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SENATE BILL NO. 970

Offered January 11, 2017

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A BILL to amend and reenact §§ 4.1-111 and 4.1-210 of the Code of Virginia, relating to alcoholic beverage control; food-to-beverage ratio for certain mixed beverage licensees.

Patron—DeSteph

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-111 and 4.1-210 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-111. Regulations of Board.**

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20 liters.

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

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59 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
60 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage
61 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages
62 may not be lawfully sold. Such regulations shall:

63 a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i)
64 the general prohibition against tied interests between retail licensees and manufacturers or wholesale
65 licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of
66 wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the
67 general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and
68 retail licensees as set forth in Board regulation; and

69 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the
70 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under
71 Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate
72 as defined in § 55-526, but only in accordance with this title.

73 14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer
74 pursuant to an agreement with a brand owner not under common control with the manufacturing
75 brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require
76 that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a
77 written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board
78 are maintained by the parties.

79 15. Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations
80 shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy
81 hour but prohibit the advertising of any pricing related to such happy hour.

82 16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one
83 bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to
84 individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any
85 24-hour period and subject to any Board limitations on the frequency of such gifts.

86 17. Permit the sale of beer and cider for off-premises consumption in resealable growlers made of
87 glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved
88 by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.

89 18. Permit the sale of wine for off-premises consumption in resealable growlers made of glass,
90 ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the
91 Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine
92 growlers may be used only by persons licensed to sell wine for both on-premises and off-premises
93 consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees shall be labeled
94 with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid
95 ounces, and (iv) the name and address of the retailer.

96 19. Permit the sale of wine and beer by retailers licensed to sell beer and wine for both on-premises
97 and off-premises consumption, or by gourmet shop licensees for off-premises consumption in sealed
98 containers made of metal or other materials approved by the Board with a maximum capacity of 32
99 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is placed in
100 the container following an order from the consumer.

101 20. Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic
102 beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations
103 established by the Board.

104 21. *Prescribe the terms and conditions under which persons holding a mixed beverage restaurant,*
105 *caterer's, or limited caterer's license meet or exceed the following food-to-beverage ratio:*

106 a. *For such licensees with monthly food sales of at least \$4,000 but less than \$10,000, the*
107 *food-to-beverage ratio shall be 35 percent; and*

108 b. *For such licensees with monthly food sales of at least \$10,000, there shall be no food-to-beverage*
109 *ratio requirement imposed.*

110 *In addition, such regulation shall provide that food cooked or prepared on the premises and*
111 *consumed on the premises shall be available at all times when alcoholic beverages are served by such*
112 *licensees.*

113 C. The Board may promulgate regulations that:

114 1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be
115 based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit
116 status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the
117 purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its
118 not-for-profit status. The granting of such waiver shall be limited to two events per year for each
119 applicant.

120 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the

course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

3. Provide incentives to licensees with a proven history of compliance with state and federal laws and regulations to encourage licensees to conduct their business and related activities in a manner that is beneficial to the Commonwealth.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

§ 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~~ *the percentage, if any, set by Board regulation in accordance with § 4.1-111*. For the purposes of this subdivision, 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. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

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 percentage, if any, set by Board regulation in accordance with § 4.1-111*. 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~~ *the percentage, if any, set by Board regulation in accordance with § 4.1-111*.

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~~ *the percentage, if any, set by Board regulation in accordance with § 4.1-111*.

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

182 on-premises consumption in areas approved by the Board on the premises of the place designated in the
183 license. A separate license shall be required for each day of each special event.

184 5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or
185 association operating either a performing arts facility or an art education and exhibition facility, (ii) a
186 nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and
187 objects significant in American history and culture, or (iii) persons operating an agricultural event and
188 entertainment park or similar facility that has a minimum of 50,000 square feet of indoor exhibit space
189 and equine and other livestock show areas, which includes barns, pavilions, or other structures equipped
190 with roofs, exterior walls, and open or closed-door access. The operation in all cases shall be upon
191 premises owned by such licensee or occupied under a bona fide lease the original term of which was for
192 more than one year's duration. Such license shall authorize the licensee to sell alcoholic beverages
193 during scheduled events and performances for on-premises consumption in areas upon the licensed
194 premises approved by the Board.

195 6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat
196 or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the
197 Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms
198 of establishments of air carriers at airports in the Commonwealth. For purposes of supplying its
199 airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air
200 carrier licensee may appoint an authorized representative to load distilled spirits onto the same airplanes
201 and to transport and store distilled spirits at or in close proximity to the airport where the distilled spirits
202 will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier
203 licensee shall (i) designate for purposes of its license all locations where the inventory of distilled spirits
204 may be stored and from which the distilled spirits will be delivered onto airplanes of the air carrier and
205 any such licensed express carrier and (ii) maintain records of all distilled spirits to be transported,
206 stored, and delivered by its authorized representative.

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

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

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

224 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any
225 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,
226 200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed
227 beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events
228 or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing
229 areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization
230 of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the
231 premises in all areas and locations covered by the license.

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

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

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

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

256 15. Annual mixed beverage performing arts facility license to persons operating food concessions at
257 any performing arts facility located in the City of Norfolk or the City of Richmond, provided that the
258 performing arts facility (i) is occupied under a bona fide long-term lease or concession agreement, the
259 original term of which was more than five years; (ii) has a capacity in excess of 1,400 patrons; (iii) has
260 been rehabilitated in accordance with historic preservation standards; and (iv) has monthly gross receipts
261 from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic beverages
262 served on the premises that meet or exceed the monthly minimum established by Board regulations for
263 mixed beverage restaurants. Such license shall authorize the sale, on the dates of performances or
264 events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises
265 approved by the Board.

266 16. Annual mixed beverage performing arts facility license to persons operating food concessions at
267 any performing arts facility located in the City of Waynesboro, provided that the performing arts facility
268 (i) is occupied under a bona fide long-term lease or concession agreement, the original term of which
269 was more than five years; (ii) has a total capacity in excess of 550 patrons; and (iii) has been
270 rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on
271 the dates of performances or private or special events, of alcoholic beverages for on-premises
272 consumption in areas upon the licensed premises approved by the Board.

273 17. A combined mixed beverage restaurant and caterer's license, which may be granted to any
274 restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to
275 subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location,
276 and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed
277 beverage caterer at the same business premises designated in the license, with a common alcoholic
278 beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the
279 separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision
280 A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

281 B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17
282 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The
283 licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

284 **2. That the Alcoholic Beverage Control Board shall promulgate regulations to implement the**
285 **provisions of this act in accordance with § 2.2-4012.1.**
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