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HOUSE BILL NO. 1526

Offered January 11, 2017

Prefiled December 26, 2016

A BILL to amend and reenact §§ 4.1-100, as it is currently effective and as it shall become effective, and 4.1-210 of the Code of Virginia, relating to alcoholic beverage control; mixed beverage performing arts facility license.

 Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, as it is currently effective and as it shall become effective, and 4.1-210 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-100. (Effective until July 1, 2018) 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, powder or crystal, 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.

"Art instruction studio" means any commercial establishment that provides to its customers all required supplies and step-by-step instruction in creating a painting or other work of art during a studio instructional session.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"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

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59 because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.)
60 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided
61 that no alcoholic beverages are served or consumed in the room where such charitable gaming is being
62 conducted while such gaming is being conducted and that no alcoholic beverages are made available
63 upon the premises to any person who is neither a member nor a bona fide guest of a member.

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

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

69 "Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains
70 grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes,
71 processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with
72 the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility
73 for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied
74 the grapes, fruits, or other agricultural products used in the production of the wine. The contract
75 winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have
76 not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm
77 winery for its services.

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

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

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

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

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

89 "Farm winery" means (i) an establishment (a) located on a farm in the Commonwealth on land zoned
90 agricultural with a producing vineyard, orchard, or similar growing area and with facilities for
91 fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains
92 not more than 21 percent alcohol by volume or (b) located in the Commonwealth on land zoned
93 agricultural with a producing vineyard, orchard, or similar growing area or agreements for purchasing
94 grapes or other fruits from agricultural growers within the Commonwealth and with facilities for
95 fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains
96 not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher
97 education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine
98 manufactured by the institution shall be used solely for research and educational purposes, (c) the wine
99 manufactured by the institution shall be stored on the premises of such farm winery that shall be
100 separate and apart from all other facilities of the institution, and (d) such farm winery is operated in
101 strict conformance with the requirements of this clause (ii) and Board regulations. As used in this
102 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of
103 individuals for the purpose of manufacturing wine. In the event that such cooperative is licensed as a
104 farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the
105 individual members of the cooperative as long as such land is located in the Commonwealth. For
106 purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or
107 classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this
108 definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for
109 the limitation on land zoned "residential conservation," nothing in the definition of "land zoned
110 agricultural" shall otherwise limit or affect local zoning authority.

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

119 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may
120 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such

persons facilities for manufacturing, fermenting and bottling such wine or beer.

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

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

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

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

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

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

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

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

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

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol 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.

"Performing arts facility" means an establishment devoted exclusively to the bona fide performance of live music, which establishment is open to the public no more than four days in any calendar week and where at least 90 percent of the ticket sales for any performance at such facility are required to be purchased in advance of the performance.

"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

182 highway, street, or lane.

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

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

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

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

206 "Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant
207 license, an established place of business (i) where meals with substantial entrees are regularly sold and
208 (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such
209 meals for consumption at tables in dining areas on the premises, and includes establishments specializing
210 in full course meals with a single substantial entree.

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

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

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

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

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

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

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

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

241 **§ 4.1-100. (Effective July 1, 2018) Definitions.**

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

243 "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, powder or crystal, 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.

"Art instruction studio" means any commercial establishment that provides to its customers all required supplies and step-by-step instruction in creating a painting or other work of art during a studio instructional session.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.

"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 Board of Directors of the Virginia Alcoholic Beverage Control Authority.

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

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

"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes, processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied the grapes, fruits, or other agricultural products used in the production of the wine. The contract winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm

305 winery for its services.

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

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

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

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

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

317 "Farm winery" means (i) an establishment (a) located on a farm in the Commonwealth on land zoned
318 agricultural with a producing vineyard, orchard, or similar growing area and with facilities for
319 fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains
320 not more than 21 percent alcohol by volume or (b) located in the Commonwealth on land zoned
321 agricultural with a producing vineyard, orchard, or similar growing area or agreements for purchasing
322 grapes or other fruits from agricultural growers within the Commonwealth and with facilities for
323 fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains
324 not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher
325 education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine
326 manufactured by the institution shall be used solely for research and educational purposes, (c) the wine
327 manufactured by the institution shall be stored on the premises of such farm winery that shall be
328 separate and apart from all other facilities of the institution, and (d) such farm winery is operated in
329 strict conformance with the requirements of this clause (ii) and Board regulations. As used in this
330 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of
331 individuals for the purpose of manufacturing wine. In the event that such cooperative is licensed as a
332 farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the
333 individual members of the cooperative as long as such land is located in the Commonwealth. For
334 purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or
335 classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this
336 definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for
337 the limitation on land zoned "residential conservation," nothing in the definition of "land zoned
338 agricultural" shall otherwise limit or affect local zoning authority.

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

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

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

354 "Government store" means a store established by the Authority for the sale of alcoholic beverages.

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

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

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

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

366 "Licensed" means the holding of a valid license granted by the Authority.

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

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

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol 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.

"Performing arts facility" means an establishment devoted exclusively to the bona fide performance of live music, which establishment is open to the public no more than four days in any calendar week and where at least 90 percent of the ticket sales for any performance at such facility are required to be purchased in advance of the performance.

"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.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the equity ownership of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such equity ownership. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.

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

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

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

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

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

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

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

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

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

§ 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 the gross receipts from the sale of mixed beverages and food. For the purposes of this subdivision, 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. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

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

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

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

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

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

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating either a performing arts facility or an art education and exhibition facility, (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture, or (iii) persons operating an agricultural event and entertainment park or similar facility that has a minimum of 50,000 square feet of indoor exhibit space and equine and other livestock show areas, which includes barns, pavilions, or other structures equipped with roofs, exterior walls, and open or closed-door access. The operation in all cases shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the licensee to sell alcoholic beverages during scheduled events and performances for on-premises consumption in areas upon the licensed premises approved by the Board.

6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth. For purposes of supplying its airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load distilled spirits onto the same airplanes and to transport and store distilled spirits at or in close proximity to the airport where the distilled spirits will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of distilled spirits may be stored and from which the distilled spirits will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all distilled spirits to be transported, stored, and delivered by its authorized representative.

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

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

562 9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
563 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000
564 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize
565 the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar
566 disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or
567 similar facilities, for on-premises consumption.

568 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any
569 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,
570 200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed
571 beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events
572 or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing
573 areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization
574 of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the
575 premises in all areas and locations covered by the license.

576 11. Annual mixed beverage banquet licenses to duly organized private nonprofit fraternal, patriotic or
577 charitable membership organizations that are exempt from state and federal taxation and in charge of
578 banquets conducted exclusively for its members and their guests, which shall authorize the licensee to
579 serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of
580 the place designated in the license. Such license shall authorize the licensee to conduct no more than 12
581 banquets per calendar year.

582 12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve
583 dessert wines as defined by Board regulation and no more than six varieties of liqueurs, which liqueurs
584 shall be combined with coffee or other nonalcoholic beverages, for consumption in dining areas of the
585 restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall
586 the sale of such wine or liqueur-based drinks, together with the sale of any other alcoholic beverages,
587 exceed 10 percent of the total annual gross sales of all food and alcoholic beverages.

588 13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an
589 outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the
590 licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled
591 events, as well as events or performances immediately subsequent thereto, to patrons in all dining
592 facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises
593 consumption.

594 14. Annual mixed beverage performing arts facility license to corporations or associations operating a
595 performing arts facility, provided the performing arts facility (i) is owned by a governmental entity; (ii)
596 is occupied by a for-profit entity under a bona fide lease, the original term of which was for more than
597 one year's duration; and (iii) has been rehabilitated in accordance with historic preservation standards.
598 Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for
599 on-premises consumption in areas upon the licensed premises approved by the Board.

600 ~~15. Annual mixed beverage performing arts facility license to persons operating food concessions at~~
601 ~~any performing arts facility located in the City of Norfolk or the City of Richmond, provided that the~~
602 ~~performing arts facility (i) is owned by the licensee or is occupied under a bona fide long-term lease or~~
603 ~~concession agreement, the original term of which was more than five years; (ii) has a capacity in excess~~
604 ~~of 1,400 patrons; (iii) has been rehabilitated in accordance with historic preservation standards; and (iv)~~
605 ~~(ii) has monthly gross receipts from the sale of food cooked, or prepared, and consumed on the premises~~
606 ~~and nonalcoholic beverages served on the premises that meet or exceed the monthly minimum~~
607 ~~established by Board regulations for mixed beverage restaurants of at least \$6,000. Such license shall~~
608 ~~authorize the sale, on the dates of performances or events and one hour prior to any such performance~~
609 ~~and one hour after the conclusion of any performance, of alcoholic beverages for on-premises~~
610 ~~consumption in areas upon the licensed premises approved by the Board.~~

611 ~~16. 15. Annual mixed beverage performing arts facility license to persons operating food concessions~~
612 ~~at any performing arts facility located in the City of Waynesboro, provided that the performing arts~~

613 facility (i) is occupied under a bona fide long-term lease or concession agreement, the original term of
614 which was more than five years; (ii) has a total capacity in excess of 550 patrons; and (iii) has been
615 rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on
616 the dates of performances or private or special events, of alcoholic beverages for on-premises
617 consumption in areas upon the licensed premises approved by the Board.

618 ~~17.~~ 16. A combined mixed beverage restaurant and caterer's license, which may be granted to any
619 restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to
620 subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location,
621 and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed
622 beverage caterer at the same business premises designated in the license, with a common alcoholic
623 beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the
624 separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision
625 A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

626 B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, *or* 16; ~~or 17~~
627 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The
628 licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.