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**HOUSE BILL NO. 2156**

Offered January 9, 2019

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

Patrons—Plum, Adams, D.M., Kory and Levine

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

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

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

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

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

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

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

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

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

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

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

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

119 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty  
120 items relating to history, original and handmade arts and products, collectibles, crafts, and floral

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 beer 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.

"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,

182 and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives  
183 which are not commonly consumed unless combined with alcoholic beverages, whether or not such  
184 ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a  
185 Virginia corporation.

186 "Municipal golf course" means any golf course that is owned by any town incorporated in 1849 and  
187 which is the county seat of Smyth County.

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

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

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

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

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

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

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

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

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

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

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

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

241 "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable  
242 water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and  
243 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, including cider, 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.