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2021 SPECIAL SESSION I

CHAPTER 82

An Act to amend and reenact Sections 4.1-230, as it shall become effective, and 4.1-233.1 of the Code of Virginia and to amend and reenact the third, fifth, and eighth enactments of Chapter 1113 of the Acts of Assembly of 2020 and the third, fifth, and eighth enactments of Chapter 1114 of the Acts of Assembly of 2020, relating to alcoholic beverage control; license fee reform; delay; emergency.

[H 1845]

Approved March 11, 2021

Be it enacted by the General Assembly of Virginia:

1. That Sections 4.1-230, as it shall become effective, and 4.1-233.1 of the Code of Virginia are amended and reenacted as follows:

Section 4.1-230. (Effective July 1, 2021) Applications for licenses; publication; notice to localities; fees; permits.

A. Every person intending to apply for any license authorized by this chapter shall file with the Board an application on forms provided by the Board and a statement in writing by the applicant swearing and affirming that all of the information contained therein is true.

Applicants for retail licenses for establishments that serve food or are otherwise required to obtain a food establishment permit from the Department of Health or an inspection by the Department of Agriculture and Consumer Services shall provide a copy of such permit, proof of inspection, proof of a pending application for such permit, or proof of a pending request for such inspection. If the applicant provides a copy of such permit, proof of inspection, proof of a pending application for a permit, or proof of a pending request for an inspection, a license may be issued to the applicant. If a license is issued on the basis of a pending application or inspection, such license shall authorize the licensee to purchase alcoholic beverages in accordance with the provisions of this title; however, the licensee shall not sell or serve alcoholic beverages until a permit is issued or an inspection is completed.

B. In addition, each applicant for a license under the provisions of this chapter, except applicants for annual banquet, banquet, tasting, special events, club events, annual mixed beverage banquet, wine and beer shipper's, delivery permit, annual arts venue, or museum licenses issued under the provisions of Chapter 2 (Section 4.1-200 et seq.), or beer or wine importer's licenses, shall post a notice of his application with the Board on the front door of the building, place or room where he proposes to engage in such business for no more than 30 days and not less than 10 days. Such notice shall be of a size and contain such information as required by the Board, including a statement that any objections shall be submitted to the Board not more than 30 days following initial publication of the notice required pursuant to this subsection.

The applicant shall also cause notice to be published at least once a week for two consecutive weeks in a newspaper published in or having a general circulation in the county, city, or town wherein such applicant proposes to engage in such business. Such notice shall contain such information as required by the Board, including a statement that any objections to the issuance of the license be submitted to the Board not later than 30 days from the date of the initial newspaper publication. In the case of wine and beer shipper's licensees, delivery permittees or operators of boats, dining cars, buffet cars, club cars, buses, and airplanes, the posting and publishing of notice shall not be required.

Except for applicants for annual banquet, banquet, tasting, mixed beverage special events, club events, annual mixed beverage banquet, wine and beer shipper's, beer or wine importer's, annual arts venue, or museum licenses, the Board shall conduct a background investigation, to include a criminal history records search, which may include a fingerprint-based national criminal history records search, on each applicant for a license. However, the Board may waive, for good cause shown, the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership.

Except for applicants for wine and beer shipper's licenses and delivery permits, the Board shall notify the local governing body of each license application through the county or city attorney or the chief law-enforcement officer of the locality. Local governing bodies shall submit objections to the granting of a license within 30 days of the filing of the application.

C. Each applicant shall pay the required application fee at the time the application is filed. Each license application fee, including annual banquet and annual mixed beverage banquet, shall be $195, plus the actual cost charged to the Department of State Police by the Federal Bureau of Investigation or the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of Investigation or the Central Criminal Records Exchange for each criminal history records search required by the Board, except for banquet, tasting, or mixed beverage club events licenses, in which case the application fee shall be $15. The application fee for banquet special event and mixed beverage special event licenses shall be $45. Application fees shall be in addition to the state license fee required pursuant to Section 4.1-231.1 and shall not be refunded.

D. Subsection A shall not apply to the continuance of licenses granted under this chapter; however, all licensees shall file and maintain with the Board a current, accurate record of the information required by the Board pursuant to subsection A and notify the Board of any changes to such information in accordance with Board regulations.

E. Every application for a permit granted pursuant to Section 4.1-212 shall be on a form provided by the Board. Such permits shall confer upon their holders no authority to make solicitations in the Commonwealth as otherwise provided by law.

The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied by the number of months for which the permit is granted.

F. The Board shall have the authority to increase state license fees from the amounts set forth in Section 4.1-231.1 as it was in effect on ~~July~~ January 1, ~~2021~~ 2022. The Board shall set the amount of such increases on the basis of the consumer price index and shall not increase fees more than once every three years. Prior to implementing any state license fee increase, the Board shall provide notice to all licensees and the general public of (i) the Board's intent to impose a fee increase and (ii) the new fee that would be required for any license affected by the Board's proposed fee increases. Such notice shall be provided on or before November 1 in any year in which the Board has decided to increase state license fees, and such increases shall become effective July 1 of the following year.

Section 4.1-233.1. (Effective July 1, 2021) Fees on local licenses.

A. In addition to the state license taxes, the annual local license taxes that may be collected shall not exceed the following sums:

1. Manufacturer licenses. For each:

a. Distiller's license and limited distiller's license, if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, $750; if more than 36,000 gallons manufactured during such year, $1,000; and no local license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits, or both, during such license year;

b. Brewery license and limited brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, $250, and if more than ~~10,000~~ 500 barrels manufactured during such year, $1,000;

c. Winery license, $50; and

d. Farm winery license, $50.

2. Wholesale licenses. For each:

a. Wholesale beer license, in a city, $250, and in a county or town, $75; and

b. Wholesale wine license, $50.

3. Retail licenses — mixed beverage. For each:

a. Mixed beverage restaurant license, granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:

(1) With a seating capacity at tables for up to 100 persons, $200;

(2) With a seating capacity at tables for more than 100 but not more than 150 persons, $350;

(3) With a seating capacity at tables for more than 150 persons but not more than 500 persons, $500;

(4) With a seating capacity at tables for more than 500 persons but not more than 1,000 persons, $650; and

(5) With a seating capacity at tables for more than 1,000 persons, $800;

b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs, $350;

c. Mixed beverage restaurant license for restaurants located on the premises of and operated by a casino gaming establishment, $800 plus an additional $2 for each gaming station located on the premises of the casino gaming establishment;

d. Mixed beverage caterer's license, $500;

e. Mixed beverage limited caterer's license, $100;

f. Annual mixed beverage motor sports facility license, $300;

g. Limited mixed beverage restaurant license:

(1) With a seating capacity at tables for up to 100 persons, $100;

(2) With a seating capacity at tables for more than 100 but not more than 150 persons, $250; or

(3) With a seating capacity at tables for more than 150 persons, $400;

h. Annual mixed beverage performing arts facility license, $300;

i. Bed and breakfast license, $40;

j. Museum license, $10;

k. Motor car sporting event facility license, $10;

l. Commercial lifestyle center license, $60; and

m. Annual mixed beverage special events license, $300.

4. Retail licenses — on-and-off-premises wine and beer. For each on-and-off premises wine and beer license issued to:

a. Hotels, restaurants, and clubs, in a city, $150, and in a county or town, $37.50;

b. Hospitals, $10;

c. Rural grocery stores, $37.50; and

d. Historic cinema houses, $20.

5. Retail licenses — off-premises wine and beer. For each:

a. Retail off-premises wine and beer license, in a city, $150, and in a county or town, $37.50;

b. Gourmet brewing shop license, $150; and

c. Confectionery license, $20.

6. Retail licenses — banquet, special event, and tasting licenses. For each:

a. Per-day event licenses. For each:

(1) Banquet license, $5 per license granted by the Board, except for banquet licenses granted by the Board pursuant to subsection A of Section 4.1-215, which shall be $20 per license;

(2) Mixed beverage special events license, $10 for each day of each event;

(3) Mixed beverage club events license, $10 for each day of each event; and

(4) Tasting license, $10.

b. Annual licenses. For each:

(1) Annual banquet license, $15;

(2) Local special events license, $60;

(3) Annual mixed beverage banquet license, $75;

(4) Equine sporting event license, $10; and

(5) Annual arts venue event license, $10.

7. Retail licenses — marketplace. For each marketplace license, $200.

8. Retail licenses — shipper, bottler, and related licenses. For each:

a. Wine and beer shipper's license, $10; and

b. Bottler license, $500.

B. Common carriers. No local license tax shall be either charged or collected for the privilege of selling alcoholic beverages in (i) passenger trains, boats, buses, or airplanes or (ii) rooms designated by the Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises consumption only.

C. Merchants' and restaurants' license taxes. The governing body of each county, city, or town in the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales, may include alcoholic beverages in the base for measuring such local license taxes the same as if the alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter shall exempt any licensee from any local merchants' or local restaurant license tax, but such local merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license taxes authorized by this chapter.

The governing body of any county, city, or town, in adopting an ordinance under this section, shall provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation under the ordinance, and in computing the local wholesale merchants' license tax on such beer wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be the amount of beer purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall be disregarded, which stated amount shall be the amount of wine purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax paid by such wholesale wine licensee.

D. Delivery. No county, city, or town shall impose any local alcoholic beverage license tax on any wholesaler for the privilege of delivering alcoholic beverages in the county, city, or town when such wholesaler maintains no place of business in such county, city, or town.

E. Application of county tax within town. Any county license tax imposed under this section shall not apply within the limits of any town located in such county, where such town imposes a town license tax on the same privilege.

2. That the third, fifth, and eighth enactments of Chapter 1113 of the Acts of Assembly of 2020 are amended and reenacted as follows:

3. That the provisions of the first, second, and fourth enactments of this act shall become effective on ~~July~~ January 1, ~~2021~~ 2022, except for the provisions of the first enactment that amend the definition of low alcohol beverage cooler set forth in Section 4.1-100 of the Code of Virginia, as amended by this act, which shall become effective July 1, 2020.

5. That any person who (i) is licensed pursuant to subdivision A 9, 11, 12, 14, 18, or 19 of Section 4.1-206 of the Code of Virginia, as it was in effect prior to July 1, 2020, and (ii) wishes to maintain licensure after ~~June 30~~ December 31, 2021, shall apply for a marketplace license on or before ~~January~~ July 1, 2021.

8. That on or after July 1, 2020, the Board of Directors of the Virginia Alcoholic Beverage Control Authority may issue mixed beverage carrier licenses to persons operating a common carrier of passengers by bus, 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. The state license fee for any such license granted prior to ~~July~~ January 1, ~~2021~~ 2022, shall be $190. Such license shall automatically authorize the licensee to obtain a license to sell and serve wine and beer for on-premises consumption; however, the licensee shall be required to pay the local fee required for such additional license. For the purposes of this enactment, "bus" means a motor vehicle that (i) is operated by a common carrier licensed under Chapter 20 (Section 46.2-2000 et seq.) of Title 46.2 of the Code of Virginia to transport passengers for compensation over the highways of the Commonwealth on regular or irregular routes of not less than 100 miles, (ii) seats no more than 24 passengers, (iii) is 40 feet in length or longer, (iv) offers wireless Internet services, (v) is equipped with charging stations at every seat for cellular phones or other portable devices, and (vi) during the transportation of passengers, is staffed by an attendant who has satisfied all training requirements set forth in Title 4.1 of the Code of Virginia or Board regulation.

3. That the third, fifth, and eighth enactments of Chapter 1114 of the Acts of Assembly of 2020 are amended and reenacted as follows:

3. That the provisions of the first, second, and fourth enactments of this act shall become effective on ~~July~~ January 1, ~~2021~~ 2022, except for the provisions of the first enactment that amend the definition of low alcohol beverage cooler set forth in Section 4.1-100 of the Code of Virginia, as amended by this act, which shall become effective July 1, 2020.

5. That any person who (i) is licensed pursuant to subdivision A 9, 11, 12, 14, 18, or 19 of Section 4.1-206 of the Code of Virginia, as it was in effect prior to July 1, 2020, and (ii) wishes to maintain licensure after ~~June 30~~ December 31, 2021, shall apply for a marketplace license on or before ~~January~~ July 1, 2021.

8. That on or after July 1, 2020, the Board of Directors of the Virginia Alcoholic Beverage Control Authority may issue mixed beverage carrier licenses to persons operating a common carrier of passengers by bus, 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. The state license fee for any such license granted prior to ~~July~~ January 1, ~~2021~~ 2022, shall be $190. Such license shall automatically authorize the licensee to obtain a license to sell and serve wine and beer for on-premises consumption; however, the licensee shall be required to pay the local fee required for such additional license. For the purposes of this enactment, "bus" means a motor vehicle that (i) is operated by a common carrier licensed under Chapter 20 (Section 46.2-2000 et seq.) of Title 46.2 of the Code of Virginia to transport passengers for compensation over the highways of the Commonwealth on regular or irregular routes of not less than 100 miles, (ii) seats no more than 24 passengers, (iii) is 40 feet in length or longer, (iv) offers wireless Internet services, (v) is equipped with charging stations at every seat for cellular phones or other portable devices, and (vi) during the transportation of passengers, is staffed by an attendant who has satisfied all training requirements set forth in Title 4.1 of the Code of Virginia or Board regulation.

4. That any person licensed to sell wine or beer for on-premises consumption may sell such wine or beer to persons to whom alcoholic beverages may be lawfully sold for off-premises consumption until January 1, 2022, provided that such wine or beer is sold in a (i) container upon which the original seal or closure has not been broken; (ii) growler made of glass, ceramic, metal, or other material approved by the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board); or (iii) reusable, resealable container approved by the Board. Such on-premises licensee, as well as persons licensed to sell wine or beer for off-premises consumption, may deliver wine or beer that it is authorized to sell to consumers within the Commonwealth without obtaining a delivery permit until January

1, 2022, subject to the following conditions: (a) deliveries shall be performed by (1) the licensee, (2) an agent, officer, director, shareholder, or employee of the licensee, or (3) an independent contractor of the licensee, provided that only one individual takes possession of the wine or beer during the course of the delivery and the licensee has entered into a written agreement with the independent contractor establishing that the licensee is vicariously liable for any administrative violations of this enactment or Section 4.1-304 of the Code of Virginia committed by the independent contractor relating to any deliveries made on behalf of the licensee; (b) deliveries may be made without obtaining the recipient's signature, provided that the person making the delivery records the recipient's full name and the method used to verify that the recipient is 21 years of age or older; (c) the delivery shall be refused when the recipient appears to be younger than 21 years of age and refuses to present valid identification; (d) the licensee shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer that states "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY" and includes the licensee number; and (e) no more than four cases of wine or beer may be delivered to any person at one time unless the licensee provides notice to the Board at least one business day prior to the delivery, which notice shall include the name and address of the intended recipient.

5. That an emergency exists and this act is in force from its passage.

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