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HOUSE BILL NO. 1541

Offered January 19, 2018

A *BILL to amend and reenact §§ 4.1-100, 4.1-210, 4.1-231, and 4.1-233 of the Code of Virginia, relating to alcoholic beverage control; limited mixed beverage license for retail cigar shops.*

Patrons—Landes and Torian

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-210, 4.1-231, and 4.1-233 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-100. Definitions.

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

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

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

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

"Art instruction studio" means any commercial establishment that provides to its customers all required supplies and step-by-step instruction in creating a painting or other work of art during a studio instructional session.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.

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

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided. For purposes of the licensing requirements of this title, "bed and breakfast establishment" includes any property offered to the public for short-term rental, as that term is defined in § 15.2-983, other than a hotel as defined in this section, regardless of whether a meal is offered to each person to whom overnight lodging is provided.

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

"Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

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

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

"Cigar shop" means any bona fide retail store that (i) caters to patrons who purchase and smoke premium cigars; (ii) annually receives at least 60 percent of its gross revenue from the sale of premium

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59 tobacco products, to include at least \$200,000 and 40 percent or more of its gross revenue, whichever
60 is greater, from the sale of premium cigars; (iii) has on the premises at least one display humidor that
61 stocks no less than 5,000 premium cigars; and (iv) is open to the public on a regular basis. Such shop
62 shall be a permanent structure where stock is displayed and offered for sale and that has facilities to
63 properly secure any stock of alcoholic beverages. For the purposes of this definition, "premium cigars"
64 means any handmade cigar valued at \$2 or more at retail, and "premium tobacco products" means
65 cigars, pipes, pipe tobacco, humidors, and other accessories for cigars and pipes. "Premium tobacco
66 products" does not include cigarettes.

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

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

79 "Commercial lifestyle center" means a mixed-use commercial development covering a minimum of
80 25 acres of land and having at least 100,000 square feet of retail space featuring national specialty chain
81 stores and a combination of dining, entertainment, office, residential, or hotel establishments located in a
82 physically integrated outdoor setting that is pedestrian friendly and that is governed by a commercial
83 owners' association that is responsible for the management, maintenance, and operation of the common
84 areas thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Licensed" means the holding of a valid license granted by the Authority.

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

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

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

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

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

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same

182 locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the
183 annual dues of resident members of the club, the full amount of such contribution being paid in advance
184 in a lump sum.

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

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

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

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

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

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

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

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

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

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

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

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

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

243 "Special agent" means an employee of the Virginia Alcoholic Beverage Control Authority whom the

Board has designated as a law-enforcement officer pursuant to § 4.1-105.

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

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

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

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

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

§ 4.1-210. 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 subdivision, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

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

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

If the restaurant is located on the premises of and operated by a municipal golf course, the Board shall recognize the seasonal nature of the business and waive any applicable monthly food sales requirements for those months when weather conditions may reduce patronage of the golf course,

305 provided that prepared food, including meals, is available to patrons during the same months. The gross
306 receipts from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic
307 beverages served on the premises, after the issuance of such license, shall amount to at least 45 percent
308 of the gross receipts from the sale of mixed beverages and food on an annualized basis.

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

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

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

326 5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or
327 association operating either a performing arts facility or an art education and exhibition facility, (ii) a
328 nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and
329 objects significant in American history and culture, or (iii) persons operating an agricultural event and
330 entertainment park or similar facility that has a minimum of 50,000 square feet of indoor exhibit space
331 and equine and other livestock show areas, which includes barns, pavilions, or other structures equipped
332 with roofs, exterior walls, and open or closed-door access. The operation in all cases shall be upon
333 premises owned by such licensee or occupied under a bona fide lease the original term of which was for
334 more than one year's duration. Such license shall authorize the licensee to sell alcoholic beverages
335 during scheduled events and performances for on-premises consumption in areas upon the licensed
336 premises approved by the Board.

337 6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat
338 or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the
339 Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms
340 of establishments of air carriers at airports in the Commonwealth. For purposes of supplying its
341 airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air
342 carrier licensee may appoint an authorized representative to load distilled spirits onto the same airplanes
343 and to transport and store distilled spirits at or in close proximity to the airport where the distilled spirits
344 will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier
345 licensee shall (i) designate for purposes of its license all locations where the inventory of distilled spirits
346 may be stored and from which the distilled spirits will be delivered onto airplanes of the air carrier and
347 any such licensed express carrier and (ii) maintain records of all distilled spirits to be transported,
348 stored, and delivered by its authorized representative.

349 7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer
350 club license to sell and serve mixed beverages for on-premises consumption by club members and their
351 guests in areas approved by the Board on the club premises. A separate license shall be required for
352 each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar
353 year.

354 8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
355 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000
356 persons and is located in Prince William County or the City of Virginia Beach. Such license shall
357 authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic
358 or similar disposable containers or in single original metal cans, to patrons within all seating areas,
359 concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

360 9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any
361 outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000
362 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize
363 the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar
364 disposable containers or in single original metal cans, to patrons within all seating areas, concourses,
365 walkways, concession areas, or similar facilities, for on-premises consumption.

366 10. Annual mixed beverage motor sports facility license to persons operating food concessions at any

367 outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,
368 200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed
369 beverages, in paper, plastic, or similar disposable containers or in single original metal cans, during
370 scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all
371 dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for
372 on-premises consumption. Upon authorization of the licensee, any person may keep and consume his
373 own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the
374 license.

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

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

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

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

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

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

416 17. Annual mixed beverage performing arts facility license to persons operating food concessions at
417 any performing arts facility located in the arts and cultural district of the City of Harrisonburg, provided
418 that the performing arts facility (i) is occupied under a bona fide long-term lease or concession
419 agreement, the original term of which was more than five years; (ii) has been rehabilitated in accordance
420 with historic preservation standards; (iii) has monthly gross receipts from the sale of food cooked, or
421 prepared, and consumed on the premises and nonalcoholic beverages served on the premises that meet
422 or exceed the monthly minimum established by Board regulations for mixed beverage restaurants; and
423 (iv) has a total capacity in excess of 900 patrons. Such license shall authorize the sale, on the dates of
424 performances or private or special events, of alcoholic beverages for on-premises consumption in areas
425 upon the licensed premises approved by the Board.

426 18. A combined mixed beverage restaurant and caterer's license, which may be granted to any
427 restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to

subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location, and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed beverage caterer at the same business premises designated in the license, with a common alcoholic beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision A 1 and mixed beverage caterer's license pursuant to subdivision A 2.

19. *Limited mixed beverage retail cigar shop license, which shall authorize the licensee to serve wine, beer, or mixed beverages for on-premises consumption upon the licensed premises approved by the Board to any bona fide customer; however, the licensee shall not give more than (i) two five-ounce glasses of wine, (ii) two 12-ounce glasses of beer, or (iii) two glasses of mixed beverages, provided that each glass of mixed beverages contains no more than two ounces of spirits, to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine, beer, or mixed beverages served or consumed. The privileges of this license shall be limited to the premises of the cigar shop regularly occupied and utilized as such. Such license shall be deemed a retail license for the purposes of this title.*

B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, ~~or~~ 18, or 19 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

§ 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; if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, \$2,500; and if more than 36,000 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;

k. Canal boat operator license, \$100;

l. Annual arts venue event license, \$100;

m. Art instruction studio license, \$100; and

n. Commercial lifestyle center license, \$300.

2. Wine licenses. For each:

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

b. (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 the number of separate locations covered by the license;

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

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

e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license, each of which shall include a delivery permit;

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

g. Internet wine retailer license, \$150.

3. Beer licenses. For each:

a. Brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, \$350; if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150; and if more than 10,000 barrels manufactured during such year, \$4,300;

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

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

(2) Wholesale beer license applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by the license;

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

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

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

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

h. Beer shipper's license, \$95; and

i. Retail off-premises brewery license, \$120, which shall include a delivery permit.

4. Wine and beer licenses. For each:

a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$750;

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

c. Retail on-premises wine and beer license to a historic cinema house, \$200;

d. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$230, which shall include a delivery permit;

e. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600, which shall include a delivery permit;

f. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215, which shall be \$100 per license;

g. Gourmet brewing shop license, \$230;

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

i. Annual banquet license, \$150;

j. Fulfillment warehouse license, \$120;

k. Marketing portal license, \$150; and

l. Gourmet oyster house license, \$230.

5. Mixed beverage licenses. For each:

a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:

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

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

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

b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs:

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

(ii) With an average yearly membership of more than 200 but not more than 500 resident members, \$1,860; and

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

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

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

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

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;

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;

(iii) With a seating capacity at tables for more than 150 persons, \$1,330;

m. Annual mixed beverage motor sports facility license, \$560; ~~and~~

n. Annual mixed beverage performing arts facility license, \$560; *and*

o. Limited mixed beverage retail cigar shop license, \$100.

6. 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 other than 12, 24, or 36 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, and then increased by five percent. Such tax shall not be refundable, except as provided in § 4.1-232.

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.

D. In addition to the taxes set forth in this section, a fee of \$5 may be imposed on any license purchased in person from the Board if such license is available for purchase online.

§ 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, if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, \$750; if more than 36,000 gallons manufactured during such year, \$1,000; and 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;

j. Canal boat operator license, \$20;

k. Annual arts venue event license, \$20;

l. Art instruction studio license, \$20; and

m. Commercial lifestyle center license, \$60.

2. Beer. — For each:

a. Brewery license, if not more than 500 barrels of beer manufactured during the year in which the license is granted, \$250, and if more than 500 barrels of beer manufactured during the year in which the license is granted, \$1,000;

b. Bottler's license, \$500;

- 613 c. Wholesale beer license, in a city, \$250, and in a county or town, \$75;
 614 d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer
 615 license in a city, \$100, and in a county or town, \$25; and
 616 e. Beer shipper's license, \$10.
 617 3. Wine. — For each:
 618 a. Winery license, \$50;
 619 b. Wholesale wine license, \$50;
 620 c. Farm winery license, \$50; and
 621 d. Wine shipper's license, \$10.
 622 4. Wine and beer. — For each:
 623 a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail
 624 off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery
 625 store license, in a city, \$150, and in a county or town, \$37.50;
 626 b. Hospital license, \$10;
 627 c. Historic cinema house license, \$20;
 628 d. Banquet license, \$5 for each license granted, except for banquet licenses granted by the Board
 629 pursuant to subsection A of § 4.1-215, which shall be \$20 per license;
 630 e. Gourmet brewing shop license, \$150;
 631 f. Wine and beer shipper's license, \$10;
 632 g. Annual banquet license, \$15; and
 633 h. Gourmet oyster house license, in a city, \$150, and in a county or town, \$37.50.
 634 5. Mixed beverages. — For each:
 635 a. Mixed beverage restaurant license, including restaurants located on the premises of and operated
 636 by hotels or motels, or other persons:
 637 (i) With a seating capacity at tables for up to 100 persons, \$200;
 638 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and
 639 (iii) With a seating capacity at tables for more than 150 persons, \$500.
 640 b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;
 641 c. Mixed beverage caterer's license, \$500;
 642 d. Mixed beverage limited caterer's license, \$100;
 643 e. Mixed beverage special events licenses, \$10 for each day of each event;
 644 f. Mixed beverage club events licenses, \$10 for each day of each event;
 645 g. Annual mixed beverage amphitheater license, \$300;
 646 h. Annual mixed beverage motor sports race track license, \$300;
 647 i. Annual mixed beverage banquet license, \$75;
 648 j. Limited mixed beverage restaurant license:
 649 (i) With a seating capacity at tables for up to 100 persons, \$100;
 650 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$250;
 651 (iii) With a seating capacity at tables for more than 150 persons, \$400;
 652 k. Annual mixed beverage motor sports facility license, \$300; ~~and~~
 653 l. Annual mixed beverage performing arts facility license, \$300; *and*
 654 *m. Limited mixed beverage retail cigar shop license, \$20.*
 655 B. Common carriers. — No local license tax shall be either charged or collected for the privilege of
 656 selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the
 657 Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises
 658 consumption only.
 659 C. Merchants' and restaurants' license taxes. — The governing body of each county, city or town in
 660 the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local
 661 retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,
 662 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
 663 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
 664 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
 665 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
 666 taxes authorized by this chapter.
 667 The governing body of any county, city or town, in adopting an ordinance under this section, shall
 668 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
 669 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
 670 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
 671 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
 672 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
 673 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale

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

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

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