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HOUSE BILL NO. 284

Offered January 8, 2014

Prefiled December 31, 2013

A BILL to amend and reenact §§ 4.1-209 and 4.1-210 of the Code of Virginia, relating to alcoholic beverage control; air carrier licenses; privileges.

 Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-209 and 4.1-210 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-209. Wine and beer licenses; advertising.**

A. The Board may grant the following licenses relating to wine and beer:

1. Retail on-premises wine and beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. However, with regard to a hotel classified by the Board as (i) a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board or (ii) a limited service hotel, the Board may authorize the sale and consumption of alcoholic beverages in dining areas, private guest rooms, and other designated areas to persons to whom overnight lodging is being provided, for on-premises consumption in such rooms or areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises, provided that at least one meal is provided each day by the hotel to such guests. With regard to facilities registered in accordance with Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia as continuing care communities that are also licensed by the Board under this subdivision, any resident may, upon authorization of the licensee, keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas covered by the license;

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell wine and beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them, for on-premises consumption when carrying passengers;

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

d. Persons operating as air carriers of passengers on regular schedules in foreign, interstate or intrastate commerce, which shall authorize the licensee to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth while in transit and in designated rooms of establishments of such carriers at airports in the Commonwealth, § 4.1-129 notwithstanding. *For purposes of supplying its airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air carrier licensee may obtain its wine inventory from any lawful source licensed as a wholesale distributor of wine within or outside of the Commonwealth, which inventory may be (i) transported, stored, and delivered to and loaded onto the airplanes by an authorized agent of the air carrier and (ii) brought into the Commonwealth by airplane or other common carrier, including trucks, irrespective of quantity, notwithstanding any provision of § 4.1-310 to the contrary. The air carrier licensee shall maintain records of all wine purchased and sold and shall designate for purposes of its license all locations where wine inventory may be stored;*

e. Hospitals, which shall authorize the licensee to sell wine and beer in the rooms of patients for their on-premises consumption only in such rooms, provided the consent of the patient's attending physician is first obtained;

f. Persons operating food concessions at coliseums, stadia, racetracks or similar facilities, which shall authorize the licensee to sell wine and beer in paper, plastic or similar disposable containers, during any event and immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas and additional locations designated by the Board in such coliseums, stadia, racetracks or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license;

g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which (i) has seating for more than 20,000 persons and is located in Prince William County or

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59 the City of Virginia Beach, (ii) has capacity for more than 3,500 persons and is located in the Counties
60 of Albemarle, Augusta, Pittsylvania, or Rockingham, or the Cities of Charlottesville, Danville, or
61 Roanoke, or (iii) has capacity for more than 9,500 persons and is located in Henrico County. Such
62 license shall authorize the licensee to sell wine and beer during the performance of any event, in paper,
63 plastic or similar disposable containers to patrons within all seating areas, concourses, walkways,
64 concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee,
65 any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all
66 areas and locations covered by the license; and

67 h. Persons operating food concessions at exhibition or exposition halls, convention centers or similar
68 facilities located in any county operating under the urban county executive form of government or any
69 city which is completely surrounded by such county, which shall authorize the licensee to sell wine and
70 beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all
71 seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations
72 designated by the Board in such facilities, for on-premises consumption. Upon authorization of the
73 licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the
74 premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or
75 exposition hall" and "convention centers" mean facilities conducting private or public trade shows or
76 exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

77 2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer
78 in closed containers for off-premises consumption.

79 3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed
80 containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any
81 person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed two ounces by
82 volume or (ii) a sample of beer not to exceed four ounces by volume, for on-premises consumption. The
83 licensee may also give samples of wine and beer in designated areas at events held by the licensee for
84 the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted.
85 Additionally, with the consent of the licensee, farm wineries, wineries, breweries, and wholesale
86 licensees may participate in tastings held by licensees authorized to conduct tastings, including the
87 pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Notwithstanding
88 Board regulations relating to food sales, the licensee shall maintain each year an average monthly
89 inventory and sales volume of at least \$1,000 in products such as cheeses and gourmet food.

90 4. Convenience grocery store licenses, which shall authorize the licensee to sell wine and beer in
91 closed containers for off-premises consumption.

92 5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which
93 shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition,
94 shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

95 6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or
96 associations in charge of special events, which shall authorize the licensee to sell or give wine and beer
97 in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms
98 or areas. Except as provided in § 4.1-215, a separate license shall be required for each day of each
99 banquet or special event. For the purposes of this subdivision, when the location named in the original
100 application for a license is outdoors, the application may also name an alternative location in the event
101 of inclement weather. However, no such license shall be required of any hotel, restaurant, or club
102 holding a retail wine and beer license.

103 7. Gift shop licenses, which shall authorize the licensee to sell wine and beer unchilled, only within
104 the interior premises of the gift shop in closed containers for off-premises consumption.

105 8. Gourmet brewing shop licenses, which shall authorize the licensee to sell to any person to whom
106 wine or beer may be lawfully sold, ingredients for making wine or brewing beer, including packaging,
107 and to rent to such persons facilities for manufacturing, fermenting, and bottling such wine or beer, for
108 off-premises consumption in accordance with subdivision 6 of § 4.1-200.

109 9. Annual banquet licenses, to duly organized private nonprofit fraternal, patriotic or charitable
110 membership organizations that are exempt from state and federal taxation and in charge of banquets
111 conducted exclusively for its members and their guests, which shall authorize the licensee to serve wine
112 and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such
113 rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per
114 calendar year. For the purposes of this subdivision, when the location named in the original application
115 for a license is outdoors, the application may also name an alternative location in the event of inclement
116 weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail
117 wine and beer license.

118 10. Fulfillment warehouse licenses, which shall authorize associations as defined in § 13.1-313 with a
119 place of business located in the Commonwealth to (i) receive deliveries and shipments of wine or beer
120 owned by holders of wine or beer shipper's licenses, (ii) store such wine or beer on behalf of the owner,

and (iii) pick, pack, and ship such wine or beer as directed by the owner, all in accordance with Board regulations. No wholesale wine or wholesale beer licensee, whether licensed in the Commonwealth or not, or any person under common control of such licensee, shall acquire or hold any financial interest, direct or indirect, in the business for which any fulfillment warehouse license is issued.

11. Marketing portal licenses, which shall authorize agricultural cooperative associations organized under the provisions of the Agricultural Cooperative Association Act (§ 13.1-312 et seq.), with a place of business located in the Commonwealth, in accordance with Board regulations, to solicit and receive orders for wine or beer through the use of the Internet from persons in the Commonwealth to whom wine or beer may be lawfully sold, on behalf of holders of wine or beer shipper's licenses. Upon receipt of an order for wine or beer, the licensee shall forward it to a holder of a wine or beer shipper's license for fulfillment. Marketing portal licensees may also accept payment on behalf of the shipper.

12. Gourmet oyster house licenses, to establishments located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring and educating the consuming public about local oysters and other seafood products. Such license shall authorize the licensee to (i) give samples of or sell wine and beer in designated rooms and outdoor areas approved by the Board for consumption in such approved areas and (ii) sell wine and beer in closed containers for off-premises consumption. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person. The Board shall establish a minimum monthly food sale requirement of oysters and other seafood for such license. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

B. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms; and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery; and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

C. Persons granted retail on-premises and on-and-off-premises wine and beer licenses pursuant to this section or subsection B of § 4.1-210 may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption. Such licensees may sell or give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person.

§ 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.

4. 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.

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating a performing arts facility, (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture, or (iii) a duly organized nonprofit corporation that has been granted an exemption from federal taxation under § 501(c)(3) of the U.S. Internal Revenue Code of 1986 that owns any rural event and entertainment park or similar facility that has a minimum of 60,000 square feet of indoor exhibit space and equine and other livestock show areas. The operation in all cases 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.

6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth. *For purposes of supplying its airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air carrier licensee may obtain its distilled spirits inventory from any lawful source within or outside of the Commonwealth, which inventory may be: (i) transported, stored, and delivered to and loaded onto the airplanes by an authorized agent of the air carrier and (ii) brought into the Commonwealth by airplane or other common carrier, including trucks, irrespective of quantity, notwithstanding any provision of § 4.1-310 to the contrary. The air carrier licensee shall maintain records of all distilled spirits purchased and sold and shall designate for purposes of its license all locations where distilled spirits inventory may be stored.*

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

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic

or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

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

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

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

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

13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises consumption.

14. Annual mixed beverage performing arts facility license to corporations or associations operating a performing arts facility, provided the performing arts facility (i) is owned by a governmental entity; (ii) is occupied by a for-profit entity under a bona fide lease, the original term of which was for more than one year's duration; and (iii) has been rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board.

B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, 11, 13, or 14 shall automatically 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.