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## SENATE BILL NO. 1161

Offered January 11, 2017

Prefiled January 9, 2017

*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; food sale requirements.*

Patron—Reeves

Referred to Committee on Rehabilitation and Social Services

**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 because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.)

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59 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided  
60 that no alcoholic beverages are served or consumed in the room where such charitable gaming is being  
61 conducted while such gaming is being conducted and that no alcoholic beverages are made available  
62 upon the premises to any person who is neither a member nor a bona fide guest of a member.

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

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

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

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

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

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

85 "Dining area" means a public room or area in which ~~meals are~~ *food is* regularly served.

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

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

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

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

"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

182 limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such  
183 building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in  
184 use for private meetings or parties limited in attendance to employees and nonpaying guests of the  
185 owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats  
186 which are not licensed by the Board and on which alcoholic beverages are not sold.

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

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

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

201 "Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant  
202 license, an established place of business (i) where ~~meals with substantial entrees~~ *foods prepared on the*  
203 *premises* are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking,  
204 preparing, and serving such ~~meals~~ *foods* for consumption at tables in dining areas on the premises; ~~and~~  
205 ~~includes establishments specializing in full course meals with a single substantial entree.~~

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

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

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

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

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

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

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

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

236 **§ 4.1-100. (Effective July 1, 2018) Definitions.**

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

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

242 "Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic  
243 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 winery for its services.

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

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

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

309 "Dining area" means a public room or area in which ~~meals are~~ *food is* regularly served.

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

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

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

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

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

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

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

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

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

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

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

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

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

365 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol  
366 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.

"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~~ *foods prepared on the premises* are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such ~~meals~~ *foods* 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, *nonalcoholic 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, *nonalcoholic 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, *nonalcoholic 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, *nonalcoholic 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.

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

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach. Such license shall

551 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic  
552 or similar disposable containers to patrons within all seating areas, concourses, walkways, concession  
553 areas, or similar facilities, for on-premises consumption.

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

560 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any  
561 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,  
562 200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed  
563 beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events  
564 or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing  
565 areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization  
566 of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the  
567 premises in all areas and locations covered by the license.

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

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

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

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

593 15. Annual mixed beverage performing arts facility license to persons operating food concessions at  
594 any performing arts facility located in the City of Norfolk or the City of Richmond, provided that the  
595 performing arts facility (i) is occupied under a bona fide long-term lease or concession agreement, the  
596 original term of which was more than five years; (ii) has a capacity in excess of 1,400 patrons; (iii) has  
597 been rehabilitated in accordance with historic preservation standards; and (iv) has monthly gross receipts  
598 from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic beverages  
599 served on the premises that meet or exceed the monthly minimum established by Board regulations for  
600 mixed beverage restaurants. Such license shall authorize the sale, on the dates of performances or  
601 events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises  
602 approved by the Board.

603 16. Annual mixed beverage performing arts facility license to persons operating food concessions at  
604 any performing arts facility located in the City of Waynesboro, provided that the performing arts facility  
605 (i) is occupied under a bona fide long-term lease or concession agreement, the original term of which  
606 was more than five years; (ii) has a total capacity in excess of 550 patrons; and (iii) has been  
607 rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on  
608 the dates of performances or private or special events, of alcoholic beverages for on-premises  
609 consumption in areas upon the licensed premises approved by the Board.

610 17. A combined mixed beverage restaurant and caterer's license, which may be granted to any  
611 restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to  
612 subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location,

613 and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed  
614 beverage caterer at the same business premises designated in the license, with a common alcoholic  
615 beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the  
616 separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision  
617 A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

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