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SENATE BILL NO. 115

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 17, 2018)

(Patrons Prior to Substitute—Senators Locke and Mason [SB 527])

A *BILL to amend and reenact §§ 58.1-3833 and 58.1-3842 of the Code of Virginia, relating to county food and beverage tax.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3833 and 58.1-3842 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~four~~ *eight* percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools or institutions of higher education to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. However, no referendum initiated by a resolution of the board of supervisors shall be authorized in a county in the three calendar years subsequent to the electoral defeat of any referendum held pursuant to this section in such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

Any referendum held for the purpose of approving a county food and beverage tax pursuant to this section shall, in the language of the ballot question presented to voters, contain the following text in a paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four percent is imposed, then the total tax imposed on all prepared food and beverage shall be..." followed by the total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction added to the four percent county food and beverage tax to be approved by the referendum.

60 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
61 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
62 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax
63 shall be in a manner prescribed by the governing body.

64 B. Notwithstanding the provisions of subsection A, Roanoke County, Rockbridge County, Frederick
65 County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and
66 beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as
67 modified in subsection A above and subject to the same exemptions, not to exceed four percent of the
68 amount charged for such food and beverages, provided that the governing body of the respective county
69 holds a public hearing before adopting a local food and beverage tax, and the governing body by
70 unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such
71 terms as the governing body may by ordinance prescribe.

72 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
73 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
74 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
75 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
76 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
77 law shall constitute embezzlement pursuant to § 18.2-111.

78 D. No county which has heretofore adopted an ordinance pursuant to subsection A shall be required
79 to submit an amendment to its meals tax ordinance to the voters in a referendum.

80 E. C. Notwithstanding any other provision of this section, no locality shall levy any tax under this
81 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
82 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
83 service charge added by the restaurant in addition to the sales price, but only to the extent that such
84 mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic
85 beverages sold in factory sealed containers and purchased for off-premises consumption or food
86 purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.
87 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:
88 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily
89 of an assortment of vegetables, and nonfactory sealed beverages.

90 **§ 58.1-3842. Combined transient occupancy and food and beverage tax.**

91 A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to
92 levy a tax on occupancy in a bed and breakfast establishment on which the county is authorized to levy
93 a transient occupancy tax under § 58.1-3819 and on food and beverages sold for human consumption
94 within such establishment on which the county is authorized to levy a food and beverage tax under
95 § 58.1-3833, when the charges for the occupancy of the room or space and for the sale of food and
96 beverages are assessed in the aggregate and not separately stated. Such tax shall not exceed four percent
97 of the total amount charged for the occupancy of the room or space occupied and for the food and
98 beverages. Such tax shall be in such amount and on such terms as the governing body may, by
99 ordinance, prescribe. The tax shall be in addition to the sales tax currently imposed by the county
100 pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax shall be in a manner
101 prescribed by the governing body. All taxes collected under the authority of this article shall be deemed
102 to be held in trust for the county imposing the tax.

103 B. If a bed and breakfast establishment separately states charges for the occupancy of the room or
104 space and for the sale of food and beverages, a transient occupancy tax levied under § 58.1-3819 and a
105 food and beverage tax levied under § 58.1-3833 shall apply to such separately stated charges, as
106 applicable.

107 C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in
108 such county, where such town now, or hereafter, imposes a town meals tax or a town transient
109 occupancy tax on the same subject. If the governing body of any town within a county, however,
110 provides that a county tax authorized by this article shall apply within the limits of such town, then such
111 tax may be imposed within such towns.

112 D. This tax shall be levied only if a food and beverage tax has been approved in a referendum
113 within the county as provided by subsection A of § 58.1-3833. No county in which the levy of a food
114 and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be
115 required to submit an amendment to its meals tax ordinance or a further question to the voters in a
116 referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

117 E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a
118 food and beverage tax or a transient occupancy tax.