

11101415D

**HOUSE BILL NO. 1901**

Offered January 12, 2011

Prefiled January 11, 2011

*A BILL to amend and reenact §§ 4.1-100, 4.1-103, 4.1-111, 4.1-119, 4.1-324, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; prohibited sale of prepackaged alcoholic beverages to which caffeine has been added; exception for mixed beverage licensees.*

Patron—Hugo

Referred to Committee on General Laws

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

**1. That §§ 4.1-100, 4.1-103, 4.1-111, 4.1-119, 4.1-324, and 4.1-325 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-100. Definitions.**

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Alcoholic energy drink" means any alcoholic beverage that is sold in a closed container and to which caffeine has been added by the manufacturer in excess of 200 milligrams per serving.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being

INTRODUCED

HB1901

59 conducted while such gaming is being conducted and that no alcoholic beverages are made available  
60 upon the premises to any person who is neither a member nor a bona fide guest of a member.

61 Any such corporation or association which has been declared exempt from federal and state income  
62 taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a  
63 nonprofit corporation or association.

64 "Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding  
65 alcoholic beverages.

66 "Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent  
67 structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items  
68 intended for human consumption consisting of a variety of such items of the types normally sold in  
69 grocery stores.

70 "Day spa" means any commercial establishment that offers to the public both massage therapy,  
71 performed by persons certified in accordance with § 54.1-3029, and barbering or cosmetology services  
72 performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.

73 "Designated area" means a room or area approved by the Board for on-premises licensees.

74 "Dining area" means a public room or area in which meals are regularly served.

75 "Establishment" means any place where alcoholic beverages of one or more varieties are lawfully  
76 manufactured, sold, or used.

77 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing  
78 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the  
79 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol  
80 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing  
81 area or agreements for purchasing grapes or other fruits from agricultural growers within the  
82 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or  
83 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this  
84 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of  
85 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm  
86 winery, the term "farm" as used in this definition includes all of the land owned or leased by the  
87 individual members of the cooperative as long as such land is located in the Commonwealth.

88 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty  
89 items relating to history, original and handmade arts and products, collectibles, crafts, and floral  
90 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure  
91 where stock is displayed and offered for sale and which has facilities to properly secure any stock of  
92 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered  
93 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall  
94 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be  
95 considered a gift shop.

96 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may  
97 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such  
98 persons facilities for manufacturing, fermenting and bottling such wine or beer.

99 "Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage  
100 facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and  
101 beers of various types and sizes and related products such as cheeses and gourmet foods are habitually  
102 furnished to persons.

103 "Government store" means a store established by the Board for the sale of alcoholic beverages.

104 "Hotel" means any duly licensed establishment, provided with special space and accommodation,  
105 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has  
106 four or more bedrooms. It shall also mean the person who operates such hotel.

107 "Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order  
108 pursuant to this title.

109 "Internet wine retailer" means a person who owns or operates an establishment with adequate  
110 inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone  
111 orders are taken and shipped directly to consumers and which establishment is not a retail store open to  
112 the public.

113 "Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to  
114 observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

115 "Licensed" means the holding of a valid license issued by the Board.

116 "Licensee" means any person to whom a license has been granted by the Board.

117 "Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol  
118 content of 25 percent by volume.

119 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol  
120 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits

mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Board may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such

182 meals for consumption at tables in dining areas on the premises, and includes establishments specializing  
183 in full course meals with a single substantial entree.

184 "Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale;  
185 peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic  
186 beverages.

187 "Sangria" means a drink consisting of red or white wine mixed with some combination of  
188 sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other  
189 similar spirits.

190 "Special agent" means an employee of the Department of Alcoholic Beverage Control whom the  
191 Board has designated as a law-enforcement officer pursuant to § 4.1-105.

192 "Special event" means an event sponsored by a duly organized nonprofit corporation or association  
193 and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

194 "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable  
195 water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and  
196 gin, or any one or more of the last four named ingredients; but shall not include any such liquors  
197 completely denatured in accordance with formulas approved by the United States government.

198 "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of  
199 fruits or other agricultural products containing (i) sugar, including honey and milk, either with or  
200 without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product  
201 of distillation. The term includes any wine to which wine spirits have been added, as provided in the  
202 Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an  
203 alcohol content of 21 percent by volume.

204 "Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and  
205 not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of  
206 wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain  
207 water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar  
208 products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice  
209 beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

210 "With or without meals" means the selling and serving of alcoholic beverages by retail licensees for  
211 on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio  
212 required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by  
213 such retail licensee.

214 § 4.1-103. General powers of Board.

215 The Board shall have the power to:

216 1. Buy, import, and sell alcoholic beverages other than beer ~~and~~, wine not produced by farm  
217 wineries, and *alcoholic energy drinks* and to have alcoholic beverages other than beer ~~and~~, wine not  
218 produced by farm wineries, and *alcoholic energy drinks* in its possession for sale;

219 2. Buy and sell any mixers;

220 3. Control the possession, sale, transportation and delivery of alcoholic beverages;

221 4. Determine, subject to § 4.1-121, the localities within which government stores shall be established  
222 or operated and the location of such stores;

223 5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic  
224 beverages to and from such warehouses;

225 6. Lease, occupy and improve any land or building required for the purposes of this title;

226 7. Purchase or otherwise acquire title to any land or building required for the purposes of this title  
227 and sell and convey the same by proper deed, with the consent of the Governor;

228 8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be  
229 considered necessary or useful in carrying into effect the purposes of this title, including rectifying,  
230 blending and processing plants. The Board may purchase, build, lease, and operate distilleries and  
231 manufacture alcoholic beverages;

232 9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to  
233 be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed  
234 thereon;

235 10. Appoint every agent and employee required for its operations; require any or all of them to give  
236 bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the  
237 services of experts and professionals;

238 11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the  
239 production of records, memoranda, papers and other documents before the Board or any agent of the  
240 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board  
241 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take  
242 testimony thereunder, and make summary decisions, subject to final decision by the Board, on  
243 application of any party aggrieved;

12. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

13. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of this chapter;

14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

15. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

17. Establish minimum food sale requirements for all retail licensees; and

18. Do all acts necessary or advisable to carry out the purposes of this title.

§ 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.

~~10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.~~

~~11.0.~~ Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

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 applicant.

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

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

E. Courts shall take judicial notice of Board regulations.

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

§ 4.1-119. Operation of government stores.

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

1. *Alcoholic beverages other than beer, wine not produced by farm wineries, and alcoholic energy drinks;*

2. *Vermouth;*

3. *Mixers; and*

4. *Products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of the glass of distilled spirits.*

The Board may discontinue any such store.

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

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

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

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

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

3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site.

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

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

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

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

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § 4.1-304. The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

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

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

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

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

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

2. Sell beer to which wine, spirits or alcohol has been added, except that a mixed beverage licensee may combine wine or spirits, or both, with beer pursuant to a patron's order;

3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations, except that a mixed beverage licensee may (i) make sangria that contains brandy, triple sec, or other similar spirits and (ii) combine beer or spirits, or both, with wine pursuant to a patron's order;

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

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

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

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

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

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

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

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

12. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except: (i) for a frozen alcoholic beverage; and (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; or

13. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

14. *Sell alcoholic energy drinks, except that a mixed beverage licensee may combine alcoholic beverages with beverages containing caffeine pursuant to a patron's order.*

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

C. Neither this section nor any Board regulation shall prohibit an on-premises restaurant licensee from using alcoholic beverages that the licensee otherwise is authorized to purchase and possess for the purposes of preparing and selling for on-premises consumption food products with a final alcohol content of more than one-half of one percent by volume, as long as such food products are sold to and consumed by persons who are 21 years of age or older.

§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to *subdivision B 10 of § 4.1-111 B 11*;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;
9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;
10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or obliterated;
11. Allow any obscene conduct, language, literature, pictures, performance or materials on the licensed premises;
12. Allow any striptease act on the licensed premises;
13. Allow persons connected with the licensed business to appear nude or partially nude;
14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § 4.1-210.

The provisions of this subdivision shall not apply to the delivery of:

- a. "Soju." For the purposes of this clause, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes; or
- b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;

16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;
17. Conceal any sale or consumption of any alcoholic beverages;
18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;
19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;
20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;
21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus;
22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in

490 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection  
491 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision  
492 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall  
493 keep complete and accurate records of gifts given in accordance with this subdivision; or

494 23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or  
495 device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase  
496 the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the  
497 normal or customary price charged for the same alcoholic beverage.

498 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

499 C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters,  
500 concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or  
501 theatrical performances, when the performances that are presented are expressing matters of serious  
502 literary, artistic, scientific, or political value.