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**HOUSE BILL NO. 1075**

Offered January 9, 2008

Prefiled January 9, 2008

*A BILL to amend and reenact §§ 4.1-111, 4.1-119, 4.1-204, 4.1-210, 4.1-227, and 4.1-324 of the Code of Virginia, relating to alcoholic beverage control; powers and duties of the Alcoholic Beverage Control Board generally; prohibited acts by licensees; exceptions.*

Patrons—Suit, Ebbin and Eisenberg

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-111, 4.1-119, 4.1-204, 4.1-210, 4.1-227, and 4.1-324 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each

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59 applicant.

60 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the  
61 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of  
62 § 4.1-325.2.

63 D. Board regulations shall be uniform in their application, except those relating to hours of sale for  
64 licensees.

65 E. Courts shall take judicial notice of Board regulations.

66 F. The Board's power to regulate shall be broadly construed.

67 § 4.1-119. Operation of government stores.

68 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and  
69 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by  
70 farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any  
71 garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the  
72 Board from time to time, in such counties, cities, and towns considered advisable by the Board. The  
73 Board may discontinue any such store.

74 B. With respect to the sale of wine produced by farm wineries, the Board may give preference to  
75 farm wineries that produce 2,500 cases or less of wine per year.

76 C. The Board shall fix (i) the wholesale ~~and retail~~ prices at which the various classes, varieties and  
77 brands of alcoholic beverages and other Board-approved products ~~that are sold in government stores are~~  
78 *sold to mixed beverage licensees and (ii) the retail prices at which alcoholic beverages and other*  
79 *Board-approved products are sold to consumers.* Differences in the cost of operating stores, and market  
80 competition and conditions may be reflected in the sale price of alcoholic beverages sold at government  
81 stores. The Board may sell alcoholic beverages to federal instrumentalities ~~(i)(a)~~ authorized and  
82 operating under the laws of the United States and regulations of the United States Department of  
83 Defense and ~~(ii)(b)~~ located within the boundaries of federal enclaves or reservations over which the  
84 United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price  
85 charged other authorized purchasers.

86 D. Alcoholic beverages at government stores shall be sold by employees of the Board, who shall  
87 carry out the provisions of this title and Board regulations governing the operation of government stores  
88 and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license  
89 or its officers and employees as agents of the Board for the sale of spirits manufactured by such  
90 licensee at government stores established by the Board on the distiller's licensed premises; provided:

91 1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are  
92 grown on the licensee's farm and no more than 25 percent of the agricultural products are grown or  
93 produced outside the Commonwealth. However, upon petition by the Department of Agriculture and  
94 Consumer Services, the Board may permit the use of a lesser percentage of products grown on the  
95 licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the  
96 availability of agricultural products grown on the farm to manufacture the spirits during a given license  
97 year; or

98 2. Such licensee is a duly organized nonprofit association holding title to real property, together with  
99 improvements thereon that are significant in American history, under a charter from the Commonwealth  
100 to preserve such property, and which association accepts no federal, state, or local funds.

101 Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations,  
102 and the terms of the agency agreement between the Board and the licensed distiller.

103 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without  
104 distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101  
105 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

106 F. All alcoholic beverages sold in government stores shall be in closed containers, sealed and affixed  
107 with labels prescribed by the Board.

108 G. No alcoholic beverages shall be consumed in a government store by any person.

109 H. With respect to purchases by licensees at government stores, the Board shall (i) accept in payment  
110 for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check  
111 payable to the Board, in the exact amount of any such purchase or series of purchases and (ii) provide  
112 notice to licensees on Board policies relating to the assignment of government stores from which  
113 licensees may purchase products and any procedure for the licensee to elect to make purchases from an  
114 alternative government store.

115 I. With respect to purchases by consumers at government stores, the Board shall accept cash in  
116 payment for any purchase or series of purchases. The Board may adopt regulations which provide for  
117 accepting a credit card or debit card as payment. Such regulations may provide for the collection, where  
118 appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by  
119 any consumer.

120 § 4.1-204. Records of licensees; inspection of records and places of business.

A. Manufacturers, bottlers or wholesalers. - Every licensed manufacturer, bottler or wholesaler shall keep complete, accurate and separate records in accordance with Board regulations of all alcoholic beverages purchased, manufactured, bottled, sold or shipped by him, and the applicable tax required by § 4.1-234 or 4.1-236, if any.

B. Retailers. - Every retail licensee shall keep complete, accurate and separate records, in accordance with Board regulations, of all purchases of alcoholic beverages, the prices charged such licensee therefor, and the names and addresses of the persons from whom purchased. Every retail licensee shall also preserve all invoices showing his purchases for a period as specified by Board regulations. He shall also keep an accurate account of daily sales, showing quantities of alcoholic beverages sold and the total price charged by him therefor. Except as otherwise provided in subsection D, such account need not give the names or addresses of the purchasers thereof, except as may be required by Board regulation for the sale of alcoholic beverages in kegs. In the case of persons holding retail licenses which require sales of food to determine their qualifications for such licenses, the records shall also include purchases and sales of food and nonalcoholic beverages.

C. Common carriers. - Common carriers of passengers by train, boat, or airplane shall keep records of purchases and sales of alcoholic beverages and food as required by Board regulation.

D. Wine shippers and beer shippers. - Every wine shipper licensee and every beer shipper licensee shall keep complete, accurate, and separate records in accordance with Board regulations of all shipments of wine or beer to persons in the Commonwealth. Such licensees shall also remit on a monthly basis an accurate account stating whether any wine, farm wine, or beer products were sold and shipped and, if so, stating the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is shipped.

E. Delivery permittees. - Every holder of a delivery permit issued pursuant to § 4.1-212.1 shall keep complete, accurate, and separate records in accordance with Board regulations of all deliveries of wine or beer to persons in the Commonwealth. Such permittees shall also remit on a monthly basis an accurate account that sets forth the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is delivered. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report to the Board for that month; however, every permittee must submit a report to the Board no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

F. Inspection. - The Board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth and to the premises of both (i) every wine shipper licensee and beer shipper licensee and (ii) every delivery permittee wherever located where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein. The Board may engage the services of alcoholic beverage control authorities in any state to assist with the inspection of the premises of a wine shipper licensee, a beer shipper licensee, or delivery permittee, or any applicant for such license or permit.

*For purposes of a Board inspection of the records of any retail licensees, "reasonable hours" means the hours between 9 a.m. and 5 p.m. At any other time of day, if the retail licensee's records are not available for inspection, the retailer shall provide the records to a special agent of the Board within 24 hours after a request is made to inspect the records.*

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least ~~45 percent of an average of \$4,000 per month annually from~~ the gross receipts from the sale of ~~mixed beverages and~~ food. For the purposes of this paragraph, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board.

If the restaurant is located on the premises of a hotel or motel with not less than four permanent bedrooms where food and beverage service is customarily provided by the restaurant in designated areas, bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell spirits packaged in original closed containers purchased from the Board for on-premises consumption to

182 registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private  
183 rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale  
184 and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed  
185 appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own  
186 lawfully acquired spirits in bedrooms or private rooms.

187 If the restaurant is located on the premises of and operated by a private, nonprofit or profit club  
188 exclusively for its members and their guests, or members of another private, nonprofit or profit club in  
189 another city with which it has an agreement for reciprocal dining privileges, such license shall also  
190 authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club  
191 prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the  
192 Board and located on another portion of the premises of the same hotel or motel building, this fact shall  
193 not prohibit the granting of a license by the Board to such club qualifying in all other respects. The  
194 club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold  
195 to its members and guests and consumed on the premises shall amount to at least 45 percent of its gross  
196 receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club  
197 shall be excluded in any consideration of the qualifications of such restaurant for a license from the  
198 Board.

199 2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the  
200 business of providing food and beverages to others for service at private gatherings or at special events,  
201 which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption.  
202 The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic  
203 beverages served at gatherings and events referred to in this subdivision shall amount to at least 45  
204 percent of the gross receipts from the sale of mixed beverages and food.

205 3. Mixed beverage limited caterer's licenses, which may be granted only to a person regularly  
206 engaged in the business of providing food and beverages to others for service at private gatherings or at  
207 special events, not to exceed 12 gatherings or events per year, which shall authorize the licensee to sell  
208 and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of  
209 food cooked and prepared for service and nonalcoholic beverages served at gatherings and events  
210 referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of  
211 mixed beverages and food.

212 4. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in  
213 charge of a special event, which shall authorize the licensee to sell and serve mixed beverages for  
214 on-premises consumption in areas approved by the Board on the premises of the place designated in the  
215 license. A separate license shall be required for each day of each special event.

216 5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or  
217 association operating a performing arts facility or (ii) a nonprofit corporation or association chartered by  
218 Congress for the preservation of sites, buildings and objects significant in American history and culture.  
219 The operation in either case shall be upon premises owned by such licensee or occupied under a bona  
220 fide lease the original term of which was for more than one year's duration. Such license shall authorize  
221 the sale, on the dates of performances or events in furtherance of the purposes of the nonprofit  
222 corporation or association, of alcoholic beverages, for on-premises consumption in areas upon the  
223 licensed premises approved by the Board.

224 6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat  
225 or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the  
226 Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms  
227 of establishments of air carriers at airports in the Commonwealth.

228 7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer  
229 club license to sell and serve mixed beverages for on-premises consumption by club members and their  
230 guests in areas approved by the Board on the club premises. A separate license shall be required for  
231 each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar  
232 year.

233 8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any  
234 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000  
235 persons and is located in Prince William County or the City of Virginia Beach. Such license shall  
236 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic  
237 or similar disposable containers to patrons within all seating areas, concourses, walkways, concession  
238 areas, or similar facilities, for on-premises consumption.

239 9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any  
240 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000  
241 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize  
242 the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar  
243 disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or

similar facilities, for on-premises consumption.

10. Annual mixed beverage motor sports facility license to persons operating food concessions at any outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, 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.

11. Annual mixed beverage 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 mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year.

12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve no more than six varieties of liqueurs, which liqueurs shall be combined with coffee or other nonalcoholic beverages for consumption in dining areas of the restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall the sale of such liqueur-based drinks exceed 10 percent of the total annual gross sales.

B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, or 11 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both.

C. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

305 D. In case of an offense by the holder of a brewery license, the Board may require that such holder  
306 pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not  
307 to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any  
308 subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof,  
309 impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the  
310 licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under  
311 the laws of the United States sailing for ports of call of a foreign country or another state, and to  
312 persons outside the Commonwealth.

313 E. The Board shall, by regulation, (i) designate the violations for which a waiver of a hearing and  
314 payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within  
315 three years immediately preceding the date of the violation and (ii) *provide for a reduction in the length*  
316 *of any suspension and a reduction in the amount of any civil penalty for an on-premises licensee where*  
317 *the licensee can demonstrate that it provided certified alcohol server training, including the Serve Safe*  
318 *Alcohol training through the National Restaurant Association, to its employees.* The Board shall  
319 establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license  
320 and the civil charge acceptable in lieu of such suspension. A licensee receiving notice of a hearing on  
321 an alleged violation meeting the requirements of this subsection, shall be advised of the option of ~~(i)~~(a)  
322 accepting the suspension authorized by the Board's schedule, ~~(ii)~~(b) paying a civil charge authorized by  
323 the Board's schedule in lieu of suspension, or ~~(iii)~~(c) proceeding to a hearing.

324 § 4.1-324. Illegal sale or keeping of alcoholic beverages by licensees; penalty.

325 A. No licensee or any agent or employee of such licensee shall:

326 1. Sell any alcoholic beverages of a kind other than that which such license or this title authorizes  
327 him to sell;

328 2. Sell beer to which wine, spirits or alcohol has been added, *except where a mixed beverage*  
329 *licensee does so to prepare an alcoholic beverage drink for its patrons;*

330 3. Sell wine to which spirits or alcohol, or both, have been added, ~~otherwise than~~ *except (i) as*  
331 *required in the manufacture thereof under Board regulations or (ii) where a mixed beverage licensee*  
332 *does so to prepare an alcoholic beverage drink for his patrons;*

333 4. Sell alcoholic beverages of a kind which such license or this title authorizes him to sell, but to  
334 any person other than to those to whom such license or this title authorizes him to sell;

335 5. Sell alcoholic beverages which such license or this title authorizes him to sell, but in any place or  
336 in any manner other than such license or this title authorizes him to sell;

337 6. Sell any alcoholic beverages when forbidden by this title;

338 7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic  
339 beverages other than that which he is authorized to sell by such license or by this title;

340 8. Sell any beer to a retail licensee, except for cash, if the seller holds a brewery, bottler's or  
341 wholesale beer license;

342 9. Sell any beer on draft and fail to display to customers the brand of beer sold or misrepresent the  
343 brand of any beer sold;

344 10. Sell any wine for delivery within the Commonwealth to a retail licensee, except for cash, if the  
345 seller holds a wholesale wine or farm winery license; or

346 11. Keep or allow to be kept or sell any vaporized form of an alcoholic beverage produced by an  
347 alcohol vaporizing device.

348 12. *Conduct a "happy hour" or related promotion at a licensed restaurant except during hours*  
349 *permitted by Board regulation; however, during any happy hour or related promotion, no licensee may*  
350 *(i) allow a person to possess more than two drinks; (ii) increase the volume of alcoholic beverages*  
351 *contained in a drink without increasing the customary or established retail price charged for such*  
352 *drink; (iii) sell two or more drinks for one price; (iv) sell pitchers of mixed beverages, other than*  
353 *sangria; (v) give away free alcoholic beverages; or (vi) sell an unlimited number of drinks for one*  
354 *price. Any customary pricing of alcoholic beverages by a licensee outside of any happy hour or related*  
355 *promotion specials shall not be deemed to be in violation of this section.*

356 B. *Neither this section nor any Board regulation shall prohibit:*

357 1. *Any mixed beverage licensee from pre-mixing, either in a frozen drink dispenser of a type*  
358 *approved by the Board or otherwise, mixed beverages for purposes of sale and consumption on the*  
359 *licensed premises; or*

360 2. *An on-premises restaurant licensee from using alcoholic beverages that the licensee otherwise is*  
361 *authorized to purchase and possess for the purposes of preparing and selling for on-premises*  
362 *consumption food products with a final alcohol content of more than one-half of one percent by volume,*  
363 *as long as such food products are sold and consumed by persons who are 21 years of age or older.*

364 C. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.