

070824496

HOUSE BILL NO. 2450

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 4.1-100, 4.1-111, 4.1-204, 4.1-207, 4.1-223, 4.1-231, and 4.1-310 of the Code of Virginia, relating to alcoholic beverage control; nonresident winery distributor license.

Patrons—Saxman, Abbitt, Bell, Byron, Callahan, Carrico, Crockett-Stark, Hargrove, Hurt, Jones, S.C., Landes, Lohr, Marshall, D.W., Marshall, R.G., May, Peace, Poisson, Putney, Rust, Scott, E.T., Tata, Toscano, Ware, O., Ware, R.L. and Wright

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-111, 4.1-204, 4.1-207, 4.1-223, 4.1-231, and 4.1-310 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, 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.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

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

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

INTRODUCED

HB2450

57 nonprofit corporation or association.

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

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

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

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

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

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

71 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing
72 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the
73 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol
74 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing
75 area or agreements for purchasing grapes or other fruits from agricultural growers within the
76 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or
77 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this
78 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of
79 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm
80 winery, the term "farm" as used in this definition includes all of the land owned or leased by the
81 individual members of the cooperative as long as such land is located in the Commonwealth.

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

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

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

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

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

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

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

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

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

107 "Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol
108 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits
109 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit
110 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by
111 fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of
112 this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved
113 the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be
114 sold for on-premises consumption other than by mixed beverage licensees.

115 "Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona
116 fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments
117 specializing in full course meals with a single substantial entree.

118 "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.

"Nonresident winery distributor" means any winery (i) located outside the Commonwealth and licensed as a winery in the state where the winery is located and (ii) whose total wine distribution to all Virginia licensees for resale does not exceed 3,000 cases in any calendar year.

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

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

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties 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 Board 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, 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, 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.

"Special agent" means an employee of the Department of Alcoholic Beverage Control 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

180 completely denatured in accordance with formulas approved by the United States government.

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

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

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

197 § 4.1-111. Regulations of Board.

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

204 B. The Board shall promulgate regulations that:

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

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

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

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

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

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

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

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

234 9. *Prescribe the terms and conditions under which licensees, having the privilege to distribute wine*
235 *produced by them, provide evidence of their continuing eligibility to distribute such wine in Virginia.*
236 *The Board shall conduct quarterly audits and inspections to ensure that the total wine distribution to all*
237 *Virginia licensees for resale does not exceed 3,000 cases in any calendar year.*

238 C. The Board may promulgate regulations that:

239 1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be
240 based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit
241 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.

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.

§ 4.1-204. Records of licensees; inspection of records and places of business.

A. Manufacturers, bottlers or wholesalers. - Every licensed manufacturer, bottler or wholesaler, including holders of nonresident winery distributor licenses, shall keep complete, accurate and separate records in accordance with Board regulations of all alcoholic beverages purchased, manufactured, bottled, sold or shipped by him, and the applicable tax required by § 4.1-234 or § 4.1-236, if any.

B. Retailers. - Every retail licensee shall keep complete, accurate and separate records, in accordance with Board regulations, of all purchases of alcoholic beverages, the prices charged such licensee therefor, and the names and addresses of the persons from whom purchased. Every retail licensee shall also preserve all invoices showing his purchases for a period as specified by Board regulations. He shall also keep an accurate account of daily sales, showing quantities of alcoholic beverages sold and the total price charged by him therefor. Except as otherwise provided in subsection D, such account need not give the names or addresses of the purchasers thereof, except as may be required by Board regulation for the sale of alcoholic beverages in kegs. In the case of persons holding retail licenses which require sales of food to determine their qualifications for such licenses, the records shall also include purchases and sales of food and nonalcoholic beverages.

C. Common carriers. - Common carriers of passengers by train, boat, or airplane shall keep records of purchases and sales of alcoholic beverages and food as required by Board regulation.

D. Wine shippers and beer shippers. - Every wine shipper licensee and every beer shipper licensee shall keep complete, accurate, and separate records in accordance with Board regulations of all shipments of wine or beer to persons in the Commonwealth. Such licensees shall also remit on a monthly basis an accurate account stating whether any wine, farm wine, or beer products were sold and shipped and, if so, stating the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is shipped.

E. Inspection. - The Board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth and to the premises of every nonresident winery distributor licensee, wine shipper licensee, and beer shipper licensee wherever located where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein. The Board may engage the services of alcoholic beverage control authorities in any state to assist with the inspection of the premises of a nonresident winery distributor licensee, wine shipper licensee or a beer shipper licensee or any applicant for such license.

§ 4.1-207. Wine licenses.

The Board may grant the following licenses relating to wine:

1. Winery licenses, which shall authorize the licensee to manufacture wine and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth. In addition, such license shall authorize the licensee to (i) operate distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit juices only, which shall be used only for the fortification of wine produced by the licensee, and (ii) store wine in bonded warehouses on or off the licensed premises upon permit issued by the Board.

Such licenses shall also authorize the licensee to sell and deliver the wine produced by the licensee, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell the wine at retail for the purpose of resale, § 4.1-326 notwithstanding, and (ii) the Board, provided the total wine distribution to all Virginia licensees for resale does not exceed 3,000 cases in any calendar year.

2. Wholesale wine licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

No wholesale wine licensee shall purchase wine for resale from a person outside the Commonwealth who does not hold a wine importer's license unless such wholesale wine licensee holds a wine importer's license and purchases wine for resale pursuant to the privileges of such wine importer's license.

3. Wine importers' licenses, which shall authorize persons located within or outside the Commonwealth to sell and deliver or ship wine, in accordance with Board regulations, in closed containers, to persons in the Commonwealth licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the licensee to sell wine at the place of business designated in the winery license, in closed containers, for off-premises consumption.

5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, § 4.1-326 notwithstanding, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine manufactured by the licensee and to sell and deliver or ship this wine, in accordance with Board regulations, to persons licensed to sell wine in the Commonwealth, § 4.1-326 notwithstanding and (b) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § 4.1-219.

Such licenses shall also authorize the licensee to sell:

a. Sell wine at retail at the places of business designated in the licenses, which may include no more than five additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption; and

b. Sell and deliver wine produced by the licensee, in accordance with Board regulations, in closed containers, to persons licensed to sell the wine at retail for the purpose of resale, § 4.1-326 notwithstanding, provided the total wine distribution by the licensee does not exceed 3,000 cases in any calendar year.

6. Nonresident winery distributor licenses, which shall authorize the licensee to sell and deliver wine produced by the licensee, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell the wine at retail for the purpose of resale, § 4.1-326 notwithstanding, (ii) the Board, and (iii) persons in Virginia to whom alcoholic beverages may be lawfully sold. For purposes of § 4.1-234 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine by such licensee to a consumer or a retail licensee shall constitute a sale in Virginia. Licensees under this subdivision shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Board and any sales tax to the Department of Taxation.

§ 4.1-223. Conditions under which Board shall refuse to grant licenses.

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer or any person under common control with such manufacturer. This subdivision, however, shall not apply to any (i) applicant for a wholesale beer or wine license filed pursuant to subdivision 3 b of subsection B of § 4.1-216, (ii) farm winery licensee who is exercising any privilege granted under subdivision 5 of § 4.1-207, or (iii) applicant for a nonresident winery distributor license filed pursuant to subdivision 6 of § 4.1-207.

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety,

and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

5. Mixed beverage license to any member, agent or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § 4.1-231 is paid to the Board. § 4.1-231. Taxes on state licenses.

A. The annual fees on state licenses shall be as follows:

1. Alcoholic beverage licenses. For each:

a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, \$450; and if more than 5,000 gallons manufactured during such year, \$3,725;

b. Fruit distiller's license, \$3,725;

c. Banquet facility license or museum license, \$190;

d. Bed and breakfast establishment license, \$35;

e. Tasting license, \$40 per license granted;

f. Equine sporting event license, \$130; and

g. Motor car sporting event facility license, \$130.

2. Wine licenses. For each:

a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;

b. Wholesale wine license, \$185 for any wholesaler who sells 30,000 gallons of wine or less per year, \$930 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000 gallons of wine per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and, \$1,860 for any wholesaler who sells more than 300,000 gallons of wine per year;

c. Wine importer's license, \$370;

d. Retail off-premises winery license, \$145;

e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license;

f. Wine shipper's license, \$65; and

g. Day spa license, \$100; and

h. *Nonresident winery distributor license*, \$2,000.

3. Beer licenses. For each:

a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;

b. Bottler's license, \$1,430;

c. Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;

d. Beer importer's license, \$370;

e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;

f. Retail off-premises beer license, \$120;

g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$300; and

h. Beer shipper's license, \$65.

4. Wine and beer licenses. For each:

a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to

426 a common carrier of passengers by airplane, \$750;
427 b. Retail on-premises wine and beer license to a hospital, \$145;
428 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
429 grocery store license, \$230;
430 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600;
431 e. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the
432 Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be
433 \$100 per license;
434 f. Gourmet brewing shop license, \$230;
435 g. Wine and beer shipper's license, \$65; and
436 h. Annual banquet license, \$150.
437 5. Mixed beverage licenses. For each:
438 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants
439 located on premises of and operated by hotels or motels, or other persons:
440 (i) With a seating capacity at tables for up to 100 persons, \$560;
441 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
442 (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
443 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by
444 private, nonprofit clubs:
445 (i) With an average yearly membership of not more than 200 resident members, \$750;
446 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
447 \$1,860; and
448 (iii) With an average yearly membership of more than 500 resident members, \$2,765.
449 c. Mixed beverage caterer's license, \$1,860;
450 d. Mixed beverage special events license, \$45 for each day of each event;
451 e. Mixed beverage club events licenses, \$35 for each day of each event;
452 f. Annual mixed beverage special events license, \$560;
453 g. Mixed beverage carrier license:
454 (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the
455 Commonwealth by a common carrier of passengers by train;
456 (ii) \$560 for each common carrier of passengers by boat;
457 (iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
458 h. Annual mixed beverage amphitheater license, \$560;
459 i. Annual mixed beverage motor sports race track license, \$560; and
460 j. Annual mixed beverage banquet license, \$500.
461 6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax
462 imposed by this section on the license for which the applicant applied.
463 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
464 subject to proration to the following extent: If the license is granted in the second quarter of any year,
465 the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be
466 decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by
467 three-fourths.
468 If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000
469 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license
470 to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the
471 number of gallons permitted to be manufactured shall be prorated in the same manner.
472 Should the holder of a distiller's license or a winery license to manufacture not more than 5,000
473 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or
474 winery license, such person shall pay for such unlimited license a license tax equal to the amount that
475 would have been charged had such license been applied for at the time that the license to manufacture
476 less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person
477 shall be entitled to a refund of the amount of license tax previously paid on the limited license.
478 Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than
479 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest
480 cent, multiplied by the number of months in the license period.
481 C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state
482 restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter,
483 shall be liable to state merchants' license taxation and state restaurant license taxation and other state
484 taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer
485 wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license
486 tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining
487 the liability of a wholesale wine distributor to merchants' license taxation, and in computing the

488 wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases
489 shall be disregarded.

490 § 4.1-310. Illegal importation, shipment and transportation of alcoholic beverages; penalty; exception.

491 A. No alcoholic beverages, other than wine or beer, shall be imported, shipped, transported or
492 brought into the Commonwealth, other than to distillery licensees or winery licensees, unless consigned
493 to the Board. However, the Board may permit such alcoholic beverages ordered by it from outside the
494 Commonwealth for (i) persons, for industrial purposes, (ii) the manufacture of articles allowed to be
495 manufactured under § 4.1-200, or (iii) hospitals, to be shipped or transported directly to such persons.
496 On such orders or shipments of alcohol, the Board shall charge only a reasonable permit fee.

497 B. Except as otherwise provided in § 4.1-112.1 *or subdivision 6 of § 4.1-207*, no wine shall be
498 imported, shipped, transported or brought into the Commonwealth unless it is consigned to a wholesale
499 wine licensee.

500 C. Except as otherwise provided in § 4.1-112.1, no beer shall be imported, shipped, transported or
501 brought into the Commonwealth except to persons licensed to sell it.

502 D. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

503 E. The provisions of this chapter shall not prohibit (i) any person from bringing, in his personal
504 possession, or through United States Customs in his accompanying baggage, into the Commonwealth not
505 for resale, alcoholic beverages in an amount not to exceed one gallon or four liters if any part of the
506 alcoholic beverages being transported is held in metric-sized containers, (ii) the shipment or
507 transportation into the Commonwealth of a reasonable quantity of alcoholic beverages not for resale in
508 the personal or household effects of a person relocating his place of residence to the Commonwealth, or
509 (iii) the possession or storage of alcoholic beverages on passenger boats, dining cars, buffet cars and
510 club cars, licensed under this title, or common carriers engaged in interstate or foreign commerce.

511 **2. That the Alcoholic Beverage Control Board shall promulgate regulations to implement the**
512 **provisions of this act to be effective within 280 days of its enactment.**