

LD2811484

HOUSE BILL NO. 1975

Offered January 20, 1995

A BILL to provide for the discontinuation of government stores and for the licensure of privately owned retail package stores; to amend and reenact §§ 4.1-100, 4.1-103, 4.1-111, 4.1-115, 4.1-121, 4.1-122, 4.1-206, 4.1-231, 4.1-233, 4.1-234, 4.1-235, 4.1-303, and 4.1-330 of the Code of Virginia; and to amend the Code of Virginia by adding sections numbered 4.1-119.1, 4.1-204.1, and 4.1-221.1, relating to alcoholic beverage control laws; retail privatization; penalty.

Patrons—Watkins and Purkey

Referred to Committee on General Laws

Whereas, it is in the interest of the Commonwealth to control the manufacture, distribution and sale of alcoholic beverages in the Commonwealth; and

Whereas, it is in the interest of the citizens of the Commonwealth to be afforded the most competitive price for alcoholic beverages while being assured of their quality; and

Whereas, it is the intent of the General Assembly that the Alcoholic Beverage Control Board continue to be the regulatory body which controls and regulates the manufacture, distribution, and sale of alcoholic beverages; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *The Alcoholic Beverage Control Board, hereafter called the Board, shall, on or before December 31, 1995, begin an implementation process for the discontinuation of government stores, and the licensing of privately owned package stores for the retail sale of spirits, as defined in § 4.1-100, and other alcoholic beverages.*

§ 2. *As government stores are discontinued, the Board shall have the authority to sell all real property owned by it and used solely as government stores, as well as the fixtures, equipment, and inventory associated with each location owned or leased by the Board. Such sales shall be made in accordance with generally accepted business practices, taking into account the fair market value of the property to be sold, as determined by the Board. Such valuation shall take into account the volume of business conducted at such store and revenues generated by the operation of such government store. Purchasers in such sales shall be qualified applicants for package store licenses who will be licensed to conduct their business at the purchased premises or at a location approved by the Board serving the area formerly served by the discontinued government store. The Board shall establish a service area for each package store licensed to replace a discontinued government store, and shall issue no additional package store licenses within such service area for a period of three years immediately following the granting of such package store license. However, the Board in its discretion and in the interest of better service to a community, may grant more than one package store license if the financial records of the replaced and discontinued government store disclose that such government store was not self-supporting on or before the time of its discontinuation. The Board shall also have the authority, as permitted by the lease documents, to assign any lease of real property held by it and used as a government store, or to grant a lease on any portion of real property owned by it and used partially as a government store. Such sales, lease assignments, or leases shall be exempt from the provisions of subsection C of § 2.1-512. Any such sale, lease assignment, or lease shall be approved by the Governor or his designee. The proceeds of such sales, lease assignments, or leases shall be paid or deposited as required by § 4.1-116, subsection C of § 2.1-512 notwithstanding.*

§ 3. *The implementation process for the discontinuation of government stores shall be completed by the Board within three years of the effective date of this act.*

2. That §§ 4.1-100, 4.1-103, 4.1-111, 4.1-115, 4.1-121, 4.1-122, 4.1-206, 4.1-231, 4.1-233, 4.1-234, 4.1-235, 4.1-303, and 4.1-330 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 4.1-119.1, 4.1-204.1, and 4.1-221.1 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.

"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,

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60 and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being
61 consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be
62 considered as belonging to that variety which has the higher percentage of alcohol, however obtained,
63 according to the order in which they are set forth in this definition.

64 "Barrel" means any container or vessel having a capacity of more than forty-three ounces.

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

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

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

73 "Bottle" means any vessel intended to contain liquids and having a capacity of not more than
74 forty-three ounces.

75 "Club" means any private nonprofit corporation or association which is the owner, lessee, or
76 occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other
77 like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also
78 means the establishment so operated. A corporation or association shall not lose its status as a club
79 because of the conduct of bingo games or raffles conducted pursuant to Article 1.1 (§ 18.2-340.1 et seq.)
80 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided
81 that no alcoholic beverages are served or consumed in the room where such bingo games or raffles are
82 being conducted while such games or raffles are being conducted and that no alcoholic beverages are
83 made available upon the premises to any person who is neither a member nor a bona fide guest of a
84 member.

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

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

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

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

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

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

98 "Farm winery" means an establishment located on a farm in the Commonwealth with a producing
99 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the
100 premises where the owner or lessee manufactures wine that contains not more than fourteen percent
101 alcohol by volume. As used in this definition, the terms "owner" and "lessee" shall include a cooperative
102 formed by an association of individuals for the purpose of manufacturing wine. In the event such
103 cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the
104 land owned or leased by the individual members of the cooperative as long as such land is located in
105 the Commonwealth.

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

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

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

119 "Hotel" means any duly licensed establishment, provided with special space and accommodation,
120 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has
121 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.

"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.

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

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

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

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

"Package store" means the licensed premises of a package store licensee where spirits and other alcoholic beverages are sold at retail.

"Package store licensee" means any person licensed pursuant to subdivision 5 of § 4.1-206.

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

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

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

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

"Resort complex" means a facility with a hotel owning year-round sports and recreational facilities located contiguously on the same property. The hotel must have a minimum of 250 private guest rooms contained on not less than 100 acres. The Board may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

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

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

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

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

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

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

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

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

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

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

200 § 4.1-103. General powers of Board.

201 The Board shall have the power to:

202 1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries,
203 the procurement of which is exempt from Chapter 7 (§ 11-35 et seq.) of Title 11, and to have alcoholic
204 beverages other than beer and wine not produced by farm wineries in its possession for sale;

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

206 3. Determine, subject to § 4.1-121, the localities within which government stores *or package stores*
207 shall be established or operated and the location of such stores;

208 4. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic
209 beverages to and from such warehouses;

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

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

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

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

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

223 10. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
224 production of records, memoranda, papers and other documents before the Board or any agent of the
225 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
226 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take
227 testimony thereunder, and make summary decisions, subject to final decision by the Board, on
228 application of any party aggrieved;

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

234 12. Promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and
235 § 4.1-111 of this chapter;

236 13. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and
237 sale of alcoholic beverages;

238 14. Assess and collect civil penalties and civil charges for violations of this title and Board
239 regulations;

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

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

242 17. *Appoint, in the discretion of the Board, an advisory committee to advise the Board on the issues*
243 *involved in the privatized retail sale of alcoholic beverages; and*

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

§ 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 (§ 9-6.14:1 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations which:

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 *and spirits* 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, *and (iii) reporting of the name and address of any person having a financial interest in a package store licensee pursuant to subsection D of § 4.1-221.1.*

5. *Require, for a period of two years, each package store licensee whose package store replaces a discontinued government store to offer employment to eighty percent of the full-time employees whose positions are terminated as a result of the discontinuance of the government store and who do not qualify for or who choose not to accept early retirement. If eighty percent of any discontinued government store's full-time employees does not equal a whole number, the number shall be rounded down to the nearest whole number.*

C. The Board may promulgate regulations which 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.

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 October 1 of each year, which shall contain:

1. A statement of the nature and amount of the business transacted by each government store *and the wholesale business transacted by each warehouse operated by the Board* 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 § 2.1-196.1.

C. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

D. 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.

§ 4.1-119.1. *Wholesale operations of warehouses operated by Board.*

A. *The Board shall fix the wholesale price at which the various classes, varieties and brands of*

306 *alcoholic beverages are to be sold and shall establish minimum lot orders for such alcoholic beverages.*

307 *B. All alcoholic beverages sold from warehouses operated by the Board shall be in closed*
308 *containers, sealed and affixed with labels prescribed by the Board.*

309 *C. No alcoholic beverages shall be consumed in a warehouse operated by the Board by any person.*

310 *D. With respect to purchases by licensees from warehouses operated by the Board, the Board shall*
311 *accept in payment for any purchase or series of purchases cash, electronic fund transfer, or check*
312 *payable to the Board, in the exact amount of any such purchase or series of purchases.*

313 *§ 4.1-121. Referendum on establishment of package stores.*

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

325 *The question on the ballot shall be:*

326 *"Shall the sale by the Alcoholic Beverage Control Board of alcoholic beverages, other than beer and*
327 *wine not produced by farm wineries, by package store licensees of the Alcoholic Beverage Control*
328 *Board be permitted in (name of county, city, or town)?"*

329 *The referendum shall be ordered and held and the results certified as provided in § 24.1-165 Article*
330 *5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. Thereupon the court shall enter of record an order*
331 *certified by the clerk of the court to be transmitted to the Board and to the governing body of the*
332 *county, city, or town.*

333 *B. Once a referendum has been held, no other referendum on the same question under this section*
334 *shall be held in the county, city, or town within four years of the date of the prior referendum.*
335 *However, a town shall not be prescribed from holding a referendum within such period although an*
336 *election has been held in the county in which the town or a part thereof is located less than four years*
337 *prior thereto.*

338 *§ 4.1-122. Effect of local option referenda.*

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

346 *B. If in any such referendum held in any county, city, or town in which a majority of the qualified*
347 *voters have previously voted against permitting the sale of alcoholic beverages by package store*
348 *licensees of the Board and in a subsequent election a majority of the voters of the county, city, or town*
349 *vote "Yes" on the question stated in § 4.1-121, then such alcoholic beverages package stores permitted*
350 *to be sold established by such referendum may, in accordance with this title, be sold opened within the*
351 *county, city, or town on and after sixty days from the day on which the order of the court setting forth*
352 *the results of such election is entered of record.*

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

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

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

F. In any county, city, or town in which the establishment of government stores has been approved in a referendum held pursuant to § 4.1-121, no additional referendum approving the establishment of a package store shall be required.

§ 4.1-204.1 Operation of package stores.

A. All spirits sold by package store licensees shall be purchased from the Board.

B. Package store licensees shall operate their stores in accordance with Board regulations. All alcoholic beverages sold in such stores shall be in closed containers, sealed and having such labels as prescribed by the Board. No alcoholic beverages shall be consumed in such stores by any person, except in accordance with regulations promulgated by the Board.

C. No package store licensee or employee of such licensee shall sell or have in his possession any spirits which have not been purchased from the Board.

§ 4.1-206. Alcoholic beverage licenses.

The Board may grant the following licenses relating to alcoholic beverages generally:

1. Distillers' licenses, which shall authorize the licensee to manufacture alcoholic beverages other than wine and beer, and to sell and deliver or ship the same, in accordance with Board regulations, in closed containers, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

2. Fruit distillers' licenses, which shall authorize the licensee to manufacture any alcoholic beverages made from fruit or fruit juices, and to sell and deliver or ship the same, in accordance with Board regulations, in closed containers, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

3. Banquet facility licenses to volunteer fire departments and volunteer rescue squads, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any person, and bona fide members and guests thereof, otherwise eligible for a banquet license. However, lawfully acquired alcoholic beverages shall not be purchased or sold by the licensee or sold or charged for in any way by the person permitted to use the premises. Such premises shall be a fire or rescue squad station or both, regularly occupied as such and recognized by the governing body of the county, city or town in which it is located. Under conditions as specified by Board regulation, such premises may be other than a fire or rescue squad station, provided such other premises are occupied and under the control of the fire department or rescue squad while the privileges of its license are being exercised.

4. Bed and breakfast licenses, which shall authorize the licensee to serve alcoholic beverages in dining areas, private guest rooms and other designated areas to persons to whom overnight lodging is being provided, with or without meals, for on-premises consumption only in such rooms and areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises.

5. Package store licenses, which shall authorize the licensee to sell alcoholic beverages in closed containers for off-premises consumption and to deliver or ship alcoholic beverages to purchasers in accordance with Board regulations. Such licensees shall purchase alcoholic beverages in a manner prescribed by Board regulations.

§ 4.1-221.1. Limitations on package store licenses; limitation on interests.

A. No package store licensee shall be engaged in any other business on the licensed premises. The sale of lottery tickets, when authorized by the State Lottery Department and lawfully conducted in accordance with the State Lottery law (§ 58.1-4000 et seq.) and State Lottery Board regulations, shall not constitute engaging in another business within the meaning of this section.

B. The Board shall grant such license only if the majority of the voters of the county, city or town voting therein voted "Yes" in the referendum authorized by § 4.1-121, and the applicant for such license has obtained prior approval of the local governing body in which the licensed premises will be located. The Board shall determine the manner by which the approval of the local governing body is obtained.

C. The number of package store licenses granted by the Board shall not exceed a total of one license per 20,000 residents of the Commonwealth.

D. No person shall acquire or hold a financial interest, direct or indirect, in more than ten percent of active package store licenses at any time. No person shall acquire or hold a financial interest, direct or indirect, in more than twenty-five of the active package store licenses in a county, city, or town having four or more licenses. No person shall acquire or hold a financial interest, direct or indirect, in more than one active package store license in a county, city, or town having fewer than four licenses.

§ 4.1-231. Taxes on state licenses.

A. The annual taxes 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, \$350; and if more than 5,000 gallons manufactured

429 during such year, \$2,860;
430 b. Fruit distiller's license, \$2,860;
431 c. Banquet facility license, \$145; and
432 d. Bed and breakfast establishment license, \$25- ; and
433 e. *Package store license:*
434 (i) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license is*
435 *granted are less than \$500,000, \$750;*
436 (ii) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license*
437 *is granted are \$500,000 or more, but less than \$1 million, \$1,750;*
438 (iii) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license*
439 *is granted are \$1 million or more, but less than \$2 million, \$3,250; and*
440 (iv) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license*
441 *is granted are \$2 million or more, \$5,250.*
442 *The annual tax for the first year of any package store license granted to replace a discontinued*
443 *government store shall be based on the gross sales for the last twelve-month period of operation of the*
444 *discontinued government store.*
445 2. Wine licenses. - For each:
446 a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the
447 license is granted, \$350, and if more than 5,000 gallons manufactured during such year, \$2,860;
448 b. Wholesale wine license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per
449 year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine
450 per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year;
451 c. Wine importer's license, \$285;
452 d. Retail off-premises winery license, \$110; and
453 e. Farm winery license, \$145.
454 3. Beer licenses. - For each:
455 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which
456 the license is granted, \$1,650, and if more than 10,000 barrels manufactured during such year, \$3,300;
457 b. Bottler's license, \$1,100;
458 c. Wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less,
459 and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a
460 year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year;
461 d. Beer importer's license, \$285;
462 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common
463 carrier of passengers by train or boat, \$110; for each such license to a common carrier of passengers by
464 train or boat, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club
465 cars operated daily in the Commonwealth;
466 f. Retail off-premises beer license, \$90; and
467 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a
468 town or in a rural area outside the corporate limits of any city or town, \$230.
469 4. Wine and beer licenses. - For each:
470 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a
471 common carrier of passengers by train, boat or airplane, \$230; for each such license to a common
472 carrier of passengers by train or boat, \$230 per annum for each of the average number of boats, dining
473 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to
474 a common carrier of passengers by airplane, \$575;
475 b. Retail on-premises wine and beer license to a hospital, \$110;
476 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
477 grocery store license, \$175;
478 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$460; and
479 e. Banquet license, \$30 per license granted by the Board.
480 5. Mixed beverage licenses. - For each:
481 a. Mixed beverage restaurant licenses granted to persons operating restaurants, including restaurants
482 located on premises of and operated by hotels or motels, or other persons:
483 (i) With a seating capacity at tables of not more than 100 persons, \$430;
484 (ii) With a seating capacity at tables of more than 100 but not more than 150 persons, \$750; and
485 (iii) With a seating capacity at tables of more than 150 persons, \$1,100.
486 b. Mixed beverage restaurant licenses for restaurants located on the premises of and operated by
487 private, nonprofit clubs:
488 (i) With an average yearly membership of not more than 200 resident members, \$575;
489 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
490 \$1,430; and

(iii) With an average yearly membership of more than 500 resident members, \$2,125.
 c. Mixed beverage caterer's licenses, \$1,430.
 d. Mixed beverage special events licenses, \$35 for each day of each event.
 e. Annual mixed beverage special events licenses, \$430.
 f. Mixed beverage carrier licenses:
 (i) \$145 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) \$430 for each common carrier of passengers by boat; and
 (iii) \$1,135 for each license granted to a common carrier of passengers by airplane.
 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, or both, 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 twelve 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; ~~and~~
 c. Bed and breakfast establishment license, \$40; ; *and*
 d. *Package store license:*
 (i) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license is granted are less than \$500,000, \$250;*
 (ii) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license is granted are \$500,000 or more, but less than \$1 million, \$500;*
 (iii) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license is granted are \$1 million or more, but less than \$2 million, \$1,000; and*
 (iv) *if the licensee's gross sales of distilled spirits for the year prior to the year in which the license is granted are \$2 million or more, \$1,750.*
 2. Beer. - For each:
 a. Brewery license, \$1,000;
 b. Bottler's license, \$500;
 c. Wholesale beer license, in a city, \$250, and in a county or town, \$75; and
 d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license in a city, \$100, and in a county or town, \$25.

552 3. Wine. - For each:
553 a. Winery license, \$1,000; and
554 b. Wholesale wine license, \$50.
555 4. Wine and beer. - For each:
556 a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail
557 off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery
558 store license, in a city, \$150, and in a county or town, \$37.50;
559 b. Hospital license, \$10; and
560 c. Banquet license, \$5 for each license granted.
561 5. Mixed beverages. - For each:
562 a. Mixed beverage restaurant license, including restaurants located on the premises of and operated
563 by hotels or motels, or other persons:
564 (i) With a seating capacity at tables of not more than 100 persons, \$200;
565 (ii) With a seating capacity at tables of more than 100 but not more than 150 persons, \$350; and
566 (iii) With a seating capacity at tables for more than 150 persons, \$500.
567 b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;
568 c. Mixed beverage caterer's license, \$500; and
569 d. Mixed beverage special events licenses, \$10 for each day of each event.
570 B. Common carriers. - No local license tax shall be either charged or collected for the privilege of
571 selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the
572 Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises
573 consumption only.
574 C. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in
575 the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local
576 retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,
577 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
578 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
579 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
580 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
581 taxes authorized by this chapter.
582 The governing body of any county, city or town, in adopting an ordinance under this section, shall
583 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
584 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
585 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
586 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
587 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
588 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale
589 merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall
590 be disregarded, which stated amount shall be the amount of wine purchases which would be necessary
591 to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax
592 paid by such wholesale wine licensee.
593 D. Delivery. - No county, city or town shall impose any local alcoholic beverages license tax on any
594 wholesaler for the privilege of delivering alcoholic beverages in the county, city or town when such
595 wholesaler maintains no place of business in such county, city or town.
596 E. Application of county tax within town. - Any county license tax imposed under this section shall
597 not apply within the limits of any town located in such county, where such town now, or hereafter,
598 imposes a town license tax on the same privilege.
599 § 4.1-234. Tax on wine and other alcoholic beverages; exceptions.
600 A. In addition to the taxes imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, a tax of
601 forty cents is levied on each liter of wine sold in the Commonwealth. Additionally, on vermouth and on
602 farm winery wines sold to consumers by the Board, the state tax shall be four percent of the sales price
603 charged. *On vermouth and on farm winery wines sold to package store licensees by the Board, the*
604 *state tax shall be six percent of the price charged the package store licensee.*
605 B. There is levied on other alcoholic beverages sold to consumers by the Board a tax of twenty
606 percent of the sales price charged. ~~This subsection shall also apply to all alcoholic beverages purchased~~
607 ~~from the Board by any mixed beverage licensee.~~ *There is levied on other alcoholic beverages sold by*
608 *the Board to package store or mixed beverage licensees, a tax of twenty-three percent of the sales price*
609 *charged such licensees.*
610 C. The provisions of this section shall not apply to (i) beer, (ii) wine coolers, (iii) sales of wine by
611 manufacturers to wholesale wine licensees for resale to retail licensees, (iv) sales, other than by or
612 through government stores, of alcoholic beverages for manufacturing and industrial purposes, or either,
613 (v) sales, other than by or through government or package stores, 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, ~~or twenty percent tax~~, *or twenty-three percent tax*, as appropriate, shall then be added to the *sales* price of each container of alcoholic beverages. The four percent tax *or six percent tax* on vermouth and farm winery wines shall then be added *to the sales price* 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 twenty 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 by the Board under this section during each quarter shall, within fifty 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 fifty 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.

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

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

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

§ 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 package store licensee*; (ii) any agent, servant, or employee of such licensee; or (iii) any person connected with ~~the~~ such 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 *package 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

675 through ~~government~~ *such* stores or purchases by the Board or portion thereof, or both.

676 Any person convicted of a violation of this subsection shall be guilty of a Class 4 ~~misdemeanor~~ 6
677 *felony*.

678 B. No mixed beverage licensee *or package store licensee* or any agent, servant, or employee of such
679 licensee, or any person connected with the licensee in any capacity whatsoever in his licensed business
680 shall, either directly or indirectly, be a party to, consent to, solicit, or aid or abet another in a violation
681 of subsection A.

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

684 Any person convicted of a violation of this subsection shall be guilty of a Class 4 ~~misdemeanor~~ 6
685 *felony*.

686 **3. That the provisions of this act may result in a net increase in periods of imprisonment in state**
687 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
688 **is \$ 250,000.00.**