

18102833D

SENATE BILL NO. 773

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact §§ 4.1-100, 4.1-111, and 4.1-210 of the Code of Virginia, relating to alcoholic beverage control; food-to-beverage ratio.

Patron—DeSteph

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-111, and 4.1-210 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-100. Definitions.

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

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

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

"Alcoholic beverages" includes alcohol, spirits, wine, 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

INTRODUCED

SB773

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

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

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

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

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

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

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

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

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

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

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

120 "Food-to-beverage ratio" means, for purposes of mixed beverage restaurant licenses, the percentage

calculated by dividing (i) the licensee's gross receipts from the sale of food cooked or prepared, and consumed on the premises, and nonalcoholic beverages served on the premises by (ii) the licensee's gross receipts from the sale of food cooked or prepared, and consumed on the premises, nonalcoholic beverages served on the premises, and mixed beverages. "Food-to-beverage ratio" means, for purposes of mixed beverage caterer's and limited caterer's licenses, the percentage calculated by dividing (a) the licensee's gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at private gatherings and special events by (b) the licensee's gross receipts from the sale of mixed beverages and from food cooked and prepared for service and nonalcoholic beverages served at private gatherings and special events.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty 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 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 which is the county seat of Smyth County.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Wine" means any alcoholic beverage, 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.

§ 4.1-111. Regulations of Board.

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

B. The Board shall promulgate regulations that:

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

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

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

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

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

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

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

305 9. Provide alternative methods for licensees to maintain and store business records that are subject to
306 Board inspection, including methods for Board-approved electronic and off-site storage.

307 10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing
308 one-half of one percent or more of alcohol by volume in the same location where wine and beer are
309 available for sale within the licensed premises.

310 11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and
311 sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20
312 liters.

313 12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to
314 subsection C of § 4.1-232.

315 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
316 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage
317 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages
318 may not be lawfully sold. Such regulations shall:

319 a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i)
320 the general prohibition against tied interests between retail licensees and manufacturers or wholesale
321 licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of
322 wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the
323 general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and
324 retail licensees as set forth in Board regulation; and

325 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the
326 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under
327 Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate
328 as defined in § 55-526, but only in accordance with this title.

329 14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer
330 pursuant to an agreement with a brand owner not under common control with the manufacturing
331 brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require
332 that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a
333 written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board
334 are maintained by the parties.

335 15. Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations
336 shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy
337 hour but prohibit the advertising of any pricing related to such happy hour.

338 16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one
339 bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to
340 individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any
341 24-hour period and subject to any Board limitations on the frequency of such gifts.

342 17. Permit the sale of beer and cider for off-premises consumption in resealable growlers made of
343 glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved
344 by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.

345 18. Permit the sale of wine for off-premises consumption in resealable growlers made of glass,
346 ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the
347 Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine
348 growlers may be used only by persons licensed to sell wine for both on-premises and off-premises
349 consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees shall be labeled
350 with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid
351 ounces, and (iv) the name and address of the retailer.

352 19. Permit the sale of wine, cider, and beer by retailers licensed to sell beer and wine for both
353 on-premises and off-premises consumption, or by gourmet shop licensees for off-premises consumption
354 in sealed containers made of metal or other materials approved by the Board with a maximum capacity
355 of 32 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is
356 placed in the container following an order from the consumer.

357 20. Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic
358 beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations
359 established by the Board.

360 21. Establish and make available to all licensees and permittees for which on-premises consumption
361 of alcoholic beverages is allowed and employees of such licensees and permittees who serve as a
362 bartender or otherwise sell, serve, or dispense alcoholic beverages for on-premises consumption a bar
363 bystander training module, which shall include (i) information that enables licensees, permittees, and
364 their employees to recognize situations that may lead to sexual assault and (ii) intervention strategies to
365 prevent such situations from culminating in sexual assault.

366 22. Require mixed beverage licensees to have food, cooked or prepared on the licensed premises,

available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served.

23. *Prescribe the terms and conditions under which persons holding a mixed beverage restaurant, caterer's, or limited caterer's license comply with the following food-to-beverage ratio provisions:*

a. For such licensees with monthly food sales of at least \$4,000 but less than \$10,000, the food-to-beverage ratio shall meet or exceed 35 percent; and

b. For such licensees with monthly food sales of at least \$10,000, there shall be no food-to-beverage ratio requirement imposed.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

3. Provide incentives to licensees with a proven history of compliance with state and federal laws and regulations to encourage licensees to conduct their business and related activities in a manner that is beneficial to the Commonwealth.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas of such restaurant. Such license may be granted only to persons ~~(i)~~ who operate a restaurant ~~and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food that complies with the food-to-beverage ratio provisions set by Board regulation pursuant to § 4.1-111.~~ For the purposes of this subdivision, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

If the restaurant is located on the premises of a hotel or motel with not less than four permanent bedrooms where food and beverage service is customarily provided by the restaurant in designated areas, bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell spirits packaged in original closed containers purchased from the Board for on-premises consumption to registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own lawfully acquired spirits in bedrooms or private rooms.

If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on another portion of the premises of the same hotel or motel building, this fact shall not prohibit the granting of a license by the Board to such club qualifying in all other respects. ~~The club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises shall amount to at least 45 percent of its gross receipts from the sale of mixed beverages and food club shall comply with the food-to-beverage ratio provisions set by Board regulation pursuant to § 4.1-111.~~ 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.

If the restaurant is located on the premises of and operated by a municipal golf course, the Board shall recognize the seasonal nature of the business and waive any applicable monthly food sales requirements for those months when weather conditions may reduce patronage of the golf course, provided that prepared food, including meals, is available to patrons during the same months. The gross receipts from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after the issuance of such license, shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food on an annualized basis restaurant shall comply with the food-to-beverage ratio provisions set by Board regulation pursuant to § 4.1-111.

2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food comply with the food-to-beverage ratio provisions set by Board regulation pursuant to § 4.1-111.

3. Mixed beverage limited caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, not to exceed 12 gatherings or events per year, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food comply with the food-to-beverage ratio provisions set by Board regulation pursuant to § 4.1-111.

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 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers or in single original metal cans, to patrons within all seating areas,

concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

9. 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 5,000 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers or in single original metal cans, to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

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

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

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

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

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

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

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

17. Annual mixed beverage performing arts facility license to persons operating food concessions at any performing arts facility located in the arts and cultural district of the City of Harrisonburg, provided that the performing arts facility (i) is occupied under a bona fide long-term lease or concession agreement, the original term of which was more than five years; (ii) has been rehabilitated in accordance

551 with historic preservation standards; (iii) has monthly gross receipts from the sale of food cooked, or
552 prepared, and consumed on the premises and nonalcoholic beverages served on the premises that meet
553 or exceed the monthly minimum established by Board regulations for mixed beverage restaurants; and
554 (iv) has a total capacity in excess of 900 patrons. Such license shall authorize the sale, on the dates of
555 performances or private or special events, of alcoholic beverages for on-premises consumption in areas
556 upon the licensed premises approved by the Board.

557 18. A combined mixed beverage restaurant and caterer's license, which may be granted to any
558 restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to
559 subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location,
560 and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed
561 beverage caterer at the same business premises designated in the license, with a common alcoholic
562 beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the
563 separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision
564 A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

565 B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or
566 18 shall automatically include a license to sell and serve wine and beer for on-premises consumption.
567 The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.