

## **CHAPTER 5-02 RETAIL LICENSING**

### **5-02-01. State and local retail license required - Penalty - Exception.**

1. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or if the business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor.
2. This section does not apply to public carriers engaged in interstate commerce.
3. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

### **5-02-01.1. Event permit authorized - Penalty.**

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid the tax and who continues to pay any such tax imposed by the city or a licensee in a county, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person that dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize an individual under twenty-one years of age to attend the event but may not authorize the consumption or possession of an alcoholic beverage by an individual under twenty-one years of age.

### **5-02-02. Qualifications for license.**

A retail license may not be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than an organization, must be a legal resident of the United States and be a person of good moral character.
2. If the applicant is:
  - a. A corporation, then:
    - (1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
    - (2) The shareholders:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.
  - b. A limited liability company, then:
    - (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
    - (2) The members:

- (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
    - (3) The applicant must first be properly registered with the secretary of state.
  - c. A limited partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
    - (2) The general partners and limited partners:
      - (a) If individuals, must be legal residents of the United States and of good moral character; and
      - (b) If organizations, must meet the requirements of this section for applicants that are organizations.
    - (3) The applicant must first be properly registered with the secretary of state.
  - d. A general partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
    - (2) The partners:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
  - e. A limited liability partnership, then:
    - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
    - (2) The partners:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- Limited liability partnership applicants must first be properly registered with the secretary of state.
- 3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
  - 4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
  - 5. The applicant for a state license must have first secured a local license.
  - 6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
  - 7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.
  - 8. As a condition precedent to a background check, the attorney general may require the applicant to pay, in advance, an estimated additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available. The estimated additional fee must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. In addition, the attorney general may require the applicant or such other person subject to a background check to execute a written consent if needed by the attorney general to obtain background or criminal history information.

**5-02-02.1. Sale of alcoholic beverages in gas stations, grocery stores, and convenience stores.**

Before a state retail off sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the nonlicensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion.

**5-02-03. Local license fees.**

The fee for an annual local on and off sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee shall not exceed one thousand dollars. The fee for an annual on and off sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive on sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee must not exceed one thousand dollars. The fee for an annual local exclusive on sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive off sale beer or off sale liquor license must not be more than the fee charged for an on and off sale license. The local governing body may by ordinance or resolution provide for issuance of licenses for any period not to exceed one year and may allow for proration and refunds of license fees. In addition to any other license fee permitted by this section, a license fee may be increased by not more than five dollars for each Sunday the licensee sells alcoholic beverages.

**5-02-04. State license fee.**

The fee for an annual state beer or liquor license is fifty dollars each, except in cities over five hundred population at the last federal decennial census, the fee is one hundred dollars for each license. The fee for an annual state license will be charged on a calendar-year basis. License fees will be prorated from the first day of the month in which the license is issued up to the last day of the month in which such license expires, except that no license fee will be less than twenty-five dollars. A reinstatement fee of one hundred dollars is required in addition to the annual license fee for each license renewal applied for after December thirty-first.

**5-02-05. Dispensing prohibited on certain days - Penalty.**

A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and eight a.m., on Christmas Day, or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after two a.m. on Thanksgiving Day or between two a.m. and eight a.m. on Sundays. A person that violates this section is guilty of a class A misdemeanor.

**5-02-05.1. Sunday alcoholic beverage permit - Penalty.**

Repealed by S.L. 2017, ch. 104, § 2.

**5-02-05.2. Local approval of Sunday beer and wine sales by eating establishments - Fee.**

Repealed by S.L. 1993, ch. 63, § 6.

**5-02-06. Prohibitions for individuals under twenty-one years of age - Penalty - Exceptions.**

1. Except as permitted in this section, a licensee who dispenses alcoholic beverages to an individual under twenty-one years of age, or who permits an individual under

- twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if:
    - a. The individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age;
    - b. The individual is on the premises to consume a meal or in an emergency situation;
    - c. The premises serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;
    - d. The individual is not on the licensed premises after ten p.m.; and
    - e. The owner of the licensed premises receives permission of the local licensing authority for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred or fewer people, or the licensed premises is not located in a city.
  3.
    - a. At the discretion of the owner of the licensed premises, an individual under twenty-one years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
      - (1) Is accompanied by a parent or guardian;
      - (2) Is not seated at or within three feet [0.91 meters] of the bar counter; and
      - (3) Does not enter or remain in the designated area after ten p.m.
    - b. At the discretion of the owner of a brewer taproom licensed under section 5-01-21, an individual under twenty-one years of age may be permitted to enter and remain in the brewer taproom if:
      - (1) The brewer taproom is connected to or contracts with an establishment, including a mobile food unit, at which food is prepared and available for purchase to be consumed in the brewer taproom and which is connected to or located at the brewer taproom and receives the majority of its gross sales from the sale of food; and
      - (2) The individual:
        - (a) Is accompanied by the individual's parent or guardian;
        - (b) Is not seated at or within three feet [0.91 meters] of the bar counter; and
        - (c) Does not enter or remain in the brewer taproom after ten p.m. or during any time that food is not available for consumption as provided in paragraph 1.
    - c. An individual under twenty-one years of age may be permitted to remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the designated area in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual twenty-one years of age or older and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
    - d. For purposes of this subsection, "mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable from which a vendor prepares, cooks, sells, or serves food or beverages for immediate consumption.
  4. An individual under twenty-one years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement

officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.

5. An individual under twenty-one years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.
6. A restaurant may employ an individual who is eighteen years of age or older but under twenty-one years of age as provided in subsection 3 to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment that sells alcoholic beverages may employ an individual from eighteen to twenty-one years of age to work on the premises as a musician, disc jockey, or entertainer, or to perform duties directly related to working as a musician, disc jockey, or entertainer if the individual is under the direct supervision of an individual twenty-one or more years of age.
7. For purposes of this section, an individual is not twenty-one years of age until eight a.m. on that individual's twenty-first birthday.
8. If an individual is convicted of this section, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

**5-02-06.1. Evidence of an individual under twenty-one years of age in a licensed premises - Proof of identification - Refusal - Penalty.**

1. If a peace officer has reasonable and articulable suspicion that an individual under the age of twenty-one is in a licensed premises for a purpose prohibited under section 5-02-06, the peace officer may request the individual to furnish a nondriver photo identification card or an operator's license to verify the individual's age.
2. An individual who refuses to provide proof of identification upon request is guilty of an infraction.
3. If an individual charged with an infraction under this section produces a nondriver photo identification card or an operator's license before the final disposition of the infraction establishing the individual was twenty-one years of age or older at the time of the peace officer's request to furnish identification, the prosecuting attorney shall dismiss the infraction against the individual.

**5-02-07. Sale of other items restricted - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**5-02-07.1. Sale of alcoholic beverages in exchange for goods prohibited.**

Any licensee engaged in the retail sale of alcoholic beverages who accepts goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidences of debt, in exchange for any alcoholic beverages is guilty of a class B misdemeanor.

**5-02-07.2. Sale of beer in kegs - Registration and marking required.**

1. Any retail alcoholic beverage licensee who sells beer in a container with a liquid capacity greater than six gallons [22.71 liters] must place the licensee's state retail alcoholic beverage license number on the container and also must mark the container with a "registration" number or letters, or both, unique to that container. The paint or

ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.

2. Whenever a retail alcoholic beverage licensee sells beer in a container with a liquid capacity greater than six gallons [22.71 liters], the licensee shall record the date of sale and the name, address, and driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number, or letters of the container, or both. Such records must be retained for a period of no less than six months and must be kept on the licensed premises of the retail establishment where the sales are made.
3. Each retail alcoholic beverage licensee shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.
4. This section does not apply to the sale of beer in a container by a retail alcoholic beverage licensee if the contents of the container are consumed on the licensed premises where the sale occurred.

#### **5-02-08. Disorderly conduct prohibited - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

#### **5-02-09. Local regulations.**

The local governing body by ordinance or resolution may regulate or restrict the operation of licensees, including among other things determining the number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours, regulation of open door policies by fraternal organizations or private clubs, and regulation of dancing or various forms of entertainment on the premises.

#### **5-02-09.1. Attorney general to adopt rules.**

The attorney general pursuant to chapter 28-32 shall adopt rules necessary to carry out the provisions of this chapter.

#### **5-02-10. Hearing on alleged violations.**

1. If a person has information that a licensed retailer of alcoholic beverages has violated any provision of this title, the person may file with the attorney general, city attorney, or state's attorney an affidavit specifically explaining the violation within fourteen days of the date of the alleged violation.
2. If a person timely files an affidavit under subsection 1, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward the affidavit to the attorney general.
3. If a person timely files an affidavit under subsection 1, the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail.
4. If the hearing is held by the local governing body, a copy of the affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five days before the hearing.
5. A hearing conducted under this section must be recorded by stenographic notes or the use of an electronic recording device.

#### **05-02-10.1. Violations - Alcohol server training.**

For a first violation taken against the retail licensee by a licensing authority for serving alcoholic beverages, the licensing authority shall accept as a mitigating factor the retail licensee provided to the licensee's employees alcohol server training that addressed intoxication, drunk driving, and underage drinking, as approved by the licensing authority. Under this section, a mitigating factor must result in a lesser punishment than the retail licensee would have received if not for the mitigating factor.

**5-02-11. Suspension or revocation of license - Appeal.**

If after such hearing the attorney general or local governing body finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the licensee's license for a period of time. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is inoperative while the appeal is pending.

**5-02-12. Witnesses - Subpoena - Fees.**

The attorney general or a member of the local governing body has the power to administer oaths and subpoena and examine witnesses. Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

**5-02-13. Removal of wine from restaurant.**

If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages consumed on the premises may permit an individual purchasing the bottle to remove the bottle when leaving the licensed premises if the licensee reseals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.