# CODE OF VIRGINIA

## Title 4.1

Alcoholic Beverage Control Act

# Title 4.1 - ALCOHOLIC BEVERAGE CONTROL ACT

## Chapter 1 - DEFINITIONS AND GENERAL PROVISIONS

### § 4.1-100. (Effective until July 1, 2018) Definitions

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

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

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

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

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

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

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

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

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

"Board" means the Virginia Alcoholic Beverage Control Board.

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

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

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

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

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

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

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of

edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

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

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

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

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

"Farm winery" means (i) an establishment (a) located on a farm in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 21 percent alcohol by volume or (b) located in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine manufactured by the institution shall be used solely for research and educational purposes, (c) the wine manufactured by the institution shall be stored on the premises of such farm winery that shall be separate and apart from all other facilities of the institution, and (d) such farm winery is operated in strict conformance with the requirements of this clause (ii) and Board regulations. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event that such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth. For purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation, " nothing in the definition of "land zoned agricultural" shall otherwise limit or affect local zoning authority.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty items relating to history, original and handmade arts and products, collectibles, crafts, and floral arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a

government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"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 park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

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

recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

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

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

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant 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 other than a limited mixed beverage restaurant 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.

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

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

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

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

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

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

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

Code 1950, §§ 4-2, 4-99; 1952, c. 496; 1954, c. 682; 1962, c. 533; 1968, c. 7, § 4-98.1; 1970, cc. 302, 309; 1974, cc. 460, 497; 1975, c. 408; 1976, cc. 64, 702; 1977, c. 280; 1980, cc. 324, 490; 1983, c. 340; 1984, c. 200; 1985, cc. 448, 457; 1988, c. 261, § 4-127; 1990, cc. 707, 932; 1991, c. 426; 1993, cc. 190, 866, 910; 1995, cc. 497, 518, 661; 1996, cc. 558, 604; 1997, cc. 124, 425; 1999, cc. 93, 171, 481; 2000, cc. 786, 1037, 1052; 2005, c. 911; 2006, c. 714; 2007, cc. 101, 295, 454, 558; 2008, cc. 198, 513, 875; 2013, cc. 107, 117; 2014, cc. 124, 510; 2015, cc. 25, 54, 288, 348, 735; 2016, cc. 324, 710.

**§ 4.1-100. (Effective July 1, 2018) Definitions**

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

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

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

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, powder or crystal, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid

containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

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

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

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

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

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

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

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

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

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

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in

large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

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

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

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

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

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

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

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

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

"Farm winery" means (i) an establishment (a) located on a farm in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 21 percent alcohol by volume or (b) located in the Commonwealth on land zoned agricultural with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth and with facilities for fermenting and bottling wine on the premises where the owner or lessee

manufactures wine that contains not more than 21 percent alcohol by volume or (ii) an accredited public or private institution of higher education, provided that (a) no wine manufactured by the institution shall be sold, (b) the wine manufactured by the institution shall be used solely for research and educational purposes, (c) the wine manufactured by the institution shall be stored on the premises of such farm winery that shall be separate and apart from all other facilities of the institution, and (d) such farm winery is operated in strict conformance with the requirements of this clause (ii) and Board regulations. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event that such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth. For purposes of this definition, "land zoned agricultural" means (1) land zoned as an agricultural district or classification or (2) land otherwise permitted by a locality for farm winery use. For purposes of this definition, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation, " nothing in the definition of "land zoned agricultural" shall otherwise limit or affect local zoning authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"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.

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

"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 park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

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 Authority in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

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

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and

other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Authority 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 or a limited mixed beverage restaurant 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 other than a limited mixed beverage restaurant 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.

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

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

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

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

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

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

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

Code 1950, §§ 4-2, 4-99; 1952, c. 496; 1954, c. 682; 1962, c. 533; 1968, c. 7, § 4-98.1; 1970, cc. 302, 309; 1974, cc. 460, 497; 1975, c. 408; 1976, cc. 64, 702; 1977, c. 280; 1980, cc. 324, 490; 1983, c. 340; 1984, c. 200; 1985, cc. 448, 457; 1988, c. 261, § 4-127; 1990, cc. 707, 932; 1991, c. 426; 1993, cc. 190, 866, 910; 1995, cc. 497, 518, 661; 1996, cc. 558, 604; 1997, cc. 124, 425; 1999, cc. 93, 171, 481; 2000, cc. 786, 1037, 1052; 2005, c. 911; 2006, c. 714; 2007, cc. 101, 295, 454, 558; 2008, cc. 198, 513, 875; 2013, cc. 107, 117; 2014, cc. 124, 510; 2015, cc. 25, 38, 54, 288, 348, 730, 735; 2016, cc. 324, 710.

**§ 4.1-101. (Effective until July 1, 2018) Department of Alcoholic Beverage Control**

The Department of Alcoholic Beverage Control is created and shall consist of the Virginia Alcoholic Beverage Control Board and the agents and employees of the Board.

Code 1950, § 4-6; 1976, c. 64; 1993, c. 866.

**§ 4.1-101. (Effective July 1, 2018) Virginia Alcoholic Beverage Control Authority created; public purpose**

A. The General Assembly has determined that there exists in the Commonwealth a need to control the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth. Further, the General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. To achieve this objective, there is hereby created an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, or judicial branches of state government, to be known as the Virginia Alcoholic Beverage Control Authority. The Authority's exercise of powers and duties conferred by this title shall be deemed the performance of an essential governmental function and a matter of public necessity for which public moneys may be spent. The Board of Directors of the Authority is vested with control of the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth, with plenary power to prescribe and enforce regulations and conditions under which alcoholic beverages are possessed, sold, transported, distributed, and delivered, so as to prevent any corrupt, incompetent, dishonest, or unprincipled practices and to

promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. The exercise of the powers granted by this title shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their safety, health, welfare, and convenience. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.

B. The Virginia Alcoholic Beverage Control Authority shall consist of the Virginia Alcoholic Beverage Control Board of Directors, the Chief Executive Officer, and the agents and employees of the Authority. The Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board.

C. Nothing contained in this title shall be construed as a restriction or limitation upon any powers that the Board of Directors of the Authority might otherwise have under any other law of the Commonwealth.

Code 1950, § 4-6; 1976, c. 64; 1993, c. 866; 2015, c. 38, 730.

**§ 4.1-101.01. (Effective July 1, 2018) Board of Directors; membership; terms; compensation**

A. The Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § 4.1-101.03.

B. After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.

C. The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of

the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

D. The Board shall meet at least every 60 days for the transaction of its business. Special meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.

E. Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth in the general appropriation act for members of the House of Delegates when the General Assembly is not in session, except that the chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of his official duties as set forth in the general appropriation act for a member of the Senate of Virginia when the General Assembly is not in session.

F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.

2015, cc. 38, 730.

**§ 4.1-101.02. (Effective July 1, 2018) Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer**

A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree in business or a related field of study; and shall possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive such compensation as determined by the Board and approved by the Governor, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § 4.1-101.03. The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved by the Governor. The Chief Executive Officer may be removed from office by the Governor for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board and approved by the Governor, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.

B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.

D. The Chief Executive Officer shall:

1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;

2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;

3. Appoint a chief financial officer and employ or retain such agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and

4. Make recommendations to the Board for legislative and regulatory changes.

E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

F. To assist the Chief Executive Officer in the performance of his duties, the Governor shall also appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.

2015, cc. 38, 730.

**§ 4.1-101.03. (Effective July 1, 2018) Background investigations of Board members and Chief Executive Officer**

All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a national criminal history records search and to the Department of State Police for a Virginia criminal history records search. The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section. No person shall be appointed to the Board or appointed by the Board who (i) has defrauded or attempted to defraud any federal, state, or local government or governmental agency or authority by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact; (ii) has willfully deceived or attempted to deceive any federal, state, or local government or governmental agency or governmental authority by making or maintaining business records required by statute or regulation that are false and fraudulent; or (iii) has been convicted of (a) a felony or a crime involving moral turpitude or (b) a violation of

any law applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages within the five years immediately preceding appointment.

2015, cc. 38, 730.

**§ 4.1-101.04. (Effective July 1, 2018) Financial interests of Board, employees, and family members prohibited**

No Board member or employee of the Authority shall (i) be a principal stockholder or (ii) otherwise have any financial interest, direct or indirect, in any licensee subject to the provisions of this title or in any entity that has submitted an application for a license under Chapter 2 (§ 4.1-200 et seq.). No Board member and no spouse or immediate family member of a Board member shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

2015, cc. 38, 730.

**§ 4.1-101.05. (Effective July 1, 2018) Employees of the Authority**

A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to employees of the former Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the former Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the former Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.

C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.

D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.

2015, cc. 38, 730.

**§ 4.1-101.06. (Effective July 1, 2018) Moneys of Authority**

All moneys of the Authority, from whatever source derived, shall be paid in accordance with § 4.1-116.

2015, cc. 38, 730.

**§ 4.1-101.07. (Effective July 1, 2018) Forms of accounts and records; audit; annual report**

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.

2015, cc. 38, 730.

**§ 4.1-101.08. (Effective July 1, 2018) Leases of property**

The Authority shall be exempt from the provisions of § 2.2-1149 and from any rules, regulations, and guidelines of the Division of Engineering and Buildings in relation to leases of real property into which it enters.

2015, cc. 38, 730.

**§ 4.1-101.09. (Effective July 1, 2018) Exemptions from taxes or assessments**

The exercise of the powers granted by this title shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the

improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this title or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.

2015, cc. 38, 730.

**§ 4.1-101.010. (Effective July 1, 2018) Exemption of Authority from personnel and procurement procedures; information systems**

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 apply to the Authority in the exercise of any power conferred under this title.

2015, cc. 38, 730.

**§ 4.1-101.011. (Effective July 1, 2018) Reversion to the Commonwealth**

In the event of the dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Commonwealth.

2015, cc. 38, 730.

**§ 4.1-101.1. Certified mail; subsequent mail or notices may be sent by regular mail; electronic communications as alternative to regular mail; limitation**

A. Whenever in this title the Board is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board may be sent by regular mail.

B. Except as provided in subsection C, whenever in this title the Board is required or permitted to send any mail, notice, or other official communication by regular mail to persons licensed under Chapter 2 (§ 4.1-200 et seq.), upon the request of a licensee, the Board may instead send such mail, notice, or official communication by email, text message, or other electronic means to the email address, telephone number, or other contact information provided to the Board by the licensee, provided that the Board retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery or a certificate of service prepared by the Board confirming the electronic delivery.

C. No notice required by § 4.1-227 to (i) a licensee of a hearing that may result in the suspension or revocation of his license or the imposition of a civil penalty or (ii) a person holding a permit shall be sent by the Board by email, text message, or other electronic means, nor shall any

decision by the Board to suspend or revoke a license or permit or impose a civil penalty be sent by the Board by email, text message, or other electronic means.

2011, c. 566; 2015, c. 412.

**§ 4.1-102. (Repealed effective July 1, 2018) Membership of Board**

A. The Board shall consist of three members appointed by the Governor, subject to confirmation by the General Assembly, for terms of five years each, to run from the expiration of the respective terms of the present members, except appointments to fill vacancies which shall be for the unexpired terms. The Governor shall designate the chairman from among the members of the Board. The Board, by its rules, may elect one of its members chairman pro tempore and another or some other person as secretary. Two Board members shall constitute a quorum.

B. Each Board member shall receive a salary to be fixed by the General Assembly.

C. Board members may be suspended or removed by the Governor for cause and shall be subject to impeachment under the provisions of Article IV, Section 17 of the Constitution of Virginia.

D. Each Board member shall, prior to the discharge of his duties, (i) take and subscribe the oath of office required by Article II, Section 7 of the Constitution of Virginia and (ii) give bond payable to the Commonwealth, in a form approved by the Attorney General, in such penalty as shall be fixed by the Governor, with some surety or guaranty company authorized to do business in the Commonwealth and approved by the Governor as security, conditioned upon the faithful discharge of his duties. The premium of such bonds shall be paid by the Commonwealth and the bonds shall be filed with and preserved by the Comptroller.

E. Each Board member shall devote his full time to the performance of his official duties.

Code 1950, § 4-4; 1970, c. 756; 1971, Ex. Sess., c. 1; 1974, c. 460; 1976, c. 64; 1993, c. 866; 2015, cc. 38, 730.

**§ 4.1-103. (Effective until July 1, 2018) General powers of Board**

The Board shall have the power to:

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

2. Buy and sell any mixers;

3. Buy and sell products licensed by the Virginia Tourism Corporation that are within international trademark classes 16 (paper goods and printed matter), 18 (leather goods), 21 (housewares and glass), and 25 (clothing);

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

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

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

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

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

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

10. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon; however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline alcohol;

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

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

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

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

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

16. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

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

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

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

Code 1950, § 4-7; 1974, c. 460; 1982, c. 647; 1984, c. 200; 1993, c. 866; 1996, c. 558; 2015, cc. 25, 735; 2016, c. 21.

**§ 4.1-103.01. Additional powers; access to certain tobacco sales records; inspections; penalty**

A. Notwithstanding the provisions of § 58.1-3 or any other provision of law, the Tax Commissioner shall provide to the Board the name, address, and other identifying information within his possession of all wholesale cigarette dealers.

B. All invoices, books, papers or other memoranda and records concerning the sale of cigarettes maintained by wholesale cigarette dealers pursuant to § 58.1-1007 shall be subject to inspection during normal business hours by special agents of the Board. Any person who, upon request by a special agent, unreasonably fails or refuses to allow an inspection of the records authorized by this subsection shall be guilty of a Class 2 misdemeanor.

C. The Board may use the information obtained from the Tax Commissioner or by the inspections authorized by subsection B only for the purpose of creating and maintaining a list of retail dealers to facilitate enforcement of the laws governing the sale of tobacco products to minors. Neither the Board nor any special agent shall divulge any information provided by the Tax Commissioner or obtained in the performance of the inspections authorized by subsection B to anyone other than to another special agent. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

1998, cc. 189, 364.

**§ 4.1-103.02. Additional powers; substance abuse prevention**

It shall be the responsibility of the Board to administer a substance abuse prevention program within the Commonwealth and to (i) coordinate substance abuse prevention activities of agencies of the Commonwealth in such program, (ii) review substance abuse prevention program expenditures by agencies of the Commonwealth, and (iii) determine the direction and appropriateness of such expenditures. The Board shall cooperate with federal, state, and local agencies, private and public agencies, interested organizations, and individuals in order to prevent substance abuse within the Commonwealth. The Board shall report annually by December 1 of each year to the Governor and the General Assembly on the substance abuse prevention activities of the Commonwealth.

2012, cc. 803, 835.

**§ 4.1-103. (Effective July 1, 2018) General powers of Board**

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;

4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;

5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;

6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed;

8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;

9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;

10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title 2.2;

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

12. Buy and sell any mixers;

13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass), and 25 (clothing);

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

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

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

17. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;

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

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

20. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon; however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline alcohol;

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

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

and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

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

24. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111;

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

26. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

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

28. Establish minimum food sale requirements for all retail licensees;

29. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate;

30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement activities undertaken to enforce the provisions of this title; and

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

Code 1950, § 4-7; 1974, c. 460; 1982, c. 647; 1984, c. 200; 1993, c. 866; 1996, c. 558; 2015, cc. 25, 38, 730, 735; 2016, c. 21.

**§ 4.1-103.1. (Effective until July 1, 2018) Criminal history records check required on certain employees; reimbursement of costs**

On or after July 1, 1994, all persons hired by the Board whose job duties involve access to or handling of departmental funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

The Department of State Police shall be reimbursed by the Board for the cost of investigations conducted pursuant to this section.

1994, c. 34.

**§ 4.1-103.1. (Effective July 1, 2018) Criminal history records check required on certain employees; reimbursement of costs**

All persons hired by the Authority whose job duties involve access to or handling of the Authority's funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

No person who has been convicted of a felony or a crime involving moral turpitude shall be employed or appointed by the Authority.

The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section.

1994, c. 34; 2015, cc. 38, 730.

**§ 4.1-104. Purchases by the Board**

The purchasing of alcoholic beverages and mixers, products used in connection with distilled spirits intended for resale, or products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 intended for resale, the making of leases, and the purchasing of real estate by the Board under the provisions of this title are exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

Code 1950, § 4-18; 1993, c. 866; 1996, c. 558; 2008, c. 135; 2016, c. 21.

**§ 4.1-105. Police power of members, agents and employees of Board**

Members of the Board are vested, and such agents and employees of the Board designated by it shall be vested, with like power to enforce the provisions of (i) this title and the criminal laws of the Commonwealth as is vested in the chief law-enforcement officer of a county, city, or town; (ii) § 3.2-4207; (iii) § 18.2-371.2; and (iv) § 58.1-1037.

Code 1950, § 4-8; 1993, c. 866; 1997, cc. 812, 882; 2000, cc. 880, 901; 2006, c. 695.

**§ 4.1-106. Liability of Board members; suits by and against Board**

A. No Board member may be sued civilly for doing or omitting to do any act in the performance of his duties as prescribed by this title, except by the Commonwealth, and then only in the Circuit Court of the City of Richmond. Such proceedings by the Commonwealth shall be instituted and conducted by the Attorney General.

B. The Board may, in the name of the Commonwealth, be sued in the Circuit Court of the City of Richmond to enforce any contract made by it or to recover damages for any breach thereof. The Board may defend the proceedings and may institute proceedings in any court. No such proceedings shall be taken against, or in the names of, the members of the Board.

Code 1950, § 4-12; 1993, c. 866 .

**§ 4.1-107. Counsel for members, agents and employees of Board**

If any member, agent, or employee of the Board shall be arrested, indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Board chairman may employ special counsel approved by the Attorney General to defend such member, agent, or employee. The compensation for special counsel employed pursuant to this section, shall, subject to the approval of the Attorney General, be paid in the same manner as other expenses incident to the administration of this title are paid.

Code 1950, § 4-20; 1958, c. 542; 1993, c. 866 .

**§ 4.1-108. Hearings; representation by counsel**

Any licensee or applicant for any license granted by the Board shall have the right to be represented by counsel at any Board hearing for which he has received notice. The licensee or applicant shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses; present evidence on behalf of the corporation; and draw conclusions and make arguments before the Board or hearing officers without being in violation of the provisions of § 54.1-3904.

1989, c. 266, § 4-10.1; 1993, c. 866 .

**§ 4.1-109. Hearings; allowances to witnesses**

Witnesses subpoenaed to appear on behalf of the Board shall be entitled to the same allowance for expenses as witnesses for the Commonwealth in criminal cases in accordance with § 17.1-611. Such allowances shall be paid out of the fund from which other costs incurred by the Board are paid upon certification to the Comptroller.

Code 1950, § 4-10; 1954, c. 709; 1993, c. 866 .

**§ 4.1-110. Purchase orders of Board for alcoholic beverages**

A. Every order of the Board for the purchase of alcoholic beverages shall be authenticated by the chairman or by a member or agent of the Board, authorized by the Board to authenticate such orders. No order shall be binding unless so authenticated.

B. A duplicate of every such order shall be kept on file in the office of the Board in accordance with retention regulations established pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.).

C. All cancellations of orders made by the Board shall be authenticated in the same manner and a duplicate kept as required by subsection B.

Code 1950, § 4-17; 1972, c. 138; 1984, c. 469; 1993, c. 866 .

**§ 4.1-111. Regulations of Board**

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

B. The Board shall promulgate regulations that:

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

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

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

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

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

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

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

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

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

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20 liters.

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title.

14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board are maintained by the parties.

15. Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour.

16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any 24-hour period and subject to any Board limitations on the frequency of such gifts.

17. Permit the sale of beer and cider for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.

18. Permit the sale of wine for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine growlers may be used only by persons licensed to sell wine for both on-premises and off-premises consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees

shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces, and (iv) the name and address of the retailer.

19. Permit the sale of wine and beer by retailers licensed to sell beer and wine for both on-premises and off-premises consumption, or by gourmet shop licensees for off-premises consumption in sealed containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is placed in the container following an order from the consumer.

20. Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the Board.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

3. Provide incentives to licensees with a proven history of compliance with state and federal laws and regulations to encourage licensees to conduct their business and related activities in a manner that is beneficial to the Commonwealth.

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.

Code 1950, §§ 4-11, 4-36; 1968, c. 7, §§ 4-98.5, 4-98.14; 1974, c. 460; 1982, c. 145; 1991, c. 690; 1992, c. 220; 1993, cc. 433, 866; 1997, c. 40; 1998, c. 301; 1999, cc. 98, 641; 2003, c. 856; 2008, c. 513; 2009, c. 122; 2010, c. 481; 2011, c. 728; 2012, cc. 376, 760, 818; 2015, cc. 404, 412.

**§ 4.1-112. Regulations relating to transportation of beer and wine coolers**

The Board may promulgate regulations relating to the transportation of beer and wine coolers through the Commonwealth, including a prohibition against the direct shipment of beer or wine coolers from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth for resale on such installation.

1988, c. 261, § 4-144; 1993, c. 866 .

**§ 4.1-112.1. Repealed**

Repealed by Acts 2007, cc. 99 and 799, cl. 2.

**§ 4.1-112.2. Outdoor advertising; limitations; variances; compliance with Title 33.2**

A. No outdoor alcoholic beverage advertising shall be placed within 500 linear feet on the same side of the road, and parallel to such road, measured from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a building or structure located on the real property of (i) a church, synagogue, mosque or other place of religious worship; (ii) a public, private, or parochial school, college, or university; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use.

B. However, (i) if there is no building or structure on a playground or similar recreational facility, the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to the property line of such playground or similar recreational facility and (ii) if a public or private school providing grade K through 12 education is located across the road from a sign, the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a building or structure located on such real property across the road.

C. If, at the time the advertisement was displayed, the advertisement was more than 500 feet from (i) a church, synagogue, mosque or other place of religious worship; (ii) a public, private, or parochial school, college, or university; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use, but the circumstances change such that the advertiser would otherwise be in violation of subsection A, the Board shall permit the advertisement to remain as displayed for the remainder of the term of any written advertising contract, but in no event more than one year from the date of the change in circumstances.

D. The Board may grant a permit authorizing a variance from the distance requirements of this section upon a finding that the placement of alcoholic beverage advertising on a sign will not unduly expose children to alcoholic beverage advertising.

E. Provided such signs are in compliance with local ordinances, the distance and zoning restrictions contained in this section shall not apply to:

1. Signs placed by licensees upon the property on which the licensed premises are located; or

2. Directional signs placed by manufacturers or wholesalers with advertising limited to trade names, brand names, the terms "distillery," "brewery," "farm winery," or "winery," and tour information.

F. The distance and zoning restrictions contained in this section shall not apply to any sign that is included in the Integrated Directional Sign Program administered by the Virginia Department of Transportation or its agents.

G. Nothing in this section shall be construed to authorize billboard signs containing outdoor alcoholic beverage advertising on property zoned agricultural or residential, or on any unzoned

property. Nor shall this section be construed to authorize the erection of new billboard signs containing outdoor advertising that would be prohibited under state law or local ordinance.

H. All lawfully erected outdoor alcoholic beverage signs shall comply with the provisions of this title, Board regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any outdoor alcoholic beverage directional sign located or to be located on highway rights of way shall also be governed by and comply with the Integrated Directional Sign Program administered by the Virginia Department of Transportation or its agents.

2012, cc. 760, 818.

**§ 4.1-113. Board not to regulate certain advertising in the interiors of retail establishments**

A. The Board shall not regulate the use of advertising materials or decorations within the premises of a retail on-premises licensee (i) where such advertising materials or decorations cannot be seen from the street or roadway outside of the licensed establishment and (ii) if the retail establishment is located within an enclosed area with no street or roadway, where such advertising or decorations cannot be seen more than fifteen feet from the nearest window.

B. This section shall not restrict the regulation of advertising materials or decorations containing references to an alcoholic beverage brand or manufacturer, except the Board shall not regulate such references contained in works of art.

C. This section shall not restrict or deny the Board its authority pursuant to §§ 4.1-216, 4.1-317, and subdivisions 11, 12, 13, 16, and 21 of § 4.1-325, nor shall this section authorize any manufacturer, bottler, wholesaler or importer of any alcoholic beverages to sell, rent, lend, buy for, or give to any retailer any advertising materials or decorations under any circumstances otherwise prohibited by law.

1981, c. 574, § 4-69.2; 1993, c. 866 .

**§ 4.1-113.1. Outdoor advertising; compliance with Title 33.2**

All lawfully erected outdoor alcoholic beverage signs shall comply with the provisions of this title, Board regulations, and Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any outdoor alcoholic beverage directional sign located or to be located on highway rights-of-way shall also be governed by and comply with the Integrated Directional Sign Program administered by the Virginia Department of Transportation or its agents.

2012, cc. 326, 618.

**§ 4.1-114. Annual review of operations of certain mixed beverage licensees**

The Board shall at least annually review the operations of each establishment holding a mixed beverage restaurant license and each person holding a caterer's license to determine whether during the preceding license year such licensee has met the food-beverage ratio required by § 4.1-210.

If not met, the license granted to such licensee may be suspended or revoked. If the license is revoked, no new license may be granted to the licensee with respect to such establishment or catering business for at least one year from the date of the revocation. For the purposes of this section and § 4.1-210, "nonalcoholic beverage" shall not include any beverages, ice, water or other mixer served with an alcoholic beverage.

1968, c. 7, § 4-98.7; 1980, c. 490; 1981, c. 565; 1986, c. 374; 1990, c. 402; 1993, c. 866 .

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

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

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

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

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

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

5. Any other information requested by the Governor.

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

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

Code 1950, § 4-13; 1984, c. 734; 1993, c. 866; 2004, c. 650; 2005, c. 633.

**§ 4.1-116. Disposition of moneys collected by Board; creation of Enterprise Fund; reserve fund**

A. All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description whatever, as required by § 2.2-1802.

All moneys so paid into the state treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the

payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages.

B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within fifty days after the close of each quarter or as otherwise provided in the appropriation act. As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of $2.5 million in connection with the administration of this title and to provide for the depreciation on the buildings, plants and equipment owned, held or operated by the Board.

C. The term "net profits" as used in this section means the total of all moneys collected by the Board less all costs, expenses and charges authorized by this section.

Code 1950, §§ 4-22, 4-23; 1960, c. 104; 1962, c. 385; 1964, c. 215; 1966, c. 431; 1968, c. 623; 1970, c. 727; 1972, cc. 138, 849; 1973, c. 349; 1974, c. 460; 1981, c. 514; 1982, c. 540; 1983, c. 427; 1984, c. 105; 1985, c. 222; 1993, c. 866 .

**§ 4.1-117. Disposition of net profits to localities**

When the moneys transferred quarterly or as otherwise provided in the appropriation act by the Comptroller to the general fund of the state treasury exceed the sum of $187,500, two-thirds of all moneys in excess of $187,500 shall be apportioned by the Comptroller and distributed quarterly within ten days following such transfer. Such payments shall be made by the Comptroller drawn on the Treasurer of Virginia to the several counties, cities, and towns of the Commonwealth, appropriated on the basis of the population of the respective counties, cities, and towns, according to the last preceding United States census. However, in the case of any town which came into existence in or about the year 1691 which is now the county seat of any county having a population of less than 45,000 but more than 40,000, and the boundaries of such town are not fixed, such portion of the moneys appropriated shall be based on an estimate of the population of such town made by the Center for Public Service. The judge of the circuit court of the county in which the town or city or greater part thereof seeking an increase under the provisions of this chapter is located may appoint two disinterested persons as commissioners, neither of whom shall reside in the county, city, or town which is the subject of the annexation proceedings. The commissioners so appointed shall determine the population of the territory annexed to the town or city as of the date of the last preceding United States census and report their findings to the court, and future distributions of the moneys allocated under the provisions of this chapter shall be made in accordance therewith. The Comptroller shall make no adjustments in his distribution of profits until the Secretary of the Commonwealth transmits to the Comptroller, pursuant to § 15.2-3209, a copy of the court order granting the petition of annexation.

Code 1950, § 4-22; 1960, c. 104; 1962, c. 385; 1964, c. 215; 1966, c. 431; 1968, c. 623; 1970, c. 727; 1972, c. 849; 1973, c. 349; 1974, c. 460; 1981, c. 514; 1982, c. 540; 1983, c. 427; 1984, c. 105; 1985, c. 222; 1993, c. 866 .

**§ 4.1-118. Certain information not to be made public**

Neither the Board nor its employees shall divulge any information regarding (i) financial reports or records required pursuant to § 4.1-114; (ii) the purchase orders and invoices for beer and wine filed with the Board by wholesale beer and wine licensees; or (iii) beer and wine taxes collected from, refunded to, or adjusted for any person. The provisions of § 58.1-3 shall apply, mutatis mutandis, to beer and wine taxes collected pursuant to this title and to purchase orders and invoices for beer and wine filed with the Board by wholesale beer and wine licensees.

Nothing contained in this section shall prohibit the use or release of such information or documents by the Board to any governmental or law-enforcement agency, or when considering the granting, denial, revocation, or suspension of a license or permit, or the assessment of any penalty against a licensee or permittee.

Nor shall this section prohibit the Board or its employees from compiling and disseminating to any member of the public aggregate statistical information pertaining to (i) malt beverage excise tax collection as long as such information does not reveal or disclose excise tax collection from any identified licensee; (ii) the total quantities of wine sold or shipped into the Commonwealth by each out-of-state winery, distributor, or importer for resale in the Commonwealth by wholesale wine licensees collectively; (iii) the total amount of wine sales in the Commonwealth by wholesale wine licensees collectively; or (iv) the total amount of purchases or sales submitted by licensees as required pursuant to § 4.1-114, provided such information does not identify the licensee.

1988, c. 261, § 4-145; 1993, c. 866; 1994, c. 179.

**§ 4.1-119. (Effective until July 1, 2018) Operation of government stores**

A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain, and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, and products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

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

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell

alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers.

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

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

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

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

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

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

Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of such agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer, two ounces of wine, or one-half ounce of spirits, unless served as a mixed beverage, in which case a single sample may contain up to one and one-half ounces of

spirits; (iii) no more than four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such agent from serving samples of spirits as part of a mixed beverage.

The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

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

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

Code 1950, § 4-15; 1958, c. 269; 1962, c. 453; 1970, c. 351; 1983, c. 267; 1984, c. 200; 1992, c. 782; 1993, cc. 252, 866; 1996, c. 558; 1999, c. 98; 2005, c. 651; 2006, c. 106; 2007, cc. 546, 726, 820; 2008, c. 609; 2009, c. 620; 2010, cc. 115, 170, 517; 2011, c. 713; 2012, c. 344; 2013, c. 476; 2014, cc. 437, 724; 2015, cc. 62, 604; 2016, cc. 21, 132, 141.

**§ 4.1-119. (Effective July 1, 2018) Operation of government stores**

A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain, and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, and products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

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

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the

United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers. Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.

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

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

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

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

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

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

Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of such agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer, two ounces of wine, or one-half ounce of spirits, unless served as a

mixed beverage, in which case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such agent from serving samples of spirits as part of a mixed beverage.

The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

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

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

J. Before the Authority implements any increase in the markup on distilled spirits or any change to the markup formula for distilled spirits pursuant to § 4.1-235 that would result in an increase in the retail price of distilled spirits sold to the public, the Authority shall (i) provide at least 45 days' public notice before such a price increase takes effect; (ii) provide the opportunity for submission of written comments regarding the proposed price increase; (iii) conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and (iv) consider any written or verbal comments before implementing such a price increase.

Code 1950, § 4-15; 1958, c. 269; 1962, c. 453; 1970, c. 351; 1983, c. 267; 1984, c. 200; 1992, c. 782; 1993, cc. 252, 866; 1996, c. 558; 1999, c. 98; 2005, c. 651; 2006, c. 106; 2007, cc. 546, 726, 820; 2008, c. 609; 2009, c. 620; 2010, cc. 115, 170, 517; 2011, c. 713; 2012, c. 344; 2013, c. 476; 2014, cc. 437, 724; 2015, cc. 38, 62, 604, 730; 2016, cc. 21, 132, 141.

**§ 4.1-120. When government stores closed**

A. Except as provided in subsection B, no sale or delivery of alcoholic beverages shall be made at any government store, nor shall any such store be kept open for the sale of alcoholic beverages:

1. On Sunday;

2. On Thanksgiving Day, Christmas Day and New Year's Day; or

3. During such other periods and on such other days as the Board may direct.

B. Certain government stores, as determined by the Board, may be open on Sunday for the sale of alcoholic beverages after 1:00 p.m.

Code 1950, § 4-19; 1972, c. 138; 1992, c. 129; 1993, c. 866; 2004, c. 1002; 2008, c. 134; 2012, c. 245.

**§ 4.1-121. (Effective until July 1, 2018) Referendum on establishment of government 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 of whether the sale by the Board of Alcoholic Beverages, other than beer and wine not produced by farm wineries, should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ten percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

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

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

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

Code 1950, § 4-45; 1954, c. 221; 1974, c. 399; 1975, c. 517; 1977, c. 683; 1980, cc. 541, 543; 1984, c. 200; 1993, c. 866.

**§ 4.1-121. (Effective July 1, 2018) Referendum on establishment of government 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 of whether the sale by the Virginia Alcoholic Beverage Control Authority, other than beer and wine not produced by farm wineries, should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the

filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

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

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

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

Code 1950, § 4-45; 1954, c. 221; 1974, c. 399; 1975, c. 517; 1977, c. 683; 1980, cc. 541, 543; 1984, c. 200; 1993, c. 866; 2015, cc. 38, 730.

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

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

B. If in any such referendum held in any county, city, or town in which a majority of the qualified voters have previously voted against permitting the sale of 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 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.

Code 1950, § 4-46; 1954, c. 221; 1974, c. 460; 1975, c. 482; 1977, c. 683; 1980, cc. 541, 543; 1982, cc. 66, 204; 1984, c. 200; 1991, c. 690; 1993, c. 866 .

**§ 4.1-123. Referendum on Sunday wine and beer sales; exception**

A. Either the qualified voters or the governing body of any county, city, town, or supervisor's election district of a county may file a petition with the circuit court of the county or city or of the county wherein the town or the greater part thereof is situated asking that a referendum be held on the question of whether the sale of beer and wine on Sunday should be permitted within that jurisdiction. The petition of voters 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 at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale of wine and beer between the hours of twelve o'clock p.m. on each Saturday and six o'clock a.m. on each Monday be permitted in _____ (name of county, city, town, or supervisor's election district of the county)?"

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

Notwithstanding an ordinance adopted pursuant to § 4.1-129, an affirmative majority vote on the question shall be binding on the governing body of the county, city, or town, and the governing body shall take all actions required of it to legalize such Sunday sales.

B. Notwithstanding the provisions of subsection A or § 4.1-129, where property that constitutes a farm winery lies within, or abuts, the boundaries of Floyd and Patrick Counties, the retail sale of wine by the farm winery licensee in the county that restricts the sale of wine and beer shall be allowed at one fixed location on a parcel of land that contains all or part of the licensee's producing vineyard and the licensee's vinification facilities.

The Board may refuse to allow such licensee the exercise of his retail sales privilege in the county restricting the Sunday sale of wine and beer if the Board determines, after giving the licensee notice and a hearing, that (i) the owner of the farm winery had actual knowledge that the vinification facilities and all or part of the producing vineyard were going to be located in the county restricting the sale of wine and beer prior to construction of the vinification facilities or (ii) the primary business purpose of the farm winery licensee is to engage in the retail sale of wine in such county rather than the business of a farm winery.

Nothing in this subsection shall apply to a farm winery licensee that has a retail establishment for the sale of its wine in the county adjoining the county that restricts the Sunday sale of wine and beer if the retail establishment is within one-half mile of the farm winery's vinification facilities.

1979, c. 621, § 4-96.3; 1980, c. 543; 1993, c. 866; 2001, cc. 594, 783; 2007, c. 813.

**§ 4.1-124. (Effective until July 1, 2018) Referendum on the sale of mixed beverages**

A. The provisions of this title relating to the sale of mixed beverages shall not become effective in any town, county, or supervisor's election district of a county until a majority of the voters voting in a referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election district of a county may file a petition with the circuit court of the county asking that a referendum be held on the question of whether the sale of mixed beverages by restaurants licensed by the Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the town, county, or supervisor's election district on January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

Petition requirements for any county shall be based on the number of registered voters in the county, including the number of registered voters in any town having a population in excess of 1,000 located within such county. Upon the filing of a petition, and under no other circumstances, the court shall order the election officials of the county to conduct a referendum on the question.

The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of general circulation in the town, county, or supervisor's election district once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale of mixed alcoholic beverages by restaurants licensed by the Alcoholic Beverage Control Board be permitted in .....(name of town, county, or supervisor's election district of county)?"

The referendum shall be ordered and held and the results certified as provided in Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. 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 town or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of a county on or after 30 days following the entry of the order if a majority of the voters voting in the referendum have voted "Yes."

The provisions of this section shall be applicable to towns having a population in excess of 1,000 to the same extent and subject to the same conditions and limitations as are otherwise applicable to counties under this section. Such towns shall be treated as separate local option units, and only residents of any such town shall be eligible to vote in any referendum held pursuant to this section for any such town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote in any referendum held pursuant to this section for any county in which the town is located.

The provisions of this section shall not require any town created as a result of a city-to-town reversion pursuant to Chapter 41 (§ 15.2-4100 et seq.) of Title 15.2 to hold a referendum on the same question if a majority of the voters voting in the former city had previously approved the sale of mixed beverages by restaurants licensed by the Board in such city.

B. Once a referendum has been held, no other referendum on the same question shall be held in the town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § 4.1-122, the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § 4.1-210. However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

1968, c. 7, §§ 4-98.12, 4-98.13; 1975, c. 517; 1979, c. 199; 1982, c. 31; 1985, c. 551; 1986, c. 70; 1988, c. 156; 1991, c. 690; 1993, c. 866; 1995, c. 177; 1997, c. 126; 2011, c. 560.

**§ 4.1-124. (Effective July 1, 2018) Referendum on the sale of mixed beverages**

A. The provisions of this title relating to the sale of mixed beverages shall not become effective in any town, county, or supervisor's election district of a county until a majority of the voters voting in a referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election district of a county may file a petition with the circuit court of the county asking that a referendum be held on the question of whether the sale of mixed beverages by restaurants licensed by the Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the town, county, or supervisor's election district on January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

Petition requirements for any county shall be based on the number of registered voters in the county, including the number of registered voters in any town having a population in excess of 1,000 located within such county. Upon the filing of a petition, and under no other circumstances, the court shall order the election officials of the county to conduct a referendum on the question.

The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of general circulation in the town, county, or supervisor's election district once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale of mixed alcoholic beverages by restaurants licensed by the Virginia Alcoholic Beverage Control Authority be permitted in ..... (name of town, county, or supervisor's election district of county)?"

The referendum shall be ordered and held and the results certified as provided in Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. 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 town or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of a county on or after 30 days following the entry of the order if a majority of the voters voting in the referendum have voted "Yes."

The provisions of this section shall be applicable to towns having a population in excess of 1,000 to the same extent and subject to the same conditions and limitations as are otherwise applicable to counties under this section. Such towns shall be treated as separate local option units, and only residents of any such town shall be eligible to vote in any referendum held pursuant to this section for any such town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote in any referendum held pursuant to this section for any county in which the town is located.

The provisions of this section shall not require any town created as a result of a city-to-town reversion pursuant to Chapter 41 (§ 15.2-4100 et seq.) of Title 15.2 to hold a referendum on the same question if a majority of the voters voting in the former city had previously approved the sale of mixed beverages by restaurants licensed by the Board in such city.

B. Once a referendum has been held, no other referendum on the same question shall be held in the town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § 4.1-122, the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § 4.1-210. However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

1968, c. 7, §§ 4-98.12, 4-98.13; 1975, c. 517; 1979, c. 199; 1982, c. 31; 1985, c. 551; 1986, c. 70; 1988, c. 156; 1991, c. 690; 1993, c. 866; 1995, c. 177; 1997, c. 126; 2011, c. 560; 2015, cc. 38, 730.

**§ 4.1-125. Section 4.1-124 applicable to certain towns**

The provisions of § 4.1-124 shall be applicable mutatis mutandis to any town within the Commonwealth which is entirely surrounded by a base of the United States armed forces.

1968, c. 761, § 4-98.12:1; 1993, c. 866 .

**§ 4.1-126. Licenses for establishments in national forests, certain adjoining lands, on the Blue Ridge Parkway, and certain other properties**

A. Notwithstanding the provisions of § 4.1-124, mixed beverage licenses may be granted to establishments located (i) on property owned by the federal government in Jefferson National Forest, George Washington National Forest or the Blue Ridge Parkway; (ii) at altitudes of 3,800 feet or more above sea level on property adjoining the Jefferson National Forest; (iii) at an altitude of 2,800 feet or more above sea level on property adjoining the Blue Ridge Parkway at Mile Marker No. 189; (iv) on property within one-quarter mile of Mile Marker No. 174 on the Blue Ridge Parkway; (v) on property developed by a nonprofit economic development company or an industrial development authority; (vi) on old Jonesboro Road between Routes 823 and 654, located approximately 4,500 feet from the City of Bristol; (vii) on property developed as a motor sports road racing club, of which the track surface is 3.27 miles in length, on 1,200 acres of rural property bordering the Dan River in Halifax County, with such license applying to any area of the property deemed appropriate by the Board; (viii) at an altitude of 2,645 feet or more above sea level on land containing at least 750 acres used for recreational purposes and located within two and one-half miles of the Blue Ridge Parkway; (ix) on property fronting U.S. Route 11, with portions fronting Route 659, adjoining the City of Bristol and located approximately 2,700 feet north of mile marker 7.7 on Interstate 81; (x) on property bounded on the north by U.S. Route 11 and to the south by Interstate 81, and located between mile markers 8.1 and 8.5 of Interstate 81; (xi) on property consisting of at least 10,000 acres and operated as a resort located in any county with a population between 19,200 and 19,500; (xii) on property located as of December 1, 2012, within the Montgomery County Route 177 Urban Development Area, which area is adjacent to Exit 109 on Interstate 81; (xiii) on property fronting Route 603, with portions fronting on Interstate 81, located approximately 1,100 feet from the intersection of Route 603 and Interstate 81 at Exit 128; (xiv) on property located south of and within 1,400 feet of Interstate 81 between mile markers 38.8 and 39.5; (xv) on property bounded on the north by Interstate 81, on the west and south by State Route 691, and on the east by State Route 689; (xvi) on property located south of and within 1,500 feet of Interstate 81 between mile markers 44 and 44.4; (xvii) on property within 1,500 feet of Interstate 81 on either frontage road between mile markers 75 and 86 in the County of Wythe; (xviii) on property within the boundary of any town incorporated in 1875 located adjacent to the intersection of Interstate 81 and Route 91; (xix) on property adjacent to the intersection of U.S. Route 220 North and State Route 57, operated as a country club as of December 31, 1926, in Henry County; (xx) on property adjacent to Lake Lanier, operated as a country club as of December 31, 1932, in Henry County; (xxi) on property fronting Old Jonesboro Road between Routes 823 and 808, located approximately 4,500 feet south of Interstate 81, and operated as a country club;

(xxii) on property located west of Route 58 and approximately 3,000 feet north of Interstate 81; (xxiii) on property fronting U.S. Route 11 and 1,300 feet north of Interstate 81; (xxiv) on property located within 1,500 feet of Exit 26 on Interstate 81; (xxv) on property within the boundary of any town incorporated in 1911 located adjacent to the intersection of Route 63 and Route 58 Alternate; (xxvi) on property within the boundary of any town incorporated in 1894 consisting of 1.9 square miles and, prior to the town's incorporation, known as Guest Station; and (xxvii) on property fronting Kanawha Ridge Road, located within approximately 700 feet of Route 638, and operated as a resort in Carroll County as of December 31, 2007.

B. In granting any license under clauses (iii) and (iv) of subsection A, the Board shall consider whether the (i) voters of the jurisdiction in which the establishment is located have voted by referendum under the provisions of § 4.1-124 to prohibit the sale of mixed beverages and (ii) granting of a license will give that establishment an unfair business advantage over other establishments in the same jurisdiction. If an unfair business advantage will result, then no license shall be granted.

1972, c. 304, § 4-98.12:2; 1976, c. 169; 1988, c. 63; 1992, c. 876; 1993, cc. 866, 954; 2001, cc. 461, 845; 2005, cc. 646, 689; 2006, c. 752; 2007, cc. 469, 813; 2013, cc. 35, 186, 558, 601, 633; 2014, c. 692; 2015, c. 348; 2016, c. 659.

**§ 4.1-127. Contests of local option referenda**

The regularity or legality of any referendum held pursuant to §§ 4.1-121, 4.1-123 and 4.1-124 shall be subject to the inquiry, determination, and judgment of the circuit court which ordered the referendum. The court shall proceed upon complaint of fifteen or more qualified voters of the county, city, or town, filed within thirty days after the date the results of the referendum are certified and setting out fully the grounds of contest. The complaint and the proceedings shall conform as nearly as practicable to the provisions of § 15.2-1654, and the judgment of the court entered of record shall be a final determination of the regularity and legality of the referendum.

Code 1950, § 4-47; 1993, c. 866 .

**§ 4.1-128. (Effective until July 1, 2018) Local ordinances or resolutions regulating or taxing alcoholic beverages**

A. No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other

than the taxes authorized by §§ 58.1-605, 58.1-3833 or § 58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

Code 1950, § 4-98; 1983, c. 340; 1993, c. 866; 2000, cc. 381, 450; 2007, cc. 140, 454.

**§ 4.1-128. (Effective July 1, 2018) Local ordinances or resolutions regulating or taxing alcoholic beverages**

A. No county, city, or town shall, except as provided in § 4.1-205 or 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by § 58.1-605, 58.1-3833 or 58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii)

subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

Code 1950, § 4-98; 1983, c. 340; 1993, c. 866; 2000, cc. 381, 450; 2007, cc. 140, 454; 2015, cc. 38, 730.

**§ 4.1-129. Local ordinances regulating time of sale of wine and beer**

The governing body of each county may adopt ordinances effective in that portion of such county not embraced within the corporate limits of any incorporated town, and the governing body of each city and town may adopt ordinances effective in such city or town, prohibiting the sale of wine or beer, or both, between the hours of twelve o'clock p.m. on each Saturday and six o'clock a.m. on each Monday, or fixing hours within such period during which wine or beer, or both, may be sold. Such governing bodies shall provide for fines and other penalties for violations of any such ordinances which shall be enforced as if the violations were Class 1 misdemeanors, with a right of appeal pursuant to § 16.1-106. Such ordinances shall not affect the sale of wine and beer on common carriers of passengers by train, boat, or airplane.

A copy of any ordinance adopted pursuant to this section shall be certified by the clerk of the governing body adopting it and transmitted to the Board.

On and after the effective date of any ordinance adopted pursuant to this section, no retail licensee authorized to sell wine or beer, or both, shall sell or permit the drinking of wine or beer on the premises of such licensee during the hours limited by the ordinance.

Code 1950, § 4-97; 1993, c. 866 .

**§ 4.1-130. Importation of beverages not under customs or internal revenue bonds; storage in approved warehouses; release**

A. Notwithstanding the provisions of § 4.1-310, alcoholic beverages not under United States customs bonds or internal revenue bonds may be transported into and stored in the Commonwealth in warehouses which have been approved by the Board for that purpose.

The Board may refuse to approve any warehouse as a place where alcoholic beverages may be stored if it has reasonable cause to believe that the owner or operator of the warehouse is a person to whom or the place sought to be approved is one for which the Board may refuse to grant a license under the provisions of § 4.1-222, which shall apply mutatis mutandis, unless the provisions of such section are inapplicable.

The Board may disapprove any warehouse which has been approved as a place where alcoholic beverages may be stored if it has reasonable cause to believe that a ground exists for which the

Board may suspend or revoke a license under the provisions of § 4.1-225, which shall apply mutatis mutandis, unless the provisions of such section are inapplicable.

B. Alcoholic beverages stored in warehouses in the Commonwealth pursuant to this section shall be released only on permits issued by the Board for delivery to the Board or to persons entitled to receive them within or outside the Commonwealth.

1962, c. 200, § 4-84.1; 1993, c. 866 .

**§ 4.1-131. Importation of beverages under customs bonds and holding in warehouses; release**

A. Alcoholic beverages may be imported into the Commonwealth under United States customs bonds and be held in the Commonwealth in United States customs bonded warehouses. Alcoholic beverages may be removed from any such warehouse, wherever situated, to such a warehouse located in the Commonwealth and be held in the Commonwealth.

B. Alcoholic beverages so imported or removed to such warehouses in the Commonwealth shall be released from customs bonds in the Commonwealth only (i) for delivery to the Board, or to licensees entitled to receive them in the Commonwealth, as provided in § 4.1-310; (ii) to boats engaged in foreign trade, trade between the Atlantic and Pacific ports of the United States, trade between the United States and any of its possessions outside of the several states and the District of Columbia, or for shipment outside of the Commonwealth; or (iii) in accordance with subsection C for the official or personal use of persons who are on duty in the United States as members of the armed forces of any foreign country, or their immediate family, authorized by federal laws and regulations to receive imported alcoholic beverages free of customs duties and internal revenue taxes.

C. Persons operating United States customs bonded warehouses and licensed as wholesalers or retailers may make sales and deliveries, in quantities determined by the Board, of alcoholic beverages held in customs bond to foreign armed forces personnel as provided in subsection B. Such sales may be made only on permits issued by the Board which shall cover the transportation of such imported alcoholic beverages, either by the operator of a customs bonded warehouse or purchaser from the operator, from such customs bonded warehouse to the place of duty or residence of such authorized persons.

Code 1950, § 4-85; 1958, c. 394; 1960, c. 101; 1984, c. 128; 1993, c. 866 .

**§ 4.1-132. Transportation into or within Commonwealth under internal revenue bond and holding in warehouses; release**

A. Alcoholic beverages may be transported into the Commonwealth under United States internal revenue bonds and be held in the Commonwealth in United States internal revenue bonded warehouses. Alcoholic beverages may be removed from any such warehouse, wherever situated, to such a warehouse located in the Commonwealth and be held in the Commonwealth.

B. Alcoholic beverages may be transported within the Commonwealth under United States internal revenue bonds and be held in United States internal revenue bonded warehouses. Alcoholic beverages may be removed from any such warehouse and transported to a winery or farm winery licensee in accordance with § 4.1-207.

C. Alcoholic beverages so transported or removed to such warehouses in the Commonwealth shall be released from internal revenue bonds in the Commonwealth only on permits issued by the Board for delivery to (i) boats engaged in foreign trade, trade between the Atlantic and Pacific ports of the United States, or trade between the United States and any of its possessions outside of the several states and the District of Columbia; (ii) installations of the United States Department of Defense; or (iii) holders of permits issued in accordance with subdivision A 14 of § 4.1-212.

Code 1950, § 4-86; 1954, c. 21; 1993, c. 866; 2003, c. 564; 2006, c. 826.

**§ 4.1-133. Bailment system of warehousing; prohibited fees and charges**

In the event that the Board adopts any regulation or policy providing for bailment warehousing operations or otherwise requiring that a vendor of alcoholic beverages retain ownership or legal title to beverages purchased or ordered for purchase by the Board for any period after the Board or its agent comes into physical possession of such beverages, the Board shall not impose upon any vendor required to provide stock under such bailment system any:

1. Overstock fee or other charge based or premised in whole or in part upon the fact that a vendor has delivered to any warehouse, store or other facility owned or operated by the Board or its agent bailed stock in excess of any maximum inventory level established or suggested by the Board.

2. Space reservation fee or other charge based or premised in whole or in part upon the fact that a vendor has delivered to any warehouse, store or other facility owned or operated by the Board or its agent bailed stock in a quantity less than any minimum inventory level established or suggested by the Board.

3. Fee or charge for the movement of bailed stock within a bailment warehouse or other bailment facility, or from a bailment warehouse or other bailment facility to a work area in proximity to such warehouse or facility, not at the request of the vendor holding legal title to such stock for the purpose of inspecting such stock.

4. Fee or charge for conducting a physical inventory of bailed stock at the request of the vendor holding legal title to such stock, provided that no more than two such requests have been made within the current fiscal year with respect to the particular item or brand of stock that is the subject of the request.

5. Fee or charge for withdrawal of bailed stock by the vendor who retains legal title to such stock.

6. Fee or charge greater than fifteen dollars per hour for the placement of stock on pallets or other appurtenances designed to facilitate the movement of stock within the warehouse or other facility.

1996, c. 692.

## Chapter 2 - ADMINISTRATION OF LICENSES

## Article 1 - GENERAL PROVISIONS

### § 4.1-200. Exemptions from licensure

The licensure requirements of this chapter shall not apply to:

1. A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, who administers or causes to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes. Such person may charge for the alcoholic beverages so administered, and carry such stock as may be necessary for this purpose. No charge shall be made of any patient for the alcoholic beverages so administered to him where the same have been supplied to the institution by the Board free of charge.

2. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicine containing sufficient medication to prevent it from being used as a beverage.

3. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopoeia; national formulary, patent and proprietary preparations; and other bona fide medicinal and technical preparations; which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which are manufactured and sold to be used exclusively as medicine and not as beverages.

4. The manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

5. The manufacture and sale of food products known as flavoring extracts which are manufactured and sold for cooking and culinary purposes only and not sold as beverages.

6. Any person who manufactures at his residence or at a gourmet brewing shop for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both, in an amount not to exceed the limits permitted by federal law.

Any person who manufactures wine or beer in accordance with this subdivision may remove from his residence an amount not to exceed fifty liters of such wine or fifteen gallons of such beer on any one occasion for (i) personal or family use, provided such use does not violate the provisions of this title or Board regulations; (ii) giving to any person to whom wine or beer may be lawfully

sold an amount not to exceed (a) one liter of wine per person per year or (b) seventy-two ounces of beer per person per year, provided such gift is for noncommercial purposes; or (iii) giving to any person to whom beer may lawfully be sold a sample of such wine or beer, not to exceed (a) one ounce of wine by volume or (b) two ounces of beer by volume for on-premises consumption at events organized for judging or exhibiting such wine or beer, including events held on the premises of a retail licensee. Nothing in this paragraph shall be construed to authorize the sale of such wine or beer.

The provision of this subdivision shall not apply to any person who resides on property on which a winery, farm winery, or brewery is located.

7. Any person who keeps and possesses lawfully acquired alcoholic beverages in his residence for his personal use or that of his family. However, such alcoholic beverages may be served or given to guests in such residence by such person, his family or servants when (i) such guests are 21 years of age or older or are accompanied by a parent, guardian, or spouse who is 21 years of age or older, (ii) the consumption or possession of such alcoholic beverages by family members or such guests occurs only in such residence where the alcoholic beverages are allowed to be served or given pursuant to this subdivision, and (iii) such service or gift is in no way a shift or device to evade the provisions of this title.

8. Any person who manufactures and sells cider to distillery licensees, or any person who manufactures wine from grapes grown by such person and sells it to winery licensees.

9. The sale of wine and beer in or through canteens or post exchanges on United States reservations when permitted by the proper authority of the United States.

10. The keeping and consumption of any lawfully acquired alcoholic beverages at a private meeting or private party limited in attendance to members and guests of a particular group, association or organization at a banquet or similar affair, or at a special event, if a banquet license has been granted. However, no banquet license shall be required for private meetings or private parties limited in attendance to the members of a common interest community as defined in § 54.1-2345 and their guests, provided (i) the alcoholic beverages shall not be sold or charged for in any way, (ii) the premises where the alcoholic beverages are consumed is limited to the common area regularly occupied and utilized for such private meetings or private parties, and (iii) such meetings or parties are not open to the public.

Code 1950, §§ 4-50, 4-89, 4-90; 1954, c. 147; 1970, cc. 113, 541; 1972, cc. 75, 76, 741; 1973, c. 413; 1975, c. 408; 1976, c. 37; 1981, c. 410; 1984, c. 200; 1992, c. 349; 1993, c. 866; 1995, cc. 497, 518; 2001, c. 117; 2006, cc. 274, 740; 2010, c. 294; 2011, c. 8.

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

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

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

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

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

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

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

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

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

8. The receipt by a fruit distillery licensee of deliveries and shipments of alcoholic beverages made from fruit or fruit juices in closed containers from other fruit distilleries owned by such licensee,

or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to persons outside of the Commonwealth for resale outside of the Commonwealth.

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

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

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

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

13. Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in the Commonwealth, from distributing to retail licensees and their employees novelties and specialties, including wearing apparel, having a wholesale value of $10 or less and that bear alcoholic beverage advertising. Such items may be distributed to retail licensees in quantities equal to the

number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises.

14. Any (i) retail on-premises wine or beer licensee, his agent or employee from offering for sale or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of wines or beers consisting of samples of not more than five different wines or beers and (ii) mixed beverage licensee, his agent or employee from offering for sale or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples of not more than five different spirits products.

15. Any restaurant licensed under this chapter from permitting the consumption of lawfully acquired wine, beer, or cider by bona fide customers on the premises in all areas and locations covered by the license, provided that (i) all such wine, beer, or cider shall have been acquired by the customer from a retailer licensed to sell such alcoholic beverages and (ii) no such wine, beer, or cider shall be brought onto the licensed premises by the customer except in sealed, non-resealable bottles or cans. The licensee may charge a corkage fee to such customer for the wine, beer, or cider so consumed; however, the licensee shall not charge any other fee to such customer.

16. Any winery, farm winery, wine importer, or wine wholesaler licensee from providing to adult customers of licensed retail establishments information about wine being consumed on such premises.

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

Code 1950, § 4-89; 1954, c. 147; 1970, cc. 113, 541; 1972, cc. 75, 76; 1973, c. 413; 1975, c. 408; 1981, c. 410; 1984, c. 200; 1992, c. 349; 1993, c. 866; 1995, cc. 253, 317; 1997, c. 386; 2000, c. 786; 2003, c. 630; 2004, c. 379; 2006, cc. 106, 826; 2007, c. 820; 2011, c. 559; 2012, c. 376; 2013, c. 604; 2014, cc. 123, 455; 2015, cc. 404, 604; 2016, c. 26.

**§ 4.1-201.1. Conduct not prohibited by this title; tastings conducted by manufacturers, wine or beer wholesalers, and authorized representatives**

A. Manufacturers of alcoholic beverages, whether or not licensed in the Commonwealth, and wine or beer wholesalers may conduct tastings of wine, beer, or spirits within hotels, restaurants, and clubs licensed for on-premises consumption provided:

1. The tastings are conducted only by (i) employees of such manufacturers or wholesalers or (ii) authorized representatives of such manufacturers or wholesalers, which authorized representatives have obtained a permit in accordance with subdivision A 15 of § 4.1-212;

2. Such employees or authorized representatives are present while the tastings are being conducted;

3. No category of alcoholic beverage products is offered to consumers unless the retail licensee on whose premises the tasting is conducted is licensed to sell that category of alcoholic beverage product;

4. All alcoholic beverage products used in the tasting are served to the consumer by employees of the retail licensee;

5. The quantity of wine, beer, or spirits provided to any person during the tasting does not exceed 12 ounces of beer, five ounces of wine, or one and one-half ounces of spirits; however, for any spirits tastings, no single sample shall exceed one-half ounce per spirits product offered and no more than three spirits products may be offered to any patron; and

6. All alcoholic beverage products used in the tasting are purchased from the retail licensee on whose premises the tasting is conducted; except that no more than $100 may be expended by or on behalf of any such manufacturer or wholesaler at any retail licensed premises during any 24-hour period. For the purposes of this subdivision, the $100 limitation shall be exclusive of taxes and gratuities, which gratuities may not exceed 20 percent of the cost of the alcoholic beverages, including taxes, for the alcoholic beverages purchased for the tasting.

B. Manufacturers, wholesalers, and their authorized representatives shall keep complete records of each tasting authorized by this section for a period of not less than two years, which records shall include the date and place of each tasting conducted and the dollar amount expended by the manufacturer, wholesaler, or his agent or representative in the purchase of the alcoholic beverages used in the tasting.

C. Manufacturers and wholesalers shall be held liable for any violation of this section committed by their employees or authorized representative in connection with their employment or representation at any tasting event.

2006, c. 826; 2007, cc. 452, 722.

**§ 4.1-202. To whom privileges conferred by licenses extend; liability for violations of law**

The privilege of any licensee to sell or serve alcoholic beverages shall extend to such licensee and to all agents or employees of such licensee for the purpose of selling or serving alcoholic beverages under such license. The licensee may be held liable for any violation of this title or any Board regulation committed by such agents or employees in connection with their employment.

1968, c. 7, § 4-98.4; 1981, c. 381, § 4-37.2; 1993, c. 866 .

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

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

B. No license shall be transferable from one person to another, or from one location to another. The Board may permit a licensee to amend the classification of an existing license without complying with the posting and publishing procedures required by § 4.1-230 if the effect of the amendment is to reduce materially the privileges of an existing license. However, if (i) the Board determines that the amendment is a device to evade the provisions of this chapter, (ii) a majority of the corporate stock of a retail licensee is sold to a new entity, or (iii) there is a change of business at the premises of a retail licensee, the Board may, within 30 days of receipt of written notice by the licensee of a change in ownership or a change of business, require the licensee to comply with any or all of the requirements of § 4.1-230. If the Board fails to exercise its authority within the 30-day period, the licensee shall not be required to reapply for a license. The licensee shall submit such written notice to the Secretary of the Board.

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

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

The Board may grant licenses for one year or for multiple years, not to exceed three years, based on the fees set forth in § 4.1-231. Qualification for a multiyear license shall be determined on the basis of criteria established by the Board. Fees for multiyear licenses shall not be refundable except as provided in § 4.1-232. The Board may provide a discount for two-year or three-year licenses, not to exceed five percent of the applicable license fee, which extends for one fiscal year and shall not be altered or rescinded during such period.

The Board may permit a licensee who fails to pay:

1. The required license tax covering the continuation or reissuance of his license by midnight of the fifteenth day of the twelfth month or of the designated month of expiration, whichever is applicable, to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within 30 days following that date and is accompanied by a civil penalty of $25 or 10 percent of such tax, whichever is greater; and

2. The tax and civil penalty pursuant to subdivision 1 to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within 45 days following the 30 days specified in subdivision 1 and is accompanied by a civil penalty of $100 or 25 percent of such tax, whichever is greater.

Such civil penalties collected by the Board shall be deposited in accordance with § 4.1-114.

E. Subsections A and C shall not apply to common carriers of passengers by train, boat, or airplane.

Code 1950, § 4-34; 1972, c. 178; 1974, c. 460; 1980, c. 524; 1984, c. 180; 1993, cc. 424, 866; 1997, c. 37; 2007, cc. 870, 932; 2013, c. 642; 2015, c. 412.

**§ 4.1-203.1. Managers of licensed retail establishments**

The Board may suspend or revoke any license if it finds that the licensee has been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its managers or otherwise constituting a pattern or practice of employing unauthorized aliens on the licensed premises in the Commonwealth.

2012, c. 643.

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

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

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

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

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

E. Delivery permittees. -- Every holder of a delivery permit issued pursuant to § 4.1-212.1 shall keep complete, accurate, and separate records in accordance with Board regulations of all deliveries of wine or beer to persons in the Commonwealth. Such permittees shall also remit on a

monthly basis an accurate account that sets forth the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is delivered. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report to the Board for that month; however, every permittee must submit a report to the Board no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

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

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

Code 1950, § 4-44; 1958, c. 192; 1968, c. 7, § 4-98.6; 1970, c. 784; 1988, c. 261, §§ 4-134, 4-135, 4-137; 1992, cc. 161, 220; 1993, c. 866; 2003, cc. 1029, 1030; 2007, cc. 99, 799; 2008, c. 513.

**§ 4.1-205. Local licenses**

A. In addition to the state licenses provided for in this chapter, the governing body of each county, city or town in the Commonwealth may provide by ordinance for the issuance of county, city or town licenses and to charge and collect license taxes therefor, to persons licensed by the Board to manufacture, bottle or sell alcoholic beverages within such county, city or town, except for temporary licenses authorized by § 4.1-211. Subject to § 4.1-233, the governing body of a county, city or town may classify licenses and graduate the license taxes therefor in the manner it deems proper.

B. No county, city or town shall issue a local license to any person who does not hold or secure simultaneously the proper state license. If any person holds any local license without at the same time holding the proper state license, the local license, during the period when such person does not hold the proper state license, shall confer no privileges under the provisions of this title.

Code 1950, § 4-38; 1952, c. 535; 1970, cc. 627, 734; 1976, c. 496; 1978, c. 190; 1982, cc. 66, 527; 1984, c. 180; 1990, c. 707; 1992, c. 350; 1993, c. 866 .

## Article 2 - LICENSES GRANTED BY BOARD; LIMITATIONS; REVOCATION AND SUSPENSION

### § 4.1-206. Alcoholic beverage licenses

A. 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. When the Board has established a government store on the distiller's licensed premises pursuant to subsection D of § 4.1-119, such license shall also authorize the licensee to make a charge to consumers to participate in an organized tasting event conducted in accordance with subsection G of § 4.1-119 and Board regulations.

2. Limited distiller's licenses, to distilleries that manufacture not more than 36,000 gallons of alcoholic beverages other than wine or beer per calendar year, provided (i) the distillery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such distillery or its owner and (ii) agricultural products used by such distillery in the manufacture of its alcoholic beverages are grown on the farm. Limited distiller's licensees shall be treated as distillers for all purposes of this title except as otherwise provided in this subdivision. For purposes of this subdivision, "land zoned agricultural" means (a) land zoned as an agricultural district or classification or (b) land otherwise permitted by a locality for limited distillery use. For purposes of this subdivision, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation, " nothing in this definition shall otherwise limit or affect local zoning authority.

3. 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.

4. Banquet facility licenses to volunteer fire departments and volunteer emergency medical services agencies, 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 volunteer fire or volunteer emergency medical services agency 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 volunteer fire or volunteer emergency medical services agency station, provided such other premises are occupied and under the control of the volunteer

fire department or volunteer emergency medical services agency while the privileges of its license are being exercised.

5. Bed and breakfast licenses, which shall authorize the licensee to (i) 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 and (ii) permit the consumption of lawfully acquired alcoholic beverages by persons to whom overnight lodging is being provided in (a) bedrooms or private guest rooms or (b) other designated areas of the bed and breakfast establishment. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

6. Tasting licenses, which shall authorize the licensee to sell or give samples of alcoholic beverages of the type specified in the license in designated areas at events held by the licensee. A tasting license shall be issued for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. A separate license shall be required for each day of each tasting event. No tasting license shall be required for conduct authorized by § 4.1-201.1.

7. Museum licenses, which may be issued to nonprofit museums exempt from taxation under § 501(c)(3) of the Internal Revenue Code, which shall authorize the licensee to (i) permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any bona fide member and guests thereof and (ii) serve alcoholic beverages on the premises of the licensee to any bona fide member and guests thereof. However, alcoholic beverages shall not be sold or charged for in any way by the licensee. The privileges of this license shall be limited to the premises of the museum, regularly occupied and utilized as such.

8. Equine sporting event licenses, which may be issued to organizations holding equestrian, hunt and steeplechase events, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by patrons thereof during such event. However, alcoholic beverages shall not be sold or charged for in any way by the licensee. The privileges of this license shall be (i) limited to the premises of the licensee, regularly occupied and utilized for equestrian, hunt and steeplechase events and (ii) exercised on no more than four calendar days per year.

9. Day spa licenses, which shall authorize the licensee to (i) permit the consumption of lawfully acquired wine or beer on the premises of the licensee by any bona fide customer of the day spa and (ii) serve wine or beer on the premises of the licensee to any such bona fide customer; however, the licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass

of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served or consumed. The privileges of this license shall be limited to the premises of the day spa regularly occupied and utilized as such.

10. Motor car sporting event facility licenses, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by patrons thereof during such events. However, alcoholic beverages shall not be sold or charged for in any way, directly or indirectly, by the licensee. The privileges of this license shall be limited to those areas of the licensee's premises designated by the Board that are regularly occupied and utilized for motor car sporting events.

11. Meal-assembly kitchen license, which shall authorize the licensee to serve wine or beer on the premises of the licensee to any such bona fide customer attending either a private gathering or a special event; however, the licensee shall not give more than two five-ounce glasses of wine or two 12-ounce glasses of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served or consumed. The privileges of this license shall be limited to the premises of the meal-assembly kitchen regularly occupied and utilized as such.

12. Canal boat operator license, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any bona fide customer attending either a private gathering or a special event; however, the licensee shall not sell or otherwise charge a fee to such customer for the alcoholic beverages so consumed. The privileges of this license shall be limited to the premises of the licensee, including the canal, the canal boats while in operation, and any pathways adjacent thereto. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

13. Annual arts venue event licenses, to persons operating an arts venue, which shall authorize the licensee participating in a community art walk that is open to the public to serve lawfully acquired wine or beer on the premises of the licensee to adult patrons thereof during such events. However, alcoholic beverages shall not be sold or charged for in any way, directly or indirectly, by the licensee, and the licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any one adult patron. The privileges of this license shall be (i) limited to the premises of the arts venue regularly occupied and used as such and (ii) exercised on no more than 12 calendar days per year.

14. Art instruction studio licenses, which shall authorize the licensee to serve wine or beer on the premises of the licensee to any such bona fide customer; however, the licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served or consumed. The privileges of this license shall be limited to the premises of the art instruction studio regularly occupied and utilized as such.

B. Any limited distillery that, prior to July 1, 2016, (i) holds a valid license granted by the Alcoholic Beverage Control Board (the Board) in accordance with this title and (ii) is in compliance with the local zoning ordinance as an agricultural district or classification or as otherwise permitted by a locality for limited distillery use shall be allowed to continue such use as provided in § 15.2-2307, notwithstanding (a) the provisions of this section or (b) a subsequent change in ownership of the limited distillery on or after July 1, 2016, whether by transfer, acquisition, inheritance, or other means. Any such limited distillery located on land zoned residential conservation prior to July 1, 2016, may expand any existing building or structure and the uses thereof so long as specifically approved by the locality by special exception. Any such limited distillery located on land zoned residential conservation prior to July 1, 2016, may construct a new building or structure so long as specifically approved by the locality by special exception. All such licensees shall comply with the requirements of this title and Board regulations for renewal of such license or the issuance of a new license in the event of a change in ownership of the limited distillery on or after July 1, 2016.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, c. 866; 1996, cc. 584, 596; 1998, c. 489; 1999, c. 325; 2005, c. 911; 2006, cc. 737, 826; 2007, c. 101; 2008, c. 198; 2013, c. 476; 2014, c. 510; 2015, cc. 348, 393, 412, 502, 503, 695; 2016, c. 644.

**§ 4.1-207. Wine licenses**

The Board may grant the following licenses relating to wine:

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

2. Wholesale wine licenses, including those granted pursuant to § 4.1-207.1, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine from one or more premises identified in the license, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

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

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

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

5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 21 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine and sell and deliver or ship this wine, in accordance with Board regulations, to the Board, persons licensed to sell wine at wholesale for the purpose of resale, or persons outside the Commonwealth; (b) operate a contract winemaking facility on the premises of the licensee in accordance with Board regulations; and (c) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § 4.1-219. A farm winery may enter into an agreement in accordance with Board regulations with a winery or farm winery licensee operating a contract winemaking facility.

Such licenses shall also authorize the licensee to sell wine at retail at the places of business designated in the licenses, which may include no more than five additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption. In addition, wine may be pre-mixed by the licensee to be served and sold for on-premises consumption at these business places.

6. Internet wine retailer license, which shall authorize persons located within or outside the Commonwealth to sell and ship wine, in accordance with § 4.1-209.1 and Board regulations, in closed containers to persons in the Commonwealth to whom wine may be lawfully sold for off-premises consumption. Such licensee shall not be required to comply with the monthly food sale requirement established by Board regulations.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 324, 526, 528, § 4-25.1; 1981, cc. 410, 412; 1982, c. 66;

1984, cc. 200, 559; 1985, c. 457; 1986, c. 190; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, cc. 300, 390, 707, 810; 1991, c. 628; 1992, cc. 215, 350; 1993, c. 866; 1998, cc. 77, 208; 2000, cc. 786, 1037, 1052; 2003, cc. 564, 629, 1029, 1030; 2006, c. 845; 2007, cc. 558, 870, 932; 2008, c. 194; 2013, cc. 107, 117, 596; 2015, cc. 54, 288, 412.

**§ 4.1-207.1. Restricted wholesale wine licenses**

The Board may grant a wholesale wine license to a nonprofit, nonstock corporation created in accordance with subdivision B 2 of § 3.2-102, which shall authorize the licensee to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this title and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2 of § 4.1-207.

2007, cc. 870, 932; 2012, cc. 803, 835.

**§ 4.1-208. Beer licenses**

A. The Board may grant the following licenses relating to beer:

1. Brewery licenses, which shall authorize the licensee to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with Board regulations, in closed containers to (i) persons licensed to sell the beer at wholesale; (ii) persons licensed to sell beer at retail for the purpose of resale within a theme or amusement park owned and operated by the brewery or a parent, subsidiary or a company under common control of such brewery, or upon property of such brewery or a parent, subsidiary or a company under common control of such brewery contiguous to such premises, or in a development contiguous to such premises owned and operated by such brewery or a parent, subsidiary or a company under common control of such brewery; and (iii) persons outside the Commonwealth for resale outside the Commonwealth. Such license shall also authorize the licensee to sell at retail the brands of beer that the brewery owns at premises described in the brewery license for on-premises consumption and in closed containers for off-premises consumption.

Such license may also authorize individuals holding a brewery license to (a) operate a facility designed for and utilized exclusively for the education of persons in the manufacture of beer, including sampling by such individuals of beer products, within a theme or amusement park located upon the premises occupied by such brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary or (b) offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the premises of such facility or licensed premises and only to individuals to whom such products may be lawfully sold.

2. Limited brewery licenses, to breweries that manufacture no more than 15,000 barrels of beer per calendar year, provided that (i) the brewery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof. However, the Board may, with notice to the local governing body in accordance with the provisions of § 4.1-230, also approve other portions of the farm to be included as part of the licensed premises. For purposes of this subdivision, "land zoned agricultural" means (a) land zoned as an agricultural district or classification or (b) land otherwise permitted by a locality for limited brewery use. For purposes of this subdivision, "land zoned agricultural" does not include land zoned "residential conservation." Except for the limitation on land zoned "residential conservation, " nothing in this definition shall otherwise limit or affect local zoning authority.

Limited brewery licensees shall be treated as breweries for all purposes of this title except as otherwise provided in this subdivision.

3. Bottlers' licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer in closed containers and to bottle, sell and deliver or ship it, in accordance with Board regulations to (i) wholesale beer licensees for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

4. Wholesale beer licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the beer from one or more premises identified in the license, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

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

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

6. Retail on-premises beer licenses to:

a. Hotels, restaurants, and clubs, which shall authorize the licensee to sell beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201.

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them for on-premises consumption when carrying passengers.

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers.

d. Grocery stores located in any town or in a rural area outside the corporate limits of any city or town, which shall authorize the licensee to sell beer for on-premises consumption in such establishments. No license shall be granted unless it appears affirmatively that a substantial public demand for such licensed establishment exists and that public convenience and the purposes of this title will be promoted by granting the license.

e. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize the licensee to sell beer, in paper, plastic, or similar disposable containers, during the performance of professional sporting exhibitions, events or performances immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas, and additional locations designated by the Board in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

f. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which has seating for more than 3,500 persons and is located in Albemarle, Augusta, Pittsylvania, Nelson, or Rockingham Counties. Such license shall authorize the licensee to sell beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

g. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or exposition halls" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

7. Retail off-premises beer licenses, which shall authorize the licensee to sell beer in closed containers for off-premises consumption.

8. Retail off-premises brewery licenses to persons holding a brewery license which shall authorize the licensee to sell beer at the place of business designated in the brewery license, in closed containers which shall include growlers and other reusable containers, for off-premises consumption.

9. Retail on-and-off premises beer licenses to persons enumerated in subdivisions 6 a and 6 d, which shall accord all the privileges conferred by retail on-premises beer licenses and in addition, shall authorize the licensee to sell beer in closed containers for off-premises consumption.

B. Any farm winery or limited brewery that, prior to July 1, 2016, (i) holds a valid license granted by the Alcoholic Beverage Control Board (the Board) in accordance with this title and (ii) is in compliance with the local zoning ordinance as an agricultural district or classification or as otherwise permitted by a locality for farm winery or limited brewery use shall be allowed to continue such use as provided in § 15.2-2307, notwithstanding (a) the provisions of this section or (b) a subsequent change in ownership of the farm winery or limited brewery on or after July 1, 2016, whether by transfer, acquisition, inheritance, or other means. Any such farm winery or limited brewery located on land zoned residential conservation prior to July 1, 2016 may expand any existing building or structure and the uses thereof so long as specifically approved by the locality by special exception. Any such farm winery or limited brewery located on land zoned residential conservation prior to July 1, 2016 may construct a new building or structure so long as specifically approved by the locality by special exception. All such licensees shall comply with the requirements of this title and Board regulations for renewal of such license or the issuance of a new license in the event of a change in ownership of the farm winery or limited brewery on or after July 1, 2016.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987,

c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, cc. 828, 866; 1994, c. 585; 1995, cc. 497, 518, 544, 570; 1996, cc. 443, 604; 1997, cc. 489, 646, 662; 2000, c. 1047; 2003, cc. 329, 1029, 1030; 2006, c. 845; 2007, cc. 813, 870, 932; 2012, c. 619; 2014, c. 365; 2015, c. 412; 2016, cc. 671, 710.

**§ 4.1-209. Wine and beer licenses; advertising**

A. The Board may grant the following licenses relating to wine and beer:

1. Retail on-premises wine and beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. However, with regard to a hotel classified by the Board as (i) a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board or (ii) a limited service hotel, the Board may authorize the sale and consumption of alcoholic beverages in dining areas, private guest rooms, and other designated areas to persons to whom overnight lodging is being provided, for on-premises consumption in such rooms or areas, and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises, provided that at least one meal is provided each day by the hotel to such guests. With regard to facilities registered in accordance with Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia as continuing care communities that are also licensed by the Board under this subdivision, any resident may, upon authorization of the licensee, keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas covered by the license. For purposes of this subdivision, "other designated areas" includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor dining areas are under the control of the licensee and approved by the Board. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § 4.1-201;

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell wine and beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them, for on-premises consumption when carrying passengers;

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

d. Persons operating as air carriers of passengers on regular schedules in foreign, interstate or intrastate commerce, which shall authorize the licensee to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth while in transit and in designated rooms of establishments of such carriers at airports in the Commonwealth, § 4.1-129

notwithstanding. For purposes of supplying its airplanes, as well as any airplane of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load wine and beer onto the same airplanes and to transport and store wine and beer at or in close proximity to the airport where the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of wine and beer may be stored and from which the wine and beer will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all wine and beer to be transported, stored, and delivered by its authorized representative;

e. Hospitals, which shall authorize the licensee to sell wine and beer in the rooms of patients for their on-premises consumption only in such rooms, provided the consent of the patient's attending physician is first obtained;

f. Persons operating food concessions at coliseums, stadia, racetracks or similar facilities, which shall authorize the licensee to sell wine and beer in paper, plastic or similar disposable containers, during any event and immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas and additional locations designated by the Board in such coliseums, stadia, racetracks or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license;

g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which (i) has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach, (ii) has capacity for more than 3,500 persons and is located in the Counties of Albemarle, Augusta, Nelson, Pittsylvania, or Rockingham, or the Cities of Charlottesville, Danville, or Roanoke, or (iii) has capacity for more than 9,500 persons and is located in Henrico County. Such license shall authorize the licensee to sell wine and beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license;

h. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell wine and beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by

the license. For purposes of this subsection, "exhibition or exposition hall" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space; and

i. Persons operating a concert and dinner-theater venue on property fronting Natural Bridge School Road in Natural Bridge Station, Virginia, and formerly operated as Natural Bridge High School, which shall authorize the licensee to sell wine and beer during events to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, dining areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Persons licensed pursuant to this subdivision shall serve food, prepared on or off premises, whenever wine or beer is served.

2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

3. Gourmet shop licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume, for on-premises consumption. The licensee may also give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, breweries, and wholesale licensees may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Notwithstanding Board regulations relating to food sales, the licensee shall maintain each year an average monthly inventory and sales volume of at least $1,000 in products such as cheeses and gourmet food.

4. Convenience grocery store licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition, shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption.

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Except as provided in § 4.1-215, a separate license shall be required for each day of each banquet or special event. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also

name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer only within the interior premises of the gift shop in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold (i) a sample of wine not to exceed two ounces by volume or (ii) a sample of beer not to exceed four ounces by volume for on-premises consumption. The licensee may also give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted.

8. Gourmet brewing shop licenses, which shall authorize the licensee to sell to any person to whom wine or beer may be lawfully sold, ingredients for making wine or brewing beer, including packaging, and to rent to such persons facilities for manufacturing, fermenting, and bottling such wine or beer, for off-premises consumption in accordance with subdivision 6 of § 4.1-200.

9. Annual banquet licenses, to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

10. Fulfillment warehouse licenses, which shall authorize associations as defined in § 13.1-313 with a place of business located in the Commonwealth to (i) receive deliveries and shipments of wine or beer owned by holders of wine or beer shipper's licenses, (ii) store such wine or beer on behalf of the owner, and (iii) pick, pack, and ship such wine or beer as directed by the owner, all in accordance with Board regulations. No wholesale wine or wholesale beer licensee, whether licensed in the Commonwealth or not, or any person under common control of such licensee, shall acquire or hold any financial interest, direct or indirect, in the business for which any fulfillment warehouse license is issued.

11. Marketing portal licenses, which shall authorize agricultural cooperative associations organized under the provisions of the Agricultural Cooperative Association Act (§ 13.1-312 et seq.), with a place of business located in the Commonwealth, in accordance with Board regulations, to solicit and receive orders for wine or beer through the use of the Internet from persons in the Commonwealth to whom wine or beer may be lawfully sold, on behalf of holders of wine or beer shipper's licenses. Upon receipt of an order for wine or beer, the licensee shall forward it to a holder of

a wine or beer shipper's license for fulfillment. Marketing portal licensees may also accept payment on behalf of the shipper.

12. Gourmet oyster house licenses, to establishments located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring and educating the consuming public about local oysters and other seafood products. Such license shall authorize the licensee to (i) give samples of or sell wine and beer in designated rooms and outdoor areas approved by the Board for consumption in such approved areas and (ii) sell wine and beer in closed containers for off-premises consumption. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person. The Board shall establish a minimum monthly food sale requirement of oysters and other seafood for such license. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

B. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to this section may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms; and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery; and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

C. Persons granted retail on-premises and on-and-off-premises wine and beer licenses pursuant to this section or subsection B of § 4.1-210 may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption. Such licensees may sell or give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. Samples of wine shall not exceed two ounces per person. Samples of beer shall not exceed four ounces per person.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, cc. 190, 828, 866; 1994, c. 585; 1995, cc. 544, 570; 1996, cc. 443, 604; 1997, c. 489; 2001, c. 361; 2002, c. 204; 2003, cc. 329, 589, 1029, 1030; 2004, c. 487; 2005, cc. 652, 784; 2006, cc. 94, 153, 256, 826,

845; 2007, c. 813; 2008, cc. 179, 186, 192, 875; 2010, cc. 317, 561; 2011, c. 626; 2014, cc. 125, 612; 2015, c. 412; 2016, c. 654.

**§ 4.1-209.1. Direct shipment of wine and beer; shipper's license**

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section. Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such brands that an application has been filed for a shipper's license. The notice shall be in writing and in a form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section, including regulations that permit the holder of a shipper's license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or beer identified in such shipper's license.

B. Any applicant for a wine or beer shipper's license that does not own or have the right to control the distribution of the brands of wine, farm wine, or beer identified in such person's application may be issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its application for a shipper's license, and with any subsequent application for renewal thereof, the written consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor, that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery, or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such shipper

licensee shall promptly file with the Board an amendment to its license eliminating any such withdrawn brand or brands from the shipper's license.

C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall be by approved common carrier only. The Board shall develop regulations pursuant to which common carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iii) the Board-approved common carrier to submit to the Board such information as the Board may prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee shall be liable only for their independent acts.

D. (Effective until July 1, 2018) For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in Virginia. The licensee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Department of Alcoholic Beverage Control and any sales taxes to the Department of Taxation.

D. (Effective July 1, 2018) For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in Virginia. The licensee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Authority and any sales taxes to the Department of Taxation.

E. Notwithstanding the provisions of § 4.1-203, the holder of a wine shipper license or beer shipper license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month club at in-state or out-of-state locations for which a license for on-premises consumption has been issued, other than the place where the licensee carries on the business for which the license is granted. For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month for an agreed term of months.

F. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may ship wine or beer as authorized by this section through the use of the services of an approved fulfillment warehouse. For the purposes of this section, a "fulfillment warehouse" means a business operating a warehouse and providing storage, packaging, and shipping services to wineries or breweries. The Board shall develop regulations pursuant to which fulfillment warehouses may apply for approval to provide storage, packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved fulfillment warehouse to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this section.

G. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may sell wine or beer as authorized by this section through the use of the services of an approved marketing portal. For the purposes of this section, a "marketing portal" means a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine or beer and accepting and processing payment of such orders as the agent of a licensed wine or beer shipper. The Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section.

2007, cc. 99, 799; 2009, c. 292; 2010, cc. 317, 561; 2015, cc. 38, 730.

**§ 4.1-210. Mixed beverages licenses**

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food. For the purposes of this subdivision, other designated areas shall include outdoor dining areas, whether or not contiguous to the

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

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

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

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

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

at gatherings and events referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food.

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

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

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

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

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000

persons and is located in Prince William County or the City of Virginia Beach. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

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

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

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

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

13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all

dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises consumption.

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

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

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

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

B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17 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.

1968, c. 7, §§ 4-98.2, 4-98.3; 1970, cc. 119, 627; 1972, cc. 679, 691; 1974, c. 460; 1975, c. 483; 1976, cc. 700, 768; 1978, c. 153; 1980, c. 490; 1981, c. 269; 1982, c. 119; 1986, cc. 70, 374; 1987, c. 107; 1990, c. 402; 1991, c. 690; 1992, cc. 162, 215; 1993, cc. 190, 866, 910; 1998, c. 535; 2000, cc. 1036, 1047, 1051; 2001, cc. 461, 845; 2004, c. 487; 2006, c. 731; 2007, cc. 107, 126, 295, 813; 2008, c. 172; 2009, c. 322; 2012, cc. 203, 237; 2013, c. 479; 2014, cc. 125, 231, 495, 633, 638; 2015, cc. 404, 412; 2016, cc. 20, 28, 536.

**§ 4.1-211. Temporary licenses**

Notwithstanding subsection D of § 4.1-203, the Board may grant a temporary license to any of the licensed retail operations authorized by §§ 4.1-206 through 4.1-210. A temporary license may be granted only after an application has been filed in accordance with the provisions of § 4.1-230 and in cases where the sole objection to granting a license is that the establishment will not be qualified in terms of the sale of food. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications. The decision to refuse to grant a temporary license shall not be subject to a hearing.

If a temporary license is granted, the Board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. If the audit indicates that the business is qualified, the license applied for may be granted. If the audit indicates that the business is not qualified, the applicant is entitled to a hearing. No further temporary license shall be granted to the applicant or to any other person at that location for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be granted.

A temporary license may be revoked summarily by the Board for any cause set forth in § 4.1-225 without complying with subsection A of § 4.1-227. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

Code 1950, § 4-34; 1972, c. 178; 1974, c. 460; 1980, c. 524; 1984, c. 180; 1993, c. 866 .

**§ 4.1-212. Permits required in certain instances**

A. The Board may grant the following permits which shall authorize:

1. Wine and beer salesmen representing any out-of-state wholesaler engaged in the sale of wine and beer, or either, to sell or solicit the sale of wine or beer, or both in the Commonwealth.

2. Any person having any interest in the manufacture, distribution or sale of spirits or other alcoholic beverages to solicit any mixed beverage licensee, his agent, employee or any person con-

nected with the licensee in any capacity in his licensed business to sell or offer for sale such spirits or alcoholic beverages.

3. Any person to keep upon his premises alcoholic beverages which he is not authorized by any license to sell and which shall be used for culinary purposes only.

4. Any person to transport lawfully purchased alcoholic beverages within, into or through the Commonwealth, except that no permit shall be required for any person shipping or transporting into the Commonwealth a reasonable quantity of alcoholic beverages when such person is relocating his place of residence to the Commonwealth in accordance with § 4.1-310.

5. Any person to keep, store or possess any still or distilling apparatus.

6. The release of alcoholic beverages not under United States custom bonds or internal revenue bonds stored in Board approved warehouses for delivery to the Board or to persons entitled to receive them within or outside of the Commonwealth.

7. The release of alcoholic beverages from United States customs bonded warehouses for delivery to the Board or to licensees and other persons enumerated in subsection B of § 4.1-131.

8. The release of alcoholic beverages from United States internal revenue bonded warehouses for delivery in accordance with subsection C of § 4.1-132.

9. A secured party or any trustee, curator, committee, conservator, receiver or other fiduciary appointed or qualified in any court proceeding, to continue to operate under the licenses previously issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board deems appropriate.

10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in subdivision (a)(73) of § 8.9A-102 of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the Board may prescribe.

11. Any person who purchases at a foreclosure, secured creditor's or judicial auction sale the premises or property of a person licensed by the Board and who has become lawfully entitled to the possession of the licensed premises to continue to operate the establishment to the same extent as a person holding such licenses for a period not to exceed 60 days or for such longer period as determined by the Board. Such permit shall be temporary and shall confer the privileges of any licenses held by the previous owner to the extent determined by the Board. Such temporary permit may be issued in advance, conditioned on the above requirements.

12. The sale of wine and beer in kegs by any person licensed to sell wine or beer, or both, at retail for off-premises consumption.

13. The storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond in warehouses located in the Commonwealth.

14. The storage of wine by a licensed winery or farm winery under internal revenue bond in warehouses located in the Commonwealth.

15. Any person to conduct tastings in accordance with § 4.1-201.1, provided that such person has filed an application for a permit in which the applicant represents (i) that he or she is under contract to conduct such tastings on behalf of the alcoholic beverage manufacturer or wholesaler named in the application; (ii) that such contract grants to the applicant the authority to act as the authorized representative of such manufacturer or wholesaler; and (iii) that such contract contains an acknowledgment that the manufacturer or wholesaler named in the application may be held liable for any violation of § 4.1-201.1 by its authorized representative. A permit issued pursuant to this subdivision shall be valid for at least one year, unless sooner suspended or revoked by the Board in accordance with § 4.1-229.

16. Any person who, through contract, lease, concession, license, management or similar agreement (hereinafter referred to as the contract), becomes lawfully entitled to the use and control of the premises of a person licensed by the Board to continue to operate the establishment to the same extent as a person holding such licenses, provided such person has made application to the Board for a license at the same premises. The permit shall (i) confer the privileges of any licenses held by the previous owner to the extent determined by the Board and (ii) be valid for a period of 120 days or for such longer period as may be necessary as determined by the Board pending the completion of the processing of the permittee's license application. No permit shall be issued without the written consent of the previous licensee. No permit shall be issued under the provisions of this subdivision if the previous licensee owes any state or local taxes, or has any pending charges for violation of this title or any Board regulation, unless the permittee agrees to assume the liability of the previous licensee for the taxes or any penalty for the pending charges. An application for a permit may be filed prior to the effective date of the contract, in which case the permit when issued shall become effective on the effective date of the contract. Upon the effective date of the permit, (a) the permittee shall be responsible for compliance with the provisions of this title and any Board regulation and (b) the previous licensee shall not be held liable for any violation of this title or any Board regulation committed by, or any errors or omissions of, the permittee.

17. Any sight-seeing carrier or contract passenger carrier as defined in § 46.2-2000 transporting individuals for compensation to a winery, brewery, or restaurant, licensed under this chapter and authorized to conduct tastings, to collect the licensee's tasting fees from tour participants for the sole purpose of remitting such fees to the licensee.

B. Nothing in subdivision 9, 10, or 11 shall authorize any brewery, winery or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default, except to the extent authorized by subdivision B 3 a of § 4.1-216.

Code 1950, §§ 4-26, 4-59, 4-61.2, 4-72, 4-77, 4-86; 1950, p. 879; 1954, cc. 21, 351; 1962, c. 200, § 4-84.1; 1968, c. 7, § 4-98.16; 1972, cc. 138, 717; 1974, c. 460, § 4-72.1; 1975, c. 480; 1976, c. 696; 1978, c. 436; 1984, c. 53; 1986, c. 190; 1988, c. 786; 1990, cc. 442, 773; 1993, cc. 221, 866; 1994, cc. 825, 826; 1997, c. 801; 2003, c. 564; 2006, c. 826; 2008, c. 453; 2012, c. 155; 2014, c. 617.

**§ 4.1-212.1. Permits; delivery of wine and beer; regulations of Board**

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal consumption.

B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal consumption.

C. All such deliveries shall be to consumers within the Commonwealth for personal consumption only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the permittee. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold; except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

D. (Effective until July 1, 2018) For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Department of Alcoholic Beverage Control and any sales taxes to the Department of Taxation.

D. (Effective July 1, 2018) For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Authority and any sales taxes to the Department of Taxation.

2007, cc. 99, 799; 2015, cc. 38, 730.

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

A. Any winery licensee or farm winery licensee may manufacture and sell cider to (i) the Board, (ii) any wholesale wine licensee, and (iii) persons outside the Commonwealth.

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

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

D. Cider containing less than seven percent of alcohol by volume may be sold in any containers that comply with federal regulations for wine or beer, provided such containers are labeled in accordance with Board regulations. Cider containing seven percent or more of alcohol by volume may be sold in any containers that comply with federal regulations for wine, provided such containers are labeled in accordance with Board regulations.

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

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

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

H. For the purposes of this section:

"Chaptalization" means a method of increasing the alcohol in a wine by adding sugar to the must before or during fermentation.

"Cider" means any beverage, carbonated or otherwise, obtained by the fermentation of the natural sugar content of apples or pears (i) containing not more than 10 percent of alcohol by volume without chaptalization or (ii) containing not more than seven percent of alcohol by volume regardless of chaptalization.

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

Code 1950, § 4-27; 1978, c. 174; 1980, c. 324; 1992, c. 349; 1993, c. 866; 2011, cc. 265, 288; 2014, c. 787; 2015, c. 412.

**§ 4.1-214. Limitations on licenses; sale outside the Commonwealth**

No deliveries or shipments of alcoholic beverages or cider as defined in § 4.1-213 to persons outside the Commonwealth for resale outside the Commonwealth authorized by this chapter shall be made into any state the laws of which prohibit the consignee from receiving or selling the same.

Code 1950, §§ 4-25, 4-27, 4-37; 1952, c. 535; 1956, cc. 520, 521; 1962, c. 532; 1964, c. 210; 1970, cc. 545, 627, 676, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 696, 698, 702, 703; 1977, c. 439; 1978, cc. 174, 190, 579; 1979, cc. 258, 537; 1980, cc. 299, 324, 526, 528, § 4-25.1; 1981, cc. 24, 410, 412, 586, 600; 1982, cc. 66, 214; 1983, c. 608; 1984, cc. 180, 200, 559, 703; 1985, cc. 457, 559; 1986, cc. 101, 190, 318, 615; 1987, cc. 252, 365; 1988, c. 893; 1989, c. 42; 1990, cc. 300, 390, 707, 810; 1991, cc. 468, 628; 1992, cc. 161, 215, 349, 350, 820; 1993, c. 866 .

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

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

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

Notwithstanding any other provision of this title, a manufacturer of distilled spirits, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in subdivision A 4 of § 4.1-210 upon application to the Board, provided that such event is (1) at a place approved by the Board and (2) conducted for the purposes of featuring and educating the consuming public about the manufacturer's spirits products. Such manufacturer shall be

limited to no more than four banquet licenses for such special events per year. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event. Such banquet license shall authorize the manufacturer to give samples of spirits to any person to whom alcoholic beverages may be lawfully sold in designated areas at the special event, provided that (A) no single sample shall exceed one-half ounce per spirits product offered, unless served as a mixed beverage, in which case a single sample may contain up to one and one-half ounces of spirits, and (B) no more than three ounces of spirits may be offered to any patron. Nothing in this paragraph shall prohibit such manufacturer from serving such samples as part of a mixed beverage.

B. This section shall not apply to:

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

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

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

4. Manufacturers, bottlers or wholesalers of alcoholic beverages who do not (i) sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail license or banquet license as described in subsection A and (ii) require, by agreement or otherwise, such person to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers;

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

6. One out-of-state winery, not under common control or ownership with any other winery, that is under common ownership or control with one restaurant licensed to sell wine at retail in Virginia, so long as any wine produced by that winery is purchased from a Virginia wholesale wine licensee by the restaurant before it is offered for sale to consumers.

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

Code 1950, § 4-32; 1978, c. 108; 1982, c. 66; 1984, c. 68, § 4-32.1; 1993, c. 866; 1995, cc. 456, 630; 2003, cc. 1029, 1030; 2005, c. 784; 2007, cc. 99, 799; 2013, cc. 266, 604; 2015, c. 604; 2016, cc. 132, 141.

**§ 4.1-216. Further limitations on manufacturers, bottlers, importers, brokers or wholesalers; ownership interests prohibited; exceptions; prohibited trade practices**

A. As used in this section:

"Broker" means any person, other than a manufacturer or a licensed beer or wine importer, who regularly engages in the business of bringing together sellers and purchasers of alcoholic beverages for resale and arranges for or consummates such transactions with persons in the Commonwealth to whom such alcoholic beverages may lawfully be sold and shipped into the Commonwealth pursuant to the provisions of this title.

"Manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages" includes any officers or directors of any such manufacturer, bottler, importer, broker or wholesaler.

B. Except as provided in this title, no manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not, shall acquire or hold any financial interest, direct or indirect, (i) in the business for which any retail license is issued or (ii) in the premises where the business of a retail licensee is conducted.

1. Subdivision B (ii) shall not apply so long as such manufacturer, bottler, importer, broker or wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to such retail licensee and such retailer is not required by agreement or otherwise to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers, importers, brokers or wholesalers.

2. Service as a member of the board of directors of a corporation licensed as a retailer, the shares of stock of which are sold to the general public on any national or local stock exchange, shall not be deemed to be a financial interest, direct or indirect, in the business or the premises of the retail licensee.

3. A brewery, winery or subsidiary or affiliate thereof, hereinafter collectively referred to as a financing corporation, may participate in financing the business of a wholesale licensee in the Commonwealth by providing debt or equity capital or both but only if done in accordance with the provisions of this subsection.

a. In order to assist a proposed new owner of an existing wholesale licensee, a financing corporation may provide debt or equity capital, or both, if prior approval of the Board has been obtained pursuant to subdivision 3 b of subsection B. A financing corporation which proposes to provide equity capital shall cause the proposed new owner to form a Virginia limited partnership in which the new owner is the general partner and the financing corporation is a limited partner. If the general partner defaults on any financial obligation to the limited partner, which default has been specifically defined in the partnership agreement, or, if the new owner defaults on its obligation to pay principal and interest when due to the financing corporation as specifically defined in the loan documents, then, and only then, shall such financing corporation be allowed to take title to the business of the wholesale licensee. Notwithstanding any other law to the contrary and

provided written notice has been given to the Board within two business days after taking title, the wholesale licensee may be managed and operated by such financing corporation pursuant to the existing wholesale license for a period of time not to exceed 180 days as if the license had been issued in the name of the financing corporation. On or before the expiration of such 180-day period, the financing corporation shall cause ownership of the wholesale licensee's business to be transferred to a new owner. Otherwise, on the 181st day, the license shall be deemed terminated. The financing corporation may not participate in financing the transfer of ownership to the new owner or to any other subsequent owner for a period of twenty years following the effective date of the original financing transaction; except where a transfer takes place before the expiration of the eighth full year following the effective date of the original financing transaction in which case the financing corporation may finance such transfer as long as the new owner is required to return such debt or equity capital within the originally prescribed eight-year period. The financing corporation may exercise its right to take title to, manage and operate the business of, the wholesale licensee only once during such eight-year period.

b. In any case in which a financing corporation proposes to provide debt or equity capital in order to assist in a change of ownership of an existing wholesale licensee, the parties to the transaction shall first submit an application for a wholesale license in the name of the proposed new owner to the Board.

The Board shall be provided with all documents that pertain to the transaction at the time of the license application and shall ensure that the application complies with all requirements of law pertaining to the issuance of wholesale licenses except that if the financing corporation proposes to provide equity capital and thereby take a limited partnership interest in the applicant entity, the financing corporation shall not be required to comply with any Virginia residency requirement applicable to the issuance of wholesale licenses. In addition to the foregoing, the applicant entity shall certify to the Board and provide supporting documentation that the following requirements are met prior to issuance of the wholesale license: (i) the terms and conditions of any debt financing which the financing corporation proposes to provide are substantially the same as those available in the financial markets to other wholesale licensees who will be in competition with the applicant, (ii) the terms of any proposed equity financing transaction are such that future profits of the applicant's business shall be distributed annually to the financing corporation in direct proportion to its percentage of ownership interest received in return for its investment of equity capital, (iii) if the financing corporation proposes to provide equity capital, it shall hold an ownership interest in the applicant entity through a limited partnership interest and no other arrangement and (iv) the applicant entity shall be contractually obligated to return such debt or equity capital to the financing corporation not later than the end of the eighth full year following the effective date of the transaction thereby terminating any ownership interest or right thereto of the financing corporation.

Once the Board has issued a wholesale license pursuant to an application filed in accordance with this subdivision 3 b, any subsequent change in the partnership agreement or the financing documents shall be subject to the prior approval of the Board. In accordance with the previous paragraph, the Board may require the licensee to resubmit certifications and documentation.

c. If a financing corporation wishes to provide debt financing, including inventory financing, but not equity financing, to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee, it may do so without regard to the provisions of subdivisions 3 a and 3 b of subsection B under the following circumstances and subject to the following conditions: (i) in order to secure such debt financing, a wholesale licensee or a proposed new owner thereof may grant a security interest in any of its assets, including inventory, other than the wholesale license itself or corporate stock of the wholesale licensee; in the event of default, the financing corporation may take title to any assets pledged to secure such debt but may not take title to the business of the wholesale licensee and may not manage or operate such business; (ii) debt capital may be supplied by such financing corporation to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee so long as debt capital is provided on terms and conditions which are substantially the same as those available in the financial markets to other wholesale licensees in competition with the wholesale licensee which is being so financed; and (iii) the licensee or proposed new owner shall certify to the Board and provide supporting documentation that the requirements of (i) and (ii) of this subdivision 3 c have been met.

Nothing in this section shall eliminate, affect or in any way modify the requirements of law pertaining to issuance and retention of a wholesale license as they may apply to existing wholesale licensees or new owners thereof which have received debt financing prior to the enactment of this subdivision 3 c.

4. Except for holders of retail licenses issued pursuant to subdivision A 5 of § 4.1-201, brewery licensees may sell beer to retail licensees for resale only under the following conditions: If such brewery or an affiliate or subsidiary thereof has taken title to the business of a wholesale licensee pursuant to the provisions of subdivision 3 a of subsection B, direct sale to retail licensees may be made during the 180-day period of operation allowed under that subdivision. Moreover, the holder of a brewery license may make sales of alcoholic beverages directly to retail licensees for a period not to exceed thirty days in the event that such retail licensees are normally serviced by a wholesale licensee representing that brewery which has been forced to suspend wholesale operations as a result of a natural disaster or other act of God or which has been terminated by the brewery for fraud, loss of license or assignment of assets for the benefit of creditors not in the ordinary course of business.

5. Notwithstanding any provision of this section, including but not limited to those provisions whereby certain ownership or lease arrangements may be permissible, no manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages shall make an agreement, or attempt to make an agreement, with a retail licensee pursuant to which any products sold by a competitor are

excluded in whole or in part from the premises on which the retail licensee's business is conducted.

6. Nothing in this section shall prohibit a winery, brewery, or distillery licensee from paying a royalty to a historical preservation entity pursuant to a bona fide intellectual property agreement that (i) authorizes the winery, brewery, or distillery licensee to manufacture wine, beer, or spirits based on authentic historical recipes and identified with brand names owned and trademarked by the historical preservation entity; (ii) provides for royalties to be paid based solely on the volume of wine, beer, or spirits manufactured using such recipes and trademarks, rather than on the sales revenues generated from such wine, beer, or spirits; and (iii) has been approved by the Board.

For purposes of this subdivision, "historical preservation entity" means an entity (a) that is exempt from income taxation under § 501(c)(3) of the Internal Revenue Code; (b) whose declared purposes include the preservation, restoration, and protection of a historic community in the Commonwealth that is the site of at least 50 historically significant houses, shops, and public buildings dating to the eighteenth century; and (c) that owns not more than 12 retail establishments in the Commonwealth for which retail licenses have been issued by the Board.

C. Subject to such exceptions as may be provided by statute or Board regulations, no manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not, shall sell, rent, lend, buy for or give to any retail licensee, or to the owner of the premises in which the business of any retail licensee is conducted, any (i) money, equipment, furniture, fixtures, property, services or anything of value with which the business of such retail licensee is or may be conducted, or for any other purpose; (ii) advertising materials; and (iii) business entertainment, provided that no transaction permitted under this section or by Board regulation shall be used to require the retail licensee to partially or totally exclude from sale at its establishment alcoholic beverages of other manufacturers or wholesalers.

The provisions of this subsection shall apply to manufacturers, bottlers, importers, brokers and wholesalers selling alcoholic beverages to any governmental instrumentality or employee thereof selling alcoholic beverages at retail within the exterior limits of the Commonwealth, including all territory within these limits owned by or ceded to the United States of America.

1989, c. 528, § 4-79.1; 1992, c. 349; 1993, c. 866; 2015, c. 421.

**§ 4.1-216.1. Point-of-sale advertising materials authorized under certain conditions; civil penalties**

A. As used in this section:

"Alcoholic beverage advertising material" or "advertising material" means any item, other than an illuminated device, which contains one or more references to a brand of alcoholic beverage and which is used to promote the sale of alcoholic beverages within the interior of a licensed retail establishment and which otherwise complies with Board regulations.

"Authorized vendor" or "vendor" means any person, other than a wholesale wine or beer licensee, that a manufacturer has authorized to engage in a business consisting in whole or in part of the sale and distribution of any articles of tangible personal property bearing any of the manufacturer's alcoholic beverage trademarks.

"Manufacturer" means any brewery, winery, distillery, bottler, broker, importer and any person that a brewery, winery, or distiller has authorized to sell or arrange for the sale of its products to wholesale wine and beer licensees in Virginia or, in the case of spirits, to the Board.

B. Notwithstanding the provisions of § 4.1-215 or 4.1-216 and Board regulations adopted thereunder, a manufacturer or its authorized vendor and a wholesale wine and beer licensee may lend, buy for, or give to a retail licensee any alcoholic beverage advertising material made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of $40 or less per item.

C. Alcoholic beverage advertising materials, other than those authorized by subsection B to be given to a retailer, may be displayed by a retail licensee in the interior of its licensed establishment provided:

1. The wholesale value of the advertising material does not exceed $250 per item, and

2. The advertising material is not obtained from a manufacturer, its authorized vendor, or any wholesale wine or beer licensee.

A retail licensee shall retain for at least two years a record of its procurement of, including any payments for, such advertising materials along with an invoice or sales ticket containing a description of the item so purchased or otherwise procured.

D. Except as otherwise provided in this title, a retail licensee shall not display in the interior of its licensed establishment any alcoholic beverage advertising materials, other than those that may be lawfully obtained and displayed in accordance with this section or Board regulation.

E. Nothing in this section shall be construed to prohibit any advertising materials permitted under Board regulations in effect on January 1, 2007.

2007, c. 494.

**§ 4.1-217. Limitation on brewery licenses**

No beer reconstituted from beer concentrate, other than reconstituted beer originally manufactured, concentrated and reconstituted at the same plant located in the Commonwealth, shall be sold by any brewery licensee to persons licensed to sell beer at retail for purposes of resale.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987,

c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, cc. 190, 828, 866 .

**§ 4.1-218. Limitation on wine and beer importers**

Wine importer licensees and beer importer licensees shall not sell and deliver or ship any brand of beer or wine to wholesale licensees for the purpose of resale until such importer has also complied with the provisions of this section and Board regulations for each such brand.

Any licensed importer, if not also the owner of the brand to be imported into the Commonwealth, shall provide to the Board written authorization from the brand owner entitling the importer to (i) sell and deliver or ship such brand into the Commonwealth and (ii) establish written agreements of a definite duration and within the meaning of the Wine Franchise Act (§ 4.1-400 et seq.) and the Beer Franchise Act (§ 4.1-500 et seq.), on behalf of the brand owner, as its authorized representative, with each wholesale licensee to whom the importer sells any brand of beer or wine owned by the brand owner. In addition, each such licensed importer shall file and maintain with the Board a current list of all wholesale licensees authorized by such importer, as the authorized representative of the brand owner, to distribute such brand within the Commonwealth.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, c. 866 .

**§ 4.1-219. Limitation on Class A and Class B farm wineries**

A. For Class A farm winery licensees, at least 51 percent of the fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth.

B. For Class B farm winery licensees, 75 percent of the fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced in the Commonwealth and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth. No Class B farm winery license shall be issued to any person who has not operated under an existing Virginia farm winery license for at least seven years.

C. Farm winery licensees may trade fruits or agricultural products grown or produced on such farms with other farm winery licensees. For the purposes of this section, fruit or agricultural products traded or exchanged between farm winery licensees shall be considered grown or produced on the receiving farm for the purposes of meeting the fruit sourcing requirement in subsections A and B, provided that verification is provided to the receiving farm that the fruit or agricultural products traded or exchanged were grown or produced in the Commonwealth by the farm winery licensee engaging in such trade or exchange. Both licensees shall maintain complete and accurate records of the quantity and source of any fruit or agricultural products traded or

exchanged. Such trades or exchanges shall be bona fide transactions based on the fair market value of the fruits or agricultural products traded or exchanged. For the purposes of this subsection, "agricultural products" means the raw materials used or intended to be used in the manufacture of wine or cider by farm winery licensees.

D. Notwithstanding the provisions of subsections A and B, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use (i) of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient for a farm winery licensee, whether Class A or Class B, to achieve the level of production which otherwise could be anticipated during a given license year or (ii) by a Class A farm winery of a lesser percentage of products grown or produced on the farm if unusually severe weather or disease conditions cause a significant reduction in the availability of fruit or other agricultural products grown or produced on the farm to manufacture wine during a given license year. As used in this section, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. The term "farm" as used in this section includes all of the land owned or leased by the farm winery licensee as long as such land is located in the Commonwealth.

Code 1950, § 4-2; 1952, c. 496; 1954, c. 682; 1962, c. 533; 1970, cc. 302, 309; 1974, cc. 460, 497; 1975, c. 408; 1976, cc. 64, 702; 1977, c. 280; 1980, c. 324, § 4-25.1; 1981, c. 410; 1984, cc. 200, 559; 1985, cc. 448, 457; 1986, c. 190; 1990, cc. 300, 390, 707, 810, 932; 1991, c. 426; 1993, c. 866; 2000, cc. 1037, 1052; 2003, c. 631; 2008, c. 194; 2016, c. 656.

**§ 4.1-220. Limitation on gift shop licenses**

In no event shall the sale of wine and beer exceed twenty-five percent of the total annual gross sales at the gift shop.

Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, c. 866 .

**§ 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.

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.

1968, c. 7, § 4-98.11; 1972, c. 17; 1974, c. 460; 1984, c. 318; 1986, c. 374; 1993, c. 866 .

**§ 4.1-221.1. Limitation of tasting licenses**

Samples of alcoholic beverages given or sold by a licensee shall not exceed two ounces per person of each product tasted, provided that (i) in the case of wine or beer, no more than four products shall be offered or (ii) in the case of spirits, no more than two products shall be offered. Tasting licenses for mixed beverages shall only be issued for events to be held in localities which have approved the sale of mixed beverages pursuant to § 4.1-124. No license shall be issued to any person to whom issuance of a retail license is prohibited. No more than four tasting licenses annually shall be issued to any person. The provisions of this section shall not apply to tastings conducted pursuant to § 4.1-201.1.

1996, cc. 584, 596; 2006, c. 826.

**§ 4.1-222. Conditions under which Board may refuse to grant licenses**

A. The Board may refuse to grant any license if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a partnership, any general partner thereof, or if the applicant is an association, any member thereof, or limited partner of 10 percent or more with voting rights, or if the applicant is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the applicant is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Is not twenty-one years of age or older;

b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of any state, or of the United States;

c. Has been convicted, within the five years immediately preceding the date of the application for such license, of a violation of any law applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

d. Is not a person of good moral character and repute;

e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be licensed;

g. Has maintained a noisy, lewd, disorderly or unsanitary establishment;

h. Has demonstrated, either by his police record or by his record as a former licensee of the Board, a lack of respect for law and order;

i. Is unable to speak, understand, read and write the English language in a reasonably satisfactory manner;

j. Is a person to whom alcoholic beverages may not be sold under § 4.1-304;

k. Has the general reputation of drinking alcoholic beverages to excess or is addicted to the use of narcotics;

l. Has misrepresented a material fact in applying to the Board for a license;

m. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false and fraudulent;

n. Is violating or allowing the violation of any provision of this title in his establishment at the time his application for a license is pending;

o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located;

p. Is physically unable to carry on the business for which the application for a license is filed or has been adjudicated incapacitated; or

q. Is a member, agent or employee of the Board.

2. The place to be occupied by the applicant:

a. Does not conform to the requirements of the governing body of the county, city or town in which such place is located with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;

b. Is so located that granting a license and operation thereunder by the applicant would result in violations of this title, Board regulations, or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;

c. Is so located with respect to any church; synagogue; hospital; public, private or parochial school, college or university; public or private playground or other similar recreational facilities; or any state, local or federal government-operated facility, that the operation of such place under such license will adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or institutions;

d. Is so located with respect to any residence or residential area that the operation of such place under such license will adversely affect real property values or substantially interfere with the usual quietude and tranquillity of such residence or residential area; or

e. Under a retail on-premises license is so constructed, arranged or illuminated that law-enforcement officers and special agents of the Board are prevented from ready access to and reasonable observation of any room or area within which alcoholic beverages are to be sold or consumed.

3. The number of licenses existent in the locality is such that the granting of a license is detrimental to the interest, morals, safety or welfare of the public. In reaching such conclusion the Board shall consider the (i) character of, population of, the number of similar licenses and the number of all licenses existent in the particular county, city or town and the immediate neighborhood concerned; (ii) effect which a new license may have on such county, city, town or neighborhood in conforming with the purposes of this title; and (iii) objections, if any, which may have been filed by a local governing body or local residents.

4. There exists any law, ordinance, or regulation of the United States, the Commonwealth or any political subdivision thereof, which warrants refusal by the Board to grant any license.

5. The Board is not authorized under this chapter to grant such license.

B. The Board may refuse to grant any retail wine and beer license, retail beer license or retail wine or winery license to any person who has not resided in the Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor, unless refusal to grant the license would in the opinion of the Board substantially impair the transferability of the real property upon which the licensed establishment would be located.

Code 1950, § 4-31; 1954, c. 301; 1956, c. 523; 1972, c. 178; 1974, c. 267; 1976, cc. 67, 698; 1978, c. 446; 1980, c. 299; 1982, c. 66; 1984, c. 703; 1986, cc. 94, 615; 1989, c. 311; 1990, c. 727; 1992, c. 161; 1993, c. 866; 1997, c. 801; 2002, c. 420; 2007, c. 103.

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

The Board shall refuse to grant any:

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

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer

or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision B 3 b of § 4.1-216 or (ii) the nonprofit, nonstock corporation established pursuant to subdivision B 2 of § 3.2-102 in exercising any privileges granted under § 4.1-207.1.

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

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

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed $10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

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

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

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

Code 1950, § 4-31; 1954, c. 301; 1956, c. 523; 1968, c. 7, §§ 4-98.9, 4-98.17; 1972, cc. 178, 525; 1974, cc. 267, 548; 1975, c. 413; 1976, cc. 67, 698; 1978, c. 446; 1980, c. 299; 1982, c. 66; 1984, c. 703; 1986, cc. 94, 615; 1989, c. 311; 1990, c. 727; 1992, c. 161; 1993, c. 866; 2000, c. 823; 2007, cc. 870, 932; 2012, cc. 803, 835.

**§ 4.1-224. Notice and hearings for refusal to grant licenses; Administrative Process Act; exceptions**

A. The action of the Board in granting or in refusing to grant any license shall be subject to review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), except as provided in subsections B and C. Review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

B. The Board may refuse a hearing on any application for the granting of any retail alcoholic beverage or mixed beverage license, including a banquet license, provided such:

1. License for the applicant has been refused or revoked within a period of twelve months;

2. License for any premises has been refused or revoked at that location within a period of twelve months;

3. Applicant, within a period of twelve months immediately preceding, has permitted a license granted by the Board to expire for nonpayment of license tax, and at the time of expiration of such license, there was a pending and unadjudicated charge, either before the Board or in any court, against the licensee alleging a violation of this title; or

4. Applicant has received a restricted license and reapplies for a lesser-restricted license at the same location within twelve months of the date of the issuance of the restricted license.

C. If an applicant has permitted a license to expire for nonpayment of license tax, and at the time of expiration there remained unexecuted any period of suspension imposed upon the licensee by the Board, the Board may refuse a hearing on an application for a new license until after the date on which the suspension period would have been executed had the license not have been permitted to expire.

Code 1950, § 4-31; 1954, c. 301; 1956, c. 523; 1972, c. 178; 1974, c. 267; 1976, cc. 67, 698; 1978, c. 446; 1980, c. 299; 1982, c. 66; 1984, c. 703; 1986, cc. 94, 615; 1989, c. 311; 1990, c. 727; 1992, c. 161; 1993, c. 866; 2000, c. 147.

**§ 4.1-225. Grounds for which Board may suspend or revoke licenses**

The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Has misrepresented a material fact in applying to the Board for such license;

b. Within the five years immediately preceding the date of the hearing held in accordance with § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;

c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;

d. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;

e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;

f. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;

g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

h. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;

k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

l. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;

m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;

o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein; or

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety.

2. The place occupied by the licensee:

a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

7. Any other cause authorized by this title.

Code 1950, § 4-37; 1956, c. 521; 1970, cc. 545, 676; 1976, cc. 696, 698, 702; 1978, c. 579; 1979, c. 537; 1980, c. 299; 1981, cc. 24, 586, 600; 1982, c. 214; 1983, c. 608; 1984, cc. 180, 200, 703; 1985, c. 559; 1986, cc. 101, 318, 615; 1987, c. 252; 1991, c. 468; 1992, cc. 161, 820; 1993, c. 866; 1996, c. 404; 1997, c. 801; 2002, c. 352; 2003, c. 594; 2007, c. 103; 2008, cc. 185, 794; 2009, c. 486; 2011, cc. 384, 410; 2013, c. 661; 2014, cc. 233, 674, 719.

**§ 4.1-225.1. Summary suspension in emergency circumstances; grounds; notice and hearing**

A. Notwithstanding any provisions to the contrary in Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act or § 4.1-227 or 4.1-229, the Board may summarily suspend any license or permit if it has reasonable cause to believe that an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, has occurred on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises, and the Board finds that there exists a continuing threat to public safety and that summary suspension of the license or permit is justified to protect the health, safety, or welfare of the public.

B. Prior to issuing an order of suspension pursuant to this section, special agents of the Board shall conduct an initial investigation and submit all findings to the Secretary of the Board within 48 hours of any such act of violence. If the Board determines suspension is warranted, it shall immediately notify the licensee of its intention to temporarily suspend his license pending the outcome of a formal investigation. Such temporary suspension shall remain effective for a minimum of 48 hours. After the 48-hour period, the licensee may petition the Board for a restricted license pending the results of the formal investigation and proceedings for disciplinary review. If the Board determines that a restricted license is warranted, the Board shall have discretion to impose appropriate restrictions based on the facts presented.

C. Upon a determination to temporarily suspend a license, the Board shall immediately commence a formal investigation. The formal investigation shall be completed within 10 days of its commencement and the findings reported immediately to the Secretary of the Board. If, following the formal investigation, the Secretary of the Board determines that suspension of the license is warranted, a hearing shall be held within five days of the completion of the formal investigation. A decision shall be rendered within 10 days of conclusion of the hearing. If a decision is not rendered within 10 days of the conclusion of the hearing, the order of suspension shall be vacated and the license reinstated. Any appeal by the licensee shall be filed within 10 days of the decision and heard by the Board within 20 days of the decision. The Board shall render a decision on the appeal within 10 days of the conclusion of the appeal hearing.

D. Service of any order of suspension issued pursuant to this section shall be made by a special agent of the Board in person and by certified mail to the licensee. The order of suspension shall take effect immediately upon service.

E. This section shall not apply to (i) temporary licenses granted under § 4.1-211 or temporary permits granted under § 4.1-212, either of which may be revoked summarily in accordance with § 4.1-211, or (ii) licenses granted pursuant to subdivision 2 or 3 of § 4.1-207 or subdivision 4 or 5 of § 4.1-208.

2016, c. 42.

**§ 4.1-226. Grounds for which Board shall suspend or revoke licenses**

The Board shall suspend or revoke any license, other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it finds that:

1. A licensee has violated or permitted the violation of § 18.2-331, relating to the illegal possession of a gambling device, upon the premises for which the Board has granted a license for the sale of alcoholic beverages to the public.

2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of an obscene nature, entertainment commonly called stripteasing, topless entertaining, or entertainment that has employees who are not clad both above and below the waist or (ii) are employees who solicit the sale of alcoholic beverages. The provisions of clause (i) shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

3. A licensee has defrauded or attempted to defraud the Board, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a willful or knowing false representation of a material fact or has willfully deceived or attempted to deceive the Board, or any federal, state, or local government or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent.

Code 1950, § 18.1-335; 1960, c. 358, § 4-37.1; 1968, c. 7, § 4-98.9; 1974, c. 548; 1975, c. 224; 1993, c. 866; 2008, c. 794; 2013, c. 661.

**§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties**

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed $1,000 for the first violation, $2,500 for the second violation and $5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by

underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed $2,500 for the first violation and $5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both.

C. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding $5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

D. In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not to exceed $25,000 for the first violation, $50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed $100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation:

1. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;

2. Provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server or seller training certified in advance by the Board;

3. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and

4. Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation. No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this title or Board regulations.

F. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of subsection E shall be advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing.

Code 1950, § 4-37; 1956, c. 521; 1970, cc. 545, 676; 1976, cc. 696, 698, 702; 1978, c. 579; 1979, c. 537; 1980, c. 299; 1981, cc. 24, 586, 600; 1982, c. 214; 1983, c. 608; 1984, cc. 180, 200, 703; 1985, c. 559; 1986, cc. 101, 318, 615; 1987, c. 252; 1991, c. 468; 1992, cc. 161, 820; 1993, c. 866; 1995, cc. 549, 563; 1996, c. 309; 1999, c. 648; 2008, c. 513; 2009, cc. 135, 279.

**§ 4.1-228. Suspension or revocation; disposition of beverages on hand; termination**

A. Alcoholic beverages, other than beer and wine, owned by or in possession of, or for sale by, any licensee at the time the license of such person is suspended or revoked may be disposed of as follows:

1. Sold by such person to the Board at prices and terms agreed upon by the Board and such person;

2. Sold to persons in the Commonwealth licensed to sell such alcoholic beverages upon permits granted by the Board and conditions specified by the Board; or

3. Sold to persons outside the Commonwealth for resale outside the Commonwealth upon permits granted by the Board.

B. Beer and wine owned and in possession of, or either, or for sale by, any licensee at the time the license of such person is suspended or revoked may be sold to any person authorized to purchase the same for resale upon permits granted by the Board and upon payment of any excise tax due thereon.

C. All alcoholic beverages owned by or in possession of any person whose license is suspended or revoked shall be disposed of by such person in accordance with the provisions of this section within sixty days from the date of such suspension or revocation.

D. Alcoholic beverages owned by, or in possession of, or for sale by persons whose licenses have been terminated other than by suspension or revocation may be disposed of in accordance with subsections A or B within such time as the Board deems proper. Such period shall not be less than sixty days.

E. All alcoholic beverages owned by or remaining in the possession of any person described in subsections A, B, or D after the expiration of such period shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4.1-338.

Code 1950, § 4-37; 1956, c. 521; 1970, cc. 545, 676; 1976, cc. 696, 698, 702; 1978, c. 579; 1979, c. 537; 1980, c. 299; 1981, cc. 24, 586, 600; 1982, c. 214; 1983, c. 608; 1984, cc. 180, 200, 703; 1985, c. 559; 1986, cc. 101, 318, 615; 1987, c. 252; 1991, c. 468; 1992, cc. 161, 820; 1993, c. 866 .

**§ 4.1-229. Suspension or revocation of permits; grounds; notice and hearing; exception**

A. The Board may suspend or revoke any permit. The suspension or revocation of any permit shall be in accordance with §§ 4.1-225 and 4.1-227.

B. This section shall not apply to temporary permits granted under § 4.1-212 which may be revoked summarily in the same manner as a temporary license may be revoked under § 4.1-211.

Code 1950, §§ 4-26, 4-59, 4-61.2; 1950, p. 879; 1954, c. 351; 1968, c. 7, § 4-98.16; 1972, cc. 138, 717; 1976, c. 696; 1984, c. 53; 1986, c. 190; 1988, c. 786; 1990, cc. 442, 773; 1993, c. 866 .

## Article 3 - APPLICATIONS FOR LICENSES AND PERMITS; FEES; TAXES

**§ 4.1-230. Applications for licenses; publication; notice to localities; fees; permits**

A. Every person intending to apply for any license authorized by this chapter shall file with the Board an application on forms provided by the Board and a statement in writing, under oath, setting forth any information required by the Board. Applications for banquet, tasting, mixed beverage special events, or club events licenses shall not be required to be under oath, but the information contained therein shall be certified as true by the applicant.

B. In addition, each applicant for a license under the provisions of this chapter, except applicants for annual banquet, banquet, tasting, special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, delivery permit, annual arts venue, or museum licenses issued under the provisions of Chapter 2 (§ 4.1-200 et seq.), or beer or wine importer's licenses, shall post a notice of his application with the Board on the front door of the building, place or room where he proposes to engage in such business for no more than 30 days and not less than 10 days. Such notice shall be of a size and contain such information as required by the Board, including a statement that any objections shall be submitted to the Board not more than 30 days following initial publication of the notice required pursuant to this subsection.

The applicant shall also cause notice to be published at least once a week for two consecutive weeks in a newspaper published in or having a general circulation in the county, city or town wherein such applicant proposes to engage in such business. Such notice shall contain such information as required by the Board, including a statement that any objections to the issuance of the license be submitted to the Board not later than 30 days from the date of the initial newspaper publication. In the case of wine or beer shipper's licensees, wine and beer shipper's licensees, delivery permittees or operators of boats, dining cars, buffet cars, club cars, and airplanes, the posting and publishing of notice shall not be required.

Except for applicants for annual banquet, banquet, tasting, mixed beverage special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, beer or wine importer's, annual arts venue, or museum licenses, the Board shall conduct a background investigation, to include a criminal history records search, which may include a fingerprint-based national criminal history records search, on each applicant for a license. However, the Board may waive, for good cause shown, the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership.

Except for applicants for wine shipper's, beer shipper's, wine and beer shipper's licenses, and delivery permits, the Board shall notify the local governing body of each license application through the county or city attorney or the chief law-enforcement officer of the locality. Local governing bodies shall submit objections to the granting of a license within 30 days of the filing of the application.

C. Each applicant shall pay the required application fee at the time the application is filed. Each license application fee, including annual banquet and annual mixed beverage banquet, shall be $65, plus the actual cost charged to the Department of State Police by the Federal Bureau of

Investigation or the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of Investigation or the Central Criminal Records Exchange for each criminal history records search required by the Board, except for banquet, tasting, mixed beverage special events, or mixed beverage club events licenses, in which case the application fee shall be $15. Application fees shall be in addition to the state license fee required pursuant to § 4.1-231 and shall not be refunded.

D. Subsection A shall not apply to the continuance of licenses granted under this chapter; however, all licensees shall file and maintain with the Board a current, accurate record of the information required by the Board pursuant to subsection A and notify the Board of any changes to such information in accordance with Board regulations.

E. Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the Board. In the case of applications to solicit the sale of wine and beer or spirits, each application shall be accompanied by a fee of $165 and $390, respectively. The fee for each such permit shall be subject to proration to the following extent: If the permit is granted in the second quarter of any year, the fee shall be decreased by one-fourth; if granted in the third quarter of any year, the fee shall be decreased by one-half; and if granted in the fourth quarter of any year, the fee shall be decreased by three-fourths. Each such permit shall expire on June 30 next succeeding the date of issuance, unless sooner suspended or revoked by the Board. Such permits shall confer upon their holders no authority to make solicitations in the Commonwealth as otherwise provided by law.

The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied by the number of months for which the permit is granted.

The fee for a keg registration permit shall be $65 annually.

The fee for a permit for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond in warehouses located in the Commonwealth shall be $260 annually.

Code 1950, §§ 4-26, 4-30, 4-31, 4-33; 1952, c. 535; 1954, cc. 301, 351; 1956, c. 523; 1960, c. 476; 1968, c. 7, § 4-98.16; 1970, c. 627; 1972, cc. 178, 717; 1974, c. 267; 1975, c. 408; 1976, cc. 67, 496, 696, 698; 1978, cc. 190, 446; 1980, cc. 299, 324, 524, 526, § 4-25.1; 1981, c. 410; 1982, cc. 66, 527; 1984, cc. 53, 180, 200, 559, 703; 1985, c. 457; 1986, cc. 94, 190, 615; 1988, c. 786; 1989, c. 311; 1990, cc. 108, 300, 390, 442, 707, 727, 810; 1991, c. 425; 1992, c. 350; 1993, cc. 166, 866; 1994, c. 825; 1996, cc. 584, 596; 1998, c. 535; 1999, cc. 112, 756; 2003, cc. 1029, 1030; 2004, cc. 382, 487; 2004, Sp. Sess. I, c. 4; 2005, cc. 361, 951; 2006, Sp. Sess. I, c. 2; 2007, cc. 99, 799; 2008, c. 765; 2011, c. 65; 2015, c. 412.

**§ 4.1-231. Taxes on state licenses**

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

1. Alcoholic beverage licenses. For each:

a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, $450; if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, $2,500; and if more than 36,000 gallons manufactured during such year, $3,725;

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

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

d. Bed and breakfast establishment license, $35;

e. Tasting license, $40 per license granted;

f. Equine sporting event license, $130;

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

h. Day spa license, $100;

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

j. Meal-assembly kitchen license, $100;

k. Canal boat operator license, $100;

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

m. Art instruction studio license, $100.

2. Wine licenses. For each:

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

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

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

c. Wine importer's license, $370;

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

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

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

g. Internet wine retailer license, $150.

3. Beer licenses. For each:

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

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

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

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

d. Beer importer's license, $370;

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

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

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

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

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

4. Wine and beer licenses. For each:

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

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

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

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

e. Banquet license, $40 per license granted by the Board, except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be $100 per license;

f. Gourmet brewing shop license, $230;

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

h. Annual banquet license, $150;

i. Fulfillment warehouse license, $120;

j. Marketing portal license, $150; and

k. Gourmet oyster house license, $230.

5. Mixed beverage licenses. For each:

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

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

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

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

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

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

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

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

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

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

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

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

g. Annual mixed beverage special events license, $560;

h. Mixed beverage carrier license:

(i) $190 for each of the average number of dining cars, buffet cars or club cars operated daily in the Commonwealth by a common carrier of passengers by train;

(ii) $560 for each common carrier of passengers by boat;

(iii) $1,475 for each license granted to a common carrier of passengers by airplane.

i. Annual mixed beverage amphitheater license, $560;

j. Annual mixed beverage motor sports race track license, $560;

k. Annual mixed beverage banquet license, $500;

l. Limited mixed beverage restaurant license:

(i) With a seating capacity at tables for up to 100 persons, $460;

(ii) With a seating capacity at tables for more than 100 but not more than 150 persons, $875;

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

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

n. Annual mixed beverage performing arts facility license, $560.

6. Temporary licenses. For each temporary license authorized by § 4.1-211, one-half of the tax imposed by this section on the license for which the applicant applied.

B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year, the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.

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

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

Notwithstanding the foregoing, the tax on each license granted or reissued for a period other than 12, 24, or 36 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period, and then increased by five percent. Such tax shall not be refundable, except as provided in § 4.1-232.

C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first $163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first $163,800 of wine purchases shall be disregarded.

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

Code 1950, § 4-33; 1952, c. 535; 1960, c. 476; 1968, c. 609, § 4-98.18; 1970, c. 627; 1972, cc. 691, 717; 1974, c. 267; 1975, cc. 2, 483; 1976, c. 496; 1978, cc. 153, 190; 1979, c. 366; 1980, cc. 324, 524, 526, § 4-25.1; 1981, c. 410; 1982, cc. 66, 527; 1984, cc. 180, 200, 559; 1985, c. 457; 1986, cc. 190, 374; 1990, cc. 300, 390, 707, 810; 1991, c. 425; 1992, cc. 162, 350; 1993, c. 866; 1995, cc. 497, 518; 1996, cc. 584, 596, 604; 1998, cc. 489, 535; 1999, c. 325; 2000, cc. 1036, 1037, 1047, 1051, 1052; 2001, cc. 461, 845; 2003, cc. 1029, 1030; 2004, c. 487; 2004, Sp. Sess. I, c. 4; 2005, cc. 784, 911, 951; 2006, cc. 737, 845; 2006, Sp. Sess. I, c. 2; 2007, cc. 99, 101, 107, 295, 558, 799, 870, 932; 2008, c. 198; 2010, cc. 317, 561; 2011, cc. 6, 626; 2012, cc. 203, 237; 2013, c. 479; 2014, cc. 510, 637; 2015, cc. 348, 412, 695.

**§ 4.1-232. Refund of state license tax**

A. The Board may correct erroneous assessments made by it against any person and make refunds of any amounts collected pursuant to erroneous assessments, or collected as taxes on licenses, which are subsequently refused or application therefor withdrawn, and to allow credit for any license taxes paid by any licensee for any license that is subsequently merged or changed into another license during the same license period. No refund shall be made of any such amount, however, unless made within three years from the date of collection of the same.

B. In any case where a licensee has changed its name or form of organization during a license period without any change being made in its ownership, and because of such change is required to pay an additional license tax for such period, the Board shall refund to such licensee the amount of such tax so paid in excess of the required license tax for such period.

C. The Board shall make refunds, prorated according to a schedule of its prescription, to licensees of state license taxes paid pursuant to subsection A of § 4.1-231 if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon.

D. Any amount required to be refunded under this section shall be paid by the State Treasurer out of moneys appropriated to the Board and in the manner prescribed in § 4.1-116.

Code 1950, §§ 4-33, 4-35; 1952, c. 535; 1960, c. 476; 1970, c. 627; 1972, c. 717; 1974, c. 267; 1976, c. 496; 1978, c. 190; 1980, cc. 524, 526; 1982, cc. 66, 527; 1984, cc. 180, 559; 1986, c. 190; 1990, cc. 300, 390, 707; 1991, c. 425; 1992, c. 350; 1993, c. 866; 2011, c. 728; 2015, c. 412.

**§ 4.1-233. Taxes on local licenses**

A. In addition to the state license taxes, the annual local license taxes which may be collected shall not exceed the following sums:

1. Alcoholic beverages. -- For each:

a. Distiller's license, if more than 5,000 gallons but not more than 36,000 gallons manufactured during such year, $750; if more than 36,000 gallons manufactured during such year, $1,000; and no local license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits, or both, during such license year;

b. Fruit distiller's license, $1,500;

c. Bed and breakfast establishment license, $40;

d. Museum license, $10;

e. Tasting license, $5 per license granted;

f. Equine sporting event license, $10;

g. Day spa license, $20;

h. Motor car sporting event facility license, $10;

i. Meal-assembly kitchen license, $20;

j. Canal boat operator license, $20;

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

l. Art instruction studio license, $20.

2. Beer. -- For each:

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

b. Bottler's license, $500;

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. Beer shipper's license, $10.

3. Wine. -- For each:

a. Winery license, $50;

b. Wholesale wine license, $50;

c. Farm winery license, $50; and

d. Wine shipper's license, $10.

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;

c. Banquet license, $5 for each license granted, except for banquet licenses granted by the Board pursuant to subsection A of § 4.1-215 for events occurring on more than one day, which shall be $20 per license;

d. Gourmet brewing shop license, $150;

e. Wine and beer shipper's license, $10;

f. Annual banquet license, $15; and

g. Gourmet oyster house license, in a city, $150, and in a county or town, $37.50.

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;

d. Mixed beverage limited caterer's license, $100;

e. Mixed beverage special events licenses, $10 for each day of each event;

f. Mixed beverage club events licenses, $10 for each day of each event;

g. Annual mixed beverage amphitheater license, $300;

h. Annual mixed beverage motor sports race track license, $300;

i. Annual mixed beverage banquet license, $75;

j. Limited mixed beverage restaurant license:

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

(ii) With a seating capacity at tables for more than 100 but not more than 150 persons, $250;

(iii) With a seating capacity at tables for more than 150 persons, $400;

k. Annual mixed beverage motor sports facility license, $300; and

l. Annual mixed beverage performing arts facility license, $300.

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

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

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

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

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

Code 1950, § 4-38; 1952, c. 535; 1968, c. 609, § 4-98.19; 1970, cc. 627, 734; 1972, c. 691; 1974, c. 460; 1975, c. 483; 1976, c. 496; 1978, c. 190; 1982, cc. 66, 527; 1984, c. 180; 1990, c. 707;

1992, cc. 162, 350; 1993, c. 866; 1995, cc. 497, 518; 1996, cc. 584, 596, 604; 1998, cc. 489, 535; 1999, c. 325; 2000, cc. 1036, 1047, 1051; 2001, cc. 461, 845; 2004, cc. 384, 487; 2005, cc. 784, 911; 2006, c. 737; 2007, cc. 101, 107, 295; 2008, c. 198; 2011, c. 626; 2012, cc. 203, 237; 2013, c. 479; 2014, cc. 510, 637; 2015, cc. 348, 695.

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

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

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

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

1968, c. 609, § 4-98.20; 1980, c. 624, § 4-22.1; 1981, cc. 381, 407; 1982, cc. 540, 556; 1984, c. 200; 1985, cc. 222, 457; 1986, c. 130; 1993, c. 866; 2011, cc. 238, 299.

**§ 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 §§ 4.1-213 and 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 20 percent tax, as appropriate, shall then be added to the price of each container of alcoholic beverages. The four percent tax on vermouth and farm winery wines and ciders shall then be added for those products. In all cases the final price for each container may be established so as to be a multiple of five or rounded to end with a nine.

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

B. The amount of tax collected under this section during each quarter shall, within 50 days after the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not later than June 20 of every year, estimate the yield of the state tax on sales imposed by §§ 4.1-213 and 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on account of an overestimate or underestimate as may be indicated within 50 days after the close of the quarter ending on June 30.

Forty-four percent of the amount derived from the liter tax levied pursuant to §§ 4.1-213 and 4.1-234 shall be transferred to the general fund and paid to the several counties, cities, and towns of the Commonwealth in proportion to their respective populations, and is appropriated for such purpose.

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

The portion of wine liter tax and cider markup collected pursuant to §§ 4.1-213 and 4.1-234 that is attributable to the sale of wine and cider produced by a farm winery shall be deposited in the Virginia Wine Promotion Fund established pursuant to § 3.2-3005.

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

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

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

1980, c. 624, § 4-22.1; 1981, c. 407; 1982, cc. 540, 556; 1984, c. 200; 1985, cc. 222, 457; 1986, c. 130; 1993, c. 866; 2010, cc. 247, 362; 2015, cc. 4, 21; 2016, cc. 24, 140.

**§ 4.1-236. Excise tax on beer and wine coolers; payment of tax; exceptions**

A. There is levied on all beer and wine coolers sold in the Commonwealth an excise tax at the rate of:

1. Twenty-five and sixty-five hundredths cents per gallon per barrel;

2. Two cents per bottle on bottles of not more than seven ounces each;

3. Two and sixty-five hundredths cents per bottle on bottles of more than seven ounces each but not more than twelve ounces each; and

4. Two and twenty-two one hundredths mills per ounce per bottle on bottles of more than twelve ounces each.

B. The tax herein levied shall be paid by the manufacturer, bottler or wholesaler selling beer or wine coolers to licensed retailers.

C. Any person selling or offering for sale in the Commonwealth any beer or wine coolers purchased or obtained from any person not licensed either as a manufacturer, bottler or wholesaler under this chapter, and on which the excise tax levied has not been paid, shall pay the tax.

D. This section shall not apply to any manufacturer, bottler or wholesaler of any beer or wine coolers, which are:

1. Shipped out of the Commonwealth by such manufacturer, bottler or wholesaler for resale outside of the Commonwealth;

2. Sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed forces of the United States;

3. Sold to the U.S. Department of Veterans Affairs for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the U.S. Department of Veterans Affairs within the geographical confines of the Commonwealth;

4. Shipped to a post exchange of the armed forces of the United States for resale by such post exchange, whether such post exchange is located on a United States military reservation or not;

5. Shipped to any instrumentality of the United States which is exempt on constitutional grounds from the excise tax levied by this section; or

6. Sold and delivered to foreign boats or aircraft actually engaged in foreign commerce or commerce between any ports of the United States or commerce between the United States and any of its possessions outside of the several states and the District of Columbia.

The exceptions allowed in subdivisions 1, 4, and 5 of this subsection shall be applicable only if, in each case, evidence satisfactory to the Board is submitted in writing that such beer or wine coolers were so shipped.

1988, c. 261, §§ 4-128, 4-129, 4-130; 1993, c. 866 .

**§ 4.1-237. Refund and adjustments on excise tax on beer and wine coolers**

A. Whenever it is proved to the satisfaction of the Board that the tax levied pursuant to § 4.1-236 has been paid and that beer or wine coolers were or are (i) damaged, destroyed or otherwise

deemed to be unsalable by reason of fire or any other providential cause before sale to the consumer, (ii) destroyed voluntarily because the beer or wine coolers were defective and after notice to and approval by the Board of such destruction or (iii) destroyed in any manner while in possession of a common, private or contract carrier, the Board shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper. The manufacturer, bottler or wholesaler shall make a report thereof to the Board as a portion of the report required by § 4.1-239.

B. Whenever it is proved to the satisfaction of the Board that any person has purchased beer or wine coolers which have been sold by him in such manner as to be exempt from the excise tax levied under § 4.1-236, the Board shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper.

1988, c. 261, §§ 4-141, 4-142; 1993, c. 866 .

**§ 4.1-238. Bond required to secure excise tax liability on beer and wine coolers, and wine stored in bonded warehouses**

A. Every manufacturer, bottler or wholesaler, as a condition precedent to obtaining a license to sell beer or wine coolers to a licensed retailer, shall file a bond with the Board in such sum and with such surety as the Board deems adequate to cover the tax liability of each such manufacturer, bottler or wholesaler. The sum of such bond shall be proportioned to the volume of business of each such manufacturer, bottler or wholesaler, but shall in no event be less than $1,000 or more than $100,000. Such bond shall be conditioned upon the payment by such manufacturer, bottler or wholesaler of the tax imposed by § 4.1-236.

B. Every holder of a bonded warehouse permit, issued in accordance with subdivision 14 of § 4.1-212, as a condition to obtaining the permit, shall file a bond with the Board in such sum and with such surety as the Board deems adequate to cover the tax liability of each such permittee. The sum of such bond shall be proportioned to the volume of business of each such manufacturer, bottler, or wholesaler, but shall in no event be less than $1,000 or more than $10,000. Such bond shall be conditioned upon the payment by the permittee of the tax imposed by § 4.1-234.

C. The Board may waive the requirement of both the surety and the bond, in cases where a manufacturer, bottler or wholesaler has previously demonstrated his financial responsibility.

D. Upon the termination of the bond, its guaranty or surety, the Board, upon reasonable notice to the manufacturer, bottler or wholesaler so licensed, may suspend the license so granted until such times as the required bond is filed or the proper surety or guaranty is given.

1988, c. 261, § 4-138; 1993, c. 866; 2003, c. 564.

**§ 4.1-239. Monthly reports and payment of excise tax on beer and wine coolers; filing by nonresident manufacturer; commissions**

A. On or before the tenth day of each month, each manufacturer, bottler, wholesaler or other person selling beer or wine coolers in the Commonwealth who is chargeable with the payment of

excise taxes imposed by § 4.1-236 shall file a report under oath with the Board, on forms prescribed by the Board, showing the quantity of all beer and wine coolers manufactured, bottled or sold by such person during the preceding calendar months. Such report shall also contain any other information the Board may require. Common carriers of passengers by train or boat licensed to sell beer or wine coolers in dining cars, buffet cars, club cars or on such boats shall have thirty days from the end of each calendar month to file such reports. At the time of filing, such person shall pay the Board all excise taxes chargeable against him under the provisions of § 4.1-236, unless the taxes have been previously paid.

B. In addition to the requirements of subsection A, on or before the fifteenth day of each month each nonresident manufacturer shall forward a copy of each invoice required by Board regulation or a listing of all such invoices for the preceding month to the Board as a condition of shipment into or doing business in the Commonwealth.

C. Any person filing the report required by this section and paying such excise tax required by subsection B of § 4.1-236 shall be allowed a commission of one percent of the amount of tax due as compensation for the expense of maintaining records and preparing reports so as to account for and remit the tax levied by § 4.1-236. Such commission shall also be allowed as compensation for the expense, if any, of compliance with the requirements of § 4.1-238. Such commission shall be accounted for in the form of a deduction from the amount of tax which would otherwise be due.

1988, c. 261, §§ 4-131, 4-132, 4-133; 1993, c. 866 .

**§ 4.1-240. Collection of taxes and fees; service charge; storage of credit card, debit card, and automated clearinghouse information**

A. The Board may accept payment by any commercially acceptable means, including checks, credit cards, debit cards, and electronic funds transfers, for the taxes, penalties, or other fees imposed on a licensee in accordance with this title. In addition, the Board may assess a service charge for the use of a credit or debit card. The service charge shall not exceed the amount negotiated and agreed to in a contract with the Department.

B. Upon the request of a license applicant or licensee, the Board may collect and maintain a record of the applicant's or licensee's credit card, debit card, or automated clearinghouse transfer information and use such information for future payments of taxes, penalties, other fees, or amounts due for products purchased from the Board. The Board may assess a service charge as provided in subsection A for any payments made under this subsection. The Board may procure the services of a third-party vendor for the secure storage of information collected pursuant to this subsection.

2000, c. 801; 2015, c. 412.

## Chapter 3 - PROHIBITED PRACTICES; PENALTIES; PROCEDURAL MATTERS

## Article 1 - PROHIBITED PRACTICES GENERALLY

**§ 4.1-300. Illegal manufacture and bottling; penalty**

A. Except as otherwise provided in §§ 4.1-200 and 4.1-201, no person shall manufacture alcoholic beverages in the Commonwealth without being licensed under this title to manufacture such alcoholic beverages. Nor shall any person, other than a brewery licensee or bottler's licensee, bottle beer for sale.

B. The presence of mash at an unlicensed distillery shall constitute manufacturing within the meaning of this section.

C. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

Code 1950, § 4-57; 1954, c. 484; 1974, c. 460; 1993, c. 866 .

**§ 4.1-301. Conspiracy to violate § 4.1-300; penalty**

If two or more persons conspire together to do any act which is in violation of § 4.1-300, and one or more of these persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of a Class 6 felony.

1956, c. 70, § 4-57.1; 1993, c. 866 .

**§ 4.1-302. Illegal sale of alcoholic beverages in general; penalty**

If any person who is not licensed sells any alcoholic beverages except as permitted by this title, he shall be guilty of a Class 1 misdemeanor.

In the event of a second or subsequent conviction under this section, a jail sentence of no less than thirty days shall be imposed and in no case be suspended.

Code 1950, § 4-58; 1952, c. 491; 1984, c. 603; 1993, c. 866 .

**§ 4.1-302.1. Use of alcohol vaporizing devices prohibited; penalty**

A. No person shall purchase, offer for sale or use, sell or use any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device.

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

2006, c. 714.

**§ 4.1-302.2. Sale, purchase, use of powdered or crystalline alcohol prohibited; penalty**

A. No person shall purchase or possess, offer for sale or use, sell, or use any powdered or crystalline alcohol product.

B. As used in this section, "powdered or crystalline alcohol" means a product that is manufactured into a powdered or crystalline form and that contains any amount of alcohol.

C. A violation of this section is a Class 1 misdemeanor.

2015, cc. 25, 735.

**§ 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 or a person authorized under this title to sell alcoholic beverages, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 4-71; 1968, c. 7; 1993, c. 866 .

**§ 4.1-304. Persons to whom alcoholic beverages may not be sold; proof of legal age; penalty**

A. No person shall, except pursuant to subdivisions 1 through 5 of § 4.1-200, sell any alcoholic beverages to any individual when at the time of such sale he knows or has reason to believe that the individual to whom the sale is made is (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated. Any person convicted of a violation of this subsection is guilty of a Class 1 misdemeanor.

B. Any person who sells, except pursuant to subdivisions 1 through 5 of § 4.1-200, any alcoholic beverage to an individual who is less than 21 years of age and at the time of the sale does not require the individual to present bona fide evidence of legal age indicating that the individual is 21 years of age or older is guilty of a violation of this subsection. Bona fide evidence of legal age is limited to any evidence that is or reasonably appears to be an unexpired driver's license issued by any state of the United States or the District of Columbia, military identification card, United States passport or foreign government visa, unexpired special identification card issued by the Department of Motor Vehicles, or any other valid government-issued identification card bearing the individual's photograph, signature, height, weight, and date of birth, or which bears a photograph that reasonably appears to match the appearance of the purchaser. A student identification card shall not constitute bona fide evidence of legal age for purposes of this subsection. Any person convicted of a violation of this subsection is guilty of a Class 3 misdemeanor. Notwithstanding the provisions of § 4.1-202, the Board shall not take administrative action against a licensee for the conduct of his employee who violates this subsection.

C. No person shall be convicted of both subsections A and B for the same sale.

Code 1950, § 4-62; 1970, c. 686; 1974, c. 460; 1979, c. 537; 1981, c. 24; 1982, c. 66; 1983, c. 608; 1985, c. 559; 1990, c. 771; 1993, c. 866; 2013, c. 562.

**§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services**

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer or his agent when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or

city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows that such consumption or possession was pursuant to subdivision 7 of § 4.1-200.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of $500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year; the license to operate a motor vehicle in the Commonwealth of any juvenile shall be handled in accordance with the provisions of § 16.1-278.9. The court, in its discretion and upon a demonstration of hardship, may authorize an adult convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require an adult who is issued a restricted permit under the provisions of this subsection to be (a) monitored by an alcohol safety action program, or (b) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any adult who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court

would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

When any juvenile is found to have committed a violation of subsection A, the disposition of the case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

Code 1950, § 4-62; 1970, c. 686; 1974, c. 460; 1979, c. 537; 1981, c. 24; 1982, c. 66; 1983, c. 608; 1985, c. 559; 1990, c. 771; 1993, c. 866; 1995, c. 374; 1996, cc. 626, 730; 2000, c. 325; 2002, c. 338; 2003, cc. 845, 849; 2004, cc. 322, 461; 2005, c. 895; 2006, c. 207; 2007, c. 133; 2009, cc. 248, 726, 813, 840; 2012, cc. 250, 260.

**§ 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture**

A. Any person who purchases alcoholic beverages for another person, and at the time of such purchase knows or has reason to believe that the person for whom the alcoholic beverage was purchased was (i) interdicted, or (ii) intoxicated, is guilty of a Class 1 misdemeanor.

A1. Any person who purchases for, or otherwise gives, provides, or assists in the provision of alcoholic beverages to another person, when he knows or has reason to know that such person was less than 21 years of age, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where

possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties, is guilty of a Class 1 misdemeanor.

B. In addition to any other penalty authorized by law, any person found guilty of a violation of this section shall have his license to operate a motor vehicle suspended for a period of not more than one year. The court, in its discretion, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1.

C. Any alcoholic beverages purchased in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

Code 1950, § 4-73; 1970, c. 686; 1993, c. 866; 2005, cc. 895, 898; 2006, c. 87; 2011, c. 31.

**§ 4.1-307. Persons by whom alcoholic beverages may not be sold or served for on-premises consumption; penalty**

No person shall permit anyone employed by him under the age of (i) eighteen years to sell, serve or dispense in any manner alcoholic beverages for on-premises consumption, except pursuant to subdivisions 1 through 5 of § 4.1-200 or (ii) twenty-one years to prepare or mix alcoholic beverages in the capacity of bartender.

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

Code 1950, § 4-63; 1974, c. 460; 1982, c. 66; 1983, c. 608; 1993, c. 866 .

**§ 4.1-308. Drinking alcoholic beverages, or offering to another, in public place; penalty; exceptions**

A. If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or in any public place, he shall be guilty of a Class 4 misdemeanor.

B. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the Board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.

C. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the Board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.

D. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another on a chartered boat being used for the transportation of passengers for compensation which is not licensed by the Board and which does not sell alcoholic beverages.

Code 1950, § 4-78; 1956, c. 23; 1972, c. 143; 1977, c. 439; 1979, c. 622; 1986, c. 113; 1988, c. 893; 1989, c. 42; 1990, c. 932; 1993, c. 866 .

**§ 4.1-309. Drinking or possessing alcoholic beverages in or on public school grounds; penalty**

A. No person shall possess or drink any alcoholic beverage in or upon the grounds of any public elementary or secondary school during school hours or school or student activities.

B. In addition, no person shall drink and no organization shall serve any alcoholic beverage in or upon the grounds of any public elementary or secondary school after school hours or school or student activities, except for religious congregations using wine for sacramental purposes only.

C. Any person convicted of a violation of this section shall be guilty of a Class 2 misdemeanor.

D. This section shall not prohibit any person from possessing or drinking alcoholic beverages or any organization from serving alcoholic beverages in areas approved by the Board at a performing arts center owned by the City of Alexandria or the City of Portsmouth, provided the organization operating the performing arts center or its lessee has a license granted by the Board.

1954, c. 651, § 4-78.1; 1982, c. 288; 1991, c. 710; 1993, c. 866; 1994, c. 844; 1997, cc. 784, 837; 2007, c. 813.

**§ 4.1-309.1. Possessing or consuming alcoholic beverage while operating a school bus; penalty**

Any person who possesses or consumes an alcoholic beverage while operating a school bus and transporting children is guilty of a Class 1 misdemeanor. For purposes of this section, "school bus" shall have the same meaning as provided in § 46.2-100.

2010, c. 169.

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

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

B. Except as otherwise provided in § 4.1-209.1 or 4.1-212.1, no wine shall be imported, shipped, transported or brought into the Commonwealth unless it is consigned to a wholesale wine licensee.

C. Except as otherwise provided in § 4.1-209.1 or 4.1-212.1, no beer shall be imported, shipped, transported or brought into the Commonwealth except to persons licensed to sell it.

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

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

Code 1950, § 4-84; 1970, c. 297; 1978, c. 436; 1983, c. 212; 1984, c. 200; 1993, c. 866; 1994, c. 826; 1995, cc. 253, 317; 2003, cc. 1029, 1030; 2007, cc. 99, 799.

**§ 4.1-311. Limitations on transporting lawfully purchased alcoholic beverages; penalty**

A. The transportation of alcoholic beverages lawfully purchased in the Commonwealth in excess of the following limits is prohibited except in accordance with Board regulations:

1. Wine and beer, no limitation.

2. Alcoholic beverages other than wine and beer, three gallons, provided that not more than one gallon thereof shall be in containers holding less than one-fifth of a gallon. If any part of the alcoholic beverages being transported is held in metric-sized containers, the three-gallon limitation shall be construed to be 12 liters, and not more than 4 liters thereof shall be in containers smaller than 750 milliliters.

B. The transportation of alcoholic beverages lawfully purchased outside the Commonwealth, within, into or through the Commonwealth, in quantities in excess of one gallon or four liters if any part of the alcohol being transported is held in metric-sized containers, is prohibited except in accordance with Board regulations adopted pursuant to this section.

C. Any person transporting alcoholic beverages in violation of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 4-72; 1974, c. 460, § 4-72.1; 1975, c. 480; 1978, c. 436; 1993, c. 866 .

**§ 4.1-312. Limitation on carrying alcoholic beverages in motor vehicle transporting passengers for hire; penalty**

The transportation of alcoholic beverages in any motor vehicle which is being used, or is licensed, for the transportation of passengers for hire is prohibited, except when carried in the possession of a passenger who is being transported for compensation at the regular rate and fare charged other passengers.

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

Code 1950, § 4-74; 1993, c. 866 .

**§ 4.1-313. Possessing, transporting, etc., alcoholic beverages illegally acquired; penalty**

A. No person, other than a common carrier, shall have, possess, keep, carry, ship or transport alcoholic beverages upon which the tax imposed by the laws of the United States has not been paid.

B. No person shall possess alcoholic beverages in amounts in excess of the limits provided in § 4.1-311 in containers not bearing evidence that they have been purchased from the Board or a person licensed to sell them, or other evidence that the tax due to the Commonwealth or the markup required by the Board has been paid, unless it can be proved that the alcoholic beverages were lawfully acquired by the possessor.

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

Code 1950, § 4-75; 1954, c. 484; 1966, c. 408; 1974, c. 460; 1975, c. 481; 1976, c. 36; 1984, c. 603; 1993, c. 866 .

**§ 4.1-314. Keeping, possessing or storing still or distilling apparatus without a permit; penalty**

No person shall keep, store or have in his possession any still, or distilling apparatus, without a permit from the Board.

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

Code 1950, § 4-77; 1993, c. 866 .

**§ 4.1-315. Possession without license to sell alcoholic beverages upon premises of restaurant; exceptions; penalty**

A. No alcoholic beverages shall be kept or allowed to be kept upon any premises or upon the person of any proprietor or person employed upon the premises of a restaurant or other place where food or refreshments of any kind are furnished for compensation, except such alcoholic beverages as such person owning or operating such place of business is licensed to purchase and to sell at such place of business.

B. This section shall not apply to (i) any residence; (ii) alcoholic beverages in the possession of a passenger being transported for compensation as provided in subsection D of § 4.1-308; (iii) dining areas in restaurants licensed by the Board while such areas are in use for private meetings or parties limited in attendance to members and guests of a particular group, association or organization; (iv) licensed restaurants in office buildings, industrial or similar facilities while such restaurant is closed to the public and is 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 (v) any dining areas or private rooms of residents in an assisted living facility as defined in § 63.2-100 and licensed in accordance with Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2.

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

Code 1950, p. 876, § 4-61; 1954, c. 512; 1958, c. 270; 1968, c. 7; 1972, c. 168; 1974, c. 497; 1990, c. 932; 1993, c. 866; 2010, c. 114.

**§ 4.1-316. Keeping or drinking alcoholic beverages upon premises of club; penalty**

No person operating a club for profit or otherwise, either public or private, shall (i) keep or allow to be kept any alcoholic beverages, either by himself or any other person, upon the premises or (ii) permit the drinking of any alcoholic beverages upon the premises, unless he is licensed to sell alcoholic beverages.

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

Code 1950, § 4-61.1; 1954, c. 147; 1993, c. 866 .

**§ 4.1-317. Maintaining common nuisances; penalties**

A. All houses, boathouses, buildings, club or fraternity or lodge rooms, boats, cars and places of every description where alcoholic beverages are manufactured, stored, sold, dispensed, given away or used contrary to law, by any scheme or device whatever, shall be deemed common nuisances.

No person shall maintain, aid, abet or knowingly associate with others in maintaining a common nuisance.

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

B. In addition, after due notice and opportunity to be heard on the part of any owner or lessor not involved in the original offense, by a proceeding analogous to that provided in §§ 4.1-339 through 4.1-348 and upon proof of guilty knowledge, judgment may be given that such house, building, boathouse, car or other place, or any room or part thereof, be closed. The court may, upon the owner or lessor giving bond in the penalty of not less than $500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, or in violation of the provisions of this chapter for a period of five years, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 4.1-335.

C. In a proceeding under this section, judgment shall not be entered against the owner, lessor, or lienholder of the property unless it is proved he (i) knew of the unlawful use of the property and (ii) had the right, because of such unlawful use, to enter and repossess the property.

Code 1950, p. 877, § 4-81; 1954, c. 484; 1993, c. 866 .

**§ 4.1-318. Violations by armed person; penalty**

No person shall unlawfully manufacture, transport or sell any alcoholic beverages, and at the time of the unlawful manufacturing, transporting, or selling or aiding or assisting in any manner in such act, shall carry on or about his person, or have on or in any vehicle which he may be using to aid him in any such purpose, or have in his possession, actual or constructive, at or within 100 yards of any place where any such alcoholic beverages are being unlawfully manufactured, transported or sold, any dangerous weapon as described in § 18.2-308.

Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

Code 1950, § 4-83; 1993, c. 866 .

**§ 4.1-319. Disobeying subpoena; hindering conduct of hearing; penalty**

No person shall (i) fail or refuse to obey any subpoena issued by the Board, any Board member, or agent authorized by the Board to issue such subpoena or (ii) hinder the orderly conduct and decorum of any hearing held and conducted by the Board, any Board member, or agent authorized by the Board to hold and conduct such hearing.

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

Code 1950, § 4-70; 1993, c. 866 .

**§ 4.1-320. Illegal advertising; penalty; exception**

A. Except in accordance with this title and Board regulations, no person shall advertise in or send any advertising matter into the Commonwealth about or concerning alcoholic beverages other than those which may legally be manufactured or sold without a license.

B. Manufacturers, wholesalers, and retailers may engage in the display of outdoor alcoholic beverage advertising on lawfully erected signs provided such display is done in accordance with § 4.1-112.2 and Board regulations.

C. Except as provided in subsection D, any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

D. For violations of § 4.1-112.2 relating to distance and zoning restrictions on outdoor advertising, the Board shall give the advertiser written notice to take corrective action to either bring the advertisement into compliance with this title and Board regulations or to remove such advertisement. If corrective action is not taken within 30 days, the advertiser shall be guilty of a Class 4 misdemeanor.

E. Neither this section nor any Board regulation shall prohibit (i) the awarding of watches of a wholesale value of less than $100 by a licensed distillery, winery or brewery, to participants in athletic contests; (ii) the exhibition or display of automobiles, boats, or aircraft regularly and normally used in racing or other competitive events and the sponsorship of an automobile, boat or aircraft racing team by a licensed distillery, winery or brewery and the display on the automobile, boat or aircraft and uniforms of the members of the racing team, the trademark or brand name of an alcoholic beverage manufactured by such distillery, winery or brewery; (iii) the sponsorship of a

professional athletic event, including, but not limited to, golf, auto racing or tennis, by a licensed distillery, winery or brewery or the use of any trademark or brand name of any alcoholic beverage in connection with such sponsorship; (iv) the advertisement of beer by the display of such product's name on any airship, which advertising is paid for by the manufacturer of such product; (v) the advertisement of beer or any alcoholic beverage by the display of such product's name on any scale model, reproduction or replica of any motor vehicle, aircraft or watercraft offered for sale; (vi) the placement of billboard advertising within stadia, coliseums, or racetracks that are used primarily for professional or semiprofessional athletic or sporting events; or (vii) the sponsorship of an entertainment or cultural event.

Code 1950, § 4-69; 1978, c. 630; 1979, c. 196; 1980, c. 407; 1993, c. 866; 1995, c. 222; 2009, c. 322; 2011, c. 728; 2012, cc. 760, 818.

**§ 4.1-321. Delivery of alcoholic beverages to prisoners in jail prohibited; penalty**

No person shall deliver, or cause to be delivered, to any prisoner in any local correctional facility, any alcoholic beverage.

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

Code 1950, § 4-93; 1993, c. 866 .

**§ 4.1-322. Possession or consumption of alcoholic beverages by interdicted persons; penalty**

No person who has been interdicted pursuant to § 4.1-333 or § 4.1-334 shall possess any alcoholic beverages, except those acquired in accordance with subdivisions 1 through 5 of § 4.1-200, nor be drunk in public in violation of § 18.2-388.

Any interdicted person found to be in violation of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 4-52; 1954, c. 484; 1982, c. 66; 1993, c. 866; 1996, c. 717.

**§ 4.1-323. Attempts; aiding or abetting; penalty**

No person shall attempt to do any of the things prohibited by this title or to aid or abet another in doing, or attempting to do, any of the things prohibited by this title.

On an indictment, information or warrant for the violation of this title, the jury or the court may find the defendant guilty of an attempt, or being an accessory, and the punishment shall be the same as if the defendant were solely guilty of such violation.

Code 1950, § 4-87; 1993, c. 866 .

## Article 2 - PROHIBITED PRACTICES BY LICENSEES

**§ 4.1-324. Illegal sale or keeping of alcoholic beverages by licensees; penalty**

A. No licensee or any agent or employee of such licensee shall:

1. Sell any alcoholic beverages of a kind other than that which such license or this title authorizes him to sell;

2. Sell beer to which wine, spirits or alcohol has been added, except that a mixed beverage licensee may combine wine or spirits, or both, with beer pursuant to a patron's order;

3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations, except that a mixed beverage licensee may (i) make sangria that contains brandy, triple sec, or other similar spirits and (ii) combine beer or spirits, or both, with wine pursuant to a patron's order;

4. Sell alcoholic beverages of a kind which such license or this title authorizes him to sell, but to any person other than to those to whom such license or this title authorizes him to sell;

5. Sell alcoholic beverages which such license or this title authorizes him to sell, but in any place or in any manner other than such license or this title authorizes him to sell;

6. Sell any alcoholic beverages when forbidden by this title;

7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic beverages other than that which he is authorized to sell by such license or by this title;

8. Sell any beer to a retail licensee, except for cash, if the seller holds a brewery, bottler's or wholesale beer license;

9. Sell any beer on draft and fail to display to customers the brand of beer sold or misrepresent the brand of any beer sold;

10. Sell any wine for delivery within the Commonwealth to a retail licensee, except for cash, if the seller holds a wholesale wine or farm winery license;

11. Keep or allow to be kept or sell any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device;

12. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except: (i) for a frozen alcoholic beverage; and (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; or

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

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

C. Neither this section nor any Board regulation shall prohibit an on-premises restaurant licensee from using alcoholic beverages that the licensee otherwise is authorized to purchase and possess for the purposes of preparing and selling for on-premises consumption food products with a final alcohol content of more than one-half of one percent by volume, as long as such food products are sold to and consumed by persons who are 21 years of age or older.

Code 1950, § 4-60; 1970, c. 360; 1974, c. 460; 1984, c. 603; 1993, c. 866; 1998, c. 238; 2006, c. 714; 2008, cc. 513, 629, 875.

**§ 4.1-325. (Effective until July 1, 2018) Prohibited acts by mixed beverage licensees; penalty**

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

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

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

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

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

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

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

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

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

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

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

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

12. Allow any striptease act on the licensed premises;

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

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

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

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

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

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

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

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

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

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

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

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

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

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection C of § 4.1-209; (iv) pursuant to subdivision A 11 of § 4.1-201; or (v)

pursuant to any Board regulation. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

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

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

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

1968, c. 7, § 4-98.10; 1970, c. 120; 1974, c. 548; 1975, c. 483; 1976, cc. 750, 768; 1978, c. 69; 1979, c. 227; 1982, c. 316; 1983, c. 608; 1993, c. 866; 2000, c. 780; 2002, c. 105; 2003, c. 856; 2004, c. 913; 2006, cc. 256, 826; 2008, cc. 513, 629, 794, 875; 2009, cc. 20, 509; 2010, c. 481; 2013, c. 661; 2015, cc. 404, 604.

**§ 4.1-325.01. Combined licenses for same premises**

On and after July 1, 2015, any licensee of the Alcoholic Beverage Control Board that holds both a mixed beverage restaurant license and a mixed beverage caterer's license for the same business premises may, upon request in writing to the Alcoholic Beverage Control Board, be granted a combined mixed beverage restaurant and caterer's license for the same business premises. The Alcoholic Beverage Control Board may require such licensee to surrender the previously granted mixed beverage restaurant license and mixed beverage caterer's license for the same licensed location. No additional license fee shall be assessed for this change.

2015, c. 404.

**§ 4.1-325.1. Falsifying application; penalty**

It shall be unlawful for any applicant for a banquet or special events license pursuant to § 4.1-209 or mixed beverage special events license pursuant to § 4.1-210 to knowingly make a false statement in order to secure a license or to alter, change, borrow, or lend or attempt to use, borrow, or lend a license. Any person violating this provision shall be guilty of a Class 3 misdemeanor.

2002, c. 104.

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

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

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

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

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

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

2002, c. 105; 2003, c. 856; 2006, cc. 256, 826; 2013, c. 661; 2015, cc. 404, 604.

**§ 4.1-325. (Effective July 1, 2018) Prohibited acts by mixed beverage licensees; penalty**

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

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

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

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

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

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

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

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

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

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

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

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

12. Allow any striptease act on the licensed premises;

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

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

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

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

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

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

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

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

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

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

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

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

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

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

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

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

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

1968, c. 7, § 4-98.10; 1970, c. 120; 1974, c. 548; 1975, c. 483; 1976, cc. 750, 768; 1978, c. 69; 1979, c. 227; 1982, c. 316; 1983, c. 608; 1993, c. 866; 2000, c. 780; 2002, c. 105; 2003, c. 856;

2004, c. 913; 2006, cc. 256, 826; 2008, cc. 513, 629, 794, 875; 2009, cc. 20, 509; 2010, c. 481; 2013, c. 661; 2015, cc. 38, 404, 604, 730.

**§ 4.1-326. Sale of; purchase for resale; wine or beer from a person without a license; penalty**

No licensee, other than a common carrier operating in interstate or foreign commerce, licensed to sell wine or beer at retail shall purchase for resale or sell any wine or beer purchased from anyone other than a wholesale wine or wholesale beer licensee.

Nothing in this section shall prohibit the holder of a retail license issued pursuant to subdivision A 5 of § 4.1-201 from the purchase or sale of wine or beer from the winery or brewery located on or contiguous to the licensed retail premises.

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

Code 1950, §§ 4-64, 4-66; 1984, c. 200; 1988, c. 261; 1993, c. 866; 2015, c. 412.

**§ 4.1-327. Prohibiting transfer of wine or beer by licensees; penalty**

A. No retail licensee, except (i) a retail on-premises wine and beer licensee or (ii) a retail on-premises beer licensee, shall transfer any wine or beer from one licensed place of business to another licensed place of business whether such places of business are under the same ownership or not.

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

1954, c. 338, § 4-34.1; 1993, c. 866 .

**§ 4.1-328. Prohibited trade practices; penalty**

A. No person subject to the jurisdiction of the Board shall violate, attempt to violate, solicit another person to violate or consent to any violation of § 4.1-216 or 4.1-216.1, or regulations adopted pursuant to subdivision B 3 of § 4.1-111.

B. Any person found by the Board to have committed a violation of this section shall be subject to a civil penalty as provided in § 4.1-227.

1989, c. 528, § 4-79.1; 1992, c. 349; 1993, c. 866; 2007, c. 494.

**§ 4.1-329. Illegal advertising materials; penalty**

No person subject to the jurisdiction of the Board shall induce, attempt to induce, or consent to, any manufacturer, as defined in § 4.1-216.1, or any wholesale licensee selling, renting, lending, buying for or giving to any person any advertising materials or decorations under circumstances prohibited by this title or Board regulations.

Any person found by the Board to have violated this section shall be subject to a civil penalty as provided in § 4.1-227.

1981, c. 574, § 4-69.2; 1993, c. 866; 2007, c. 494.

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

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

1968, c. 7, § 4-98.16; 1988, c. 786; 1990, c. 442; 1993, c. 866 .

**§ 4.1-331. Failure to pay tax or to deliver, keep and preserve records and accounts, or to allow examination and inspection; penalty**

No licensee shall fail or refuse to (i) pay any tax provided for in § 4.1-234 or § 4.1-236; (ii) deliver, keep and preserve such records, invoices and accounts as are required by § 4.1-204 or Board regulation; or (iii) allow such records, invoices and accounts or his place of business to be examined and inspected in accordance with § 4.1-204.

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

Code 1950, § 4-65; 1988, c. 261, § 4-136; 1993, c. 866 .

**§ 4.1-332. Nonpayment of excise tax on beer and wine coolers; additional penalties**

A. No person shall sell beer or wine coolers to retailers or consumers without paying the excise tax imposed by § 4.1-236. No retailer shall purchase, receive, transport, store or sell any beer or wine coolers on which such retailer has reason to know such tax has not been paid and may not be paid.

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

B. In addition to subsection A, on each manufacturer, bottler or wholesaler who fails to make any return and pay the full amount of the tax required by § 4.1-236, there shall be imposed a civil penalty to be added to the tax in the amount of five percent of the proper tax due if the failure is for not more than thirty days, with an additional five percent for each additional thirty days, or fraction thereof, during which the failure continues. Such civil penalty shall not exceed twenty-five percent in the aggregate. In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any excise tax due on beer and wine coolers, a civil penalty of fifty percent of the amount of the proper tax due shall be assessed. All penalties and interest shall be payable to the Board and if not so paid shall be collectible in the same manner as if they were a part of the tax imposed.

C. After reasonable notice to the manufacturer, bottler, wholesaler or retailer, the Board may suspend or revoke the license of the manufacturer, bottler, wholesaler or retailer who has failed to make any return or to pay the full amount of the excise tax.

1988, c. 261, §§ 4-139, 4-140; 1993, c. 866 .

## Article 3 - PROCEDURAL MATTERS

### § 4.1-333. Interdiction of intoxicated driver or habitual drunkard

A. When after a hearing upon due notice it appears to the satisfaction of the circuit court of any county or city that any person, residing within such county or city, has been convicted of driving any automobile, truck, motorcycle, engine or train while intoxicated or has shown himself to be an habitual drunkard, the court may enter an order of interdiction prohibiting the sale of alcoholic beverages to such person until further ordered. The court entering any such order shall file a copy of the order with the Board.

B. The court entering any order of interdiction may alter, amend or cancel such order as it deems proper. A copy of any alteration, amendment or cancellation shall be filed with the Board.

Code 1950, § 4-51; 1956, c. 53; 1982, c. 66; 1993, c. 866 .

### § 4.1-334. Interdiction for illegal manufacture, possession, transportation or sale of alcoholic beverages

When any person has been found guilty of the illegal manufacture, possession, transportation, or sale of alcoholic beverages or maintaining a common nuisance as defined in § 4.1-317, the court may without further notice or additional hearing enter an order of interdiction prohibiting the sale

of alcoholic beverages to such person for one year from the date of the entry of the order, and thereafter if further ordered.

Code 1950, § 4-52; 1954, c. 484; 1982, c. 66; 1993, c. 866 .

**§ 4.1-335. Enjoining nuisances**

A. In addition to the penalties imposed by § 4.1-317, the Board, its special agents, the attorney for the Commonwealth, or any citizen of the county, city, or town where a common nuisance as defined in § 4.1-317 exists may maintain a suit in equity in the name of the Commonwealth to enjoin the common nuisance.

B. The courts of equity shall have jurisdiction, and in every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two reputable citizens, that alcoholic beverages are manufactured, stored, sold, dispensed, given away, or used in such house, building or other place described in § 4.1-317 contrary to the laws of the Commonwealth, an injunction shall be granted as soon as the bill is presented to the court. The injunction shall enjoin and restrain the owners, tenants, their agents, employees, servants, and any person connected with such house, building or other place, and all persons whomsoever from manufacturing, storing, selling, dispensing, giving away, or using alcoholic beverages on such premises. The injunction shall also restrain all persons from removing any alcoholic beverage then on such premises until the further order of the court. If the court is satisfied that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such place for a period of time as the court deems proper. The injunction may be dissolved if a proper case is shown for dissolution.

Code 1950, § 4-82; 1993, c. 866 .

**§ 4.1-336. Contraband beverages and other articles subject to forfeiture**

All stills and distilling apparatus and materials for the manufacture of alcoholic beverages, all alcoholic beverages and materials used in their manufacture, all containers in which alcoholic beverages may be found, which are kept, stored, possessed, or in any manner used in violation of the provisions of this title, and any dangerous weapons as described in § 18.2-308, which may be used, or which may be found upon the person or in any vehicle which such person is using, to aid such person in the unlawful manufacture, transportation or sale of alcoholic beverages, or found in the possession of such person, or any horse, mule or other beast of burden, any wagon, automobile, truck or vehicle of any nature whatsoever which is found in the immediate vicinity of any place where alcoholic beverages are being unlawfully manufactured and which such animal or vehicle is being used to aid in the unlawful manufacture, shall be deemed contraband and shall be forfeited to the Commonwealth.

Proceedings for the confiscation of the above property shall be in accordance with § 4.1-338 for all such property except motor vehicles which proceedings shall be in accordance with Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

Code 1950, § 4-53; 1954, c. 484; 1993, c. 866; 2012, cc. 283, 756.

**§ 4.1-337. Search warrants**

A. If complaint on oath is made that alcoholic beverages are being manufactured, sold, kept, stored, or in any manner held, used or concealed in a particular house, or other place, in violation of law, the judge, magistrate, or other person having authority to issue criminal warrants, to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic beverages. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of the Commonwealth pertaining to search warrants.

B. Warrants issued under this title for the search of any automobile, boat, conveyance or vehicle, whether of like kind or not, or for the search of any article of baggage, whether of like kind or not, for alcoholic beverages, may be executed in any part of the Commonwealth where they are overtaken and shall be made returnable before any judge within whose jurisdiction such automobile, boat, conveyance, vehicle, truck, or article of baggage, or any of them, was transported or attempted to be transported contrary to law.

Code 1950, § 4-54; 1993, c. 866 .

**§ 4.1-338. Confiscation proceedings; disposition of forfeited articles**

A. All proceedings for the confiscation of articles, except motor vehicles, declared contraband and forfeited to the Commonwealth under this chapter shall be as provided in this section.

B. Production of seized property. -- Whenever any article declared contraband under the provisions of this title and required to be forfeited to the Commonwealth has been seized, with or without a warrant, by any officer charged with the enforcement of this title, he shall produce the contraband article and any person in whose possession it was found. In those cases where no person is found in possession of such articles the return shall so state and a copy of the warrant shall be posted on the door of the buildings or room where the articles were found, or if there is no door, then in any conspicuous place upon the premises.

In case of seizure of a still, doubler, worm, worm tub, mash tub, fermenting tub, or other distilling apparatus, for any offense involving their forfeiture, where it is impracticable to remove such distilling apparatus to a place of safe storage from the place where seized, the seizing officer may destroy such apparatus only as necessary to prevent use of all or any part thereof for the purpose of distilling. The destruction shall be in the presence of at least one credible witness, and such witness shall join the officer in a sworn report of the seizure and destruction, to be made to the Board. The report shall set forth the grounds of the claim of forfeiture, the reasons for seizure and destruction, an estimate of the fair cash value of the apparatus destroyed, and the materials remaining after such destruction. The report shall include a statement that, from facts within their own knowledge, the seizing officer and witness have no doubt whatever that the distilling appar-

atus was set up for use, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove such apparatus to a place of safe storage.

In case of seizure of any quantity of mash, or of alcoholic beverages on which the tax imposed by the laws of the United States has not been paid, for any offense involving forfeiture of the same, the seizing officer may destroy them to prevent the use of all or any part thereof for the purpose of unlawful distillation of spirits or any other violation of this title. The destruction shall be in the presence of at least one credible witness, and such witness shall join the officer in a sworn report of the seizure and destruction, to be made to the Board. The report shall set forth the grounds of the claim of forfeiture, the reasons for seizure and destruction, and a statement that, from facts within their own knowledge, the seizing officer and witness have no doubt whatever that the mash was intended for use in the unlawful distillation of spirits, or that the alcoholic beverages were intended for use in violation of this title.

C. Hearing and determination. -- Upon the return of the warrant as provided in this section, the court shall fix a time not less than ten days, unless waived by the accused in writing, and not more than thirty days thereafter, for the hearing on such return to determine whether or not the articles seized, or any part thereof, were used or in any manner kept, stored or possessed in violation of this title.

At such hearing if no claimant appears, the court shall declare the articles seized forfeited to the Commonwealth and, if such articles are not necessary as evidence in any pending prosecution, shall turn them over to the Board. Any person claiming an interest in any of the articles seized may appear at the hearing and file a written claim setting forth particularly the character and extent of his interest. The court shall certify the warrant and the articles seized along with any claim filed to the circuit court to hear and determine the validity of such claim.

If the evidence warrants, the court shall enter a judgment of forfeiture and order the articles seized to be turned over to the Board. Action under this section and the forfeiture of any articles hereunder shall not be a bar to any prosecution under any other provision of this title.

D. Disposition of forfeited beverages and other articles. -- Any articles forfeited to the Commonwealth and turned over to the Board in accordance with this section shall be destroyed or sold by the Board as it deems proper. The net proceeds from such sales shall be paid into the Literary Fund. If the Board believes that any alcoholic beverages forfeited to the Commonwealth and turned over to the Board in accordance with this section cannot be sold and should not be destroyed, it may give such alcoholic beverages for medicinal purposes to any institution in the Commonwealth regularly conducted as a hospital, nursing home or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, to supply the needs of such institution for alcoholic beverages for such purposes, provided that (i) the State Health Commissioner has issued a certificate stating that such institution has need for such alcoholic beverages and (ii) preference is accorded by the Board to institutions supported either in whole or in

part by public funds. A record shall be made showing the amount issued in each case, to whom issued and the date when issued, and shall be kept in the offices of the State Health Commissioner and the Board. No charge shall be made to any patient for the alcoholic beverages supplied to him where they have been received from the Board pursuant to this section. Such alcoholic beverages shall be administered only upon approval of the patient's physician.

If the Board believes that any foodstuffs forfeited to the Commonwealth and turned over to the Board in accordance with this section are usable, should not be destroyed and cannot be sold or whose sale would be impractical, it may give such foodstuffs to any institution in the Commonwealth and shall prefer a gift to the local jail or other local correctional facility in the jurisdiction where seizure took place. A record shall be made showing the nature of the foodstuffs and amount given, to whom given and the date when given, and shall be kept in the offices of the Board.

Code 1950, § 4-55; 1954, c. 484; 1958, c. 194; 1976, c. 37; 1993, c. 866; 1995, c. 196.

**§ 4.1-339. Search and seizure of conveyances or vehicles used in violation of law; arrests**

A. When any officer charged with the enforcement of the alcoholic beverage control laws of the Commonwealth has reason to believe that alcoholic beverages illegally acquired, or being illegally transported, are in any conveyance or vehicle of any kind, either on land or on water (except a conveyance or vehicle owned or operated by a railroad, express, sleeping or parlor car or steamboat company, other than barges, tugs or small craft), he shall obtain a search warrant and search such conveyance or vehicle. If illegally acquired alcoholic beverages or alcoholic beverages being illegally transported in amounts in excess of one quart or one liter if in a metric-sized container are found, the officer shall seize the alcoholic beverages, seize and take possession of such conveyance or vehicle, and deliver them to the chief law-enforcement officer of the locality in which such seizure was made, taking his receipt therefor in duplicate.

B. The officer making such seizure shall also arrest all persons found in charge of such conveyance or vehicle and shall forthwith report in writing such seizure and arrest to the attorney for the Commonwealth for the county or city in which seizure and arrest were made.

Code 1950, § 4-56; 1954, c. 504; 1968, c. 763; 1971, Ex. Sess., c. 155; 1973, c. 16; 1978, cc. 434, 436; 1981, c. 365; 1983, c. 271; 1984, c. 52; 1993, c. 866 .

**§§ 4.1-340 through 4.1-345. Repealed**

Repealed by Acts 2012, cc. 283 and 756, cl. 2.

**§ 4.1-346. Contraband beverages**

Alcoholic beverages seized pursuant to § 4.1-339 shall be deemed contraband as provided in § 4.1-336 and disposed of accordingly. Failure to maintain on a conveyance or vehicle a permit or other indicia of permission issued by the Board authorizing the transportation of alcoholic beverages within, into or through the Commonwealth when other Board regulations applicable to such trans-

portation have been complied with shall not be cause for deeming such alcoholic beverages contraband.

Code 1950, § 4-56; 1954, c. 504; 1968, c. 763; 1971, Ex. Sess., c. 155; 1973, c. 16; 1978, cc. 434, 436; 1981, c. 365; 1983, c. 271; 1984, c. 52; 1993, c. 866 .

**§ 4.1-347. Repealed**

Repealed by Acts 2012, cc. 283 and 756, cl. 2.

**§ 4.1-348. Beverages not licensed under this title**

The provisions of §§ 4.1-339 through 4.1-348 shall not apply to alcoholic beverages which may be manufactured and sold without any license under the provisions of this title.

Code 1950, § 4-56; 1954, c. 504; 1968, c. 763; 1971, Ex. Sess., c. 155; 1973, c. 16; 1978, cc. 434, 436; 1981, c. 365; 1983, c. 271; 1984, c. 52; 1993, c. 866 .

**§ 4.1-349. Punishment for violations of title or regulations; bond**

A. Any person convicted of a misdemeanor under the provisions of this title without specification as to the class of offense or penalty, or convicted of violating any other provision thereof, or convicted of violating any Board regulation, shall be guilty of a Class 1 misdemeanor.

B. In addition to the penalties imposed by this title for violations, any court before whom any person is convicted of a violation of any provision of this title may require such defendant to execute bond, with approved security, in the penalty of not more than $1,000, with the condition that the defendant will not violate any of the provisions of this title for the term of one year. If any such bond is required and is not given, the defendant shall be committed to jail until it is given, or until he is discharged by the court, provided he shall not be confined for a period longer than six months. If any such bond required by a court is not given during the term of the court by which conviction is had, it may be given before any judge or before the clerk of such court.

C. The provisions of this title shall not prevent the Board from suspending, revoking or refusing to continue the license of any person convicted of a violation of any provision of this title.

D. No court shall hear such a case unless the respective attorney for the Commonwealth or his assistant has been notified that such a case is pending.

Code 1950, § 4-92; 1984, c. 603; 1993, c. 866 .

**§ 4.1-350. Witness not excused from testifying because of self-incrimination**

No person shall be excused from testifying for the Commonwealth as to any offense committed by another under this title by reason of his testimony tending to incriminate him. The testimony given by such person on behalf of the Commonwealth when called as a witness for the prosecution shall not be used against him and he shall not be prosecuted for the offense to which he testifies.

Code 1950, § 4-94; 1993, c. 866 .

**§ 4.1-351. Previous convictions**

In any indictment, information or warrant charging any person with a violation of any provision of this title, it may be alleged and evidence may be introduced at the trial of such person to prove that such person has been previously convicted of a violation of this title.

Code 1950, § 4-91; 1993, c. 866 .

**§ 4.1-352. Certificate of forensic scientist as evidence; requiring forensic scientist to appear**
The certificate of any forensic scientist employed by the Commonwealth on behalf of the Board or the Department of Forensic Science, when signed by him, shall be evidence in all prosecutions for violations of this title and all controversies in any judicial proceedings touching the mixture analyzed by him. On motion of the accused or any party in interest, the court may require the forensic scientist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable time prior to the day on which the case is set for trial.

Code 1950, § 4-90; 1972, c. 741; 1981, c. 410; 1993, c. 866; 2003, c. 130; 2005, cc. 868, 881.

**§ 4.1-353. Label on sealed container prima facie evidence of alcoholic content**
In any prosecution for violations of this title, where a sealed container is labeled as containing an alcoholic beverage as defined herein, such labeling shall be prima facie evidence of the alcoholic content of the container. Nothing shall preclude the introduction of other relevant evidence to establish the alcoholic content of a container, whether sealed or not.

1962, c. 616, § 4-90.1; 1993, cc. 169, 866; 1997, c. 418.

**§ 4.1-354. No recovery for alcoholic beverages illegally sold**
No action to recover the price of any alcoholic beverages sold in contravention of this title may be maintained.

Code 1950, § 4-88; 1993, c. 866 .

## Chapter 4 - WINE FRANCHISE ACT

**§ 4.1-400. Construction and purpose**
This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

The underlying purposes and policies of the chapter are:

1. To promote the interests of the parties and the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;

2. To preserve and protect the existing three-tier system for the distribution of wine, which system is deemed material to the proper regulation by the Board of the distribution of alcoholic beverages;

3. To prohibit unfair treatment of wine wholesalers by wineries, promote compliance with valid franchise agreements, and define certain rights and remedies of wineries in regard to cancellation of franchise agreements with wholesalers;

4. To establish conditions for creation and continuation of all wholesale wine distributorships, including original agreements and any renewals or amendments thereto, to the full extent consistent with the laws and Constitutions of the Commonwealth and the United States; and

5. To provide for a system of designation and registration of franchise agreements between wineries and wholesalers with the Board as an aid to Board regulation of the distribution of wine by wholesalers.

Code 1950, § 4-118.22; 1985, c. 542, § 4-118.42; 1989, c. 10; 1993, c. 866 .

**§ 4.1-401. Definitions**

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

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a winery and wine wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the winery's brands of wine. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by a winery for any wine to a wine wholesaler within the Commonwealth.

2. The payment by a wine wholesaler and the acceptance of payment by any winery for the shipment of an order of wine intended for sale in the Commonwealth.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a winery to identify a specific wine product and to distinguish that product from other wine produced or marketed by that winery or other wineries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same winery and which relies to a significant extent on the good will associated with such preexisting brand.

"Dual distributorships" means the existence of agreements between a single winery and more than one wholesaler, each selling a different brand, in a given territory as the result of a purchase of another winery.

"Nonsurviving winery" means any winery which is purchased by another winery as provided in § 4.1-405 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. Person also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving winery" means the winery which purchases a nonsurviving winery as provided in § 4.1-405.

"Territory" or "sales territory" means the area of primary sales responsibility within the Commonwealth expressly or implicitly designated by any agreement between any wine wholesaler and winery for the brand or brands of any winery.

"Wine wholesaler" means any wholesale wine licensee offering wine for sale or resale to retailers or other wine wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed winery.

"Winery" means every person, including any authorized representative of such person pursuant to § 4.1-218, which enters into an agreement with any Virginia wholesale wine licensee and (i) is licensed as a winery or is licensed as a Virginia farm winery, (ii) is licensed as a wine importer and is not simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in the Commonwealth or not, or (iv) without regard to whether such person is licensed in the Commonwealth, has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

Code 1950, §§ 4-118.21, 4-118.23; 1985, c. 542, § 4-118.43; 1986, c. 102; 1989, c. 10; 1991, c. 628; 1993, c. 866; 1997, c. 801.

**§ 4.1-402. Applicability**

This chapter shall apply to all agreements in effect on or after February 18, 1989, and any renewal or amendment of such agreements. For the purposes of this chapter, an agreement shall be deemed to be in effect or renewed or continued in effect when any of the following acts occur after February 18, 1989:

1. The shipment, preparation for shipment or acceptance of any order by a winery or its agents for any wine to a wine wholesaler within the Commonwealth; and

2. The payment by a wine wholesaler and the acceptance of payment by any winery or its agents for the shipment of an order of wine intended for sale in the Commonwealth.

Code 1950, § 4-118.38; 1985, c. 542, § 4-118.58; 1989, c. 10; 1993, c. 866 .

**§ 4.1-403. No inducement or coercion**

No winery shall:

1. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to accept delivery of any wine or any other commodity which has not been ordered by the wine wholesaler.

2. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a winery and wine wholesaler.

3. Require a wine wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other winery anywhere in the Commonwealth.

Code 1950, § 4-118.24; 1985, c. 542, § 4-118.44; 1989, c. 10; 1993, c. 866 .

**§ 4.1-404. Primary area of responsibility**

Each winery which enters into an agreement with a wine wholesaler shall designate a sales territory as the primary area of responsibility of that wholesaler which is applicable to the agreement. The term "primary area of responsibility" shall not be construed as restricting sales or sales efforts by a wine wholesaler exclusively to retailers located within the designated sales territory, and any agreement to the contrary shall be void. No winery shall enter into any agreement with more than one wholesaler for the purpose of establishing more than one agreement for its brands of wine in any territory. However, the existence of more than one such agreement as a result of a sale of a winery as contemplated by § 4.1-405 shall not be prohibited. Notwithstanding any other provision in this chapter, a winery may enter into agreements with more than one wholesaler in a sales territory for new brands which are not clearly extensions of existing brands. Territories served by a wine wholesaler on February 18, 1989, shall be deemed designated sales territories within the meaning of this section. Each winery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in the designated territory in regard to a particular brand. Redesignations shall be reported to the Board within thirty days.

Code 1950, § 4-118.25; 1985, c. 542, § 4-118.45; 1989, c. 10; 1993, c. 866 .

**§ 4.1-405. Sale of winery**

A. Except for discontinuance of a brand or for good cause as provided in § 4.1-406, the purchaser of a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers in effect on the date of purchase. The purchaser of a brand from a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the winery selling the brand shall be a nonsurviving winery and the purchaser shall be a surviving winery.

B. For purposes of this section, when a purchase of a winery by or on behalf of another winery causes the selling winery to cease to exist as an independent legal entity, the selling winery shall be regarded as a nonsurviving winery, and the winery on whose behalf the purchase was made shall be regarded as a surviving winery. In any case in which such a purchase of a winery by or on

behalf of another winery has created or will create a dual distributorship, the following rules shall apply in order to determine the allocation of any brands which are first marketed in the Commonwealth by the surviving winery after February 18, 1989:

1. If the surviving winery distributes in the Commonwealth brands of the nonsurviving winery which that winery marketed anywhere prior to the purchase, these brands shall be distributed through any wholesalers who were distributors in the Commonwealth for the nonsurviving winery. If the nonsurviving winery had no distributors in the Commonwealth, then the surviving winery's brands, as well as the brands of the surviving winery which were marketed anywhere prior to the purchase, shall be distributed through those wine wholesalers who were wholesalers of the surviving winery prior to the purchase.

2. If the surviving winery decides to market in the Commonwealth a new brand which was not marketed anywhere prior to the purchase, but which is clearly an extension of a brand which did exist prior to the purchase, the new brand shall be distributed through those wholesalers who distributed the brand of which the new brand is an extension.

3. If the surviving winery decides to introduce in the Commonwealth a new brand which was not marketed anywhere prior to the purchase and which is not a brand extension, the new brand may be distributed through any distributor.

Code 1950, § 4-118.26; 1985, c. 542, § 4-118.46; 1989, c. 10; 1993, c. 866 .

**§ 4.1-406. Cancellation**

Notwithstanding the terms, provisions or conditions of any agreement, no winery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the winery has first complied with § 4.1-407 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. Good cause shall not include the sale or purchase of a winery. Good cause shall include, but is not limited to the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;

2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the winery including, but not limited to, a substantial failure by a wine wholesaler to (i) maintain a sales volume or trend of his winery's brand or brands comparable to that of other distributors of that brand in the Commonwealth similarly situated or (ii) render services comparable in quality, quantity or volume to the services rendered by other wholesalers of the same brand or brands within the

Commonwealth similarly situated. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Nothing in this section shall be construed to prohibit a winery from proposing or effecting an amendment to a contract with a wine wholesaler in the Commonwealth provided that such amendment is not inconsistent with this chapter.

Good cause shall not be construed to exist without a finding of a material deficiency for which the wholesaler is responsible in any case in which good cause is alleged to exist based on circumstances not specifically set forth in subdivisions 1 through 4 of this section.

Code 1950, § 4-118.27; 1985, c. 542, § 4-118.47; 1987, c. 246; 1989, c. 10; 1993, c. 866; 1996, c. 3.

**§ 4.1-407. Notice of intent to terminate**

A. Except as provided in subsection F, a winery shall provide a wholesaler at least ninety days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal. After providing such notice, a winery may immediately apply to the Board for a determination that it is likely to incur substantial hardship if required to comply with the ninety-day notice requirement. If the Board makes such a determination, the ninety-day notice requirement shall be reduced to thirty days. In this event, the thirty-day notice period shall be included in the sixty-day opportunity to cure period provided in subsection B.

B. Where the reason relates to a condition which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and, within the sixty-day period, shall give written notice to the winery if and when such action is taken. A copy of the notice shall be mailed at the same time to the Board. If such condition has been rectified by action of the wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the winery contends that action on the part of the wholesaler has not rectified one or more of such conditions, the winery must within fifteen days after the expiration of the sixty-day period request a hearing before the Board to determine if the condition has been rectified by action of the wholesaler.

C. Where the reason relates to a condition which may not be rectified by the wholesaler within the sixty-day period, the wholesaler may request a hearing before the Board to determine if there is good cause for the amendment, termination, cancellation or nonrenewal of the agreement.

D. Upon request in writing within the ninety-day period provided in subsection A from such winery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the

action of the wholesaler has rectified the condition or, as the case may be, if good cause exists for the amendment, termination, cancellation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the winery shall have the burden of proving the existence of good cause. Where a petition is made to the Board for a determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof, except in any case in which the Board makes a finding that there is good cause, as defined in § 4.1-406, for the amendment, termination, cancellation, or nonrenewal, in which case the winery may, unless otherwise ordered by a court of record, discontinue the agreement in question. However, where a petition is made to the Board after the agreement has been terminated in accordance with the procedures set forth in this section, the filing of the petition shall not cause the terminated agreement to be reinstated unless the terminated wholesaler's failure to petition in a timely manner was based upon reasonable reliance on representation or other inducements made by the winery.

F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;

2. An assignment for the benefit of creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

3. Revocation of the wholesaler's license.

Code 1950, § 4-118.28; 1985, c. 542, § 4-118.48; 1989, c. 10; 1993, c. 866; 1997, c. 183.

**§ 4.1-408. Transfer of business**

A. No winery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more wineries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no winery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

Code 1950, § 4-118.29; 1985, c. 542, § 4-118.49; 1989, c. 10; 1993, c. 866 .

**§ 4.1-409. Remedies**

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a winery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § 4.1-406, the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the winery pay the wholesaler reasonable compensation for the value of this agreement as determined pursuant to subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the winery's products;

2. The cost of the wholesaler's inventory of the winery's products calculated as the sum of the net price paid by the wholesaler for the inventory;

3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;

4. The cost of transporting the inventory from the winery to the wholesaler's warehouse, plus any handling costs; and

5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

B. In the event the winery and the wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, a person qualified by experience to appraise the value of existing businesses shall be appointed arbitrator by the Secretary of the Board. The decision of the arbitrator shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the winery. By entering into an agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a winery is found to have violated § 4.1-407, the Board may, upon request of the wholesaler involved, order the winery to compensate the wholesaler for any loss proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the winery to the date the winery initiates remedial action pursuant to Board order.

Code 1950, § 4-118.30; 1985, c. 542, § 4-118.50; 1987, c. 246; 1989, c. 10; 1993, c. 866 .

**§ 4.1-410. Board proceedings and appellate review**

A. The Board, upon petition by any interested party, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that the winery or wine wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter, the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing, or manufacturing practices or processes of the winery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the winery and wholesaler on condition that such information will not be disclosed by the Board, the winery or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

Code 1950, § 4-118.31; 1985, c. 542, § 4-118.51; 1987, c. 139; 1989, c. 10; 1993, c. 866 .

**§ 4.1-411. Price of product**

No winery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any wine.

Code 1950, § 4-118.32; 1985, c. 542, § 4-118.52; 1989, c. 10; 1993, c. 866 .

**§ 4.1-412. Increase of prices**

No winery or wine importer shall increase the prices charged any wholesale wine licensee for wine except by written notice to the wholesaler signed by an authorized officer or agent of the winery or wine importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a winery or wine importer so requests and demonstrates good cause therefor.

Code 1950, § 4-118.33; 1985, c. 542, § 4-118.53; 1989, c. 10; 1993, c. 866 .

**§ 4.1-413. Retaliatory action prohibited**

A winery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the winery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of services or quality of products available to the wholesaler under the agreement.

Code 1950, § 4-118.34; 1985, c. 542, § 4-118.54; 1989, c. 10; 1993, c. 866 .

**§ 4.1-414. Management**

No winery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery for its wholesalers.

Code 1950, § 4-118.35; 1985, c. 542, § 4-118.55; 1989, c. 10; 1993, c. 866 .

**§ 4.1-415. Discrimination prohibited**

No winery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

Code 1950, § 4-118.36; 1985, c. 542, § 4-118.56; 1989, c. 10; 1993, c. 866 .

**§ 4.1-416. Waiver prohibited; conflicts of laws**

A. No winery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a winery and a wine wholesaler pursuant to which the wholesaler is to market the winery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance, notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

Code 1950, § 4-118.37; 1985, c. 542, § 4-118.57; 1989, c. 10; 1993, c. 866 .

**§ 4.1-417. Right of free association**

No winery or wholesaler shall restrict or inhibit the right of free association among wineries or wholesalers for any lawful purpose.

Code 1950, § 4-118.39; 1985, c. 542, § 4-118.59; 1989, c. 10; 1993, c. 866 .

**§ 4.1-418. Reasonableness and good faith**

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

Code 1950, § 4-118.40; 1985, c. 542, § 4-118.60; 1989, c. 10; 1993, c. 866 .

## Chapter 5 - BEER FRANCHISE ACT

### § 4.1-500. Definitions

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

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a brewery and beer wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the brewery's brands of beer. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by any brewery for any beer to a beer wholesaler within the Commonwealth.

2. The payment by a beer wholesaler and the acceptance of payment by any brewery for the shipment of an order of beer intended for sale in the Commonwealth.

"Beer wholesaler," "wholesaler," "beer distributor," and "distributor" mean any wholesale beer licensee, including any successor-in-interest to such person, within the Commonwealth offering beer for sale or resale to retailers or other beer wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewery.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a brewery to identify a specific malt beverage product and to distinguish that product from other beers produced or marketed by that brewery or other breweries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand, which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with such preexisting brand.

"Brewery" means every person, including any authorized representative of such person pursuant to § 4.1-218 which (i) is licensed as a brewery located within the Commonwealth, (ii) holds a beer importer's license and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products excluding licensed Virginia wholesalers and retailers or has the contractual right to distribute under its own brand any malt beverage

product whether licensed in the Commonwealth or not, who enters into an agreement with any beer wholesaler licensed to do business in the Commonwealth.

"Dual distributorships" means the existence of agreements between a single brewery and more than one wholesaler in a given territory as the result of a purchase of another brewery.

"Nonsurviving brewery" means any brewery which is purchased by another brewery as provided in § 4.1-504 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving brewery" means a brewery which purchases a nonsurviving brewery as provided in § 4.1-504.

"Territory" or "sales territory" means the area of sales responsibility within the Commonwealth expressly or impliedly designated by any agreement between any beer wholesaler and brewery for the brand or brands of any brewer.

1978, c. 579, § 4-118.4; 1985, c. 549; 1987, c. 247; 1991, c. 628; 1993, c. 866; 1997, c. 801.

**§ 4.1-501. Applicability**

This chapter shall apply to all agreements in effect on or after January 1, 1978.

1978, c. 579, § 4-118.18; 1993, c. 866 .

**§ 4.1-502. No inducement or coercion**

No brewery shall:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any beer or any other commodity which has not been ordered by the beer wholesaler.

2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewery and beer wholesaler.

3. Require a beer wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other brewery anywhere in the Commonwealth.

1978, c. 579, § 4-118.5; 1993, c. 866 .

**§ 4.1-503. Sales territory**

Each brewery which enters into an agreement with a beer wholesaler shall designate a sales territory for that wholesaler which is applicable to the agreement. No brewery shall enter into any agreement with more than one beer wholesaler for the purpose of establishing more than one

agreement for its brands of beer in any territory. However, the existence of more than one such agreement as a result of a sale of a brewery as contemplated by § 4.1-504 shall not be prohibited. Each brewery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in such designated territory with regard to a particular brand. Redesignations shall be reported to the Board within thirty days.

1978, c. 579, § 4-118.6; 1985, c. 536; 1993, c. 866 .

**§ 4.1-504. Sale of brewery**

A. Except for discontinuance of a brand or for good cause as provided in § 4.1-505, the purchaser of a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreements with distributors in effect on the date of purchase. The purchaser of a brand from a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreement with distributors concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the brewery selling such brand shall be a nonsurviving brewery and the purchaser shall be a surviving brewery.

B. For purposes of this section, when a purchase of a brewery by or on behalf of another brewery causes the selling brewery to cease to exist as an independent legal entity, the selling brewery shall be regarded as a nonsurviving brewery and the brewery on whose behalf the purchase was made shall be regarded as a surviving brewery. The following rules shall apply in order to determine (i) the distribution rights to any brands which are first marketed in the Commonwealth by the surviving brewery on or after July 1, 1985, with respect to a dual distributorship created prior to July 1, 1985, and (ii) the distribution rights to any brands, regardless of when they were first marketed in the Commonwealth, with respect to a dual distributorship created on or after July 1, 1985:

1. If the surviving brewery distributes in the Commonwealth any brand or brands of the nonsurviving brewery which that brewery marketed in the Commonwealth at any time during the one-year period ending on the day the purchase agreement was made, these brands shall be distributed through those beer wholesalers who were distributors in the Commonwealth for the nonsurviving brewery. Any brands which the surviving brewery had marketed in the Commonwealth prior to the purchase shall be distributed through those beer wholesalers who were wholesalers of the surviving brewery prior to the purchase.

2. If the surviving brewery decides to market in the Commonwealth a new brand which is clearly an extension of a brand already assigned to beer wholesalers in the Commonwealth, the new brand shall be distributed through those wholesalers who distribute the brand of which the new brand is an extension.

3. If the surviving brewery decides to introduce in the Commonwealth a new brand which was not marketed in the Commonwealth at any time during the one-year period ending on the date the purchase agreement was made and which is not a brand extension, the surviving brewery shall market the new brand either through a distributor of the nonsurviving brewery or through a distributor who was a distributor of the surviving brewery prior to the purchase, as the brewery may see fit in any territory.

C. Subsection B shall not apply to determine distributorship rights to any brands or brand extensions which were marketed in the Commonwealth prior to July 1, 1985, with respect to any dual distributorship created prior to July 1, 1985.

1985, c. 549, § 4-118.6:1; 1993, c. 866 .

**§ 4.1-505. Cancellation**

Notwithstanding the terms, provisions or conditions of any agreement, no brewery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the brewery has first complied with § 4.1-506 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. Good cause shall not include the sale or purchase of a brewery. Good cause shall include, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;

2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him in writing by the brewery, including, but not limited to, a substantial failure by a beer wholesaler to (i) maintain a sales volume of his brewery's brand or brands, (ii) render services comparable in quality, quantity or volume to the sales volumes maintained and services rendered by other wholesalers of the same brand or brands within the Commonwealth, or (iii) failure to obtain the consent of the brewery to a transfer of a wholesaler's business unless a determination has been made by the Board pursuant to § 4.1-507 that such consent was unreasonably withheld by the brewery. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the brewery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Good cause shall not be construed to exist without a finding of a material deficiency for which the wholesaler is responsible in any case in which good cause is alleged to exist based on circumstances not specifically set forth in subdivisions 1 through 4 of this section.

1978, c. 579, § 4-118.7; 1985, c. 549; 1987, c. 247; 1989, c. 272; 1993, c. 866; 1996, c. 3.

**§ 4.1-506. Notice of intent to terminate**

A. Except as provided in subsection F, a brewery shall provide a wholesaler at least ninety days' prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

B. Where the reason relates to a condition or conditions which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and shall, within the sixty-day period, give written notice to the brewery if and when such action is taken. A copy of the notice shall be mailed at the same time to the Board. If such condition has been rectified by action of the wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the brewery contends that action on the part of the wholesaler has not rectified one or more of such conditions the brewery shall within fifteen days after the expiration of such sixty-day period request a hearing before the Board to determine if the condition has been rectified by action of the wholesaler.

C. Where the reason relates to a condition which may not be rectified by the wholesaler within the sixty-day period, the wholesaler may request a hearing before the Board to determine if there is good cause for the amendment, termination, cancellation or nonrenewal of the agreement.

D. Upon request in writing within the ninety-day period provided in subsection A from such brewery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of the wholesaler has rectified the condition or, as the case may be, if good cause exists for the amendment, termination, cancellation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the brewery shall have the burden of proving the existence of good cause. Where a petition is made to the Board in a timely manner for a determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof, except in any case in which the Board makes a finding that there is good cause, as defined in § 4.1-505, for the amendment, termination, cancellation, or nonrenewal, in which case the brewery may, unless otherwise ordered by a court of record, discontinue the agreement in question.

F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;

2. An assignment for the benefit of creditors or similar disposition of the assets of the business other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

3. Revocation of the wholesaler's license.

1978, c. 579, § 4-118.8; 1985, c. 549; 1993, c. 866; 1997, c. 183.

**§ 4.1-507. Transfer of business**

A. No brewery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business, or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more breweries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no brewery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all other respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

1978, c. 579, § 4-118.9; 1985, c. 549; 1993, c. 866 .

**§ 4.1-508. Remedies**

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a brewery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § 4.1-505, the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the brewery pay the wholesaler reasonable compensation for the value of the agreement, which shall be determined in the manner provided for in subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the brewery's products;

2. The cost of the wholesaler's inventory of the brewery's products calculated as the sum of the net price paid by the wholesaler for the inventory;

3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;

4. The cost of transporting the inventory from the brewery to the wholesaler's warehouse, plus any handling costs; and

5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

The compensation for such assets shall be subject to offset for (i) any sums recovered by the wholesaler in liquidation of the assets and (ii) the value which the assets have to the wholesaler independent of their value for use in distributing the brewery's products.

B. In the event the brewery and the beer wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a panel of three arbitrators. The brewery and the beer wholesaler shall each select one arbitrator and the two arbitrators selected shall appoint a third arbitrator who shall be a person qualified by experience to appraise the value of existing businesses. The decision of the arbitrators shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewery. By entering into an agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a brewery is found to have violated § 4.1-506, the Board may, upon request of the wholesaler involved, order the brewery to compensate the wholesaler for any losses proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the brewery to the date the brewery initiates remedial action pursuant to Board order.

1978, c. 579, § 4-118.10; 1985, c. 549; 1987, c. 247; 1993, c. 866 .

**§ 4.1-509. Board proceedings and appellate review**

A. The Board, upon petition by any beer wholesaler or brewery, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that a brewery or beer wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions,

interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing or manufacturing practices or processes of the brewery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the brewery and wholesaler on condition that such information will not be disclosed by the Board, the brewery, or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

1978, c. 579, § 4-118.11; 1980, c. 299; 1981, c. 536; 1985, c. 549; 1987, c. 139; 1993, c. 866 .

**§ 4.1-509.1. Board proceedings; contemplated actions by brewery or wholesaler**

A. For purposes of this section, "contemplated action" means an action proposed by a brewery or wholesaler that (i) if carried out would violate any provision of this chapter or subdivision 1 c (v) of § 4.1-225 and (ii) is demonstrated by a specific written statement authored by a brewery or an employee of a wholesaler who is specifically authorized by virtue of job title and responsibility to make such statement and such other evidence as may be required by the Board pursuant to the facts of any given circumstance.

B. Subsequent to compliance with subsection D, any wholesaler may file a petition against a brewery, and any brewery may file a petition against a wholesaler, in which the petitioner alleges that the respondent named in the petition as a matter of past or present fact has contemplated action that if carried out would violate any provision of this chapter or subdivision 1 c (v) of § 4.1-225. Any such petition filed shall identify with specificity the alleged contemplated action, the document in which such contemplated action is described or authorized, and specify the provision of law or regulation that the contemplated action would violate if carried out. The petition shall include a statement that a controversy as to the lawfulness of the contemplated action exists. The statement shall be supported by evidence of the petitioner's good faith effort to resolve the controversy in accordance with subsection D. The petitioner shall have the burden of establishing that the contemplated actions identified in the petition, if carried out, would violate any provision of law or regulation enumerated in this subsection. The Board may, if it finds that a brewery or wholesaler has frivolously maintained a petition or defense to a proceeding pursuant to this chapter, award reasonable costs and attorney fees to the prevailing party.

C. Any petition filed by a brewery or wholesaler pursuant to this section shall be delivered to the Secretary of the Board. The Board shall promptly issue a written determination as to whether a violation or attempted violation as alleged in the petition has occurred. In addition, the Board

shall promptly issue a written determination as to whether a violation alleged in the petition would occur if the contemplated action identified in the petition were to be carried out.

D. Prior to filing a petition, a party shall communicate with the party alleged to be considering a contemplated action and initiate a good faith attempt to resolve the issue in question. If within 21 days of initiating the communication required by this subsection, or such longer period of time if mutually agreed upon, there is no resolution, either party may proceed to file a petition in accordance with subsection B.

2013, c. 3.

**§ 4.1-510. Price of product**

No brewery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any beer.

1978, c. 579, § 4-118.12; 1993, c. 866 .

**§ 4.1-511. Increase of prices**

No brewery or beer importer shall increase the prices charged any wholesale beer licensee for beer except by written notice to the wholesaler signed by an authorized officer or agent of the brewery or beer importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a brewery or beer importer so requests and demonstrates good cause therefor.

1982, c. 122, § 4-118.12:1; 1993, c. 866 .

**§ 4.1-512. Retaliatory action prohibited**

A brewery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of service or quantity of products available to the wholesaler under the agreement.

1978, c. 579, § 4-118.13; 1993, c. 866 .

**§ 4.1-513. Management**

No brewery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the brewery for all its wholesalers.

1978, c. 579, § 4-118.14; 1985, c. 549; 1993, c. 866 .

**§ 4.1-514. Discrimination prohibited**

No brewery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

1978, c. 579, § 4-118.15; 1993, c. 866 .

**§ 4.1-515. Waiver prohibited; conflicts of laws**

A. No brewery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a brewery and a beer wholesaler pursuant to which the wholesaler is to market the brewery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

1978, c. 579, § 4-118.16; 1989, c. 272; 1993, c. 866 .

**§ 4.1-516. Right of free association**

No brewery or wholesaler shall restrict or inhibit the right of free association among breweries or wholesalers for any lawful purpose.

1978, c. 579, § 4-118.19; 1993, c. 866 .

**§ 4.1-517. Reasonableness and good faith**

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

1985, c. 549, § 4-118.20:1; 1993, c. 866 .