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SENATE BILL NO. 1417

Offered January 19, 2011

A BILL to amend and reenact §§ 4.1-100, 4.1-103, 4.1-104, 4.1-111, 4.1-115, 4.1-119, 4.1-121, 4.1-122, 4.1-201, 4.1-203, 4.1-204, 4.1-210, 4.1-213, 4.1-215, 4.1-221, 4.1-231, 4.1-233, 4.1-234, 4.1-235, 4.1-303, 4.1-325, 4.1-325.2, and 4.1-330 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 4.1-206.1; and to repeal § 4.1-120 of the Code of Virginia, relating to retail privatization; auctioning of distilled spirits retail licenses; certain revenues therefrom to the Transportation Trust Fund.

Patrons—Obenshain and Watkins

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Alcoholic Beverage Control Board (the Board) shall, on or before December 31, 2011, complete an implementation plan for the discontinuation of government stores, in accordance with the provisions of this act, and for the disposition of all real property owned or leased by the Board that is used for government stores. In addition, the implementation plan shall include, at a minimum, the following provisions:

a. The auctioning by the Board of distilled spirits retail licenses in accordance with § 2 of this act, which plan shall include a provision establishing a minimum distilled spirits retail license bid formula that will guarantee receipt by the Commonwealth of an aggregate amount of no less than \$200 million in payments by successful bidders.

b. A process allowing successful bidders with fewer than 50 employees statewide to satisfy their bid payment to the Commonwealth over a period of 48 months.

c. The use of a portion of the aggregate bid payments necessary to pay the entire cost of Workforce Transition Act of 1995 (§ 2.2-3200 et seq.) of the Code of Virginia obligations to the Department's retail employees between the effective date of this act and the completion of the implementation plan.

d. The establishment of a markup by the Department of Alcoholic Beverage Control (the Department) to be charged on distilled spirits prior to delivery to distilled spirits retail licensees. Such markup shall be 50 percent above the cost of the products purchased from distilled spirits manufacturers. The markup shall not be increased or decreased by the Department until July 1, 2014.

e. The dedication of revenue generated by annual license payments by distilled spirits retail licensees to the hiring and training of Department enforcement agents.

f. The ability for distilled spirits retail licensees to set prices in accordance with their own individual business plans and in response to market conditions.

§ 2. The granting of distilled spirits retail licenses by the Board shall be through public auction conducted by the Board. An applicant who is a successful bidder (the applicant) shall be granted a license if the Board determines the applicant is qualified for a license under the provisions of Title 4.1 of the Code of Virginia. As required by § 4.1-230 of the Code of Virginia, the Board shall conduct a background investigation on all applicants. In the event of any contested application proceeding in which the applicant prevails, the applicant shall be granted a license provided all other requirements of Title 4.1 of the Code of Virginia are satisfied.

§ 3. Within 280 days following the enactment of this act, the Board shall adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) governing the granting of distilled spirits retail licenses, which regulations shall:

a. Authorize the granting of a limited number of distilled spirits retail licenses in the Commonwealth. The number of licenses authorized by the Board shall be no greater than one license per 8,000 residents in each locality of the Commonwealth. Unless prohibited by a referendum held pursuant to §§ 4.1-121 and 4.1-124 of the Code of Virginia, the Board shall grant at least one license in each locality of the Commonwealth in which a government store existed on January 1, 2011; and

b. Provide that no one business entity shall be awarded more than 25 percent of the total number of distilled spirits retail licenses granted in any one tier, nor shall more than 25 percent of the total number of distilled spirits retail licenses in any one tier be held by businesses under common control. For the purposes of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.

§ 4. In any jurisdiction in which the establishment of government stores has been approved in a referendum held pursuant to § 4.1-121 of the Code of Virginia, no additional referendum approving the

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59 establishment of a distilled spirits retail license shall be required.

60 § 5. The Board shall, on or before December 1 of each year, advise the chairmen of the House
61 Committee on General Laws and the Senate Committee on Rehabilitation and Social Services of the
62 number of distilled spirits retail licenses that are available to be granted in each locality, based upon
63 the Board's best estimate of current population. In the absence of action by the General Assembly to the
64 contrary, the Board may grant additional distilled spirits retail licenses based on the revised population
65 totals beginning on the following July 1 annually.

66 § 6. All revenue generated from the initial auction of distilled spirits retail licenses shall be deposited
67 in the Transportation Trust Fund created pursuant to § 33.1-23.03:1 of the Code of Virginia. For the
68 purposes of this section, "revenue" means all revenues and receipts less the administrative and
69 transaction costs incurred by the Alcoholic Beverage Control Board associated with (i) the sale or
70 transfer of all interest in real property utilized exclusively in the retail sale of alcoholic beverages, (ii)
71 the auction and issuance of distilled spirits retail licenses prior to December 31, 2012, and (iii)
72 transitional costs relating to severance or workforce retraining.

73 2. That §§ 4.1-100, 4.1-103, 4.1-104, 4.1-111, 4.1-115, 4.1-119, 4.1-121, 4.1-122, 4.1-201, 4.1-203,
74 4.1-204, 4.1-210, 4.1-213, 4.1-215, 4.1-221, 4.1-231, 4.1-233, 4.1-234, 4.1-235, 4.1-303, 4.1-325,
75 4.1-325.2, and 4.1-330 of the Code of Virginia are amended and reenacted and that the Code of
76 Virginia is amended by adding a section numbered 4.1-206.1 as follows:

77 § 4.1-100. Definitions.

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

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

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

86 "Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties
87 containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages,
88 and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being
89 consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be
90 considered as belonging to that variety which has the higher percentage of alcohol, however obtained,
91 according to the order in which they are set forth in this definition; except that beer may be
92 manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as
93 long as no more than 49 percent of the overall alcohol content of the finished product is derived from
94 the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol
95 content of no more than six percent by volume; or, in the case of products with an alcohol content of
96 more than six percent by volume, as long as no more than one and one-half percent of the volume of
97 the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients
98 containing alcohol.

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

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

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

107 "Board" means the Virginia Alcoholic Beverage Control Board.

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

110 "Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for
111 recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33
112 U.S.C. § 59ii.

113 "Club" means any private nonprofit corporation or association which is the owner, lessee, or
114 occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other
115 like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also
116 means the establishment so operated. A corporation or association shall not lose its status as a club
117 because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.)
118 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided
119 that no alcoholic beverages are served or consumed in the room where such charitable gaming is being
120 conducted while such gaming is being conducted and that no alcoholic beverages are made available

upon the premises to any person who is neither a member nor a bona fide guest of a member.

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

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

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

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

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

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

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

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

"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~~ warehouse" means a ~~store~~ warehouse established by the Board for the sale of ~~alcoholic beverages distilled spirits and wine produced by farm wineries~~.

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

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

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

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

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

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

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

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

182 by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits
183 mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit
184 juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by
185 fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of
186 this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved
187 the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be
188 sold for on-premises consumption other than by mixed beverage licensees.

189 "Meal-assembly kitchen" means any commercial establishment that offers its customers, for
190 off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen
191 facilities located at the establishment.

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

195 "Member of a club" means (i) a person who maintains his membership in the club by the payment of
196 monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii)
197 a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal
198 descendants of a bona fide member, whether alive or deceased, of a national or international
199 organization to which an individual lodge holding a club license is an authorized member in the same
200 locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the
201 annual dues of resident members of the club, the full amount of such contribution being paid in advance
202 in a lump sum.

203 "Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of
204 spirits.

205 "Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials,
206 and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives
207 which are not commonly consumed unless combined with alcoholic beverages, whether or not such
208 ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a
209 Virginia corporation.

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

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

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

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

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

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

241 "Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant
242 license, an established place of business (i) where meals with substantial entrees are regularly sold and
243 (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 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 completely denatured in accordance with formulas approved by the United States government.

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

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

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

§ 4.1-103. General powers of Board.

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale at wholesale, distilled spirits and wine produced by farm wineries;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4.3. Determine, subject to § 4.1-121, the localities within which government stores licenses shall be established or operated and the location of such stores granted for the retail sale of distilled spirits for off-premises consumption;

5.4. Maintain warehouses for alcoholic beverages distilled spirits and wine produced by farm wineries and control the storage and delivery of alcoholic beverages distilled spirits and wine produced by farm wineries to and from such warehouses;

6.5. Lease, occupy and improve any land or building required for the purposes of this title;

7.6. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8.7. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9.8. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;

10.9. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

11.10. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board

member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

~~12-11.~~ Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

~~13-12.~~ Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of this chapter;

~~14-13.~~ Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

~~15-14.~~ Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

~~16-15.~~ Maintain actions to enjoin common nuisances as defined in § 4.1-317;

~~17-16.~~ Establish minimum food sale requirements for all retail licensees; and

~~18-17.~~ Do all acts necessary or advisable to carry out the purposes of this title.

§ 4.1-104. Purchases by the Board.

The purchasing of ~~alcoholic beverages and mixers, products used in connection with~~ distilled spirits ~~and wine produced by farm wineries~~ intended for resale, the making of leases, and the purchasing of real estate by the Board under the provisions of this title are exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 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 warehouses~~, 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.

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

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing

one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

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.

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.

§ 4.1-115. Reports and accounting systems of Board; auditing books and records.

A. The Board shall make reports to the Governor as he may require covering the administration and enforcement of this title. Additionally, the Board shall submit an annual report to the Governor and General Assembly on or before December 15 each year, which shall contain:

1. A statement of the nature and amount of the business transacted by each government store warehouse during the year;

2. A statement of the assets and liabilities of the Board, including a statement of income and expenses and such other financial statements and matters as may be necessary to show the result of the operations of the Board for the year;

3. A statement showing the taxes collected under this title during the year;

4. General information and remarks about the working of the alcoholic beverage control laws within the Commonwealth; and

5. Any other information requested by the Governor.

B. The Board shall maintain an accounting system in compliance with generally accepted accounting principles and approved in accordance with § 2.2-803.

C. A regular postaudit shall be conducted of all accounts and transactions of the Board. An annual audit of a fiscal and compliance nature of the accounts and transactions of the Board shall be conducted by the Auditor of Public Accounts on or before October 1. The cost of the annual audit and postaudit examinations shall be borne by the Board. The Board may order such other audits as it deems necessary.

§ 4.1-119. Operation of government warehouses.

A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and operate government stores warehouses for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, and products used in connection with distilled spirits and wine produced by farm wineries, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store warehouse.

B. With respect to the sale of wine produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine per year.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that distilled spirits and wine produced by farm wineries are sold in government stores warehouses. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages distilled spirits and wine produced by farm wineries to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers.

D. Alcoholic beverages at government stores shall be sold by employees of the Board, who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises, provided:

1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are grown on the licensee's farm or land in Virginia leased by the licensee and no more than 25 percent of the agricultural products are grown or produced outside the Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a lesser percentage of products grown on the licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the availability of agricultural products grown on the farm to manufacture the spirits during a given license year;

2. Such licensee is a duly organized nonprofit association holding title to real property, together with improvements thereon that are significant in American history, under a charter from the Commonwealth to preserve such property, and which association accepts no federal, state, or local funds; or

3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the Board and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E.D. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § 4.1-304. The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H.E. With respect to purchases by licensees at government stores *warehouses*, the Board shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the Board, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the Board shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

§ 4.1-121. Referendum on the sale of distilled spirits by distilled spirits retail licensees of the Board.

A. The qualified voters of any county, city, or town having a population of 1,000 or more may file a petition with the circuit court of the county or city, or of the county wherein the town or the greater part thereof is situated, asking that a referendum be held on the question of whether the sale by the Board of Alcoholic Beverages, other than beer and wine not produced by farm wineries, of distilled spirits by retail licensees of the Alcoholic Beverage Control Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ten percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale by the Alcoholic Beverage Control Board of alcoholic beverages, other than beer and wine not produced by farm wineries, of distilled spirits by retail licensees of the Alcoholic Beverage Control Board be permitted in (name of county, city, or town)?"

The referendum shall be ordered and held and the results certified as provided in § 24.2-684. Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.

B. Once a referendum has been held, no other referendum on the same question shall be held in the

county, city, or town within four years of the date of the prior referendum. However, a town shall not be prescribed from holding a referendum within such period although an election has been held in the county in which the town or a part thereof is located less than four years prior thereto.

§ 4.1-122. Effect of local option referenda.

A. If in any referendum held under the provisions of § 4.1-121 in any county, city, or town a majority of the qualified voters vote "No" on the question, then on and after ~~sixty~~ 60 days from the date on which the order of the court, setting forth the results of such referendum was entered of record, none of the alcoholic beverages voted against shall be sold in such county, city, or town except for delivery or shipment to persons outside of such county, city, or town authorized under this title to acquire the alcoholic beverages for resale. This subsection shall not apply to common carriers of passengers by train, boat or airplane selling wine and beer to bona fide passengers.

B. If in any such referendum held in any county, city, or town in which a majority of the qualified voters have previously voted against permitting the sale of (i) alcoholic beverages by the Board or (ii) *distilled spirits by distilled spirits retail licensees*, and in a subsequent election a majority of the voters of the county, city, or town vote "Yes" on the question stated in § 4.1-121, then such alcoholic beverages permitted to be sold by such referendum may, in accordance with this title, be sold within the county, city, or town on and after ~~sixty~~ 60 days from the day on which the order of the court setting forth the results of such election is entered of record.

C. If any referendum is held under the provisions of § 4.1-124 in any county, town or supervisor's election district of a county and the majority of voters voting in such referendum voted "Yes," the sale ~~by the Board of alcoholic beverages, other than beer and wine not produced by farm wineries, of distilled spirits by distilled spirits retail licensees~~ shall be permitted in such county, town or supervisor's election district of a county. Notwithstanding this section and any referendum held under § 4.1-121 to the contrary, persons licensed to sell mixed beverages in such county, town or supervisor's election district of a county shall also be permitted to sell wine and beer for on-premises consumption, provided the appropriate license fees are paid for the privilege.

D. The provisions of this section shall not prevent in any county, city, or town, the sale and delivery or shipment of alcoholic beverages specified in § 4.1-200 to and by persons therein authorized to sell alcoholic beverages, nor prevent the delivery or shipment of alcoholic beverages under Board regulations into any county, city, or town, except as otherwise prohibited by this title.

E. For the purpose of this section, when any referendum is held in any town, separate and apart from the county in which such town or a part thereof is located, such town shall be treated as being separate and apart from such county.

§ 4.1-201. Conduct not prohibited by this title; limitation.

A. Nothing in this title or any Board regulation adopted pursuant thereto shall prohibit:

1. Any club licensed under this chapter from keeping for consumption by its members any alcoholic beverages lawfully acquired by such members, provided the alcoholic beverages are not sold, dispensed or given away in violation of this title.

2. Any person from having grain, fruit or fruit products and any other substance, when grown or lawfully produced by him, distilled by any distillery licensee, and selling the distilled alcoholic beverages to the Board or selling or shipping them to any person outside of the Commonwealth in accordance with Board regulations. However, no alcoholic beverages so distilled shall be withdrawn from the place where distilled except in accordance with Board regulations.

3. Any person licensed to manufacture and sell, or either, in the Commonwealth or elsewhere, alcoholic beverages other than wine or beer, from soliciting and taking orders from the Board for such alcoholic beverages.

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers from other breweries owned by such person or the sale, delivery or shipment of such beer, in accordance with Board regulations to (i) persons licensed to sell beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale only as provided in subdivision B 4 of § 4.1-216, (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

5. The granting of any retail license to a brewery or winery licensee, or to an applicant for such license, or to a lessee of such person, a wholly owned subsidiary of such person, or its lessee, provided the places of business or establishments for which the retail licenses are desired are located upon the premises occupied or to be occupied by such winery or brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary.

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such

551 alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the
552 Commonwealth for resale outside the Commonwealth.

553 7. The receipt by a farm winery or winery licensee of deliveries and shipments of wine in closed
554 containers from other wineries or farm wineries located inside or outside the Commonwealth, or the
555 receipt by a winery licensee or farm winery licensee of deliveries and shipments of spirits distilled from
556 fruit or fruit juices in closed containers from distilleries located inside or outside the Commonwealth to
557 be used only for the fortification of wine produced by the licensee in accordance with Board regulations,
558 or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed
559 to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale
560 outside the Commonwealth.

561 8. The receipt by a fruit distillery licensee of deliveries and shipments of alcoholic beverages made
562 from fruit or fruit juices in closed containers from other fruit distilleries owned by such licensee, or the
563 sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to persons
564 outside of the Commonwealth for resale outside of the Commonwealth.

565 9. Any farm winery or winery licensee from shipping or delivering its wine in closed containers to
566 another farm winery or winery licensee for the purpose of additional bottling in accordance with Board
567 regulations and the return of the wine so bottled to the manufacturing farm winery or winery licensee.

568 10. Any farm winery or winery licensee from selling and shipping or delivering its wine in closed
569 containers to another farm winery or winery licensee, the wine so sold and shipped or delivered to be
570 used by the receiving licensee in the manufacture of wine. Any wine received under this subsection shall
571 be deemed an agricultural product produced in the Commonwealth for the purposes of § 4.1-219, to the
572 extent it is produced from fresh fruits or agricultural products grown or produced in the Commonwealth.
573 The selling licensee shall provide to the receiving licensee, and both shall maintain complete and
574 accurate records of, the source of the fresh fruits or agricultural products used to produce the wine so
575 transferred.

576 11. ~~Any distiller licensed under this title from serving as an agent of the Board for the sale of~~
577 ~~alcoholic beverages, other than beer and wine, at a government store established by the Board on the~~
578 ~~licensed premises of the distiller in accordance with subsection D of § 4.1-119.~~

579 12. Any retail on-premises beer licensee, his agent or employee, from giving a sample of beer to
580 persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or retail
581 on-premises wine or beer licensee, his agent or employee, from giving a sample of wine or beer to
582 persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or any mixed
583 beverage licensee, his agent or employee, from giving a sample of wine, beer, or spirits to persons to
584 whom alcoholic beverages may be lawfully sold for on-premises consumption. Samples of wine shall
585 not exceed two ounces, samples of beer shall not exceed four ounces, and samples of spirits shall not
586 exceed one-half ounce. No more than two product samples shall be given to any person per visit.

587 13.12. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not
588 licensed in the Commonwealth, from selling service items bearing alcoholic brand references to
589 on-premises retail licensees or prohibit any such retail licensee from displaying the service items on the
590 premises of his licensed establishment. Each such retail licensee purchasing such service items shall
591 retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of
592 not less than two years from the date of each sale of the service items. As used in this subdivision,
593 "service items" mean articles of tangible personal property normally used by the employees of
594 on-premises retail licensees to serve alcoholic beverages to customers including, but not limited to,
595 glasses, napkins, buckets, and coasters.

596 14.13. Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed
597 in the Commonwealth, from distributing to retail licensees and their employees novelties and specialties,
598 including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage
599 advertising. Such items may be distributed to retail licensees in quantities equal to the number of
600 employees of the retail establishment present at the time the items are delivered. Thereafter, such
601 employees may wear or display the items on the licensed premises.

602 15.14. Any retail on-premises wine or beer licensee, his agent or employee from offering for sale or
603 selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of wines
604 or beers consisting of samples of not more than five different wines or beers.

605 B. No deliveries or shipments of alcoholic beverages to persons outside the Commonwealth for resale
606 outside the Commonwealth shall be made into any state the laws of which prohibit the consignee from
607 receiving or selling the same.

608 § 4.1-203. Separate license for each place of business; transfer or amendment; posting; expiration;
609 carriers.

610 A. Each license granted by the Board shall designate the place where the business of the licensee
611 will be carried on. Except as otherwise provided in §§ 4.1-207 and 4.1-208, a separate license shall be
612 required for each separate place of business.

B. No license, *except a distilled spirits retail license*, shall be transferable from one person to another, or from one location to another. The Board may permit a licensee to amend the classification of an existing license without complying with the posting and publishing procedures required by § 4.1-230 if the effect of the amendment is to reduce materially the privileges of an existing license. However, if (i) the Board determines that the amendment is a device to evade the provisions of this chapter, (ii) a majority of the corporate stock of a retail licensee is sold to a new entity, or (iii) there is a change of business at the premises of a retail licensee, the Board may, within thirty days of receipt of written notice by the licensee of a change in ownership or a change of business, require the licensee to comply with any or all of the requirements of § 4.1-230. If the Board fails to exercise its authority within the thirty-day period, the licensee shall not be required to reapply for a license. The licensee shall submit such written notice to the Secretary of the Board. *The transferability of a distilled spirits retail license shall be governed by Board regulation.*

C. Each license shall be posted in a location conspicuous to the public at the place where the licensee carries on the business for which the license is granted.

D. The privileges conferred by any license granted by the Board, except for temporary licenses, banquet and mixed beverage special events licenses, shall continue until the last day of the twelfth month next ensuing or the last day of the designated month of expiration, except the license may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a license, by operation of law, voluntary surrender or order of the Board.

The Board may permit a licensee who fails to pay by midnight of the fifteenth day of the twelfth month or of the designated month of expiration, whichever is applicable, the required license tax covering the continuation or reissuance of his license, to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within ~~thirty~~ 30 days following that date and is accompanied by a civil penalty of ~~twenty-five dollars~~ \$25 or ~~ten~~ 10 percent of such tax, whichever is greater.

E. Subsections A and C shall not apply to common carriers of passengers by train, boat, or airplane. § 4.1-204. Records of licensees; inspection of records and places of business.

A. Manufacturers, bottlers or wholesalers. - Every licensed manufacturer, bottler or wholesaler 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 *and distilled spirits sales to mixed beverage licensees*. 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. Delivery permittees. - Every holder of a delivery permit issued pursuant to § 4.1-212.1 shall keep complete, accurate, and separate records in accordance with Board regulations of all deliveries of wine or beer to persons in the Commonwealth. Such permittees shall also remit on a monthly basis an accurate account that sets forth 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 delivered. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report to the Board for that month; however, every permittee must submit a report to the Board no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

F. 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 both (i) every wine shipper licensee and

beer shipper licensee and (ii) every delivery permittee 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 wine shipper licensee, a beer shipper licensee, or delivery permittee, or any applicant for such license or permit.

For purposes of a Board inspection of the records of any retail licensees, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public. At any other time of day, if the retail licensee's records are not available for inspection, the retailer shall provide the records to a special agent of the Board within 24 hours after a request is made to inspect the records.

§ 4.1-206.1. Distilled spirits retail licenses.

A. The Board may grant the following licenses relating to distilled spirits.

Distilled spirits retail licenses, which shall authorize the licensee to sell the spirits, in accordance with Board regulations, in closed containers for off-premises consumption. All distilled spirits shall be purchased from the Board. The granting of distilled spirits retail licenses by the Board shall be through public auction conducted by the Board. An applicant who is a successful bidder (the applicant) shall be granted a license if the Board determines the applicant is qualified for a license under the provisions of this title. As required by § 4.1-230, the Board shall conduct a background investigation on all applicants. In the event of any contested application proceeding in which the applicant prevails, the applicant shall be granted a license provided all other requirements of this title are satisfied. In addition to the application fee required by § 4.1-230, each applicant for a distilled spirits retail license shall pay an amount equal to their successful auction bid.

B. Distilled spirits retail licenses shall be divided into the following tiers:

1. Tier 1. - Retail establishments having a minimum of 15,000 square feet of retail space and a minimum of 200 linear feet of shelving space for the sale of distilled spirits.

2. Tier 2. - Retail establishments having less than 30,000 total retail square feet, with a minimum of 200 linear feet of shelving space for the sale of distilled spirits, and at least 70 percent of gross revenues generated from the sale of alcoholic beverages.

3. Tier 3. - Retail establishments having less than 15,000 square feet of retail space, and a maximum of 200 linear feet of shelving space for the sale of distilled spirits.

4. Tier 4. - Retail establishments having less than 3,000 square feet of retail space, a maximum 200 linear feet of shelving space for the sale of distilled spirits, and a maximum of 50 employees statewide.

§ 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. For the purposes of this paragraph, 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.

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 a distilled spirits retail licensee 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. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

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

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

4. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in charge of a special event, which shall authorize the licensee to sell and serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. A separate license shall be required for each day of each special event.

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating a performing arts 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) a duly organized nonprofit corporation that has been granted an exemption from federal taxation under § 501(c)(3) of the U.S. Internal Revenue Code of 1986 that owns any rural event and entertainment park or similar facility that has a minimum of 60,000 square feet of indoor exhibit space and equine and other livestock show areas. 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 sale, on the dates of performances or events in furtherance of the purposes of the nonprofit corporation or association, of alcoholic beverages, 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.

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 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 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 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

797 premises in all areas and locations covered by the license.

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

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

809 B. The granting of any license under subdivision 1, 6, 7, 8, 9, 10, or 11 shall automatically include a
810 license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state
811 and local taxes required by §§ 4.1-231 and 4.1-233.

812 § 4.1-213. Manufacture and sale of cider.

813 A. Any winery licensee or farm winery licensee may manufacture and sell cider to (i) ~~the Board~~, (ii)
814 any wholesale wine licensee, ~~(iii)~~(ii) any retail licensee approved by the Board for the purpose of selling
815 cider, and ~~(iv)~~(iii) persons outside the Commonwealth for resale outside the Commonwealth.

816 B. Any wholesale wine licensee may acquire and receive shipments of cider, and sell and deliver and
817 ship the cider in accordance with Board regulations to (i) the Board, (ii) any wholesale wine licensee,
818 (iii) any retail licensee approved by the Board for the purpose of selling cider and (iv) persons outside
819 the Commonwealth for resale outside the Commonwealth.

820 C. Any licensee authorized to sell alcoholic beverages at retail may sell cider in the same manner
821 and to the same persons, and subject to the same limitations and conditions, as such license authorizes
822 him to sell other alcoholic beverages.

823 D. No additional license fees shall be charged for the privilege of handling cider.

824 E. The Board shall collect such markup as it deems appropriate on all cider manufactured or sold, or
825 both, in the Commonwealth.

826 F. The Board shall adopt regulations relating to the manufacture, possession, transportation and sale
827 of cider as it deems necessary to prevent any unlawful manufacture, possession, transportation or sale of
828 cider and to ensure that the markup required to be paid will be collected.

829 G. "Cider" means any beverage obtained by the fermentation of the natural sugar content of apples,
830 either with or without sugar, carbonated or otherwise, and containing not more than seven percent of
831 alcohol by volume.

832 This section shall not limit the privileges set forth in subdivision A 8 of § 4.1-200, nor shall any
833 person be denied the privilege of manufacturing and selling sweet cider.

834 § 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.

835 A. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages
836 shall be granted to any (i) manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed
837 in the Commonwealth or not; (ii) officer or director of any such manufacturer, bottler or wholesaler; (iii)
838 partnership or corporation, where any partner or stockholder is an officer or director of any such
839 manufacturer, bottler or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns
840 or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of
841 alcoholic beverages; or (v) manufacturer, bottler or wholesaler of alcoholic beverages who has a
842 financial interest in a corporation which has a retail license as a result of a holding company, which
843 owns or has an interest in such manufacturer, bottler or wholesaler of alcoholic beverages. Nor shall
844 such licenses be granted in any instances where such manufacturer, bottler or wholesaler and such
845 retailer are under common control, by stock ownership or otherwise.

846 Notwithstanding any other provision of this title, a manufacturer of malt beverages or wine, whether
847 licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in
848 § 4.1-209 upon application to the Board provided that such event is ~~(i)~~(a) at a place approved by the
849 Board and ~~(ii)~~(b) conducted for the purposes of featuring and educating the consuming public about malt
850 beverage or wine products. Such manufacturer shall be limited to no more than four banquet licenses for
851 such special events per year. Where the event occurs on no more than three consecutive days, a
852 manufacturer need only obtain one such license for the event.

853 B. This section shall not apply to:

854 1. Corporations operating dining cars, buffet cars, club cars or boats;

855 2. Brewery or winery licensees engaging in conduct authorized by subdivision A 5 of § 4.1-201;

856 3. Farm winery licensees engaging in conduct authorized by subdivision 5 of § 4.1-207;

857 4. Manufacturers, bottlers or wholesalers of alcoholic beverages who do not (i) sell or otherwise
858 furnish, directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail

license or banquet license as described in subsection A and (ii) require, by agreement or otherwise, such person to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers; or

5. Wineries, farm wineries, or breweries engaging in conduct authorized by § 4.1-209.1 or 4.1-212.1; or

6. *Distilleries engaging in the sale of spirits manufactured by or for, or blended by, such licensee on the licensed premises pursuant to a distilled spirits retail license granted in accordance with § 4.1-206.1.*

C. The General Assembly finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques. The exceptions established by this section to the general prohibition against tied interests shall be limited to their express terms so as not to undermine the general prohibition and shall therefore be construed accordingly.

§ 4.1-221. Limitation on mixed beverage licensees; exceptions.

A. Unless excepted by subsection B, all alcoholic beverages sold as mixed beverages shall be purchased from the Board ~~by~~ *a distilled spirits retail licensee.*

B. Mixed beverage carrier licensees may obtain from other lawful sources alcoholic beverages to be sold as mixed beverages on trains, boats or airplanes of the licensees provided there is paid to the Board in lieu of the taxes otherwise directly imposed under this chapter and any markup otherwise charged by the Board, a tax of ten cents for each of the average number of drinks of mixed beverages determined by the Board as having been consumed within the geographical confines of the Commonwealth on such trains, boats or airplanes. Such tax shall be calculated on the basis of the proportionate number of revenue passenger miles traveled within the Commonwealth by such a licensee in relation to the total quantity of all alcoholic beverages obtained either inside or outside the Commonwealth by the licensee for consumption on trains, boats or airplanes of the licensee. Such tax shall be paid to the Board on a quarterly basis.

C. The entire contents of a closed container of distilled spirits shall not be served to an individual for on-premises consumption except as may be provided by Board regulation.

§ 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;

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

h. Day spa license, \$100;

i. Delivery permit, \$120 if the permittee holds no other license under this title;

j. Meal-assembly kitchen license, \$100; and

k. Canal boat operator license, \$100.

2. *Distilled spirits retail licenses. For each:*

a. *Tier 1 license, \$4,000;*

b. *Tier 2 license, \$1,500;*

c. *Tier 3 license, \$1,000; and*

d. *Tier 4 license, \$500.*

3. 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. (1) 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;

(2) Wholesale wine license, including that granted pursuant to § 4.1-207.1, applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied by

920 the number of separate locations covered by the license;

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

922 d. Retail off-premises winery license, \$145, which shall include a delivery permit;

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

924 which shall include a delivery permit;

925 f. Wine shipper's license, \$95; and

926 g. Internet wine retailer license, \$150.

927 ~~3.4.~~ Beer licenses. For each:

928 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which

929 the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;

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

931 c. (1) Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or

932 less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of

933 beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;

934 (2) Wholesale beer license applicable to two or more premises, the annual state license tax shall be

935 the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by the

936 license;

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

938 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common

939 carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by

940 train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club

941 cars operated daily in the Commonwealth;

942 f. Retail off-premises beer license, \$120, which shall include a delivery permit;

943 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a

944 town or in a rural area outside the corporate limits of any city or town, \$300, which shall include a

945 delivery permit; and

946 h. Beer shipper's license, \$95.

947 4.5. Wine and beer licenses. For each:

948 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a

949 common carrier of passengers by train, boat or airplane, \$300; for each such license to a common

950 carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining

951 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to

952 a common carrier of passengers by airplane, \$750;

953 b. Retail on-premises wine and beer license to a hospital, \$145;

954 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience

955 grocery store license, \$230, which shall include a delivery permit;

956 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600, which shall

957 include a delivery permit;

958 e. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the

959 Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be

960 \$100 per license;

961 f. Gourmet brewing shop license, \$230;

962 g. Wine and beer shipper's license, \$95;

963 h. Annual banquet license, \$150;

964 i. Fulfillment warehouse license, \$120; and

965 j. Marketing portal license, \$150.

966 5.6. Mixed beverage licenses. For each:

967 a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants

968 located on premises of and operated by hotels or motels, or other persons:

969 (i) With a seating capacity at tables for up to 100 persons, \$560;

970 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and

971 (iii) With a seating capacity at tables for more than 150 persons, \$1,430.

972 b. Mixed beverage restaurant license for restaurants located on the premises of and operated by

973 private, nonprofit clubs:

974 (i) With an average yearly membership of not more than 200 resident members, \$750;

975 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,

976 \$1,860; and

977 (iii) With an average yearly membership of more than 500 resident members, \$2,765.

978 c. Mixed beverage caterer's license, \$1,860;

979 d. Mixed beverage limited caterer's license, \$500;

980 e. Mixed beverage special events license, \$45 for each day of each event;

981 f. Mixed beverage club events licenses, \$35 for each day of each event;

- g. Annual mixed beverage special events license, \$560;
- h. Mixed beverage carrier license:
- (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the Commonwealth by a common carrier of passengers by train;
- (ii) \$560 for each common carrier of passengers by boat;
- (iii) \$1,475 for each license granted to a common carrier of passengers by airplane.
- i. Annual mixed beverage amphitheater license, \$560;
- j. Annual mixed beverage motor sports race track license, \$560;
- k. Annual mixed beverage banquet license, \$500; and
- l. Limited mixed beverage restaurant license:
- (i) With a seating capacity at tables for up to 100 persons, \$460;
- (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$875; and
- (iii) With a seating capacity at tables for more than 150 persons, \$1,330.
- 6.7. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax imposed by this section on the license for which the applicant applied.
- B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year, the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.
- If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the number of gallons permitted to be manufactured shall be prorated in the same manner.
- Should the holder of a distiller's license or a winery license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.
- Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period.
- C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.
- § 4.1-233. Taxes on local licenses.
- A. In addition to the state license taxes, the annual local license taxes which may be collected shall not exceed the following sums:
1. Alcoholic beverages. - For each:
- a. Distiller's license, \$1,000; no local license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits, or both, during such license year;
- b. Fruit distiller's license, \$1,500;
- c. Bed and breakfast establishment license, \$40;
- d. Museum license, \$10;
- e. Tasting license, \$5 per license granted;
- f. Equine sporting event license, \$10;
- g. Day spa license, \$20;
- h. Motor car sporting event facility license, \$10;
- i. Meal-assembly kitchen license, \$20; and
- j. Canal boat operator license, \$20.
2. *Distilled spirits retail license.* - For each:
- a. Tier 1 license, \$1,000;
- b. Tier 2 license, \$500;
- c. Tier 3 license, \$250; and

- 1043 *d. Tier 4 license, \$100.*
 1044 3. Beer. - For each:
 1045 a. Brewery license, \$1,000;
 1046 b. Bottler's license, \$500;
 1047 c. Wholesale beer license, in a city, \$250, and in a county or town, \$75;
 1048 d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer
 1049 license in a city, \$100, and in a county or town, \$25; and
 1050 e. Beer shipper's license, \$10.
 1051 ~~3-4.~~ Wine. - For each:
 1052 a. Winery license, \$50;
 1053 b. Wholesale wine license, \$50;
 1054 c. Farm winery license, \$50; and
 1055 d. Wine shipper's license, \$10.
 1056 ~~4-5.~~ Wine and beer. - For each:
 1057 a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail
 1058 off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery
 1059 store license, in a city, \$150, and in a county or town, \$37.50;
 1060 b. Hospital license, \$10;
 1061 c. Banquet license, \$5 for each license granted, except for banquet licenses granted by the Board
 1062 pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be \$20
 1063 per license;
 1064 d. Gourmet brewing shop license, \$150;
 1065 e. Wine and beer shipper's license, \$10; and
 1066 f. Annual banquet license, \$15.
 1067 ~~5-6.~~ Mixed beverages. - For each:
 1068 a. Mixed beverage restaurant license, including restaurants located on the premises of and operated
 1069 by hotels or motels, or other persons:
 1070 (i) With a seating capacity at tables for up to 100 persons, \$200;
 1071 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and
 1072 (iii) With a seating capacity at tables for more than 150 persons, \$500.
 1073 b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;
 1074 c. Mixed beverage caterer's license, \$500;
 1075 d. Mixed beverage limited caterer's license; \$100;
 1076 e. Mixed beverage special events licenses, \$10 for each day of each event;
 1077 f. Mixed beverage club events licenses, \$10 for each day of each event;
 1078 g. Annual mixed beverage amphitheater license, \$300;
 1079 h. Annual mixed beverage motor sports race track license, \$300;
 1080 i. Annual mixed beverage banquet license, \$75; and
 1081 j. Limited mixed beverage restaurant license:
 1082 (i) With a seating capacity at tables for up to 100 persons, \$100;
 1083 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$250; and
 1084 (iii) With a seating capacity at tables for more than 150 persons, \$400.
 1085 B. Common carriers. - No local license tax shall be either charged or collected for the privilege of
 1086 selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the
 1087 Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises
 1088 consumption only.
 1089 C. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in
 1090 the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local
 1091 retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,
 1092 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
 1093 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
 1094 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
 1095 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
 1096 taxes authorized by this chapter.
 1097 The governing body of any county, city or town, in adopting an ordinance under this section, shall
 1098 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
 1099 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
 1100 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
 1101 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
 1102 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
 1103 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale
 1104 merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall

be disregarded, which stated amount shall be the amount of wine purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax paid by such wholesale wine licensee.

D. Delivery. - No county, city or town shall impose any local alcoholic beverages license tax on any wholesaler for the privilege of delivering alcoholic beverages in the county, city or town when such wholesaler maintains no place of business in such county, city or town.

E. Application of county tax within town. - Any county license tax imposed under this section shall not apply within the limits of any town located in such county, where such town now, or hereafter, imposes a town license tax on the same privilege.

§ 4.1-234. Tax on wine and other alcoholic beverages; exceptions.

A. In addition to the taxes imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, a tax of ~~forty 40~~ cents is levied on each liter of wine sold in the Commonwealth. ~~Additionally, on vermouth and on farm winery wines sold to consumers by the Board the state tax shall be four percent of the price charged.~~

B. There is levied on ~~other alcoholic beverages~~ *distilled spirits* sold by the Board a tax of ~~twenty 20~~ percent of the price charged. This subsection shall also apply to all alcoholic beverages purchased from the Board by any mixed beverage licensee.

C. The provisions of this section shall not apply to (i) beer, (ii) wine coolers, (iii) sales of wine by manufacturers to wholesale wine licensees for resale to retail licensees, (iv) sales, other than by or through government ~~stores warehouses~~, of alcoholic beverages for manufacturing and industrial purposes, or either, (v) sales, other than by or through government ~~stores warehouses~~, of alcohol for hospital and laboratory purposes, or either, (vi) alcoholic beverages shipped from the Commonwealth to points outside the Commonwealth for resale outside the Commonwealth and (vii) sales to any instrumentality of the federal government.

§ 4.1-235. Collection; computation, distribution of tax on wine and other alcoholic beverages; refunds and adjustments.

A. The Board shall collect the state taxes levied pursuant to § 4.1-234 as follows:

1. Collection shall be from the purchaser at the time of or prior to sale, except as to sales made to wholesale wine licensees. Wholesale wine licensees shall collect the taxes at the time of or prior to sale to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be required by the Board, at the time and in the manner prescribed by the Board.

2. In establishing the prices for items sold by it to ~~persons other than wholesale licensees~~, the Board shall include a reasonable markup. The ~~liter tax of 20 percent tax, as appropriate, shall then be added to the price of each container of alcoholic beverages. The four percent tax on vermouth and farm winery wines shall then be added for those products. In all cases the final price for each container may be established so as to be a multiple of five.~~

In accounting for the state tax on sales the Board shall divide the net sales for the quarter by 1.20 and multiply the result by 20 percent. ~~As to the sale of vermouth and farm winery wine, the Board shall divide the net sales for the quarter by 1.04 and multiply the result by four percent.~~

B. The amount of tax collected under this section during each quarter shall, within 50 days after the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not later than June 20 of every year, estimate the yield of the state tax on sales imposed by § 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on account of an overestimate or underestimate as may be indicated within 50 days after the close of the quarter ending on June 30.

~~Forty-four percent of the amount derived from the liter tax levied pursuant to § 4.1-234 shall be transferred to the general fund and paid to the several counties, cities, and towns of the Commonwealth in proportion to their respective populations, and is appropriated for such purpose.~~

~~The counties, cities, and towns shall in no event receive from the taxes derived from the sale of wines less revenue than was received by such counties, cities, and towns for the year ending June 30, 1976.~~

The portion of wine liter tax collected pursuant to § 4.1-234 that is attributable to the sale of wine produced by a farm winery shall be deposited in the Virginia Wine Promotion Fund established pursuant to § 3.2-3005.

Twelve percent of the amount derived from the liter tax levied shall be retained by the Board as operating revenue and distributed as provided in § 4.1-117.

C. As used in this section, the term "net sales" means gross sales less refunds to customers.

D. The Board may make a refund or adjustment of any tax paid to it under this section when (i) the

1166 wine upon which such tax has been paid has been condemned and is not permitted to be sold in the
1167 Commonwealth, or (ii) wine is returned by a retail licensee to a wholesale wine licensee for refund in
1168 accordance with Board regulations or approval. Any claim for such refund or adjustment shall be made
1169 to the Board in the report filed with the Board by the wholesale wine licensee for the period in which
1170 such return and refund occurs.

1171 § 4.1-303. Purchase of alcoholic beverages from person not authorized to sell; penalty.

1172 If any person buys alcoholic beverages from any person other than the Board, a government store or
1173 a person authorized under this title to sell alcoholic beverages, he shall be guilty of a Class 1
1174 misdemeanor.

1175 § 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

1176 A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee
1177 shall:

1178 1. Sell or serve any alcoholic beverage other than as authorized by law;

1179 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;

1180 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of
1181 this title;

1182 4. Keep at the place described in his license any alcoholic beverage other than that which he is
1183 licensed to sell;

1184 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

1185 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
1186 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
1187 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by
1188 the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board
1189 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee
1190 from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;

1191 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper
1192 with the contents of any bottle or container of alcoholic beverage, except as provided by Board
1193 regulation adopted pursuant to *subdivision B 11 of § 4.1-111 B 44*;

1194 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the
1195 purchaser without first advising such purchaser of the difference;

1196 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages
1197 offered for sale;

1198 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or
1199 obliterated;

1200 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the
1201 licensed premises;

1202 12. Allow any striptease act on the licensed premises;

1203 13. Allow persons connected with the licensed business to appear nude or partially nude;

1204 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty
1205 and in a position that is involved in the selling or serving of alcoholic beverages to customers.

1206 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
1207 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
1208 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
1209 the Board who represents a distiller, if such samples are provided in accordance with Board regulations
1210 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of
1211 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for
1212 quality control purposes;

1213 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license
1214 whether the closure is broken or unbroken except in accordance with § 4.1-210.

1215 The provisions of this subdivision shall not apply to the delivery of:

1216 a. "Soju." For the purposes of this clause, "soju" means a traditional Korean alcoholic beverage
1217 distilled from rice, barley or sweet potatoes; or

1218 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content
1219 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and
1220 perishable;

1221 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

1222 17. Conceal any sale or consumption of any alcoholic beverages;

1223 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or
1224 obstruct special agents of the Board in the discharge of their duties;

1225 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any
1226 such alcoholic beverages from the premises;

1227 20. Knowingly employ in the licensed business any person who has the general reputation as a

prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus;

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A 12 11 of § 4.1-201. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

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

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.

A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or employee shall consume any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subsection shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes.

B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not be deemed to be agents of the retail wine or beer licensee.

C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subsection; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A 12 11 of § 4.1-201. Any gift permitted by this subsection shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subsection.

D. Any person convicted of a violation of this section shall be subject to a civil penalty in an amount not to exceed \$500.

§ 4.1-330. Solicitation by persons interested in manufacture, etc., of alcoholic beverages; penalty.

A. No person having any interest, direct or indirect, in the manufacture, distribution, or sale of spirits or other alcoholic beverages shall, without a permit granted by the Board and upon such conditions as the Board may prescribe, solicit either directly or indirectly (i) a mixed beverage licensee *or a distilled spirits retail licensee*; (ii) any agent, servant, or employee of such licensee; or (iii) any person connected with the licensee in any capacity whatsoever in his licensed business, to sell or offer for sale the particular spirits or other alcoholic beverage in which such person may be so interested.

The Board, upon proof of any solicitation in violation of this subsection, may suspend or terminate the sale through government stores or its purchase of the brand of spirits or other alcoholic beverage which was the subject matter of the unlawful solicitation or promotion. In addition, the Board may suspend or terminate the sale through such stores or its purchase of all brands of spirits or other alcoholic beverages manufactured or distributed by either the employer or principal of such solicitor, the broker, or by the owner of the brand of spirits unlawfully solicited or promoted. The Board may impose a civil penalty not to exceed \$250,000 in lieu of such suspension or termination of sales through

1289 government stores or purchases by the Board or portion thereof, or both.

1290 Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor.

1291 B. No mixed beverage *or distilled spirits retail* licensee, or any agent, servant, or employee of such
1292 licensee, or any person connected with the licensee in any capacity whatsoever in his licensed business
1293 shall, either directly or indirectly, be a party to, consent to, solicit, or aid or abet another in a violation
1294 of subsection A.

1295 The Board may suspend or revoke the license granted to such licensee, or may impose a civil penalty
1296 not to exceed \$25,000 in lieu of such suspension or any portion thereof, or both.

1297 Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor.

1298 **3. That § 4.1-120 of the Code of Virginia is repealed.**

1299 **4. That the provisions of this act shall become effective in due course, except that §§ 4.1-100,**
1300 **4.1-103, 4.1-104, 4.1-111, 4.1-115, 4.1-119, 4.1-201, 4.1-221, 4.1-234, 4.1-235, 4.1-303, 4.1-325, and**
1301 **4.1-325.2 of the Code of Virginia of the second enactment of this act and the provisions of the**
1302 **third enactment of this act shall become effective on January 1, 2013.**

1303 **5. That, notwithstanding the provisions of §§ 4.1-210 and 4.1-221 of the Code of Virginia, prior to**
1304 **January 1, 2013, mixed beverage licensees of the Alcoholic Beverage Control Board may purchase**
1305 **alcoholic beverages to sell as mixed beverages from either (i) the Alcoholic Beverage Control**
1306 **Board or (ii) a distilled spirits retail licensee. On or after January 1, 2013, mixed beverage**
1307 **licensees of the Alcoholic Beverage Control Board shall purchase alcoholic beverages to sell as**
1308 **mixed beverages from distilled spirits retail licensees in accordance with the provisions of this act.**