

11102918D

## HOUSE BILL NO. 2293

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 4.1-100, 4.1-111, and 4.1-215 of the Code of Virginia, relating to alcoholic beverage control; malt beverages defined.

Patron—McClellan

Referred to Committee on General Laws

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

**1. That §§ 4.1-100, 4.1-111, and 4.1-215 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, *malt beverages*, 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.

"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 *at least* one-half of one percent ~~or more~~ *but not more than eight percent* 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 conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income

INTRODUCED

HB2293

59 taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a  
60 nonprofit corporation or association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol  
117 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits  
118 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit  
119 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by  
120 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.

"Malt beverage" 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 eight percent or more of alcohol by volume.

"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 § 4.1-111. Regulations of Board.

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

221 B. The Board shall promulgate regulations that:

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

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

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

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

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

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

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

*12. Prescribe the size of the closed containers in which malt beverages are to be sold, not to exceed 12 ounces in volume. Such closed containers shall contain labeling which indicates the number of servings contained within, each serving containing no more than eight percent of alcohol by volume.*

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.

§ 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.

A. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages shall be granted to any (i) manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not; (ii) officer or director of any such manufacturer, bottler or wholesaler; (iii) partnership or corporation, where any partner or stockholder is an officer or director of any such manufacturer, bottler or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of alcoholic beverages; or (v) manufacturer, bottler or wholesaler of alcoholic beverages who has a financial interest in a corporation which has a retail license as a result of a holding company, which owns or has an interest in such manufacturer, bottler or wholesaler of alcoholic beverages. Nor shall such licenses be granted in any instances where such manufacturer, bottler or wholesaler and such retailer are under common control, by stock ownership or otherwise.

Notwithstanding any other provision of this title, a manufacturer of malt beverages, *beer* or wine, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in § 4.1-209 upon application to the Board provided that such event is (i) at a place approved by the Board and (ii) conducted for the purposes of featuring and educating the consuming public about malt beverage, *beer* or wine products. Such manufacturer shall be limited to no more than four banquet licenses for such special events per year. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event.

B. This section shall not apply to:

1. Corporations operating dining cars, buffet cars, club cars or boats;

2. Brewery or winery licensees engaging in conduct authorized by subdivision A 5 of § 4.1-201;

3. Farm winery licensees engaging in conduct authorized by subdivision 5 of § 4.1-207;

4. Manufacturers, bottlers or wholesalers of alcoholic beverages who do not (i) sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail license or banquet license as described in subsection A and (ii) require, by agreement or otherwise, such person to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers; or

5. Wineries, farm wineries, or breweries engaging in conduct authorized by § 4.1-209.1 or 4.1-212.1.

C. The General Assembly finds that it is necessary and proper to require a separation between

305 manufacturing interests, wholesale interests and retail interests in the production and distribution of  
306 alcoholic beverages in order to prevent suppliers from dominating local markets through vertical  
307 integration and to prevent excessive sales of alcoholic beverages caused by overly aggressive marketing  
308 techniques. The exceptions established by this section to the general prohibition against tied interests  
309 shall be limited to their express terms so as not to undermine the general prohibition and shall therefore  
310 be construed accordingly.