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SENATE BILL NO. 1127

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 25, 2013)

(Patron Prior to Substitute—Senator McWaters)

A *BILL to amend and reenact §§ 4.1-100 and 4.1-207 of the Code of Virginia, relating to alcoholic beverage control; operation of contract winemaking facilities.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100 and 4.1-207 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.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"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 alcoholic beverages.

60 *"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains*
61 *grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes,*
62 *processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with*
63 *the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility*
64 *for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied*
65 *the grapes, fruits, or other agricultural products used in the production of the wine. The contract*
66 *winemaking facility shall have no right to sell the wine so produced but may charge the farm winery for*
67 *its services.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 "Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol
120 content of 25 percent by volume.

121 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol

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

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona 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 park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

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 or a limited mixed beverage restaurant 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 other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and

183 (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such
184 meals for consumption at tables in dining areas on the premises, and includes establishments specializing
185 in full course meals with a single substantial entree.

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

189 "Sangria" means a drink consisting of red or white wine mixed with some combination of
190 sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other
191 similar spirits.

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

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

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

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

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

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

216 **§ 4.1-207. Wine licenses.**

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

218 1. Winery licenses, which shall authorize the licensee to manufacture wine and to sell and deliver or
219 ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the
220 wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth
221 for resale outside the Commonwealth. In addition, such license shall authorize the licensee to (i) operate
222 distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit
223 juices only, which shall be used only for the fortification of wine produced by the licensee, ~~and~~; (ii)
224 *operate a contract winemaking facility on the premises of the licensee in accordance with Board*
225 *regulations; and (iii) store wine in bonded warehouses on or off the licensed premises upon permit*
226 *issued by the Board.*

227 2. Wholesale wine licenses, including those granted pursuant to § 4.1-207.1, which shall authorize the
228 licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine
229 from one or more premises identified in the license, in accordance with Board regulations, in closed
230 containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the
231 Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for
232 sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for
233 ports of call of a foreign country or another state.

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

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

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

244 5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18

percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, § 4.1-326 notwithstanding, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine and sell and deliver or ship this wine, in accordance with Board regulations, to the Board, persons licensed to sell wine at wholesale for the purpose of resale, or persons outside the Commonwealth ~~and~~; (b) *operate a contract winemaking facility on the premises of the licensee in accordance with Board regulations; and* (c) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § 4.1-219. *A farm winery may enter into an agreement in accordance with Board regulations with a winery or farm winery licensee operating a contract winemaking facility.*

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

6. Internet wine retailer license, which shall authorize persons located within or outside the Commonwealth to sell and ship wine, in accordance with § 4.1-209.1 and Board regulations, in closed containers to persons in the Commonwealth to whom wine may be lawfully sold for off-premises consumption. Such licensee shall not be required to comply with the monthly food sale requirement established by Board regulations.