

**ALCOHOLIC BEVERAGE CONTROL IN VIRGINIA**

**REPORT OF THE**

**COMMISSION ON ALCOHOLIC BEVERAGE CONTROL**

**TO**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**House Document No. 29**

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1974

## MEMBERS OF COMMISSION

---

A L PHILPOTT, *Chairman*

WILLIAM B HOPKINS, *Vice Chairman*

FRANK ARMSTRONG, III

CARL E BAIN

LEROY S BENDHEIM

WALTHER B FIDLER

JOHN D GRAY

THOMAS W MOSS, JR

HERMAN J OBERMAYER

C T ROGERS

LAWRENCE DOUGLAS WILDER

---

## STAFF

JOHN A BANKS, JR, *Director*

G WILLIAM WHITE, JR

ROBERT W BENDALL

ALCOHOLIC BEVERAGE CONTROL STUDY  
COMMISSION REPORT

Richmond, Virginia

January 14, 1974

TO THE GENERAL ASSEMBLY OF VIRGINIA

I INTRODUCTION

The present Alcoholic Beverage Control System was adopted in the 1934 Session of the General Assembly, as a result of recommendations proposed by a study commission created in 1933. As time passed, the Act has generally continued in force as passed without major change until 1968, when the General Assembly made a major change in policy with the adoption of the Mixed Beverage laws. From time to time, the legislature, in view of the increasing number of bills offered to effect both minor and major changes in the system, has made a practice of reviewing the alcoholic beverage control laws and the practices of the Board. The last study was made in 1953. The General Assembly of 1973 felt that before making any further far reaching changes in the system of control it should again review the operation of the Board and of the system, and to that end created the Commission on Alcoholic Beverage Controls by House Joint Resolution No. 20, the text of which is as follows:

## HOUSE JOINT RESOLUTION NO 20

Creating a commission to study the system of alcoholic beverage control

Whereas, the State Department of Alcoholic Beverage Control and the State Alcoholic Beverage Control Board were created by an act of the General Assembly of Virginia prepared and presented by a committee appointed pursuant to an act adopted at the extra session of the General Assembly of 1933, and

Whereas, this Department and Board have discharged their functions under this act, and subsequent amendments thereto, without recent legislative study or review, and

Whereas, resolutions and bills proposed from time to time in the General Assembly indicate the desirability of a specific legislative study or review to determine what changes, if any, may be needed in the State system of alcoholic beverage control, and

Whereas, legislative proposals now before the General Assembly involving changes in the State system of alcoholic beverage control cannot be given, in the sixty day session, the thoughtful study and deliberate attention which their importance demands, now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That a commission be, and hereby is, created to study the operation of the existing State system of alcoholic beverage control, to consider any proposals for changes which may be referred to it by the General Assembly or which may otherwise come to its attention, and, after due and careful consideration, to prepare and present to the General Assembly for consideration at the Session of 1974 a report of its findings and conclusions, with recommendations for such legislative changes, if any, the commission may deem desirable and proper

The commission shall have access to all books and records of the Department of Alcoholic Beverage Control and The Alcoholic Beverage Control Board, and the officers and employees of this Department shall be, and are hereby, directed and required to supply the commission with any information which they may have and which the commission may request, and to render the commission all reasonable assistance in the prosecution of its study

The commission shall be composed of eleven members, three to be appointed by the Governor, three to be appointed by the committee on Privileges and Elections of the Senate from the members of the Senate, and five to be appointed by the Speaker of the House of Delegates from the members of the House

The members of the commission shall serve without compensation, but they shall be paid their expenses incurred in the performance of their duties hereunder for which and for such other costs as may be involved, there is hereby appropriated the sum of ten thousand dollars from the contingent fund of the General Assembly The commission is hereby termed the commission on Alcoholic Beverage Controls

#

Pursuant to the terms of the Resolution, the Speaker of the House of Delegates appointed from the House of Delegates the following members of the House A L Philpott, Bassett, Walther B Fidler, Sharps, Thomas W Moss, Norfolk, John D Gray, Hampton, and Carl E Bain, Richmond The Privileges and Elections Committee of the Senate appointed the following members of the Senate Leroy S Bendheim, Alexandria, William B Hopkins, Roanoke, and Lawrence Douglas Wilder, Richmond The Governor appointed the following members at large Cornelius Thomas Rogers, Richmond, Herman J Obermayer, Arlington, and Frank Armstrong, III, Winchester

At the initial meeting of the Commission, the Honorable A L Philpott was chosen as Chairman, and Senator Hopkins, Vice-Chairman

The Division of Legislative Services, represented by G William White, Jr, Robert B Cousins and Robert W Bendall, served as counsel and secretariat to the Commission

The Commission held public hearings in Richmond, Norfolk, Roanoke and Arlington, which were well attended, and produced a variety of opinions and proposals from members of the General Assembly and the public at large With few exceptions, those who appeared at the hearings, or who spoke to the members of the Commission at other times, showed a great degree of understanding of the possible differences of opinion on the subject, and the resolution of such differences

The Commission has had numerous conferences with the members and staff of the Board, and wishes to express to them its appreciation for the generous cooperation given it The Commission also wishes to thank those who appeared before it at its hearings All these have been carefully considered by the Commission, and in the formulation of its report, which follows

### Preliminary Statement

The Commission is in general accord with the fundamental principles set out in the report of the Commission to the General Assembly of 1934, and the conclusions reached by separate Commissions in 1946 and 1953 As therein stated, the fundamental principles which should be the basis of a plan of liquor control should embrace temperance, social betterment and respect for law as its prime objectives Overall, throughout the years, the policies established have been carried out and maintained, while having been liberalized from time to time in order that the Commonwealth remain in the country's mainstream of commerce This Commission is generally satisfied with the system now employed, and sees no reason for any major departures from it The evidence shows that Virginia's system is one of the best, if not the best, control systems existing in the nation, or in the world

### Specific Recommendations and Reasons Therefor

In this portion of the report it should be kept in mind that there are three laws under which the Board operates, the 32 Beverage laws, first passed in 1933, the A B C laws in the following year, and the mixed beverage laws in 1968 The 1934 Act is the one which created the Board and regulates and controls generally the sale of distilled spirits, beer and wine

Some of the changes recommended herein will require only administrative action of the Board Others will require amendment in any or all of the chapters referred to, and appropriate reference to the section involved will be made

It should be noted that local option still remains a cardinal principle in Virginia, as will appear from time to time throughout the report

1 In 1970, a study of the various State agencies and departments was made by the Governor's Management Study A number of recommendations were made concerning the operation of the Board Included in these recommendations was the following

"Create the position of operations manager XXX For a business of

this size, a professional operations manager would be desirable. This position should be filled by a person from the business community and given authority for planning and making day to day decisions. He would be accountable to the Board and work within its policies. XXX”

In the same report, a proposed table of organization is set out whereby it would be made to appear, regardless of the plain language of the report, that the overall business of the Board in its operations was delegated to the Operations Manager, and it appears to the Commission that, in the implementation of the report by the Board, that the table was taken literally by it.

To those members of the Commission who are experienced in corporate management it seems a clear violation of sound business procedures to have the Controller report to the Operations Manager, whose day to day handling of the Board's business is subject to scrutiny by the Controller.

The Commission therefore recommends that the Controller be taken from under the direction of the Operations Manager and be placed under the direct control of the Board. Policy decisions regarding the business operation of the system should be made by the Board and be non-delegable. The Operations Manager is not the “President of the Corporation,” and the Board the “Board of Directors”, an analogy which was made at one time during the hearings. The Manager, while vested with heavy responsibilities, is an employee of the Board.

This is not intended as a reflection on the Board or the Operations Manager. The Commission has the highest regard for the members of the Board and its staff. The view of the Commission is that the Board has much expert knowledge in the field of alcoholic beverage control, and this knowledge and expertise should be exercised without any abdication by the members of the Board of the powers and duties in administration conferred upon it.

The Commission also wishes to emphasize that the Operations Manager's duties be limited to business operations only, he should have no authority in licensing matters. These are within the sole province of the Board.

2 § 4-98 2 of the Code and board regulation 51 requires that the sale of “full meals” by mixed beverage licenses exceed the sale of all alcoholic merchandise. In the early days of the advent of the mixed beverage law, the term “full meal” was, on occasion, literally construed, i.e. an entree and two vegetables, except perhaps, in the case of full meal specialty houses. Over a period of time, this definition has been relaxed to some extent by the Board, so that items such as substantial club sandwiches have been included in the definition, provided there is a reasonable diversity of entrees. However, the Commission recommends that the statute be amended to give a more precise definition of a “full meal”, so as to include sandwiches, light meals, etc. This would include about all foods except snack items, popcorn, etc., but would include pizzas and sandwiches. There is no evidence of abuse by licensees in this respect. Moreover the Commission believes that the stringent requirements as to seating capacity in § 4-98 2, and the increased license fees recommended herein, are prohibitive to the marginal operator.

3 § 4-15 3, which provides an additional tax of two dollars per gallon on alcoholic beverages bought for resale by the drink should be repealed. This tax has produced \$537,938 annually (projected to \$750,000 for the next two years), which is not substantial enough to overcome the inequity implicit in the tax. The discrimination as to a particular class of customers

overcomes the benefits of the additional revenue It may also be unconstitutional

To replace the lost revenues, the Commission recommends an increase in the mixed beverage license tax At the present time, there are 676 licensees who pay an average fee of \$370 00 It is projected that in 1974, there will be 750 licensees In order to make up for the lost \$750,000, the present tax should be multiplied by four, raising the present fee to an average of \$1480 annually While this is a substantial increase, the average licensee would at least break even by the deletion of the tax on the beverages The increased tax would also have the effect of removing the marginal operator

In this connection, § 4-98 11, which provides, in part, that the Board may sell such mixed beverages at a higher price to licensees, should be amended to delete the provision

4 The Commission recommends that the requirement in § 4-15 3 requiring that stamps evidencing payment of the "mixed beverage" tax on miniatures (bottles of two ounces or less) be eliminated

Placing these stamps is a time consuming operation, involving a tax of only five cents per container So few miniatures are sold because of the airline drinks reporting system set up in § 4-98 11 that any tax benefits are off-set by the special arrangements which have to be made to affix the stamps

5 The Commission recommends that the so-called "mixed beverage tax" in the amount of 10¢ per bottle on wine containing more than 14% of alcohol by volume (fortified wine) be eliminated

During fiscal year 1972, \$8,130 60 was collected by the department in terms of the 10¢ a bottle mixed beverage tax, \$3,673 20 through sales to licensees through government stores, \$4,405 80 through sales of wholesale wine distributors to mixed beverage licensees, and \$51 60 on "special order purchases" It is the feeling of the Board that since wine is subject already to a profit markup (20¢ gal ) the "State Wine Tax" prescribed by § 4-24 (35¢ gal , 70¢ gal ), and the "State Alcoholic Beverage Tax" prescribed by § 4-15 1 (10%, 14%) no substantial necessity prevails for the additional tax, particularly when it is considered that a special stamp must be affixed by hand to each container, whether it is sold by a government store or a wholesale wine distributor (See also later suggestion that the definition of "mixed beverages" in § 4-98 1 be amended to exclude wines altogether because § 4-28 now permits the wines involved to be sold by on-premises wine licensees but, of course, not for mixed beverage purposes)

6 The Commission recommends that in the case of local option elections, that when any election has been held in accordance with the mixed beverage laws in any political subdivision and the majority of the voters voting in such election shall have voted "Yes" in favor of mixed beverage sales, the sale of alcoholic beverages by the Board likewise shall be permitted in such county, city or town, this section (§ 4-46) and any regular alcoholic beverage election held under § 4-45 to the contrary notwithstanding

At the present time, it is possible for a favorable local option election to be held under § 4-98 12 and for mixed beverages to be available in a particular locality where sales of such merchandise by the department through government stores is prohibited Not only is such a situation rather contradictory but special arrangements would have to be made for

mixed beverage licensees to obtain merchandise from the department, and it is felt § 4-46 should be appropriately amended to overcome the situation

7 § 4-95, relating to reports to the Board of cases tried should be repealed

Experience has shown that this statute is generally ignored by the clerks of court, that the reports which are received are of relatively little value, and employees of the department and the central criminal records office are better sources of information

8 § 4-98 1, relating to definitions, should be amended to limit the term "mixed beverage" or "mixed alcoholic beverage" to spirits drinks only

When the Mixed Beverage Laws were adopted in 1968 over 14% alcohol wine (fortified, appetizer or dessert wines) could be sold only in government stores and it would have been illogical to authorize sales of spirits by retailers and not fortified wines

In 1970, § 4-28, of the Code, was amended to permit on-premises sale of such merchandise by retail wine and beer licensees holding the on-premises privileges. As a consequence, a retailer now may sell a glass of vermouth as an appetizer from a bottle of such wine without having paid the mixed beverage tax of 10¢ a bottle but if he uses the vermouth for a martini, he must use mixed beverage tax-paid wine only. Of course, the State would lose that tax in terms of such wines but it only amounts to approximately \$8,130 00 per year on sales to mixed beverage licensees by wholesale distributors and the A B C Department

9 Subsection (b) of § 4-98 11, relating to exceptions as to alcoholic beverages sold as mixed beverages to be purchased from the Board should be amended so as to make it clear that the "10¢ per drink tax" shall be in lieu only of the taxes otherwise directly imposed upon mixed beverage merchandise by the provisions of the ABC Act (Chapter 1, Title 4) and the Mixed Beverage Laws (Chapter 1 1, Title 4)

At present, this section provides that a licensed mixed beverage carrier may either buy such merchandise for resale from this department or buy elsewhere and pay 10¢ a drink under a reporting system. If a carrier chooses the latter alternative, subsection (b) of that section provides that such payments shall be in lieu of the "taxes otherwise imposed by the Code of Virginia." Obviously, the intent was that such licensees should be excused only from the payment of the direct *alcoholic beverage taxes* which they otherwise would pay if they followed the first alternative by buying from the department the "State Alcoholic Beverage Tax" (§ 4-15 1), "State Mixed Beverage Tax" (§ 4-15 3), "State Wine Tax" (§ 4-24)

10 The Commission recommends that § 4-22 of the Code be amended so as to require quarterly distribution of ABC profits. This was done in House Bill No 49 in the 1973 session, however, the Governor was forced to veto the measure due to an inadvertent amendment which would have reduced the share of the localities from two thirds of the excess profits to one third

11 § 4-79(g) should be amended so that rotation of stock by wine and beer distributors should allow the distributors the right not only to rotate their stock as now defined, but should permit them to do that which is necessary to maintain their stock in their designated areas to be kept fresh. Including in such operation the right to bring forward the old and put new in the back, including adding new stock and such incidental service as is necessary to carry out this objective

This service of the distributor to protect the integrity of his own product

should not be considered a gift or service to the retailer. Also the whole question of what is a service or gift has by regulation gone to the extreme and should be redefined to eliminate the present ambiguity in the law and regulation.

\*12 The Commission recommends that eighteen year olds be permitted to drink "high test beer." This decision was reached after a great deal of discussion relative to whether the "3 2 beverage laws" should be amended to increase the alcoholic content of these beverages by law, or whether to repeal the law. It was finally decided that the difference between the 3 2 beer and high test beer was minimal in alcoholic content, and no harm could be done in taking this step. It was decided that the 3 2 beverage laws be retained, as this is the only beverage available in otherwise dry counties, and to cut off this source might tend to increase bootlegging activities.

By the same token, the Commission also recommends that eighteen year olds be permitted to work in and around areas serving alcoholic beverages, including the serving of mixed drinks (§ 4-63). The Commission does not feel that any such work would tend to corrupt persons now entitled to vote.

\*13 It is recommended that counter sales of mixed beverages be permitted at establishments where such counter is customarily used for serving food. This can now be done with beer and wine, and the Commission does not feel that the institution of this practice would tend to bring back the saloon. No change is contemplated in the ratio of food vis-a-vis alcoholic merchandise, and the Commission sees no valid reason why the consumer should be required to be seated at a table, *per se*.

14 Applications for mixed beverage licenses should automatically include an application for on-premises beer and wine. This would eliminate extra paper work both on the part of applicants and the Board. The fee structure would remain unchanged.

15 (a) Hearing officers should be given authority to grant or deny licenses in the field, in the event licenses are granted, they should be issued forthwith. If granted, opponents would be entitled to have the case heard de novo by the Board, if denied, the applicant would have the same privilege.

Hearing officers are highly trained personnel, and there seems to be no reason for them to be required to bring their findings back to Richmond for review, in the absence of compelling circumstances. It follows that administrative work of the members of the Board would be cut, so as they would have time to devote to matters other than routine.

\*\* (b) (1) Denial of license by the Board should be appealable. This appeal would be to the circuit court of the county or city where the applicant has his proposed place of business. Hearing in such appeals would not be de novo, but based on either errors of law, or arbitrary or capricious action by the Board. The attorney for the Commonwealth would be required to represent the Board, rather than the Attorney General.

\*\* (2) Appeals from other decisions of the Board should be made to the circuit court of the county or city where the licensee is doing business, rather than require him to come to Richmond. The procedure for hearing such cases should not be changed, hearings would continue to be held on the basis of errors of law, or arbitrary or capricious action of the Board.

16 § 4-802, which relates to the unjust cancellation of contracts or franchises by breweries, vintners or wineries, should be strengthened so as to prohibit the splitting of franchises. In a number of instances, both in beer and

wine, breweries and wineries have, instead of removing a franchise from a wholesale, granted a co-franchise to another wholesaler in the same area

Many wholesalers do not have written franchise agreements, and statutory provisions should be built into any such contract, so that wholesalers might have protection against unwarranted cancellation. The Commission recommends the adoption of a parallel statute to that of North Carolina to provide such protection.

17 § 4-60(j) should be amended to permit sales by wine wholesalers to other wholesalers on credit. This is permitted in the beer industry, and there is no reason why wine wholesalers should not be able to use this practice. It would appear that these businessmen should be able to take care of themselves in credit matters.

18 A thirty day grace period should be established for paying annual license fees, instead of revoking the license for which could very well be an oversight on the part of the licensee. A money penalty of twenty-five dollars, or 10% of the tax, whichever is greater, should be imposed, however, to discourage deliberate late payment.

19\_ (a) The regulation (§ 39) prohibiting a customer from having more than one drink in front of him at a time should be liberalized to permit him to have two drinks. In cases where a customer may have half-finished his drink, wishes another, and the service is fast, he may be required, under the present regulation to "chug-a-lug" the first. This does not promote temperance.

(b) It is also recommended that the regulation (§ 41) prohibiting a customer from moving from one table to another with a drink should be eliminated. The Commission feels that present regulations as to the order of an establishment are sufficient to inhibit boisterous conduct, and each establishment should be permitted to make its rules as best fits its operation under other rules of the Board.

20 The Board has adopted and enforced a policy of limiting the advertisement of alcoholic beverages rather strictly. The Commission feels that a more relaxed advertising policy should be established, particularly in advertising by mixed beverage licensees. However, the Commission does not feel that it is in any position to make concrete recommendations to the Board, except to recommend that the Board continuously review developments in the advertising field with the view toward liberalizing its policies within the realm of good taste.

21 The prohibition in § 4-72 against transporting more than one gallon of A B C store purchases in a motor vehicle should be raised to three gallons. The original prohibition was made to discourage bootlegging. Since the Board has started selling distilled spirits in half-gallon containers, this prohibition is no longer valid, although perhaps the sale and transportation of distilled spirits in pints should continue to be limited to one gallon.

22 § 4-73 2, which prohibits the purchase or possession of alcoholic beverages by a minor, and § 4-112 2 in the 3 2 Beer Act, should be repealed. At the present time, §§ 4-62 or 4-112 do not grant immunity to minors who testify at Board hearings, while these sections provide immunity. As a consequence, some agencies use §§ 4-62 or 4-112 against offending minors while others use §§ 4-73 2 or 4-112 2. Some courts have construed the sections together so as to provide immunity even though the minor was prosecuted under §§ 4-62 or 4-112. This ambiguity should be cured.

23 § 4-98 2 should be amended to provide that special event or banquet licenses be permitted establishments which have no food sales but provide for private functions and parties. This license would be granted only to regularly

organized non-profit organizations in charge of special events such as athletic, charitable or the like. Separate licenses would be required for each day of the event. The State tax for such license would be thirty dollars, the local license, ten dollars. To provide for such licenses will tend to eliminate "brown bagging" and promote temperance.

24 Uniform closing hours for government stores and licensees should be adopted, upon application of a locality for longer hours. There appears to be no reason for a differential between Virginia Beach and Roanoke, for example, if Roanoke desires the later closing hours. The Commission recommends 1 00 a m as the maximum closing time.

25 The moderate use of dessert wines is rapidly increasing throughout the country. In today's society there is no logical reason for a wine customer to shop for his table wines at a grocery store and then go to a State store for his sherry or other dessert wines. If privately owned retail outlets were permitted to sell such wines off-premises the consumer would have over 3,500 retail outlets as compared to 250 ABC stores in which he could buy dessert wines. Since dessert wines are now sold by on-premises wine and mixed drink licensees, it would be logical to extend such sales to licensed retail outlets such as grocery or drug stores, delicatessens, specialty shops. It would however, be a mistake to permit the sales of all fortified wines by such stores, as it could result in the increase of alcoholic content of more than 14% in cheaper wines. Therefore, the Commission recommends that § 4-28 be amended so that port, sherry, vermouth, muscatel, tokay and any wines generally considered a dessert wine and approved by the Board be sold in licensed retail outlets. Such wines would be sold at a minimum price set by the Board to further safeguard against fortification of cheaper wines.

26 § 4-11 (b) now provides that the Board can make regulations which may not be uniform. This is an unusual provision, not to be found anywhere else in the laws of Virginia, or in the collective experience of the Commission, anywhere. The Commission recommends that this section be amended to require uniformity.

27 The Board has outgrown its quarters at 4th & Grace Street. Additional space for the administrative offices of the Board is available in the A B C Warehouse at 2901 Hermitage Road. The Commission recommends that \$3,500,000 be earmarked for the revenues of the system to pay for their improvements. The consolidating of the warehouse and the administrative offices should promote greater efficiency. The present office building consisting of 50,000 feet of office space and a parking lot could either be sold or used by other State agencies.

28 Presently, the Department of Purchases and Supplies is leasing more than 30,000 square feet in the A B C Warehouse, and is asking for more. The Commission feels, and therefore recommends, that Purchases and Supplies be denied more space, and that it seek other facilities for the space it is now occupying, so that the Board may have and use all its space. As it is, the Board cannot now buy quantities in advance and cannot take adequate advantages of post-offs (special discounts).

29 In compliance with recommendations made by the Governor's Management Study, the Board attempted to keep inventories at nearly a zero level. This did not work, and inventories have been increased to a higher level, however, the Commission recommends that the Board should keep a warehouse inventory level which would cover at least four weeks. In December of last year, the number of sell-outs was at an extremely high level, there being between five to eight thousand sell-outs of various levels. Mixed beverage licensees are required to go to a cheaper or more expensive bar brands and happiness is not promoted in the systems as to other customers. Since the

system is a monopoly, it should go to extra lengths to provide excellent service

30 References to prima facie presumptions as proof in §§ 4-57 and 4-75 should be eliminated. Court holdings have ruled these provisions unconstitutional, as it is incumbent on the Commonwealth not only to prove the offenses beyond a reasonable doubt, but to go forward and prove all elements of the offense.

31 The Committee recommends that §§ 54-40 and 4-108, relating to the taxes on beer and beverages sold, be amended so that the State Tax Commissioner would have discretion to require surety bonds to secure tax liability on the part of breweries, bottlers or wholesalers, rather than the mandatory requirement now existing. There appears to be no reason why corporations or persons who have demonstrated their responsibility in the past to pay a surety bond premium.

32 Finally, the Commission recommends that it be continued until the legislative session beginning in 1975. While considerable progress has been made in its study, many other matters were touched on but available time was not sufficient to develop recommendations thereon. The Commission feels that, in spite of the numerous recommendations here made, the surface has barely been scratched in the study.

#### Other Observations

1 During the hearings, recommendations were made by some that the size of the Board be increased. The Commission feels, however, that the Board has functioned well at its present size, and recommends against any increase at this time.

2 The Board has recommended that it be given the power to assess fines for violations vis-a-vis suspending or revoking licenses in certain cases.

The Commission is in favor of the proposal, however, it is awaiting an opinion by the Attorney General as to its legality, and if legal, a proposal from the Board setting out a schedule of specific offenses and penalties therefor.

3 The Board has proposed that, for ecological reasons, youth control and highway safety, there should be a statutory prohibition against the sale of off-premises chilled beer. The Commission sees no eminent peril to the Commonwealth in the continuance of the present practice, and therefore recommends against this proposal.

\*\*\*\*4 There was some discussion relative to the extension of activities and powers now granted the Division of Enforcement. The majority of the Commission believes that any further extension is inadvisable and recommends no action in this regard.

#### Conclusion

Some of the matters upon which complaints were made to the Commission are in the process of correction by the Board, most of them being in matters of administration. The Commission believes that its operations have been successful in bringing to the attention of the Board some of the matters with which the general public is dissatisfied. It recommends to the Board that it take such steps as may be necessary to keep itself informed of developments of this type.

The Commission again restates its appreciation of the great assistance rendered it by the Board and its employees. It has been materially assisted by the many groups and individuals who appeared before it or who wrote setting forth their views. It hopes that the evidence of a spirit of mutual

understanding among those holding differing views is not misleading, and that this understanding will mature with the passage of time

Respectfully submitted

\*  
\*\*\* A L Philpott, Chairman

William B Hopkins, Vice Chairman

Frank Armstrong, III

Carl E Bain

Leroy S Bendheim

\*\* Walther B Fidler

\*\*\*\*\* John D Gray

\*\*\*\*\* Thomas W Moss, Jr

\*\*\*\* Herman J Obermayer

\*\*\* C T Rogers

Lawrence Douglas Wilder

- \*Mr Philpott dissents to this recommendation
- \*\*See dissenting statement by Mr Fidler
- \*\*\*Mr Philpott dissents to this recommendation,  
Mr Rogers abstained from taking a position thereon
- \*\*\*\*See dissenting statement by Mr Obermayer
- \*\*\*\*\*See dissenting statements of Messrs Gray and Moss

DISSENTING STATEMENT OF  
WALTHER B FIDLER  
DECEMBER 28, 1973

The ABC Study Commission is making many needed and sound recommendations in a field of activity that remains still much a part of our way of life. It remains none the less a sensitive field and, with all of our American self-assurance that we are somehow immuned from the dangers of these ancient human frailties, there are still more serious problems inherent in any great relaxation of the control mission in handling the sale of alcoholic products even in a modern society.

For these reasons, I dissent to recommendations #12 and #13 in the report.

Both the original study commission report to the General Assembly of 1934 which resulted in the establishment of our present ABC system and the two separate study commissions in 1946 and 1953 reached a principal conclusion that the final application of the ABC laws, insofar as was possible, must be uniform in their application throughout the Commonwealth. These earlier commissions clearly recognized that this principal, if adhered to, should free us from local pressures, and local influences that often tend to make mockeries of many state wide laws and would assure the system of the public respect it so essentially needs. They realized that this public respect comes primarily from the knowledge that the ABC laws are fairly, uniformly and evenly applied in actual practice. This has become over the years under our present system much more of a specialized field quite unfamiliar to many lawyers and most judges. If appeals on denials of licenses by the Board and from other decisions of the Board are permitted to the local Circuit Courts of the counties and cities across this state where the applicant resides or is doing business, as is contained in recommendation #15 (b) (1) and 15 (b) (2), rather than to the Circuit Court of the City of Richmond as has been the case since 1934, we are likely to get nearly as many different decisions on substantially the same set of facts as there are courts hearing these appeals. No single court will acquire any real expertise in this field and the ABC System is apt to lose the benefits of the important principal of uniformity of application of its laws across the Commonwealth. To compensate for such a change, I would expect the Board would feel compelled to appeal numerous cases to our State Supreme Court in order to assure some uniformity in the system. This proposed change has been offered many times in the past 30 years by individual members of the General Assembly in the form of bills but each time has been rejected. I am still convinced such a change is an unwise move even in 1974 and has the potential for creating an unnecessary mischief in an otherwise excellent system for alcoholic beverage control in this state.

*MINORITY REPORT OF HERMAN J OBERMAYER*

December 15, 1973

The ABC Study Commission's recommendations are sound I enthusiastically concur in all, but one My feelings on that one issue are so strong that I am compelled to outline in detail my reasons for dissenting

The Enforcement Division of the ABC should be abolished and its function taken over by the State Police or local police departments

Although at the Commission's hearings the ABC staff offered substantial evidence to support the conclusions that the Enforcement Division is well run and free of corruption, almost no argument was made to justify the existence or continuance of a special, fully-deputized police force within the ABC

When the ABC was established shortly after the repeal of Prohibition it was anticipated that its Enforcement Division's chief work would be in the area of illegal distilleries and bootlegging Forty years later neither is an important problem in Virginia During the last three years there were only 240, 281 and 287 still raids each year in the entire state, and 57 percent of those took place in three counties (Franklin, Patrick and Southampton) The ABC Enforcement Division, as presently constituted, is an anachronism, as well as a potential source of serious problems

All the laws of the Commonwealth should be enforced through the same chain of command and no particular group of laws should be separately, specially or differently enforced It is a basic threat to any democratic government to have a fully deputized police force which is not organized, directed, recruited and made accountable in the same way as other law enforcement agencies There is no reason why the laws against theft, murder, arson and dangerous driving should be enforced in one way, and those for violations of ABC laws differently

Although fully deputized, ABC police are not subjected to the same rigorous examinations and training procedures as the State Police At a Commission hearing an ABC staff member was asked, "If you wished to make a computer programmer into an agent tomorrow, could you?" The answer was "Yes" This was followed by the question, "Without examination?" And the answer was again "Yes" This kind of power, subject to few restraints, in the hands of less than scrupulous bureaucrats poses a serious threat to all freedoms

Additionally it can be questioned whether a small force of agents distributed throughout a large state can be as well trained, competently directed or closely administered as the State Police If the State Police were charged with enforcing the ABC laws like other laws, the taxpayers would save the cost of a superfluous and expensive bureaucracy During the fiscal year 1972 there were 2,619 arrests by the Enforcement Division and 2,132 convictions at a cost of \$713,106 Of this amount \$575,286 was expended for salaries and wages

There is no current need for maintaining a deputized police force within the ABC, and its abolishment would be in the public interest



#

Dissenting statement of  
John D Gray and Thomas W Moss, Jr  
January 18, 1974

We concur with the majority in every respect but one We feel that the increase in license fees provided in Recommendation No 3 are too sharp and too fast Equity does not justify quadrupling these fees While some increase may be in order to replace the revenues lost by the repeal of § 4-15 3, we cannot recommend to the General Assembly an increase of the magnitude proposed by the majority

#

A BILL to amend and reenact §§ 4-2, 4-4, 4-7, 4-11, 4-22, 4-28, 4-31, 4-34, 4-37, 4-40, 4-46, 4-57, 4-60, 4-62, 4-63, 4-72, 4-75, 4-79, 4-80 2, 4-98 1, 4-98 2, 4-98 11, 4-98 18, 4-98 19, 4-104, 4-108, 4-112 1 and 4-115, as severally amended, of the Code of Virginia, and to repeal §§ 4-15 3, 4-45 1, 4-73 1, 4-73 2, 4-95, and 4-112 2, as severally amended, of the Code of Virginia, the amended and repealed sections relating generally to alcoholic beverage definitions under the Alcoholic Beverage Control Act, members and officers of the Virginia Alcoholic Beverage Control Board, the functions, duties and powers of the Board, regulations, disposition of net profits of the Board, beverages sold at retail by government stores, exceptions, refusal of Board to grant licenses, suspension and revocation of licenses, effect of local option elections, illegal manufacture and bottling, illegal sale or keeping of alcoholic beverages by licensees, persons to whom alcoholic beverages may be sold, regulations and permits for transportation of alcoholic beverages, beverages illegally acquired, persons prohibited from having interest in retail businesses, prohibited favors, illegal cancellation of agreements or franchises to sell beer or wine, definitions under the mixed beverages law, mixed beverage licenses, alcoholic beverages sold for resale to mixed beverage licensees, taxes on State and local licenses, elections in certain towns, sale of beverages to minors, identification cards, additional tax on alcoholic beverages sold for resale to mixed beverage licensees

Be it enacted by the General Assembly of Virginia

1 That §§ 4-2, 4-4, 4-7, 4-11, 4-22, 4-28, 4-31, 4-34, 4-37, 4-40, 4-46, 4-57, 4-60, 4-62, 4-63, 4-72, 4-75, 4-79, 4-80 2, 4-98 1, 4-98 2, 4-98 11, 4-98 18, 4-98 19, 4-104, 4-108, 4-112 1 and 4-115, as severally amended, of the Code of Virginia are amended and reenacted as follows

§ 4-2 Definitions —The following terms in this chapter, unless it otherwise clearly appears from the context, shall have the following meanings

(1) "Alcohol" shall mean the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, 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. The word "alcohol" when used in the phrase "more than three and two-tenths per centum of alcohol by weight" shall mean all alcohol whether obtained by distillation, fermentation or otherwise

(2) "Alcoholic beverages" shall include the four varieties of liquor defined herein as alcohol, spirits, wine and beer, and any one or more of such varieties, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the varieties above defined 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 subsection

(3) "Beer" shall mean any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water and containing, unless otherwise expressly provided, more than three and two-tenths per centum of alcohol by weight. This definition shall include ale, porter and stout

(4) "Board" shall mean the Virginia Alcoholic Beverage Control Board

(5) "Bottle" shall mean any vessel intended to contain liquids and having a capacity of not more than forty-three ounces

(6) "Club" shall mean any private nonprofit corporation or association which is the owner, lessee or occupant of an establishment operated solely for objects of a national, social, patriotic, political or athletic nature, or the like, but not for pecuniary gain, the advantages of which belong to all the members. It also shall mean the establishment so operated.

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, the advantages of which belong to all members for the purposes of this chapter as long as such exemptions remain in effect.

(7) "Dentist" shall mean any person duly authorized to practice dentistry pursuant to the laws of Virginia.

(8) "Dining room" shall mean a public room in which meals are regularly served.

(9) "Druggist" shall mean any person duly authorized to operate a pharmacy pursuant to the laws of Virginia.

(10) "Establishment" shall mean any place where alcoholic beverages of one or more varieties are manufactured, sold or used pursuant to the provisions of this chapter.

(11) "Government store" shall mean a store established by the Board under this chapter for the sale of alcoholic beverages of any one or more varieties thereof.

(12) "Hotel" shall mean 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 ten or more bedrooms. It shall also mean the person who operates such hotel.

(13) "Interdicted person" shall mean a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this chapter.

(14) "Intoxicated" — Any person who has drunk enough alcoholic beverages to so affect his manner, disposition, speech, muscular movement, general appearance or behavior, as to be apparent to observation, shall be deemed to be intoxicated.

(15) "Manager" shall mean the appointee of the Board in charge of a government store.

*(15a) "Meals" shall mean food prepared and served for the purpose of satisfying the appetite of its consumer as one of his principal meals of the day.*

(16) "Member of a club" shall mean a person who maintains his membership in the club by the payment of monthly, quarterly or annual dues in the manner established by the rules and regulations thereof.

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

(17) "Package" shall mean any container, bottle, vessel or other receptacle used for holding alcoholic beverages.

(18) "Person" shall include an individual, partnership, association or corporation.

(19) "Physician" shall mean any person duly authorized to practice medicine pursuant to the laws of Virginia.

(20) "Public place" shall mean any place, building or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement, but shall not include hotel dining rooms or hotel ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization, and shall not include private dining rooms approved by the Board in restaurants licensed by the Board while such rooms are in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization

(21) "Residence" shall mean any building or part of a building or tent where a person resides, but does not include any part of a building which part 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

(22) "Restaurant licensed by the Board" means any establishment, provided with special space and accommodation, where, in consideration of payment, food (without lodging) is habitually furnished to persons

(23) "Sale" and "sell" shall include exchange, barter and traffic, and any delivery made otherwise than gratuitously, by any means whatsoever, of alcoholic beverages, to solicit or receive an order for alcoholic beverages, to keep, offer or expose the same for sale, to peddle

(24) "Spirits" shall mean 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 government of the United States

(25) "Veterinarian" shall mean any person duly authorized to practice veterinary science pursuant to the laws of Virginia

(26) "Wine" shall mean any beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, including honey and milk, either with or without additional sugar, and containing more than three and two-tenths per centum of alcohol by weight

(27) "Wholesale druggist" shall mean any person duly authorized to manufacture, sell, deliver and ship drugs and medicines to others for the purpose of resale

§ 4-4 Members and officers of Control Board —(a) The Board shall consist of three members appointed by the Governor, subject to confirmation by the General Assembly, for a term 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 one of the members of the Board chairman thereof. The Board, under rules adopted by itself, may elect one of its members chairman pro tempore and another or some other person as secretary. Two members of the Board shall constitute a quorum

(b) Each member of the Board shall receive a salary to be fixed by the ~~Governor and not to exceed the sum of seventy-five hundred dollars per annum~~ *General Assembly*

(c) Members of the Board may be suspended or removed by the Governor for cause, and shall also be subject to impeachment under the provisions of Article IV, Sec 17, of the Constitution of Virginia

(d) Each member of the Board shall, before entering upon the discharge of his duties, take and subscribe the oath of office required by Article II, Sec 7, of the Constitution of Virginia, and give bond payable to the Commonwealth, in form approved by the Attorney General, in such penalty as shall be fixed from time to time by the Governor, with some surety or guaranty company duly authorized to do business in Virginia 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 member of the Board shall devote his full time to the performance of his official duties

§ 4-7 Functions, duties and powers of Board —The functions, duties and powers of the Board shall be as follows

(a) To buy, import and sell alcoholic beverages other than beer, and to have alcoholic beverages in its possession for sale,

(b) To control the possession, sale, transportation and delivery of alcoholic beverages by the Board,

(c) To determine the localities within which government stores shall be established or operated and the location of such stores,

(d) To make provision for the maintenance of warehouses for alcoholic beverages and to control the delivery of alcoholic beverages to and from such warehouses, and the keeping of the same therein,

(e) To lease, occupy and improve any land or building required for the purposes of this chapter,

(f) With the consent of the Governor, to purchase or otherwise acquire title to any land or building required for the purposes of this chapter and to sell and convey the same by proper deed,

(g) To purchase, lease or acquire the use by any manner whatsoever of any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this chapter, including rectifying, blending and processing plants, the Board is hereby empowered to purchase, build, lease, and operate distilleries and to manufacture alcoholic beverages if in its opinion the purposes of this chapter can be thereby promoted,

(h) To determine the nature, form and capacity of all packages to be used for containing alcoholic beverages to be kept or sold under this chapter, and to prescribe the form and contents of all labels and seals to be placed thereon,

(i) To appoint every officer, agent and employee required for its operations, with such compensation as may be provided in accordance with law for the purpose, assign them their official positions and titles, define their respective duties and powers, require them or any 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 of persons engaged in the practice of a profession, all salaries or remuneration in excess of one thousand dollars per annum shall first be approved by the Governor,

(j) To hold and conduct hearings, to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any officer or agent thereof, and to administer oaths and to take testimony thereunder, in its discretion to authorize any member, officer or agent of the Board to hold and conduct hearings, issue subpoenas, and administer oaths and to take testimony thereunder, *and make summary decisions, subject to final decision by the Board on hearing de novo on application of any party aggrieved,*

(k) To make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (1) officials, including court and police officials, of the State and of its subdivisions, if the information requested is for official use, and (2) 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,

(l) Generally to do all such things as may be deemed necessary or advisable by the Board for the purpose of carrying into effect the provisions of this chapter

§ 4-11 Regulations of Board —(a) The Board may from time to time make such reasonable regulations, not inconsistent with this chapter or the general laws of the State, as it shall deem necessary to carry out the purposes and provisions of this chapter and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages, or any one or more of such illegal acts, and from time to time it may alter, repeal or amend such regulations or any of them. Such regulations shall be published at least once in some newspaper published in the city of Richmond and in any other manner which the Board may deem advisable, and upon being so published shall have the force and effect of law. The Board shall certify to the clerks of all circuit courts and city courts of record having criminal jurisdiction copies of all regulations adopted by it, and such clerks shall keep on file for public inspection all such regulations certified to them by the Board

(b) ~~Nothing in this chapter shall require~~ Such regulations ~~to~~ shall be uniform in their application, *except as provided in § 4-36, relating to hours of sale for licensees*

(c) Justices and courts shall take judicial notice of the regulations of the Board made, published and filed in accordance with the provisions of this section

§ 4-22 Disposition of net profits, portion to localities —The net profits derived under the provisions of this chapter shall, after deducting therefrom *quarterly* such sums as may be allowed the Board by the Governor for the creation of a reserve fund not exceeding the sum of two million five hundred thousand dollars in connection with the administration of this chapter and to provide for the depreciation on the buildings, plant and equipment owned, held or operated by the Board and such sums as may be allowed by the Governor during the fiscal years ending on June thirtieth, nineteen hundred sixty two; ~~June thirtieth, nineteen hundred sixty three, June thirtieth, nineteen hundred sixty four and June thirtieth, nineteen hundred sixty five, not to exceed five hundred thousand dollars in each such year, and not to exceed seven hundred fifty thousand dollars for each of two succeeding fiscal years beginning July first, nineteen hundred sixty eight, for the creation of a special reserve fund to be accumulated and expended for acquiring or constructing and equipping a central warehouse, at a total cost not to exceed three million five hundred thousand dollars for plans, acquisition or construction and equipment, year ending June thirtieth, nineteen hundred seventy-five, not to exceed three million five hundred thousand dollars, for the creation of a special building and alterations reserve fund to be expended for construction of an office building and alterations to existing office space at the central warehouse property located in Richmond,~~ be transferred by the Comptroller to the general fund of the State treasury quarterly, within fifty days after the close of each quarter. When such moneys so transferred by the Comptroller to the General Fund of the State treasury shall during any ~~fiscal year~~ *quarter* exceed the sum of ~~seven one hundred fifty eighty-seven thousand five hundred dollars,~~ two thirds of all moneys in excess of ~~seven hundred fifty thousand dollars~~ *such sum* so transferred and so paid into the general fund of the State treasury during such

~~fiscal year~~ *quarter* shall be apportioned by the Comptroller and distributed *quarterly within ten days following such transfer* by warrants of the Comptroller drawn on the Treasurer of Virginia to the several counties, cities and towns of the Commonwealth, on the basis of the population of the respective counties, cities and towns, according to the last preceding United States census, for which purpose such portion of the moneys is hereby appropriated, provided, however, that in case of any town which came into existence in or about the year sixteen hundred ninety-one which is now the county seat of any county having a population of less than thirty-five thousand but more than thirty-two thousand one hundred, 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 Bureau of Population and Economic Research of the University of Virginia. If the population of any city or town shall have been increased through the annexation of any territory since the last preceding United States census, such increase shall, for the purpose of this chapter, be added to the population of such city or town as shown by the last preceding United States census and a proper reduction made in the population of the county or counties from which the annexed territory was acquired. The judge of the circuit court of the county in which the town or greater part thereof seeking an increase under the provisions of this chapter is located is hereby authorized and empowered to appoint two disinterested persons as commissioners, who shall proceed to determine the population of the territory annexed to the town 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.

In making the aforesaid apportionment between the general fund of the State treasury on the one hand and the several counties, cities and towns on the other, the normal computation of respective shares under this section shall be modified to the extent that any sums allowed by the Governor during any of the above-specified ~~fiscal years~~ *year* for the creation of the above-described special ~~warehouse buildings and alterations~~ reserve fund shall be deducted entirely from the share allocable to the general fund of the State treasury and not from the share distributable to the several counties, cities and towns.

The term "net profits" as used in this section shall mean the total of all moneys collected by the Board less all costs, expenses and charges authorized by § 4-23, other than capital expenditures for buildings, plants and equipment.

§ 4-28 Beverages sold at retail only at government stores, exceptions — No alcoholic beverage having an alcoholic content of more than fourteen per centum by volume shall be sold at retail in the State of Virginia, except at government stores or except by licensees under the provisions of chapter 11 (§ 4-98 et seq.) or as otherwise provided in this section of this title. Nothing in this section shall be construed to prohibit sales by druggists as authorized by § 4-49, nor such sales as are authorized by § 4-85.

*Port, sherry, tokay, muscatel and vermouth wines, and any other wine containing more than fourteen per centum but not more than twenty-one per centum of alcohol by volume approved by the Board for such purpose, may be sold by persons licensed under the provisions of this chapter to sell wine at retail for consumption off the premises. The Board, from time to time, may establish minimum retail prices for any wines offered for sale pursuant to this paragraph, which prices shall in no event be lower than those fixed for the same or similar wines offered for sale at the government stores.*

Nothing in this title shall prohibit the sales of wines containing more than fourteen per centum but less than twenty-one per centum of alcohol by volume by the Board and by persons licensed under the provisions of this chapter to

sell wine at wholesale to persons licensed under the provision of this chapter and chapter 11 to sell wine for consumption on premises only nor prohibit such retail licensees from selling such wine for consumption on the premises

§ 4-31 Refusal of Board to grant licenses —(a) The Board may refuse to grant any license mentioned in this chapter if it shall have reasonable cause to believe

(1) That the applicant, or if the applicant is a partnership or association, any partner or member thereof, or if the applicant is a corporation, any officer, director, or manager thereof or shareholder owning ten per centum or more of its capital stock

(a) Is not twenty-one years of age or older

(b) Has been convicted of a felony under the laws of any state, or of the United States, or has been convicted of any crime or offense involving moral turpitude

(c) Has been convicted, within the five years next 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, or has been convicted of a violation of any provision of chapter 2 (§ 4-99 et seq ) of this title

(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) Is not possessed of or has not demonstrated financial responsibility sufficient to meet adequately 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 the provisions of this chapter

(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) Is violating or allowing the violation of any provision of this chapter or of chapter 2 (§ 4-99 et seq ) of this title in his establishment at the time his application for a license is pending

(n) Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located

(o) Is physically unable to carry on the business for which the application for a license is filed or has been adjudicated incompetent

(2) That 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 this State or by the regulations of the Board

(b) Is so located that violations of this chapter, or of the rules and regulations of the Board, or the laws of the Commonwealth or ordinances of such county, city, or town relating to peace and good order would result from the issuance of such license and operation thereunder by the applicant

(c) Is so situated 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 situated with respect to any residence or residential area that the operation of such place under such license will adversely affect real property value or substantially interfere with the usual quietude and tranquility of such residence or residential area

(e) Under a retail on-premises license is so constructed, arranged, or illuminated that law enforcement officers and duly authorized agents of the Board are prevented from ready access to and reasonable observation of the room or rooms within which alcoholic beverages are to be sold or consumed

For the purposes of this subsection (2) "place" shall mean 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 as defined in § 4-2

(3) That 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, and, in reaching a conclusion in this respect the Board may consider the character of, the 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, and the effect which a new license may have on such county, city, town or neighborhood in conforming with the purposes of the Alcoholic Beverage Control Act

(4) That there exists any law, ordinance, or regulation of the United States, of this State or any political subdivision thereof, which warrants refusal by the Board to issue any license

(5) That the Board is not authorized and empowered under the provisions of this chapter to issue such license

(b) The Board shall not refuse to grant any such license, except upon a hearing held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such license, and shall be served on the applicant as other notices are served or by sending the same to the applicant by registered mail to his last known post-office address. The applicant shall have the right to produce evidence in his behalf at the hearing and be represented by counsel

(c) The Board shall refuse to grant any retail license, other than a druggist license, to any person to sell wine and beer or beer in any county or city, the qualified voters of which shall in accordance with the provisions of § 4-45 vote that the sale of such alcoholic beverages be prohibited in such county or city

(d) The Board shall refuse to grant any wholesale beer or wine license to

any person, unless such person has established or will establish a place or places of business within this State at which will be received and from which will be distributed all alcoholic beverages sold by such person in the State, except in special circumstances the Board may permit, subject to such regulations as it may from time to time adopt, alcoholic beverages to be received into or distributed from places other than established places of business

(d1) The Board shall not issue any wholesale beer license or wholesale wine distributor's license to any person who has not resided in the State for at least one year immediately preceding application therefor, nor to any corporation a majority of the stock of which is owned by persons who have not resided in the State for at least one year immediately preceding application therefor. Nothing in the foregoing provision shall be construed to affect the validity of any license heretofore issued to any person, persons or corporation to do business in the State, nor to prohibit issuance of a new license at any time hereafter to such person, persons or corporations now licensed to do business in the State as a distributor of beer or wine at wholesale, whether the new license be for the same or a different or an additional establishment or establishments

(d2) The Board may in its discretion refuse to issue any retail wine and beer license, retail beer license, or retail wine or winery license to any person who has not resided in the State 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 State for at least one year immediately preceding application therefor, unless refusal to issue the license would in the opinion of the Board substantially impair the transferability of the real property upon which would be situated the licensed establishment

(d3) The Board may in its discretion refuse a hearing on any application for the issuance of any retail alcoholic beverage license, including a banquet license, provided

(1) Such license for the applicant has been refused or revoked within a period of twelve months, or

(2) Such license has been refused or revoked for any premises at that location within a period of twelve months, or

(3) Such applicant within a period of twelve months immediately preceding has permitted a license issued 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 the Alcoholic Beverage Control Act

(d4) In any case where an applicant has permitted a license issued by the Board 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 in its discretion 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

(e) The Board shall not issue any license until the license tax required by § 4-33 is paid to the Board

(f) The action of the Board in granting or in refusing to grant any license under the provisions of this chapter shall not be subject to review by any court, *except as provided in § 4-37* nor shall any mandamus or injunction lie in any such case

(g) No license shall be granted under this chapter to a wholesale wine distributor, until such applicant has filed with the Board a bond running to the Commonwealth, in a penal sum not exceeding ten thousand dollars, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in this Commonwealth as surety, conditioned upon such person securing wine only in a manner provided by law, and that such person shall not fail to remit to the Board the proper markup thereon, shall keep such records as may be required by law, or the regulations of the Board, and shall abide by such other laws or regulations of the Board as may be from time to time adopted relative to the handling of wine by wholesale wine distributors, provided, that in lieu of furnishing a surety upon such bond, the applicant or licensee may deposit with the Board as security for the performance of the conditions of the bond, United States government bonds, Commonwealth of Virginia bonds, or the bonds of any municipality or county in the State

§ 4-34 Separate license for each place of business, transfer or amendment, posting, expiration, carriers —(a) Designation of place of business —Each license issued by the Board under the provisions of this chapter shall designate the place where the business of the licensee will be carried on. A separate license shall be required for each separate place of business

(b) Transfer or amendment —No such license shall be transferable from one person to another, or from one location to another. The Board in its discretion may permit a licensee to amend the classification of an existing license without complying with the posting and publishing procedures required by § 4-30 if the effect of the amendment is to reduce materially the privileges of an existing license

(c) Posting —Each such license shall be kept posted in a conspicuous place by the licensee at the place where he carries on the business for which the license is issued

(d) The privileges conferred by any license issued by the Board pursuant to this chapter, except banquet licenses, shall be deemed to continue until the thirtieth day of June next following, and, provided that no cause exists for which the Board would be entitled to refuse to issue a license, thereafter from year to year until terminated by operation of law, by voluntary surrender, or by order of the Board, but any continuation beyond the original expiration date shall be conditioned upon the payment of the subsequent annual license tax as required by law

*Any licensee who fails to pay by midnight, June thirty, the required license tax covering the continuation or reissuance of his license may be permitted to do so within the discretion of the Board, in lieu of posting and publishing notice and reapplying provided payment of such tax is made within thirty days following that date and is accompanied by a penalty of twenty-five dollars or ten percent of such tax, whichever is greater*

(e) Common carriers —Subsections (a) and (c) of this section shall not apply to common carriers operating dining cars, buffet cars and club cars

§ 4-37 When Board may suspend or revoke licenses —(a) Grounds for suspension or revocation —The Board may suspend or revoke any licenses issued by it if it has reasonable cause to believe

(1) That the licensee, or if the licensee is a partnership or association, any partner or member thereof, or if the licensee is a corporation, any officer, director, or manager thereof or shareholder owning ten per centum or more of its capital stock

(a) Has misrepresented a material fact in applying to the Board for such license

(b) Within the five years next preceding the date of the hearing, has been convicted of the violation of any law, ordinance, or regulation of this State, or of any state, or of the United States of America, or of any county, city, or town in this State, applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages, or has violated any provision of this chapter or chapter 2 (§ 4-99 et seq ) of this title, or has violated or failed or refused to comply with any regulation, rule, or order of the Board, or has failed or refused to comply with any of the conditions or restrictions of the license issued by the Board

(c) Has been convicted of a felony or of any crime or offense involving moral turpitude in any court

(d) Is not the legitimate owner of the business conducted under the license issued by the Board, or other persons have ownership interests in the business which have not been disclosed

(e) Has become insolvent or cannot demonstrate financial responsibility sufficient to meet adequately the requirements of the business conducted under license issued by the Board

(f) Has been intoxicated, as defined in this chapter, or under the influence of some self-administered drug, while upon the licensed premises

(g) Has allowed noisy, lewd, or disorderly conduct upon the licensed premises, or has maintained such premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for persons of ill repute, or has allowed any form of gambling to take place upon such premises

(h) Knowingly, employs in the business conducted under such license, as agent, servant, or employee, any person who has been convicted of a felony or of any crime or offense involving moral turpitude in any court, or who has violated the laws of this State, or of any other state, or of the United States of America, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages

(i) Has demonstrated by his police record subsequent to the issuance of his original license a lack of respect for law and order

(j) *Except as provided herein*, has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (1) less than twenty-one years of age, or (2) an interdicted person, or (3) an intoxicated person, or (4) a patient under the supervision or control of any State hospital, whether such person be on furlough or otherwise, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises, or has allowed the consumption of *beer, as defined in § 4-2(3), or beverages, as defined in chapter 2 (§ 4-99 et seq ) of this Title 4*, by any person whom he knew or had reason to believe was (1) less than eighteen years of age, or (2) an intoxicated person

(k) Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this chapter

(l) Is physically unable to carry on the business conducted under such license or has been adjudicated incompetent

(m) Has allowed any lewd, obscene or indecent literature, pictures or materials upon the licensed premises

(n) Has possessed any gambling apparatus, machine or device upon the licensed premises

(2) That 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 place is located, with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of this State or by the regulations of the Board

(b) Has been adjudicated a common nuisance under the provisions of this chapter

(c) Has become a meeting place or rendezvous for users of narcotics, drunks, homosexuals, prostitutes, pimps, panderers, gamblers, or habitual law violators The Board may consider the general reputation in the community of such place in addition to any other competent evidence in making such determination

For the purposes of this section, "premises" or "place" shall mean 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 as defined in § 4-2

(3) That any cause exists for which the Board would have been entitled to refuse to issue such license had the facts been known, and the Board may likewise suspend or revoke any license for any other cause designated by this chapter

And the Board shall suspend or revoke a license as provided in § 18-296 (§ 18 1-335)

(b) Notice and hearing —Before the Board may suspend or revoke any license issued under the provisions of this chapter, at least ten days' notice of such proposed or contemplated action by the Board shall be given to the licensee affected Such notice shall be in writing, shall contain a statement in detail of the grounds or reasons for such proposed or contemplated action of the Board, and shall be served on the licensee as other notices are served, or by sending the same to such licensee by registered mail to his last known post-office address The Board shall in such notice appoint a time and place when and at which the licensee shall be heard as to why his license should not be suspended or revoked The licensee shall at such time and place have the right to produce evidence in his behalf and to be represented by counsel

(c) Payment of costs —The Board in suspending any license may impose, as a condition precedent to the removal of such suspension, 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

(d) Review —The action of the Board in suspending, ~~or~~ revoking ~~any license pursuant to the provisions of this chapter~~, ~~or granting or refusing to grant any license under the provisions of § 4-31~~ shall be subject to judicial review upon petition to the ~~Circuit Court of the City of Richmond~~ *only circuit court of the city or county in which the licensee or proposed licensee has his place of business*, which petition shall be filed within thirty days from the entry of the order of the Board suspending or revoking such license Provided, however, that upon the judicial review of a suspension such review or appeal shall be limited to the determination of errors of law or a capricious and arbitrary abuse of discretion The filing of such petition shall not operate to stay any such order of the Board suspending or revoking any license, provided,

however, that in the case of suspension, the judge ~~of the Circuit Court of the city of Richmond~~ may, in his discretion, grant a stay of such order of the Board until a hearing has been held by the court upon the issue. If such stay is granted, the court, in granting it, may require as a condition thereto that the petitioner comply with all the regulations of the Board, and specifically any regulation which the petitioner has been charged with violating. The jurisdiction of the ~~Circuit Court of the city of Richmond court~~ shall be limited in any case involving such petition to the record of the proceedings before the Board. An appeal shall lie to the Supreme Court ~~of Appeals~~ from any order of the ~~Circuit Court of the city of Richmond court~~. Neither mandamus nor injunction shall lie in any such case. *In all such cases, notwithstanding any provision of law to the contrary, the attorney for the Commonwealth of the county or city in which the appeal is brought, shall represent the Board.*

(e) Disposition of beverages on hand —Alcoholic beverages, other than beer, owned and in possession, or owned or in possession, for sale, by or of any licensee at the time the license of any such person is suspended or revoked as herein provided, may be sold by such person to the Board at such price or prices and upon such terms as may be agreed upon by the Board and such person, or may, upon permits issued by the Board and upon such conditions as the Board may specify be sold to persons in Virginia licensed to sell such alcoholic beverages or may, upon permits issued by the Board, be sold to persons outside of Virginia for resale outside of Virginia, except that no deliveries or shipments shall be made into any state the laws of which prohibit the consignee from receiving or selling the same.

Beer owned and in possession, or owned or in possession, for sale, by or of any licensee at the time the license of such person is suspended or revoked as provided herein, may upon permits of the Board and upon payment of any excise tax due thereon be sold to any person authorized to purchase the same for resale.

Alcoholic beverages owned and in possession, or owned or in possession, for sale, by or of persons whose licenses have been terminated otherwise than by suspension or revocation may dispose of the same in accordance with the foregoing provisions of this section within such time as the Board, in its discretion, may deem proper under the circumstances, provided such period shall not be less than sixty days.

All such alcoholic beverages owned by or in possession of any person whose license is suspended or revoked, as provided herein, shall be disposed of by such person in accordance with the provisions of this section within a period of sixty days from the date of such suspension or revocation. All such alcoholic beverages owned by or in possession of any person whose license is terminated otherwise than by suspension or revocation, shall be disposed of by such person in accordance with the provisions of this section within the period allowed by the Board. All such alcoholic beverages owned by or remaining in the possession of any such person, after the expiration of such period shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4-55.

§ 4-40 Excise tax —(a) (Repealed )

(a1) (Repealed )

(b) Tax on beer sold —There is hereby levied on all beer sold in Virginia, an excise tax at the rate of six dollars per barrel of thirty-one gallons and a tax at the same rate on such beer in containers of more or less than thirty-one gallons, but on such beer in bottles of not more than seven ounces each the tax shall be one and one-half cents per bottle, and on such beer in bottles of more than seven ounces each but not more than twelve ounces each the tax shall be

two cents per bottle, and on such beer in bottles of more than twelve ounces each, the tax shall be at the rate of one and two-thirds mills per ounce per bottle. The tax herein levied shall be paid by the brewery, bottler or wholesaler selling such beer to persons licensed hereunder to sell beer at retail.

(b1) (Repealed )

(c) When seller to pay tax —When any person shall sell or offer for sale in Virginia any beer purchased or obtained from any person not licensed either as a brewery, bottler or wholesaler under the provisions of this chapter, and on which the State excise tax herein levied has not been paid, such person shall pay the tax levied in the preceding subsection.

(d) Contract with State Tax Commissioner —No retail license authorizing the licensee to sell beer under the provisions of this chapter shall be valid unless and until the person to whom such license is issued shall have filed with the State Tax Commissioner a satisfactory contract or agreement with the Commissioner that such person will purchase for resale beer from manufacturers, bottlers or wholesalers licensed in this State and from no one else, provided, however, that any corporation licensed to sell beer on dining cars, buffet cars, club cars or boats may, in lieu of filing such a contract or agreement, file with the Commissioner a bond, with a guaranty or surety company licensed to do business in this State as surety, in such penalty as the Commissioner may find to be sufficient to cover the tax liability of such corporation, but in no event to be less than one thousand dollars. The Commissioner shall promptly notify the Board of each such bond filed, each such contract or agreement entered into, and each amendment, alteration or cancellation thereof.

(e) Monthly report and payment of tax —On or before the tenth day of each month each person manufacturing, bottling or selling any beer in Virginia shall file with the State Tax Commissioner a report under oath on forms which shall be prescribed by the Commissioner showing the quantity of all beer manufactured, bottled or sold by such person during the preceding month, the amount of tax, if any, for which such person is liable under the provisions of this section, and containing such other information as the Commissioner may require, provided that corporations licensed to sell beer on dining cars, buffet cars, club cars or boats shall have thirty days from the end of each month within which to file the monthly reports required by this subsection. At the same time such person shall pay to the Commissioner all such excise taxes chargeable against him under the provisions of this chapter on all such beer sold during the preceding month to persons licensed hereunder to sell beer at retail, unless such taxes have been previously paid.

The provisions of this subsection as to the filing of such monthly reports shall not be applicable to any person licensed hereunder to sell beer at retail who purchased beer from manufacturers, bottlers or wholesalers licensed in this State and from no one else, provided, such person shall have duly filed with the State Tax Commissioner the contract or agreement mentioned in the preceding subsection.

(e1) Bond required to secure tax liability —No brewery, bottler or wholesaler shall be licensed under the provisions of this chapter to sell beer to a licensed retailer unless and until he files with the Commissioner a bond with a guaranty or surety company licensed to do business in this State as surety in such sum as the Commissioner shall find adequate to cover the tax liability of such brewery, bottler or wholesaler, proportioned to the volume of business of each such brewery, bottler or wholesaler, but in no event to be less than one thousand dollars or more than one hundred thousand dollars, and conditioned upon the payment by such brewery, bottler or wholesaler of the tax imposed by

this section in accordance with the provisions of this section *The Commissioner is authorized to waive the provision as to a surety bond, in cases where a brewery, bottler or wholesaler has previously demonstrated his financial responsibility* The Commissioner shall promptly notify the Board of each such bond filed or the termination thereof or of its guaranty or surety Upon receipt of notice by the Board of the termination of such bond, its guaranty or surety, the Board may, upon reasonable notice to the brewery, bottler or wholesaler so licensed, suspend the license so granted until such time as the required bond is filed or the proper surety or guaranty is given, as the case may be, provided, however, such brewery, bottler or wholesaler which has filed such a bond pursuant to comparable requirements of any other section of this chapter shall not be required to file an additional bond hereunder if the bond filed pursuant thereto is sufficient to cover the tax liability of such brewery, bottler or wholesaler under this section and such other requirements

(f) Beer shipped out of State or to certain federal enclaves, sales and deliveries to certain ships or aircraft —The excise tax herein provided for shall not be chargeable against any manufacturer, bottler or wholesaler on any beer shipped out of this State by such manufacturer, bottler or wholesaler for resale out of this State, or on any beer sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration within the geographical confines of Virginia, or on any beer shipped to a post exchange of the armed forces of the United States for resale by such post exchange, whether such post exchange be located on a United States military or naval reservation or not, or on any beer shipped to any instrumentality of the United States which is exempt on constitutional grounds from the excise tax levied by this section, or on any beer sold and delivered to foreign naval ships or on any beer sold and delivered to ships or aircraft actually engaged in foreign commerce or commerce between the Atlantic and Pacific 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, provided evidence satisfactory to the State Tax Commissioner be submitted to him in writing in each case that such beer was so shipped

(g) Disposition of moneys collected —All moneys collected by the State Tax Commissioner under the provisions of this chapter shall be promptly paid into the general fund of the State treasury

(h) Gift of untaxed beer considered sale —If any person licensed under the provisions of this chapter shall give or furnish gratuitously to any person in Virginia any beer on which the excise tax herein provided for has not been paid, such gift or furnishing shall for the purpose of this section be considered a sale

(i) Sections construed together —Nothing contained in this section shall be construed as repealing any provisions of § 4-41, but such sections shall be read together

(j) Tax refunds —Manufacturers, bottlers and wholesalers who may have on hand or in transit to them as of the close of business June thirty, nineteen hundred seventy-two, any Virginia taxpaid crowns or lids, or any Virginia tax stamps designed for beer in bottles or kegs, whether attached or unattached to containers, may apply to the Department of Taxation, on forms prescribed and furnished by it, for refunds of the taxes so paid Every such application for a tax refund shall be filed within thirty days after July one, nineteen hundred seventy-two, it shall state the pertinent facts existing at the close of business June thirty, nineteen hundred seventy-two, and it shall be verified by the affidavit of the applicant If the Department of Taxation is satisfied that the application is in proper form and substance, it shall certify such facts to the

Comptroller for approval of payment from the State treasury to the applicant in the correct amount as soon as practicable after the receipt of the application. Additional evidence may be required in any doubtful case. Refunds for stamps unattached to bottles or kegs shall be made only on surrender of such stamps to the Department of Taxation for cancellation.

§ 4-46 Effect of local option elections —(a) If in any election held under the provisions of § 4-45 in any county, city or town, a majority of the qualified voters voting therein shall vote “No” on the question shall the sale of beer be permitted therein or on the question shall the sale of wine be permitted therein, or on the question shall the sale, by the Alcoholic Beverage Control Board, of alcoholic beverages other than beer be permitted therein, then on and after sixty days from the date on which the order of the court, or of the judge thereof in vacation, setting forth the results of such election shall be entered of record, none of the alcoholic beverage or beverages against the sale of which the majority voted shall be sold in such county, city or town except for delivery or shipment to persons outside of, or to druggists in such county, city or town authorized under this chapter to acquire the same for the purpose of resale. This subsection shall not apply to corporations operating dining cars, buffet cars, club cars and passenger boats selling wine and beer to bona fide passengers. Wine may be sold in store operated by the Virginia Alcoholic Beverage Control Board even though a majority voted against the sale of wine in the county, city or town, provided the sale of alcoholic beverages other than beer and wine is permitted.

(b) If any such election be held in any county, city or town in which a majority of the qualified voters thereof shall have previously voted against permitting the sale of beer or wine or other alcoholic beverages and in such subsequent election a majority of the voters of the county, city or town voting therein vote “Yes” on the question shall the sale of beer be permitted therein, or on the question shall the sale of wine be permitted therein or on the question shall the sale of alcoholic beverages other than beer be permitted therein or vote “Yes” on any of the said questions, then such beverages as have been permitted to be sold by such election may in accordance with the provisions of this chapter be sold within the county, city or town, on and after sixty days from the day on which the order of the court, or of the judge thereof in vacation, setting forth the results of such election shall be entered of record.

*(b1) If any election shall have been held under the provisions of § 4-98 12, in any county or city the majority of voters voting in such election shall have voted “yes,” the sale of alcoholic beverages by the Board likewise shall be permitted in such county or city, this section, and any election held under § 4-45 to the contrary notwithstanding*

(c) The provisions of this section shall not be construed to prevent in any county, city or town, the sale and delivery or shipment of alcoholic beverages specified in §§ 4-48, 4-49 and 4-50 to and by persons therein authorized to sell the same, nor to prevent the delivery or shipment of alcoholic beverages under regulations of the Board into any county, city or town, except as otherwise prohibited by this chapter.

(d) For the purpose of this section, when any election shall have been held in any town, separate and apart from the county in which such town or a part thereof is located, such town shall be treated as being separate and apart from such county.

§ 4-57 Illegal manufacture and bottling, being found at distillery, winery or brewery —(a) Except as otherwise provided in §§ 4-48 and 4-89, if any person shall manufacture in this State alcoholic beverages without being licensed under the provisions of this chapter to manufacture such alcoholic

beverages, or if any person other than one who holds a brewery license or a bottler's license under the provisions of this chapter shall bottle beer for sale, he shall be guilty of a felony

(b) Every person found at any distillery, winery or brewery where alcoholic beverages are being manufactured in violation of the provisions of this chapter shall be ~~deemed prima facie~~, *upon due proof of such violation*, guilty of manufacturing the same or aiding and abetting in such manufacture and upon conviction thereof shall be punished as if personally manufacturing the same

(c) Any person found guilty of a violation of any provision of this section shall be punished by confinement in the penitentiary for not less than one year nor more than three years or, in the discretion of the court or jury trying the case, by confinement in jail not less than six months nor more than twelve months and a fine not exceeding one thousand dollars

(d) The presence of mash at an unlicensed distillery shall constitute manufacture within the meaning of this section

§ 4-60 Illegal sale or keeping of alcoholic beverages by licensees —If any person who holds a license issued under the provisions of this chapter,

(a) Shall sell any alcoholic beverages of a kind other than that which such license or this chapter authorizes him to sell, or

(b) Shall sell beer to which wine, spirits or alcohol, or more than one of any such alcoholic beverages, has been added, or

(c) Shall sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under regulations of the Board, or

(d) Shall sell alcoholic beverages of a kind which such license or this chapter authorizes him to sell, but to any person other than to those to whom such license or this chapter authorizes him to sell, or

(e) Shall sell alcoholic beverages which such license or this chapter authorizes him to sell, but in any place or in any manner other than such license or this chapter authorizes him to sell, or

(f) Shall sell any alcoholic beverages when forbidden by the provisions of this chapter, or

(g) Shall 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 chapter, or

(h) Shall, if holding a brewery license, bottler's license or wholesale beer license, sell any beer to a person to whom a retail license has been issued except for cash, or

(i) Shall sell any beer on draft and fail to display to customers the brand of beer so sold or shall misrepresent the brand of any beer sold, or

(j) Shall, if holding a wholesale wine distributor's license, sell any wine for delivery within the State of Virginia, *to a person to whom a retail license has been issued* except for cash, he shall be guilty of a misdemeanor and shall be punished as is provided in § 4-92, except such persons who shall be guilty of the violation of subsection (a) of this section

Any person found guilty of a violation of subsection (a) shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars and confinement in jail for not less than thirty days nor more than twelve months,

and the trial justice or court before whom such person is convicted may require him to give bond as is provided in § 4-92, subsection (b)

§ 4-62 Persons to whom alcoholic beverages may not be sold, forfeiture —(1) If any person shall, except pursuant to the provisions of §§ 4-37(a) (1) (j), 4-48, 4-49 or 4-50, sell any alcoholic beverages to any person and at the time of such sale shall know or have reason to believe that the person to whom the sale is made is (a) less than twenty-one years of age, or (b) an interdicted person, or (c) an intoxicated person, or (d) a patient under the supervision or control of any State hospital, whether such person be on furlough or otherwise, he shall be guilty of a misdemeanor

(2) If any person to whom an alcoholic beverage may not lawfully be sold under this section shall purchase or possess any alcoholic beverage, except pursuant to the provisions of §§ 4-37(a) (1) (j), 4-48, 4-49 or 4-50 he shall be guilty of a misdemeanor Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4-55

(3) The provisions of this subsection shall not be applicable to the possession of alcoholic beverages by a person less than twenty-one years of age making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent

§ 4-63 Persons by whom alcoholic beverages may not be sold or served for on-premises consumption —(a) It shall be unlawful for any person to permit any one employed by him under the age of ~~twenty-one~~ *eighteen* years to sell, serve or dispense in any manner alcoholic beverages for on-premises consumption, except pursuant to the provisions of §§ 4-48, 4-49 or 4-50

(b) Any person found guilty of a violation of the provisions of this section shall be punished as is provided for in § 4-92

§ 4-72 Regulations and permits for transportation —The transportation of alcoholic beverages, other than wine and beer purchased from persons licensed to sell the same in this state, and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through this State in quantities in excess of ~~one gallon~~ *three gallons when in packages containing one-fifth of a gallon or more, or one gallon when in packages of less than one-fifth of a gallon is prohibited except in accordance with regulations adopted by the Board pursuant to this section*

The Board may adopt such regulations governing the transportation of alcoholic beverages, other than wine and beer purchased from persons licensed to sell the same in this State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through Virginia in quantities in excess of one gallon, as it may deem necessary to confine such transportation to legitimate purposes, and the Board may issue transportation permits in accordance with such regulations

Any person who shall transport alcoholic beverages, other than wine and beer purchased from persons licensed to sell the same in this State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this chapter, in excess of ~~one gallon~~, *that permitted by this section* in violation of such regulations shall be guilty of a misdemeanor and punished as provided in § 4-92

§ 4-75 Possessing, transporting, etc., alcoholic beverages illegally acquired —If any 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 Congress has not been paid, he shall be guilty of a misdemeanor

The fact that spirits seized in the possession of any person are in containers not bearing the required United States government stamps or seals shall for the purposes of this chapter be ~~prima facie~~, *upon due proof*, evidence that the tax imposed has not been paid

It shall be unlawful to possess alcoholic beverages in amounts in excess of ~~one gallon~~ *the limits provided in § 4-72*, in containers not bearing evidence showing the same to have been purchased from the Board or a person licensed to sell the same under the provisions of this chapter 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 thereof and lawfully transported into Virginia.~~

The punishment for any violation of the provisions of this section, shall be a fine of not less than fifty dollars nor more than five hundred dollars or confinement in jail for not less than thirty days nor more than twelve months either or both in the discretion of the court or jury trying the case, and the trial justice or court, before whom any person is convicted for the violation of this section may require such person to give bond as is provided in § 4-92

§ 4-79 Manufacturers, etc, not to have interest in retail business or sell, rent, lend or give to retail licensees, owners of premises or government instrumentality any equipment or money—(a) Prohibited matters If any manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in this State or not, or any officer or director of any such manufacturer, bottler or wholesaler, shall have any financial interest, direct or indirect, in the business for which any retail license is issued, under the provisions of this chapter, or in the premises where the business of any person to whom such retail license has been issued is conducted, or either directly or indirectly shall sell, rent, lend, buy for, or give to any person who holds any retail license issued under the provisions of this chapter, or to the owner of the premises on which the business of any such person so licensed is conducted, or to any governmental instrumentality, or employee thereof, selling alcoholic beverages at retail, within the exterior limits of the Commonwealth of Virginia, including all territory within these limits owned by or ceded to the United States of America, any money, equipment, furniture, fixtures or property, with which the business of such retailer is or may be conducted, or for any other purpose including a gift as an inducement or remuneration for other purchases of such beverages, he shall be guilty of a misdemeanor

(b) Licensee consenting to violation If any person licensed hereunder to sell at retail any alcoholic beverages shall consent to any violation of this section, he shall be guilty of a misdemeanor

(c) Cleaning and servicing equipment The provisions of this section shall not, however, prevent any manufacturer, bottler or wholesaler of alcoholic beverages from cleaning and servicing, either free or for compensation, beer coils and other like equipment used in dispensing wine and beer

(d) Sale of carbonic acid gas Nothing in this section shall be construed so as to prevent the sale of carbonic acid gas in containers by manufacturers, bottlers and wholesalers of alcoholic beverages to persons holding licenses to sell alcoholic beverages at retail in Virginia, provided that there is charged for such carbonic acid gas the reasonable open market price therefor in the locality where sold

(e) Sale of ice Nothing in this section shall be construed so as to prevent any person, who is engaged or interested in the manufacture or sale, or both, of ice and who is also a director or officer of a manufacturer, bottler or wholesaler of alcoholic beverages licensed in this State, from selling ice to persons to whom retail licenses have been issued under the provisions of this chap-

ter, provided that such ice is manufactured on premises separate and apart from the premises of such manufacturer, bottler or wholesaler of alcoholic beverages

(f) Draft beer knobs and tapping equipment, bottle or can openers This section shall not apply to the sale, renting, lending, buying for or giving to any retailer by a manufacturer, bottler or wholesaler of alcoholic beverages draft beer knobs or tapping equipment upon which any advertising matter regarding alcoholic beverages may appear, provided, that draft beer knobs shall not exceed in value the sum of five dollars in any one year, and the tapping equipment shall not exceed in value the sum of ten dollars in any one year, provided, further, that a manufacturer, bottler or wholesaler, may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container, provided, further, that a manufacturer, bottler or wholesaler may sell to any retailer any beer bottle opener or can opener upon which advertising matter regarding alcoholic beverages may appear if such opener does not exceed in value the sum of five cents and a price of not less than two cents is paid therefor

(g) Rotation of brands of beverages This section shall not apply to the rotation, in the premises of retail licensees in accordance with regulations of the Board, by wholesale licensees of the Board of stocks of the brand or brands of alcoholic beverages sold by such wholesale licensees, provided such rotation is performed with the express consent ~~in writing~~ of such retail licensees *Such rotation may include such movement of merchandise as may be necessary to maintain fresh stock in the designated areas, including the bringing forward of old stock and replacing it with new, which activity shall be liberally interpreted in the interest of the wholesale licensee in maintaining the integrity of his merchandise*

§ 4-80 2 Coercing or inducing beer or wine wholesaler to violate certain provisions, cancelling agreement or franchise to sell beer or wine, injunctive relief —(a) It shall be unlawful for any wholesaler, vintner, winery or brewery, or any officer, agent or representative of any winery or brewery

(1) To coerce, or attempt to coerce, or persuade any person licensed to sell beer, ~~or wine or beverages~~ at wholesale, to enter into any agreements or to take any action which will violate or tend to violate any provisions of chapters 1 (§ 4-1 et seq ) § 1 1 (§ 4-98 1 et seq ) or 2 (§ 4-99 et seq ) of Title 4 of the Code of Virginia, or any rules or regulations issued in accordance therewith, or

(2) Unfairly, without due regard to the equities of such wholesaler, vintner, winery or brewery and without just cause or provocation, to cancel or terminate *in whole or in part*, any agreement or contract, written or oral, or the franchise of such wholesaler, vintner, winery or brewery existing on January one, nineteen hundred sixty-four, hereafter entered into, to sell the beer or wine manufactured *or distributed* by the winery or brewery, *provided, also, that on and after June one, nineteen hundred seventy-four, this provision shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesale dealer in beer, wine or beverages licensed to do business in Virginia, and any brewery, vintner or winery doing business with such licensed wholesaler, just as though said provisions had been specifically agreed upon between said wholesaler and said brewery, vintner or winery*

(21) *The doing or accomplishment of any of the following acts shall constitute prima facie evidence of a contractual franchise relationship within the contemplation of this section, as between a licensed beer, wine or beverage wholesaler and a brewery, vintner or winery, to wit*

*(a1) The shipment, preparation for shipment or acceptance of any order by any brewery, vintner or winery or its agent for any beer, wine or beverages to a licensed wholesale distributor within the State of Virginia*

*(b1) The payment by a licensed wholesale distributor in the State or the acceptance of payment by any brewery, vintner or its agent for the shipment of an order of beer, wine or beverages intended for sale within the State*

*(c1) The Circuit Courts of this State having general equity jurisdiction are hereby vested with jurisdiction and power to enjoin the cancellation or termination of a franchise or agreement between a wholesaler of beer, wine or beverages and a brewery, vintner or winery at the instance of such wholesaler who is or might be adversely affected by such cancellation or termination*

*(b) The circuit courts ~~of record~~ in this State having ~~general equity~~ jurisdiction are hereby vested with jurisdiction and power to enjoin the cancellation or termination of a franchise or agreement between a wholesaler of beer, ~~or~~ wine and a brewery, vintner or winery at the instance of such wholesaler, vintner, winery or brewery who is or would be adversely affected by such cancellation or termination*

*(c) The Alcoholic Beverage Control Board is empowered to investigate any violations of this section and to furnish to the Commonwealth's attorney of the county or city having jurisdiction of the offense information with respect to any violations of this section. The Board shall have the power to enforce conformance with the provisions of any injunction granted by the court under the terms of this section, and, if the court finds that there has been a violation of the provisions of any injunction granted by it, the Board may revoke or suspend the permit of any wholesaler and the permission of any brewery, vintner or winery to ship beer, wine and beverages into the State of Virginia*

*(d) As used in subsection (a) (2) hereof, the words "cancel or terminate in whole or in part" shall be deemed to include the splitting or dividing by the brewery, vintner or winery of all or part of the territory or area of primary responsibility assigned to an existing wholesaler, and further, be deemed to include the granting by the brewery, vintner or winery of another dual franchise distributorship for the same or part of the same territory or area of primary responsibility assigned to an existing wholesaler*

§ 4-98 1 Definitions —The terms defined in § 4-2 shall have the same meanings when used in this chapter, and the term "mixed beverage" or "mixed alcoholic beverage" shall mean a *spirits* drink composed in whole or in part of alcoholic beverages having an alcoholic content of more than fourteen per centum by volume and served to an individual in a quantity less than the quantity contained in a closed package for consumption on premises licensed under this chapter

§ 4-98 2 Mixed beverage restaurant license and caterer's license —(a) In any city, town or county where this chapter shall become effective as hereafter provided, the Board may grant a mixed beverage restaurant license, which license may be granted only to persons operating a restaurant with a seating capacity at tables for not less than fifty persons and whose gross receipts from the sale of ~~full~~ meals cooked, or prepared, and served on the premises and nonalcoholic beverages served on the premises shall, after issuance of such license, exceed its gross receipts from the sale of alcoholic beverages, mixed beverages and beverages as defined in § 4-99. Such license shall authorize the licensee to sell and serve mixed beverages for consumption in dining rooms and other designated rooms on the premises of such restaurant specified in such license. If the restaurant is located on the premises of and in a hotel or motel with not less than forty permanent bedrooms where food and beverage service is customarily provided by the res-

restaurant in bedrooms and other private rooms of such hotel or motel, such license shall also authorize the licensee to sell and serve mixed beverages for consumption in such bedrooms and other private rooms. If the restaurant is located on the premises of and operated by a private, nonprofit club exclusively for its members and their guests, such license shall also authorize the licensee to sell and serve mixed beverages for consumption on the premises of such club specified in such license. *The granting of such license shall automatically include a license to dispense on-premises beer and wine provided the licensee shall pay the State and local tax provided in §§ 4-33 and 4-38*

(b) In any city, town or county where this chapter shall become effective as hereafter provided the Board may grant a mixed beverage caterer's license, which license may be granted only to caterers maintaining premises with a seating capacity for not less than two hundred fifty persons, and catering exclusively for private meetings and private parties limited in attendance to members and guests of a particular group association or organization and whose gross receipts from the sale of full meals cooked, prepared and served on the premises and nonalcoholic beverages served on the premises shall, after issuance of such license, exceed its gross receipts from the sale of alcoholic beverages, mixed beverages and beverages as defined in § 4-99. Such license shall authorize the licensee to sell and serve mixed beverages for consumption in dining rooms on the premises of such restaurant specified in such license.

*(c) In any city, town or county where this chapter shall become effective as hereafter provided, the Board may grant, subject to such conditions as it may specify, a mixed beverage special events license, which license may be granted only to a duly organized nonprofit corporation or association in charge of a special event operated solely for objects of an athletic, charitable, civic, educational, political or religious nature, or the like. Such license shall authorize the licensee to sell and serve mixed beverages for consumption in areas approved by the Board on the premises of the establishment designated in the license. A separate license shall be required for each day of each event.*

§ 4-98 11 Alcoholic beverages sold as mixed beverages to be purchased from Board, exceptions —(a) All alcoholic beverages sold as mixed beverages in establishments licensed under this chapter shall be purchased from the Board. Such purchases may be made at government stores or at warehouses operated by the Board, ~~at prices established by the Board, which prices, in other cases, may be greater than the prices to other authorized purchasers, but shall be uniform for all purchases licensed under this chapter.~~

(b) Notwithstanding the provisions of subsection (a) of this section, persons holding mixed beverage carrier licenses issued by the Board as common carriers of passengers by train, ship or airplane may obtain from other lawful sources alcoholic beverages to be sold as mixed beverages on trains, ships or airplanes of the licensees provided there is paid to the Board in lieu of the taxes otherwise *directly imposed by the Code of Virginia under Chapters 1 and 11 of this Title* and any markup otherwise charged by the Board a tax of ten cents for each of the average number of drinks of mixed beverages fixed by the Board as having been consumed within the geographical confines of the Commonwealth on such trains, ships 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 within or without the Commonwealth by the licensee for consumption on trains, ships or airplanes of the licensee. Such tax shall be paid to the Board on a quarterly basis commencing on the first day of July, nineteen hundred seventy-two, and thereafter paid by the Board into the State treasury to the credit of the Treasurer of Virginia as provided in §§ 4-15 3 and 4-23 of this Code.

§ 4-98 18 Taxes on State licenses —(a) The taxes on State licenses issued pursuant to the provisions of this chapter shall be as follows

(1) Mixed beverage restaurant licenses issued to persons operating restaurants and caterers including restaurants located on premises of and operated by hotels or motels

(i) For each restaurant with a seating capacity at tables for fifty to one hundred persons, ~~two~~ *eight* hundred dollars per annum,

(ii) For each restaurant with a seating capacity at tables for more than one hundred but not more than one hundred fifty persons, ~~three hundred fifty~~ *one thousand four* hundred dollars per annum,

(iii) For each restaurant with a seating capacity at tables for more than one hundred fifty persons, ~~five hundred~~ *two thousand* dollars per annum, and

(iv) For each caterer, ~~five hundred~~ *two thousand* dollars-

(v) *Mixed beverage special events licenses, thirty dollars for each day of each event*

(2) Mixed beverage restaurant licenses for restaurants located on the premises of and operated by private, nonprofit clubs

(i) For each club with not more than two hundred resident members based on the average membership during the preceding twelve months, ~~two~~ *eight* hundred dollars per annum,

(ii) For each club with more than two hundred but not more than five hundred resident members based on the average membership during the preceding twelve months, ~~five hundred~~ *two thousand* dollars per annum, and

(iii) For each club with more than five hundred resident members based on the average membership during the preceding twelve months, ~~seven hundred fifty~~ *three thousand* dollars per annum

(3) Mixed beverage carrier licenses

(i) Seventy-five dollars per annum for each of the average number of dining cars, buffet cars or club cars operated daily in this State by a common carrier of passengers by train,

(ii) Two hundred fifty dollars per annum for each passenger ship operated by a common carrier of passengers by ship, and

(iii) Seven hundred fifty dollars per annum for each license issued to a person operating common carriers of passengers by airplane

(b) All licenses granted or issued pursuant to the provisions of this chapter shall expire on the thirtieth day of June next following the date on which they were granted or issued. The Board may, however, within its discretion, extend any license granted or issued hereunder, for a period not to exceed in any case sixty days

(c) The State license taxes provided for herein shall be collected by the Board and shall be paid into the State treasury and treated in the same manner as license taxes collected by the Board under the provisions of chapter 1 (§ 4-1 et seq) of this title

(d) The provisions of subsections (b) through (d) of § 4-33 having to do with the proration of tax, other State taxes and refunds shall apply mutatis mutandis to taxes on State licenses issued pursuant to the provisions of this chapter and to those persons and places within the purview of this chapter

§ 4-98 19 Local license taxes —(a) In addition to the foregoing State license taxes provided for in this chapter, the governing body of each city, town or county in this State may, by ordinance, adopt and impose upon persons holding mixed beverage restaurant and caterers' licenses for establishments located within such city, town or county local license taxes not in excess of the following sums

(1) Persons operating restaurants, including restaurants located on premises of and operated by hotels or motels

(i) Two hundred dollars per annum for each restaurant with a seating capacity at tables for fifty to one hundred persons,

(ii) Three hundred fifty dollars per annum for each restaurant with a seating capacity at tables for more than one hundred but not more than one hundred fifty persons, and

(iii) Five hundred dollars per annum for each restaurant with a seating capacity at tables for more than one hundred fifty persons

(iv) Five hundred dollars per annum for each caterer

(v) *Mixed beverage special events licenses, ten dollars for each day of each event*

(2) A private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars per annum

(b) The governing body of each city, town or county may, in its discretion, graduate the license taxes provided for herein in such manner as it may deem appropriate

(c) No local license tax shall be either charged or collected for the privilege of selling and serving mixed beverages in passenger airplanes, dining rooms and other designated rooms of ships and in dining cars, buffet cars and club cars of trains and in rooms designated by the Board of establishments of air carriers of passengers at airports in Virginia

§ 4-104 Taxes on State licenses, expiration of licenses, other State taxes —(a) Amount of tax, proration - The taxes on State licenses issued pursuant to the provisions of this chapter shall be as follows

(1) For each manufacturer's license, one hundred dollars per annum, for each bottler's license, fifty dollars per annum, for each wholesaler's license, fifty dollars per annum, and for each retailer's license, forty dollars per annum

(2) For every distributing house or place in this State, operated by any person and used in whole or in part for distributing beverages among his retail stores in the State, a separate State license is hereby required, and the tax on every such license shall be fifty dollars per annum

(3) The tax on each such license shall be subject to proration to the following extent If the license is issued in the second quarter of any year the tax shall be decreased by one fourth, if issued in the third quarter of any year the tax shall be decreased by one half, and if in the fourth quarter of any year the tax shall be decreased by three fourths

(4) Taxes on retailers' licenses issued for the sale of beverages on railway cars, vessels and aircraft shall be as provided in § 4-113

(b) The privileges conferred by any license issued by the Board pursuant to this chapter shall be deemed to continue until the thirtieth day of June next following, and, provided that no cause exists for which the Board would be

entitled to refuse to issue a license, thereafter from year to year until terminated by operation of law, by voluntary surrender, or by order of the Board, but any continuation beyond the original expiration date shall be conditioned upon the payment of the subsequent annual license tax as required by law

*Any licensee who fails to pay by midnight, June thirty, the required license tax covering the continuation or reissuance of his license may be permitted to do so within the discretion of the Board, in lieu of posting and publishing notice and reapplying provided payment of such tax is made within thirty days following that date and is accompanied by a penalty of twenty-five dollars or ten percent of such tax, whichever is greater*

(c) Other State taxes Nothing in this chapter shall be construed as exempting any licensee from any State merchant's license or State restaurant license or any other State tax whatsoever, and every licensee, in addition to the taxes imposed by this chapter, shall be liable to State merchants' license taxes and State restaurant license taxes and other State taxes the same as if the beverages were nonalcoholic, provided, however, that in ascertaining the liability of a beverage wholesaler to merchants' license taxes, and in computing the wholesale merchants' license tax on a beverage wholesaler, the first ten thousand dollars of beverage purchases shall be disregarded if such beverage wholesaler pays a separate wholesale beverage license tax under this chapter and is not within the provisions of § 4-39

(d) Disposition of taxes All license taxes collected by the Board under the provisions of this chapter shall be paid into the State treasury and treated in the same manner as license taxes collected by the Board under the provisions of the preceding chapter (§ 4-1 et seq )

§ 4-108 Excise tax on beverages —(a), (a1) (Repealed )

(b) Tax on beverages sold - There is hereby levied on all beverages sold in Virginia, an excise tax at the rate of six dollars per barrel of thirty-one gallons, and a tax at the same rate on such beverages in containers of more or less than thirty-one gallons, but on such beverages in bottles of not more than seven ounces each the tax shall be one and one-half cents per bottle, and on such beverages in bottles of more than seven ounces each but not more than twelve ounces each the tax shall be two cents per bottle, and on such beverages in bottles of more than twelve ounces each, the tax shall be at the rate of one and two-thirds mills per ounce per bottle. The tax herein levied shall be paid by the brewery, bottler or wholesaler selling such beverages to persons licensed hereunder to sell beverages at retail

(b1) (Repealed )

(c) When seller to pay tax, contract with Commissioner - When any person shall sell or offer for sale in Virginia any beverages purchased or obtained from any person not licensed either as a manufacturer, bottler, or wholesaler under the provisions of this chapter, and on which the State excise tax herein levied has not been paid, such person shall pay the tax levied in the preceding subsection. No license issued to a retailer under this chapter shall be valid unless and until such retailer shall have filed with the State Tax Commissioner a satisfactory contract or agreement with the Commissioner that such retailer will purchase for resale beverages from manufacturers, wholesalers or bottlers licensed in this State and from no one else, provided, however, that any corporation licensed to sell beverages on dining cars, buffet cars, club cars or boats may in lieu of filing such a contract or agreement, file with the Commissioner a bond, with a guaranty or surety company licensed to do business in this State as surety, in such penalty as the Commissioner may find to be sufficient to cover the tax liability of such corporation, but in no

event to be less than one thousand dollars. The violation of the terms of any such contract or agreement between any such retailer and the Commissioner by the purchase by such retailer of any beverages for resale from anyone other than a manufacturer, bottler, or wholesaler licensed in this State shall automatically revoke the license of any such retailer and such retailer shall moreover be guilty of a misdemeanor.

(d) Monthly report and payment of tax - On or before the tenth day of each month every person manufacturing, bottling or selling any beverages in Virginia shall file with the State Tax Commissioner a report under oath on forms which shall be prescribed by the Commissioner showing the quantity of all beverages manufactured, bottled or sold by such person during the preceding month, the amount of tax, if any, for which such person is liable under the provisions of this section, and containing such other information as the Commissioner may require. At the same time such person shall pay to the Commissioner all such excise taxes chargeable against him under the provisions of this section on all such beverages sold during the preceding month, to persons licensed hereunder to sell beer at retail, unless such taxes have been previously paid. The provisions of this subsection as to the filing of such monthly reports shall not be applicable to any retailer who purchased beverages from manufacturers, wholesalers or bottlers licensed in this State and from no one else, provided, such retailer shall have duly filed with the Commissioner the contract or agreement mentioned in the preceding subsection.

(d1) Bond to secure tax liability required - No brewery, bottler or wholesaler shall be licensed under the provision of this chapter to sell beverages to a licensed retailer unless and until he files with the Commissioner a bond with a guaranty or surety company licensed to do business in this State as surety such sum as the Commissioner shall find adequate to cover the tax liability of each such brewery, bottler, or wholesaler, proportioned to the volume of business of each such brewery, bottler or wholesaler, but in no event to be less than one thousand dollars or more than one hundred thousand dollars and conditioned upon the payment by such brewery, bottler or wholesaler of the tax imposed by this section in accordance with the provisions of this section. *The Commissioner is authorized to waive the provision as to a surety bond in cases where a brewery, bottler or wholesaler has previously demonstrated his financial responsibility.* The Commissioner shall promptly notify the Board of each such bond filed or the termination thereof or of its guaranty or surety. Upon receipt of notice by the Board of the termination of such bond, its guaranty or surety, the Board may upon reasonable notice to the brewery, bottler or wholesaler so licensed, suspend the license so granted until such time as the required bond is filed or the proper surety or guaranty is given, as the case may be, provided, however, such brewery, bottler or wholesaler which has filed such a bond pursuant to other requirements of this chapter shall not be required to file an additional bond hereunder if the bond filed pursuant thereto is sufficient to cover the tax liability of such brewery, bottler or wholesaler under this section and such other requirements.

(e) Beverages shipped out of State or to certain federal enclaves, sales and deliveries to certain ships - The excise tax herein provided for shall not be chargeable against any manufacturer, bottler or wholesaler on any beverages shipped out of this State by such manufacturer, bottler or wholesaler for resale out of this State, or on any beverages sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration, within the geographical confines of Virginia, or on

any beverages shipped to a post exchange of the armed forces of the United States for resale by such post exchange, whether such post exchange be located on a United States military or naval reservation or not, or on any beverages shipped to any instrumentality of the United States which is exempt on constitutional grounds from the excise tax levied by this section, or on any beverages sold and delivered to foreign naval ships or any beer sold and delivered to ships or aircraft actually engaged in foreign commerce or commerce between the Atlantic and Pacific 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, provided evidence satisfactory to the State Tax Commissioner be submitted to him in writing in each case that such beverages were so shipped

(f) Disposition of moneys collected - All moneys collected by the State Tax Commissioner under the provisions of this chapter shall be promptly paid into the general fund of the State treasury

(g) Tax refunds - Manufacturers, bottlers and wholesalers who may have on hand or in transit to them as of the close of business June thirty, nineteen hundred seventy-two, any Virginia taxpaid crowns or lids, or any Virginia tax stamps designed for beverages in bottles or kegs whether attached or unattached to containers, may apply to the Department of Taxation, on forms prescribed and furnished by it, for refunds of the taxes so paid. Every such application for a tax refund shall be filed within thirty days after July one, nineteen hundred seventy-two, it shall state the pertinent facts existing at the close of business June thirty, nineteen hundred seventy-two, and it shall be verified by the affidavit of the applicant. If the Department of Taxation is satisfied that the application is in proper form and substance, it shall certify such facts to the Comptroller for approval of payment from the State treasury to the applicant in the correct amount as soon as practicable after the receipt of the application. Additional evidence may be required in any doubtful case. Refunds for stamps unattached to bottles or kegs shall be made only on surrender of such stamps to the Department of Taxation for cancellation.

§ 4-112.1 Purchase or possession of beverages by minor, purchase by other person for minor — If any person under the age of eighteen years shall purchase any beverages as defined in this chapter or possess any beverage so purchased, or if any person shall purchase any such beverage for another person, and at the time of such purchase know or have reason to believe that the person for whom such beverage was purchased was a person less than eighteen years of age, he shall be guilty of a misdemeanor.

(b) Any beverages purchased or possessed in violation of this section shall be deemed contraband, forfeited to the Commonwealth and destroyed.

~~(c) Any minor who testifies on behalf of the Commonwealth or the prosecution or any minor who is subpoenaed by the Alcoholic Beverage Control Board in any case involving the illegal sale of beverages to a minor shall not be prosecuted under this section.~~

~~(d) No person shall be convicted under this section unless there was posted in some prominent place in the establishment wherein the purchase was made a sign of notice advising that purchase by persons under the age of eighteen years of beverages containing not more than three and two-tenths per centum alcohol by weight is unlawful.~~

§ 4-115 Manufacturers and wholesalers not to be interested in retail sales, cleaning and servicing equipment, sale of gas or ice, renting, etc., draft beer knobs and tapping equipment, bottle or can openers — (a) Prohibited interest in retail business, furnishing money, equipment, etc. No manufacturer, bottler or wholesaler of beverages, whether licensed in this

State or not, nor any officer or director of any such manufacturer, bottler or wholesaler shall have any financial interest direct or indirect, in the business for which any retailer's license under this chapter is issued, or in the premises where the business of any person to whom a retailer's license has been issued hereunder is conducted, nor shall any manufacturer, bottler or wholesaler of beverages, whether licensed in this State or not, or any officer or director of any such manufacturer, bottler or wholesaler, rent, lend or give to any person licensed hereunder as a retailer, or to the owner of the premises on which the business of any such retailer is conducted, or to any governmental instrumentality or employee thereof, selling beverages as defined in § 4-99 at retail, any money, equipment, furniture, fixtures or property with which the business of such retailer is or may be conducted, or for any other purpose, including a gift as an inducement or remuneration for other purchases of such beverages. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

(b) Retail seller consenting to violation. Any retailer consenting to any violation of this section shall likewise be guilty of a misdemeanor and upon conviction shall be punished accordingly.

(c) Cleaning and servicing equipment. The provisions of this section shall not, however, prevent any manufacturer, bottler or wholesaler of beverages from cleaning and servicing, either free or for compensation, beer coils and other like equipment used in dispensing beverages.

(d) Sale of carbonic acid gas. Nothing in this section shall be construed so as to prevent the sale of carbonic acid gas in containers by manufacturers, bottlers and wholesalers of beverages to persons holding licenses to sell beverages at retail in Virginia, provided that there is charged for such carbonic acid gas the reasonable open market price therefor in the locality where sold.

(e) Sale of ice. Nothing in this section shall be construed so as to prevent any person, who is engaged or interested in the manufacture or sale, or both, of ice and who is also a director or officer of a manufacturer, bottler or wholesaler of beverages licensed in this State, from selling ice to persons to whom retail licenses have been issued under the provisions of this chapter, provided that such ice is manufactured on premises separate and apart from the premises of such manufacturer, bottler or wholesaler of beverages.

(f) Draft beer knobs and tapping equipment, bottle or can openers. This section shall not apply to the sale, renting, lending, buying for or giving to any retailer by a manufacturer, bottler or wholesaler of beverages of draft beer knobs or tapping equipment upon which any advertising matter regarding beverages may appear, provided, that the draft beer knobs shall not exceed in value the sum of five dollars in any one year, and the tapping equipment shall not exceed in value the sum of ten dollars in any one year, provided, further, that a manufacturer, bottler or wholesaler, may sell, rent or lend to any retailer, for use only by a purchaser of draft beverages in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beverage from its container, provided, further that a manufacturer, bottler or wholesaler may sell to any retailer any beer bottle opener or can opener upon which advertising matter regarding beverages may appear if such opener does not exceed in value the sum of five cents and a price of not less than two cents is paid therefor.

(g) Rotation of brands of beverages. This section shall not apply to the rotation, in the premises of retail licensees in accordance with regulations of the Board, by wholesale licensees of the Board of stocks of the brand or brands of alcoholic beverages sold by such wholesale licensees, provided such rotation is performed with the express consent ~~in writing~~ of such retail licensees. Such

*rotation may include such movement of merchandise as may be necessary to maintain fresh stock in the designated areas, including the bringing forward of old stock and replacing it with new, which activity shall be liberally interpreted in the interest of the wholesale licensee in maintaining the integrity of his merchandise*

2 That §§ 4-15 3, 4-45 1, 4-73 1, 4-73 2, 4-95, and 4-112 2, as severally amended of the Code of Virginia, are repealed

#