

18104796D

HOUSE BILL NO. 1519

Offered January 19, 2018

A *BILL to amend and reenact § 4.1-100 of the Code of Virginia, relating to alcoholic beverage control; definition of "day spa."*

 Patron—Head

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 4.1-100 of the Code of Virginia is amended and reenacted as follows:****§ 4.1-100. Definitions.**

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

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

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

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, 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. For purposes of the licensing requirements of this title, "bed and breakfast establishment" includes any property offered to the public for short-term rental, as that term is defined in § 15.2-983, other than a hotel as defined in this section, regardless of whether a meal is offered 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

INTRODUCED

HB1519

59 means the establishment so operated. A corporation or association shall not lose its status as a club
60 because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.)
61 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided
62 that no alcoholic beverages are served or consumed in the room where such charitable gaming is being
63 conducted while such gaming is being conducted and that no alcoholic beverages are made available
64 upon the premises to any person who is neither a member nor a bona fide guest of a member.

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

68 "Commercial lifestyle center" means a mixed-use commercial development covering a minimum of
69 25 acres of land and having at least 100,000 square feet of retail space featuring national specialty chain
70 stores and a combination of dining, entertainment, office, residential, or hotel establishments located in a
71 physically integrated outdoor setting that is pedestrian friendly and that is governed by a commercial
72 owners' association that is responsible for the management, maintenance, and operation of the common
73 areas thereof.

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

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

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

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

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

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

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

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

118 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty
119 items relating to history, original and handmade arts and products, collectibles, crafts, and floral
120 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure

where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

"Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may 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 Authority for the sale of alcoholic beverages.

"Historic cinema house" means a nonprofit establishment exempt from taxation under § 501(c)(3) of the Internal Revenue Code that was built prior to 1970 and that exists for the primary purpose of showing motion pictures to the public.

"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 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.

"Municipal golf course" means any golf course that is owned by any town incorporated in 1849 and

182 which is the county seat of Smyth County.

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

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

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

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

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

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

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

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

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

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

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

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

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

240 "Wine" means any alcoholic beverage, including cider, obtained by the fermentation of the natural
241 sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk,
242 either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and
243 (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as

244 provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do
245 not exceed an alcohol content of 21 percent by volume.

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

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

INTRODUCED

HB1519