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HOUSE BILL NO. 1738

Offered January 13, 2021

Prefiled November 6, 2020

A BILL to amend and reenact §§ 4.1-128 and 4.1-308 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-128.1 and by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.5, relating to alcoholic beverage control; local outdoor refreshment areas.

Patrons—Wampler, Mugler, Cole, J.G., Coyner, Hudson and Webert

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-128 and 4.1-308 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-128.1 and by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered 15.2-926.5 as follows:

§ 4.1-128. Local ordinances or resolutions regulating or taxing alcoholic beverages.

A. No county, city, or town shall, except as provided in § ~~4.1-205~~ or 4.1-128.1, 4.1-129, or 4.1-205, adopt any ordinance or resolution which that regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising, or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city, or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by § 58.1-605, 58.1-3833, or 58.1-3840. The foregoing limitation shall not affect the authority of any county, city, or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance that (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsections B and E, and F of § 4.1-308, or the acts described in § 4.1-309, and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

§ 4.1-128.1. Local ordinances creating outdoor refreshment areas.

A. As used in this section:

"Outdoor refreshment area" means an area within a locality covering an area of up to one-half square mile that features a combination of dining, entertainment, office, residential, or hotel establishments located in a physically integrated outdoor setting that is or can be made pedestrian friendly.

"TNC partner vehicle" means the same as that term is defined in § 46.2-2000.

B. The governing body of each locality in the Commonwealth may designate, by ordinance, up to three outdoor refreshment areas within such locality, which may be located contiguous to one another. Such ordinance shall permit the consumption of alcoholic beverages within the designated outdoor refreshment area and permit any permanent retail on-premises licensee that is located within such designated outdoor refreshment area to sell alcoholic beverages within the permanent retail location for consumption within the designated outdoor refreshment area, including sidewalks and the premises of businesses not licensed to sell alcoholic beverages at retail, upon approval of such businesses.

C. An ordinance adopted pursuant to this section shall:

1. Provide that only alcoholic beverages purchased from permanent retail on-premises licensees located within the designated outdoor refreshment area may be consumed within the outdoor refreshment area, and such alcoholic beverages shall be contained in paper, plastic, or similar disposable containers with a maximum capacity of no more than 16 fluid ounces that clearly display the

INTRODUCED

HB1738

59 name or logo of the retail on-premises licensee from which the alcoholic beverage was purchased;
60 2. Require the locality to post appropriate signage that demarcates for the public the boundaries of
61 the outdoor refreshment area;

62 3. Include a provision establishing the hours during which alcoholic beverages may be consumed
63 within the outdoor refreshment area; and

64 4. Prohibit the consumption of alcoholic beverages on the exterior premises of any (i) church,
65 synagogue, mosque, or other place of religious worship or (ii) public, private, or parochial school or an
66 institution of higher education located within the outdoor refreshment area.

67 D. Prior to adopting an ordinance pursuant to this section, the locality shall, with the assistance of
68 local law-enforcement agencies, establish a public safety plan for each outdoor refreshment area. Such
69 plan shall:

70 1. Detail local strategies for managing pedestrian and motor vehicle traffic within the outdoor
71 refreshment area;

72 2. Identify and designate at least one TNC partner vehicle pickup area within or near each outdoor
73 refreshment area to help facilitate efficient and safe travel to and from the outdoor refreshment area;

74 3. Incorporate local law-enforcement agencies to provide for the safety and welfare of individuals
75 and businesses located within the outdoor refreshment area; and

76 4. Provide for the management of any additional locality-specific public safety concerns.

77 E Prior to adopting an ordinance pursuant to this section, the locality shall publish notice of its
78 intent to consider the adoption of such an ordinance in a newspaper having general circulation in the
79 locality. The notice shall specify the time and place of a public hearing at which interested persons may
80 present their views, not less than 30 days after publication of the notice.

81 F. A copy of any ordinance adopted pursuant to this section shall be certified by the clerk of the
82 governing body adopting it and transmitted to the Board.

83 **§ 4.1-308. Drinking alcoholic beverages, or offering to another, in public place; penalty;**
84 **exceptions.**

85 A. If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether
86 accepted or not, at or in any public place, he is guilty of a Class 4 misdemeanor.

87 B. This section shall not prevent any person from drinking alcoholic beverages or offering a drink
88 thereof to another in any rooms or areas approved by the Board in a licensed establishment, provided
89 such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail
90 for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.

91 C. This section shall not prevent any person from drinking alcoholic beverages or offering a drink
92 thereof to another in any room or area approved by the Board at an event for which a banquet license,
93 mixed beverage special events license, or local special events license has been granted. Nor shall this
94 section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired
95 alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for
96 which a coliseum or stadium license has been granted.

97 D. This section shall not prevent any person from drinking alcoholic beverages or offering a drink
98 thereof to another on a chartered boat being used for the transportation of passengers for compensation
99 which is not licensed by the Board and which does not sell alcoholic beverages.

100 E. This section shall not prevent any person from drinking alcoholic beverages or offering a drink
101 thereof to another in any areas approved by the Board in a licensed commercial lifestyle center.

102 F. This section shall not prevent any person from drinking alcoholic beverages or offering a drink
103 thereof to another within an outdoor refreshment area designated by a locality pursuant to § 4.1-128.1.
104 If, however, a locality has limited the hours within which alcoholic beverages may be consumed within
105 the outdoor refreshment area pursuant to subsection C of § 4.1-128.1, the provisions of subsection A
106 shall apply during those hours within which the consumption of alcoholic beverages within the outdoor
107 refreshment area is prohibited.

108 **§ 15.2-926.5. Local ordinances creating outdoor refreshment areas.**

109 In addition to any other authority granted to localities by law, the governing body of each locality in
110 the Commonwealth may designate, by ordinance, up to three outdoor refreshment areas within such
111 locality pursuant to the provisions of § 4.1-128.1.