

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 1179

An Act to amend and reenact § 4.1-209 of the Code of Virginia, relating to alcoholic beverage control; gourmet shop license; distiller participation in tastings.

[S 1029]

Approved April 11, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-209 of the Code of Virginia is 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. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining 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;

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 airplane of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load wine and beer onto the same airplanes and to transport and store wine and beer at or in close proximity to the airport where the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of wine and beer may be stored and from which the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all wine and beer to be transported, stored, and delivered by its authorized representative;

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 or in single original metal cans, 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 the City of Virginia Beach, (ii) has capacity for more than 3,500 persons and is located in the Counties of Albemarle, Alleghany, Augusta, Nelson, Pittsylvania, or Rockingham, or the Cities of Charlottesville, Danville, or Roanoke, or (iii) has capacity for more than 9,500 persons and is located in Henrico County. Such license shall authorize the licensee to sell wine and beer during the performance of any event, in paper, plastic or similar disposable containers or in single original metal cans, to patrons within all seating areas, concourses, 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;

h. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell wine and beer during the event, in paper, plastic or similar disposable containers or in single original metal cans, to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such 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. For purposes of this subsection, "exhibition or exposition hall" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space;

i. Persons operating a concert and dinner-theater venue on property fronting Natural Bridge School Road in Natural Bridge Station, Virginia, and formerly operated as Natural Bridge High School, which shall authorize the licensee to sell wine and beer during events to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, dining areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Persons licensed pursuant to this subdivision shall serve food, prepared on or off premises, whenever wine or beer is served; and

j. Historic cinema houses, which shall authorize the licensee to sell wine and beer, either with or without meals, during any showing of a motion picture to patrons to whom alcoholic beverages may be lawfully sold, for on-premises consumption. The privileges of this license shall be limited to the premises of the historic cinema house regularly occupied and utilized as such.

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

3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume, for on-premises consumption. The licensee may also 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, breweries, *distillers*, and wholesale licensees 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. Notwithstanding Board regulations relating to food sales, the licensee shall maintain each year an average monthly inventory and sales volume of at least \$1,000 in products such as cheeses and gourmet food.

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

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

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Licensees who are nonprofit corporations or associations conducting fundraisers (i) shall also be authorized to sell wine, as part of any fundraising activity, in closed containers for off-premises consumption to persons to whom wine may be lawfully sold and (ii) shall be limited to no more than one such fundraiser per year. Except as provided in § 4.1-215, a separate license shall be required for each day of each banquet or special event. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer only within the interior premises of the gift shop in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold (i) a

sample of wine not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume for on-premises consumption. The licensee may also 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.

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

9. Annual 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 wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

10. Fulfillment warehouse licenses, which shall authorize associations as defined in § 13.1-313 with a place of business located in the Commonwealth to (i) receive deliveries and shipments of wine or beer 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. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may deliver such wine or beer in closed containers for off-premises consumption to such person's vehicle if located in a designated parking area of the retailer's premises where such person has electronically ordered wine or beer in advance of the delivery or (ii) if the licensee holds a delivery permit issued pursuant to § 4.1-212.1, to such other locations as may be permitted by Board regulation.

D. 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.

2. That if § 4.1-209 of the Code of Virginia, as amended by this act, is amended by an act of assembly passed by the 2020 Session of the General Assembly and such act consolidates the gourmet shop license into a broader retail off-premises wine and beer license, the provisions of this act shall remain in effect and shall be relocated in the subdivision of the Code of Virginia in which such retail off-premises wine and beer license is relocated.