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HOUSE BILL NO. 977

Offered January 22, 1996

A BILL to amend and reenact §§ 4.1-100, 4.1-103, 4.1-111, 4.1-121, 4.1-122, 4.1-206, 4.1-210, 4.1-221, 4.1-231, 4.1-233, 4.1-234, 4.1-235, and 4.1-330 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-214.1, relating to alcoholic beverage control laws; package store licenses; penalty.

Patron—Robinson

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-100, 4.1-103, 4.1-111, 4.1-121, 4.1-122, 4.1-206, 4.1-210, 4.1-221, 4.1-231, 4.1-233, 4.1-234, 4.1-235, and 4.1-330 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section 4.1-214.1 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, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition.

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

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

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

"Board" means the Virginia Alcoholic Beverage Control Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 "Member of a club" means a person who maintains his membership in the club by the payment of
107 monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof. It shall
108 also mean a lifetime member whose financial contribution is not less than ten times the annual dues of
109 resident members of the club, the full amount of such contribution being paid in advance in a lump
110 sum.

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

113 "*Package store*" means the licensed premises of a package store licensee where alcoholic beverages
114 are sold at retail.

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

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

120 "Public place" means any place, building, or conveyance to which the public has, or is permitted to
121 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 completely denatured in accordance with formulas approved by the United States government.

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

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

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

§ 4.1-103. General powers of Board.

The Board shall have the power to:

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

2. Control the possession, sale, transportation and delivery of alcoholic beverages, *including alcoholic beverages possessed, sold, transported, and delivered by package store licensees*;

3. Determine, subject to § 4.1-121, the localities within which government stores shall be established

183 or operated and the location of such stores;

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

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

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

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

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

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

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

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

210 12. Promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and
211 § 4.1-111 of this chapter;

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

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

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

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

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

219 § 4.1-111. Regulations of Board.

220 A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general
221 laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to
222 prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The
223 Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or
224 repealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and shall have the effect
225 of law.

226 B. The Board shall promulgate regulations which:

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

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

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

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

241 C. The Board may promulgate regulations which provide for the waiver of the license tax for an
242 applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be
243 provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no
244 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.

§ 4.1-121. Referendum on establishment of government stores and private package stores.

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

~~The~~ *Depending on the petition, the question on the ballot shall be one or both of the following:*

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

"Shall the sale by private package store licensees of the Alcoholic Beverage Control Board of alcoholic beverages be permitted in(name of county, city or town)?"

The referendum shall be ordered and held and the results certified as provided in § 24.1-165. Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.

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

§ 4.1-122. Effect of local option referenda.

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

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

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

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

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

§ 4.1-206. 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 regulation.*

§ 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 on the premises 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 forty-five percent of the gross receipts from the sale of mixed beverages and food.

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 *or from package store licensees* 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 forty-five percent of its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption.

The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least forty-five percent of the gross receipts from the sale of mixed beverages and food.

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

4. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating a performing arts facility or (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture. The operation in either case shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the sale, on the dates of performances or events in furtherance of the purposes of the nonprofit corporation or association, of alcoholic beverages, for on-premises consumption in areas upon the licensed premises approved by the Board.

5. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth.

B. The granting of any license under subdivisions 1 and 5 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.

§ 4.1-214.1. *Limitation on package store licensees.*

A. *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 label as prescribed by the Board. No alcoholic beverages shall be consumed in such stores by any person.*

B. *No package store licensee or employee of such licensee shall sell or have in his possession any spirits which have not been obtained from the Board. Title to spirits shipped and delivered to such licensee shall not pass from the Board while in the custody and care of the licensee until the spirits have been actually sold by the licensee to a bona fide purchaser.*

C. *No package store licensee shall be engaged in any other business on the licensed premises. The sale of lottery tickets, when duly 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.*

D. *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 such applicant has obtained prior approval of the local governing body in which the licensed premises would be located. The Board shall determine the manner by which the approval of the local governing body shall be obtained.*

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

A. Unless excepted by subsection B, all alcoholic beverages sold as mixed beverages shall be purchased from the Board or from package store licensees.

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

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

§ 4.1-231. *Taxes on state licenses.*

A. The annual 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 during such year, \$2,860;

b. Fruit distiller's license, \$2,860;

c. Banquet facility license, \$145; and

- 429 d. Bed and breakfast establishment license, \$25; *and*
430 e. *Package store license*, \$500.
- 431 2. Wine licenses. - For each:
- 432 a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the
433 license is granted, \$350, and if more than 5,000 gallons manufactured during such year, \$2,860;
434 b. Wholesale wine license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per
435 year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine
436 per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year;
437 c. Wine importer's license, \$285;
438 d. Retail off-premises winery license, \$110; and
439 e. Farm winery license, \$145.
- 440 3. Beer licenses. - For each:
- 441 a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which
442 the license is granted, \$1,650, and if more than 10,000 barrels manufactured during such year, \$3,300;
443 b. Bottler's license, \$1,100;
444 c. Wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less,
445 and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a
446 year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year;
447 d. Beer importer's license, \$285;
448 e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common
449 carrier of passengers by train or boat, \$110; for each such license to a common carrier of passengers by
450 train or boat, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club
451 cars operated daily in the Commonwealth;
452 f. Retail off-premises beer license, \$90;
453 g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a
454 town or in a rural area outside the corporate limits of any city or town, \$230; and
455 h. Gourmet brewing shop, \$175.
- 456 4. Wine and beer licenses. - For each:
- 457 a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a
458 common carrier of passengers by train, boat or airplane, \$230; for each such license to a common
459 carrier of passengers by train or boat, \$230 per annum for each of the average number of boats, dining
460 cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to
461 a common carrier of passengers by airplane, \$575;
462 b. Retail on-premises wine and beer license to a hospital, \$110;
463 c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience
464 grocery store license, \$175;
465 d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$460; and
466 e. Banquet license, \$30 per license granted by the Board.
- 467 5. Mixed beverage licenses. - For each:
- 468 a. Mixed beverage restaurant licenses granted to persons operating restaurants, including restaurants
469 located on premises of and operated by hotels or motels, or other persons:
470 (i) With a seating capacity at tables for up to 100 persons, \$430;
471 (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$750; and
472 (iii) With a seating capacity at tables for more than 150 persons, \$1,100.
473 b. Mixed beverage restaurant licenses for restaurants located on the premises of and operated by
474 private, nonprofit clubs:
475 (i) With an average yearly membership of not more than 200 resident members, \$575;
476 (ii) With an average yearly membership of more than 200 but not more than 500 resident members,
477 \$1,430; and
478 (iii) With an average yearly membership of more than 500 resident members, \$2,125.
479 c. Mixed beverage caterer's licenses, \$1,430.
- 480 d. Mixed beverage special events licenses, \$35 for each day of each event.
481 e. Annual mixed beverage special events licenses, \$430.
482 f. Mixed beverage carrier licenses:
483 (i) \$145 for each of the average number of dining cars, buffet cars or club cars operated daily in the
484 Commonwealth by a common carrier of passengers by train;
485 (ii) \$430 for each common carrier of passengers by boat; and
486 (iii) \$1,135 for each license granted to a common carrier of passengers by airplane.
- 487 6. Temporary licenses. - For each temporary license authorized by § 4.1-211, one-half of the tax
488 imposed by this section on the license for which the applicant applied.
- 489 B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be
490 subject to proration to the following extent: If the license is granted in the second quarter of any year,

the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.

If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the number of gallons permitted to be manufactured shall be prorated in the same manner.

Should the holder of a distiller's license or a winery license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.

Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than 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*, \$250.

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;

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; and

e. Gourmet brewing shop, \$150.

3. Wine. - For each:

a. Winery license, \$1,000; and

b. Wholesale wine license, \$50.

4. Wine and beer. - For each:

a. Retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, in a city, \$150, and in a county or town, \$37.50;

b. Hospital license, \$10; and

c. Banquet license, \$5 for each license granted.

5. Mixed beverages. - For each:

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

(i) With a seating capacity at tables for up to 100 persons, \$200;

(ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and

(iii) With a seating capacity at tables for more than 150 persons, \$500.

b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;

c. Mixed beverage caterer's license, \$500; and

d. Mixed beverage special events licenses, \$10 for each day of each event.

B. Common carriers. - No local license tax shall be either charged or collected for the privilege of selling alcoholic beverages in (i) passenger trains, boats or airplanes and (ii) rooms designated by the

552 Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises
553 consumption only.

554 C. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in
555 the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local
556 retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales,
557 may include alcoholic beverages in the base for measuring such local license taxes the same as if the
558 alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter
559 shall exempt any licensee from any local merchants' or local restaurant license tax, but such local
560 merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license
561 taxes authorized by this chapter.

562 The governing body of any county, city or town, in adopting an ordinance under this section, shall
563 provide that in ascertaining the liability of (i) a beer wholesaler to local merchants' license taxation
564 under the ordinance, and in computing the local wholesale merchants' license tax on such beer
565 wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be
566 the amount of beer purchases which would be necessary to produce a local wholesale merchants' license
567 tax equal to the local wholesale beer license tax paid by such wholesaler and (ii) a wholesale wine
568 licensee to local merchants' license taxation under the ordinance, and in computing the local wholesale
569 merchants' license tax on such wholesale wine licensee, purchases of wine up to a stated amount shall
570 be disregarded, which stated amount shall be the amount of wine purchases which would be necessary
571 to produce a local wholesale merchants' license tax equal to the local wholesale wine licensee license tax
572 paid by such wholesale wine licensee.

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

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

579 § 4.1-234. Tax on wine and other alcoholic beverages; exceptions.

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

584 B. There is levied on other alcoholic beverages sold by the Board *or by package store licensees*, a
585 tax of twenty percent of the price charged. This subsection shall also apply to all alcoholic beverages
586 purchased from the Board *or package store licensees* by any mixed beverage licensee.

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

594 § 4.1-235. Collection; computation, distribution of tax on wine and other alcoholic beverages; refunds
595 and adjustments.

596 A. The Board *and package store licensees* shall collect the state taxes levied pursuant to § 4.1-234 as
597 ~~follows: in accordance with this section. Package store licensees shall remit taxes collected by it~~
598 ~~monthly to the Board, along with such reports as may be required by the Board, at the time and in the~~
599 ~~manner prescribed by the Board.~~

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

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

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

612 B. The amount of tax collected *by the Board* under this section during each quarter shall, within fifty
613 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.

§ 4.1-330. 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 *or package store* licensee; (ii) any agent, servant, or employee of such licensee; or (iii) any person connected with the licensee in any capacity whatsoever in his licensed business, to sell or offer for sale the particular spirits or other alcoholic beverage in which such person may be so interested.

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

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

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

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

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

2. That the provisions of this act shall become effective on July 1, 1997.