 per license;

d. Gourmet brewing shop license, \$150;

e. Wine and beer shipper's license, \$10; and

f. Annual banquet license, \$15.

5. Mixed beverages. - For each:

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

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

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

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

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

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

d. Mixed beverage limited caterer's license; \$100;

e. Mixed beverage special events licenses, \$10 for each day of each event;

f. Mixed beverage club events licenses, \$10 for each day of each event;

g. Annual mixed beverage amphitheater license, \$300;

h. Annual mixed beverage motor sports race track license, \$300;

i. Annual mixed beverage banquet license, \$75; and

j. Limited mixed beverage restaurant license:

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

- (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$250; and
(iii) With a seating capacity at tables for more than 150 persons, \$400.; *and*
k. Annual mixed beverage rural event facility license, \$300.

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

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

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

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

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

§ 4.1-320. Illegal advertising; penalty; exception.

Except in accordance with Board regulations, no person shall advertise in or send any advertising matter into the Commonwealth about or concerning alcoholic beverages other than those which may legally be manufactured or sold without a license.

Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

Neither this section nor any Board regulation shall prohibit (i) the awarding of watches of a wholesale value of less than \$100 by a licensed distillery, winery or brewery, to participants in athletic contests; (ii) the exhibition or display of automobiles, boats, or aircraft regularly and normally used in racing or other competitive events and the sponsorship of an automobile, boat or aircraft racing team by a licensed distillery, winery or brewery and the display on the automobile, boat or aircraft and uniforms of the members of the racing team, the trademark or brand name of an alcoholic beverage manufactured by such distillery, winery or brewery; (iii) the sponsorship of a professional athletic event, including, but not limited to, golf, auto racing or tennis, *or sponsorship of an entertainment or cultural event*, by a licensed distillery, winery or brewery or the use of any trademark or brand name of any alcoholic beverage in connection with such sponsorship; (iv) the advertisement of beer by the display of such product's name on any airship, which advertising is paid for by the manufacturer of such product; or (v) the advertisement of beer or any alcoholic beverage by the display of such product's name on any scale model, reproduction or replica of any motor vehicle, aircraft or watercraft offered for sale.

No distillery, winery or brewery that sponsors any event referenced in this section may pay or give anything of value, directly or indirectly, to any retail licensee or to any owner of the premises on which such licensee's business is conducted; provided, however that the preceding restriction shall not prohibit sponsorship payments to any owner of such premises that is (i) a bona fide duly organized nonprofit corporation that has been granted an exemption from federal taxation under § 501 (c) of the U.S. Internal Revenue Code of 1986 and (ii) not under the control, directly or indirectly, of any person or other entity that operates or controls a for-profit business.

2. That the amendments to § 4.1-320 of the Code of Virginia shall not be construed to invalidate any sponsorship arrangement that was approved in writing by the Board on or before January 1, 2009.