

**REPORT OF THE
VIRGINIA CODE COMMISSION ON THE**

**Recodification of
Title 4 of the
Code of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
1993**

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**Report of the
Virginia Code Commission
on
The Recodification of Title 4 of the Code of Virginia
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The Governor and the General Assembly of Virginia**

Richmond, Virginia
January, 1993

TO: The Governor
and
The General Assembly of Virginia

INTRODUCTION AND SUMMARY

Senate Joint Resolution No. 13 of the 1992 Acts of Assembly directed the Virginia Code Commission to study Title 4 of the Code of Virginia and report its findings in the form of a recodification of the title to the Governor and the General Assembly. The resolution stated that the title had undergone many changes since the publication of the Code of 1950, and that the laws and regulations concerning alcoholic beverages have changed substantially in the past four decades. Due to the number of amendments and changes which have been made in Title 4, the need arose to (i) organize the laws in a more logical manner, (ii) delete obsolete and duplicative provisions, and (iii) improve the structure and clarity of Title 4.

In accordance with the mandate, the study has been completed. The result is a recodification of Title 4 into a new Title 4.1, comprised of five chapters. The name of the title was changed from "Alcoholic Beverages and Industrial Alcohol" to "Alcoholic Beverage Control" since the chapter on industrial alcohol was repealed by Chapter 468 of the 1980 Acts of Assembly. The organization of Title 4 is based primarily on the type of alcoholic beverage, with a separate chapter dedicated to each type. This organizational form created the need for repetitive provisions in each chapter. The reorganization of proposed Title 4.1 simplifies the organization of the alcoholic beverage control laws and eliminates repetitive provisions by categorizing the law principally under three chapters. Chapter 1 includes the general provisions relating to the administration of the Department of Alcoholic Beverage Control, operation of government stores, as well as definitions and local option referenda. Chapter 2 provides the "A to Z" of licensure, including exemptions from licensure, types of licenses granted by the Alcoholic Beverage Control Board (the Board) arranged by the type of beverage, the revocation and suspension of same, and fees and taxes on licenses. Chapter 3 centralizes all provisions relating to prohibited acts and penalties found scattered throughout the title. The remaining two chapters, the Wine Franchise Act and the Beer Franchise Act, are almost identical to their predecessors in subject matter and sequence, with only technical changes made due to their relatively recent enactments.

The Code Commission has rewritten and combined sections or parts of sections to clarify provisions and to eliminate archaic, obsolete or redundant language. Drafting notes highlighting significant changes or reorganization appear throughout this report, some preceding chapters where significant revisions were made and others following key sections in the Title 4.1 draft.

The Commission is indebted to the members of the Board and their staff for their efforts in this undertaking. Board member Robert E. Colvin and his staff worked with the Code Commission staff to develop and structure a draft that served as the foundation for this recodification. In addition, their analysis and historical insights enriched and invigorated this study and the draft that resulted.

The Commission is equally grateful to those individuals who devoted their time and expertise to this project by serving on a Special Task Force appointed by the Code Commission to assist it in reviewing the draft proposals. Task force members, representing a variety of interests and constituencies in the alcohol beverage control arena, helped refine the Title 4.1 draft through helpful criticism, comment, and suggestion.

The text of proposed Title 4.1 follows this introduction and summary as Appendix I. Appendix II compares the outline of Title 4 to that of proposed Title 4.1. Appendix III contains comparative tables that cross reference the provisions of Title 4 to corresponding provision in Title 4.1. Those sections in Title 4 proposed for repeal are so identified. A comparative table showing the distribution of Title 4 sections in proposed Title 4.1 is also part of this appendix. Appendix IV provides, in table form, the principal changes made by the Code Commission in the revision of Title 4. A copy of SJR 13 (1992), a listing of the names of the representatives of the Board assigned to this project, and the names and affiliations of the Special Task Force members comprise Appendix VI.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 1993 session to implement the revisions proposed in this report.

Respectfully submitted,

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ALCOHOLIC BEVERAGE CONTROL.

CHAPTER DRAFTING NOTE: Definitions for the Title, with the exception of the Wine and Beer Franchise Acts definitions, have been centralized in Chapter 1. Existing definitions have been updated or deleted as appropriate to reflect actual Board practice. Beer and wine have been redefined to include 3.2% beverages since the existing chapter on 3.2% beverage (existing Chapter 2) has been deleted as the legal drinking age in Virginia is 21 years.

Provisions relating to the administration of the Department of Alcoholic Beverage Control (ABC) are also contained in Chapter 1. The reports and accounting systems of the Board have been updated to reflect current state accounting practices.

Provisions relating to local option referenda have been updated with obsolete sections deleted. Currently, only three referenda remain — establishment of government stores, "liquor by the drink", and Sunday sales of wine and beer — and are reflected in the draft.

CHAPTER 1.

Definitions and General Provisions.

§ 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.

"Meals," as used in this chapter, shall mean an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Restaurant," as used in this chapter, shall mean an established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining rooms on the premises. The term "restaurant" shall include establishments specializing in full course meals with a single substantial entree.

DRAFTING NOTE: Mixed beverage definitions contained here have been incorporated into the general definitional section of proposed Chapter 1 — General Provisions, which covers all of the title except Chapters 4 and 5 (Wine and Beer Franchise Acts).

§ 4-99. Definitions.—As used in this chapter:

"Beverages" means beer and similar fermented malt-based beverages including those blended with fruit juices, containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume); for beer and beverage excise tax purposes only, "beverages" shall include wine, wine coolers, and similar fermented fruit juices containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume).

"Person" means an individual, partnership, association or corporation.

"Wine coolers" means drinks containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume) consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juices shall be treated as wine, as defined in § 4-2 (26) for all other purposes except for taxation under Chapter 4 (§ 4-127 et seq.) of this title.

DRAFTING NOTE: This section is the definition section from the existing 3.2% beverages chapter. Definition of "wine coolers" contained here has been incorporated into the general definitional section of Proposed Chapter 1 — General Provisions, which covers all of the title except for Chapters 4 and 5 (Wine and Beer Franchise Acts). The remainder of definitions

which are duplicative or obsolete have been deleted.

§ 4-127. Definitions.—As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

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

“Beer” means 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 percent of alcohol by weight (four percent by volume). This definition shall include ale, porter and stout.

“Beverage” means beer, similar fermented malt-based beverages, including those blended with fruit juices, wine, wine coolers as defined in § 4-09 and similar fermented fruit juices, containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume).

“Board” means the Virginia Alcoholic Beverage Control Board.

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

“Bottler” means any person licensed to bottle and sell beer or beverages to other persons for resale only.

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

“Manufacturer” means any person licensed to manufacture beer or beverages for sale to other persons for resale only and shall include any person licensed as a brewery located within the Commonwealth, and every person holding a beer importer's license who enters into an agreement as defined in § 4-118.4 with any beer wholesaler licensed to do business in the Commonwealth.

“Retailer” means any person licensed to sell beer or beverages at retail only and not for resale.

“Sale” and “sell” mean transfer by gift, exchange, barter and traffic, and any delivery made by any means whatsoever, of beer or beverages; soliciting or receiving an order for beer or beverages; keeping, offering or exposing the same for sale; or peddling.

“Wholesaler” means any person licensed to sell beer or beverages to retailers or other beer or beverage wholesalers for the purpose of resale.

DRAFTING NOTE: This section is the definitional section of the existing Beer Excise Tax Chapter. Definitions of “Barrel” and “Licensed” contained here have been incorporated into the general definitional section of proposed Chapter 1 — General Provisions, which covers all of the title except Chapters 4 and 5 (Wine and Beer Franchise Acts). Duplicate or obsolete definitions from the Beer Excise Chapter have been deleted.

§ 4-2 4.1-100 . Definitions.—As used in this chapter *title* unless the context requires otherwise a different meaning :

“Alcohol” means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or ~~oftener~~ *more often* , 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 percent of alcohol by weight” means all alcohol whether obtained by distillation, fermentation, or otherwise.

“Alcoholic beverages” includes the four varieties of liquor defined herein as alcohol, spirits, wine, and beer, and any one or more of such varieties *containing one-half of one percent or more of alcohol by volume* , including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties 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 definition.

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

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

"Beer" means any alcoholic beverage obtained by the 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 percent of alcohol by weight one-half of one percent or more of alcohol by volume . This definition includes ale, porter, and stout.

"Board" means the Virginia Alcoholic Beverage Control Board.

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

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

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association ; the advantages of which belong to all members for the purposes of this chapter as long as such exemptions remain in effect .

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

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

"Dentist" means any person duly authorized to practice dentistry pursuant to the laws of Virginia.

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

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

"Druggist" means any person duly authorized to operate a pharmacy pursuant to the laws of Virginia.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used pursuant to the provisions of this chapter .

"Farm winery" means an establishment located on a farm in this the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than fourteen percent alcohol by volume. At least fifty-one percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than twenty-five percent of the fruits, fruit juices, or other agricultural products shall be grown or produced outside this Commonwealth unless the Board has authorized the use of a greater quantity of out-of-state products pursuant to subsection B of § 4-26-1. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long

as such land is located in the Commonwealth.

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

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

"Government store" means a store established by the Board under this chapter for the sale of alcoholic beverages of any one or more varieties thereof .

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

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

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

"Manager" means the appointee of the Board in charge of a government store.

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

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

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

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

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

"Package" means any container, bottle, vessel, or other receptacle used for holding alcoholic beverages.

"Person" includes an individual, partnership, association, or corporation.

"Physician" means any person duly authorized to practice medicine pursuant to the laws of Virginia.

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

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

The term shall not include hotel or restaurant dining rooms areas 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 dining rooms 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 . Additionally, the term shall not include restaurants licensed by the Virginia Alcoholic Beverage Control Board in office buildings, industrial or similar facilities while such restaurant is closed to the public and while such restaurant is in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility, nor shall it include offices or office buildings or industrial facilities when such offices or facilities are closed to the public and while such offices or facilities are in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility. The term "public place" shall not include private recreational watercraft or chartered watercraft boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or tent structure 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.

"Restaurant licensed by the Board" means "Restaurant" means, for a wine, beer, or wine and beer license, any establishment provided with special space and accommodation, where, in consideration of payment, food (without lodging) is habitually furnished to persons meals or other foods prepared on the premises are regularly sold.

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

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

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

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

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

"Veterinarian" means any person duly authorized to practice veterinary science pursuant to the laws of Virginia.

"Wine" means any alcoholic 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 percent of alcohol by weight one-half of one percent or more of alcohol by volume , and containing no product of distillation. However, this This definition of wine includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of twenty-one percent by volume.

"Wine coolers" means drinks containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit

juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

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

"Wholesale druggist" means any person duly authorized to manufacture, sell, deliver, and ship drugs and medicines to others for the purpose of resale.

DRAFTING NOTE: Definitions found throughout Title 4, except those definitions in the Wine and Beer Franchise Acts, have been incorporated into this section to the extent feasible.

EXISTING DEFINITIONS WHICH HAVE BEEN MOVED FROM OTHER CHAPTERS INCLUDE: The terms "mixed beverages", "meals", and "restaurants" have been incorporated here from the definitions under the existing mixed beverages chapter (§ 4-98.2) with technical corrections only. The term "wine coolers" has been moved from the now deleted 3.2 beverages chapter (§ 4-99). "Barrel" and "Licensed" have been moved from existing § 4-127 (beer and beverage excise tax). "Gourmet shop" has replaced "specialty shop" to better describe the shop, although the actual definition remains the same. "Place or premises" comes from existing § 4-37(2c).

EXISTING DEFINITIONS WHICH HAVE TECHNICAL REVISIONS INCLUDE: The phrase "This definition includes ale, porter, and stout" in the definition of "Beer" has been deleted because it tends to limit the definition of beer (*eiusdem jeneris*). Insertion of "one-half percent of one percent of alcohol by volume" has been added to cover all malt-based coolers and any 3.2% beverages. "Dining room" has been changed to "Dining area" to include restaurants, hotels, etc., which serve meals on patios and similar areas. Duplicative language in "Public place" has been deleted.

DELETED DEFINITIONS: The definitions of dentist, physician, veterinarian, and wholesale druggist have been deleted. The Director of the Department of Health Professions has indicated that there is no basis for retaining these definitions and related sections since dentists, physicians and veterinarians may prescribe alcohol under the Drug Control Act. "Package" has been deleted and replaced with "container" throughout the title. "Person" has also been deleted because it is defined in Title 1 and is duplicative here.

NEW DEFINITIONS (i.e., THOSE NOT MOVED FROM OTHER SECTIONS): New definitions include "special agent", "container", "designated area", "licensee", and "with or without meals." These definitions have been added for clarity and to remove the need for repetitious phrases throughout the title. Definition of "special agent" and "designated area" have been added at the Board's request.

AREAS OF SUBSTANTIVE CHANGE INCLUDE:

1. The definition of "gift shop" has been expanded to include "historic site or museum specialty stores" which are currently defined in regulation only. Gift shops and historic site/museum specialty stores are similar establishments in that they are NOT primarily a food store, unlike a gourmet shop. As a result, they have been combined to reduce the confusion which exists because the Board currently licenses three similar-type establishments under different licenses, namely the specialty shop license (now proposed to be called a gourmet shop); the gift shop license; and the historic site/museum specialty store. The substantive change which results from the merger of the "historic site/museum specialty store" license and "gift shop" license is WHAT the licensee is authorized to sell. Under the former, the licensee may sell wine and beer. In the latter, the licensee may sell only wine. As proposed, the licensee under a "gift shop" license would now be authorized to sell wine and beer. [NOTE: The gift shop license was enacted by the 1992 Session of the General Assembly.]

2. At the Board's request, the dollar criteria used in determining the qualifications of a "convenience grocery store" for a wine and beer license has been eliminated. The Board has indicated that qualifications of establishments by dollar value of inventory and/or gross sales has and will continue to be defined by regulation. Additionally, the restriction of selling petroleum related services with the sale of petroleum products has been removed for "convenience grocery stores" because there was no apparent reason for the requirement.

3. Currently, there are two distinct definitions for "restaurant", one applying to the sale of wine and beer, and the other to the sale of mixed beverages. The definition of restaurant for a

wine and beer license has been changed to reflect actual practice of the Board which makes a distinction, by regulation, between wine and beer restaurants. Wine licenses require the preparation of meals; beer, the preparation of food. The existing statutory definition (§ 4-2) of restaurants (which applies to wine and beer) says, "any establishment ... where food is habitually furnished to persons." Board regulation adds the requirement for "preparation on the premises" which is not found in the statutory definition. Board regulation also requires *meals* for wine, and *food* for beer.

The definition of restaurant for mixed beverage purposes has NOT changed, but a clarifying revision has been made by addition of the phrase "Restaurant" for a mixed beverage license means ...

~~§ 4-3~~ 4.1-101 . Department of Alcoholic Beverage Control.— There is hereby created as a department of the Commonwealth ~~the~~ The Department of Alcoholic Beverage Control . The Department *is created* and shall consist of the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the Board.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-4 4.1-102 . ~~Members and officers~~ Membership of Control Board.— ~~(a)~~ A. The Board shall consist of three members appointed by the Governor, subject to confirmation by the General Assembly, for a ~~term~~ *terms* of five years each, to run from the expiration of the respective terms of the present members, except appointments to fill vacancies which shall be for the unexpired terms. The Governor shall designate ~~one of the members of the Board chairman thereof~~ *the chairman from among the members of the Board* . The Board, under rules adopted by itself by its rules , may elect one of its members chairman pro tempore and another or some other person as secretary. Two Board members of ~~the Board~~ shall constitute a quorum.

~~(b)~~ B. Each Board member of ~~the Board~~ shall receive a salary to be fixed by the General Assembly.

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

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

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-7 4.1-103 . ~~Functions, duties and powers~~ General powers of Board.—The functions, duties and powers of the Board shall be as follows ~~Board shall have the power to~~ :

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

~~(b)~~ To control B. Control the possession, sale, transportation and delivery of alcoholic beverages by the Board ;

~~(c)~~ To determine C. Determine, subject to § 4.1-121 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 D. Maintain warehouses for alcoholic beverages and to control the storage and delivery of alcoholic beverages to and from such warehouses ; and the keeping of the same therein ;

~~(e)~~ To lease E. Lease , occupy and improve any land or building required for the purposes

of this chapter title ;

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

~~(g)~~ To purchase *G. Purchase* , lease or acquire the use of , 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 title , including rectifying, blending and processing plants ; ~~the~~ . The Board is hereby empowered to *may* 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 *H. Determine* the nature, form and capacity of all packages to be *containers* used for containing *holding* alcoholic beverages to be kept or sold under this chapter title , and to prescribe the form and ~~contents~~ *content* of all labels and seals to be placed thereon;

~~(i)~~ To appoint *I. 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 or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board ; ; and engage the services of experts and of persons engaged in the practice of a profession; all salaries or remuneration in excess of \$1,000 per annum shall first be approved by the Governor~~ *professionals* ;

~~(j)~~ To hold *J. 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, *of the Board*; and to administer oaths and to take testimony thereunder ; ~~in its discretion to~~ . *The Board may* authorize any *Board* 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 application of any party aggrieved;

~~(k)~~ To make *K. Make* a reasonable charge for preparing and furnishing statistical information and compilations to persons other than ~~(1)~~ *(i)* officials, including court and police officials, of the Commonwealth and of its subdivisions, if the information requested is for official use, and ~~(2)~~ *(ii)* persons who have a personal or legal interest in obtaining the information requested, if such information is not to be used for commercial or trade purposes;

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

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

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

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

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

~~(t)~~ Generally to do *Q. Do* all such things as may be deemed ~~acts~~ necessary or advisable by the Board for the purpose of carrying into effect the provisions of this chapter to carry out the purposes of this title .

DRAFTING NOTE: No substantive change in the law. In subsection I, language dealing with setting compensation and official positions and titles has been deleted because the Department of Personnel and Training is responsible for personnel classification. Also in subsection I, language requiring the approval of the Governor for all Department employees with salaries in excess of \$1,000 per year has been deleted as this provision has become obsolete. The authority to promulgate regulations has been added from existing § 4-11 as subsection L in this section. References to "officers" of the Board have been deleted here and throughout proposed Chapter 1 as obsolete. The powers to (i) promulgate regulations, (ii) grant, suspend or revoke licenses, (iii) assess civil penalties and charges; and (iv) enjoin nuisances have been listed here as a cross-reference to the existing Board powers, specifically existing §§ 4-11, 4-25, 4-37 and 4-98.16, and 4-82, respectively. The power to establish minimum food sale requirements for retail wine

and beer licensees has been added for clarification since the food sale requirement has been deleted from the definition of "convenience grocery store". This section also contains technical corrections.

~~§ 4-18 4.1-104 . Purchases and printing by the Board .— (a) The provisions of law pertaining to the Department of Accounts and Purchases and the purchasing of materials, equipment and supplies through the Department shall not apply to the purchasing of alcoholic beverages, the making of leases , and the purchasing of real estate by the Board under the provisions of this chapter title are exempt from the Virginia Public Procurement Act (§ 11-35 et seq.).~~

~~(b) All printing required by the Board shall be done through the Department of Accounts and Purchases and shall be paid for by the Board out of funds available for such program.~~

DRAFTING NOTE: No substantive change in the law. This section was rewritten to clarify that purchases, etc., of the Board are exempt from the Virginia Public Procurement Act. Subsection (b) has been deleted since the Board does most of its printing internally.

~~§ 4-8 4.1-105 . Police power of members, officers, agents and employees of Board.—Members of the Board are hereby vested, and such officers, agents and employees of the Board as shall be designated by it shall upon being so designated be vested ; with like power to enforce the provisions of this chapter title and the criminal laws of the Commonwealth as is now vested in sheriffs of counties and police of cities and towns the chief law-enforcement officer of a county, city, or town .~~

DRAFTING NOTE: No substantive change in the law. The term "Officers" is obsolete and has been deleted. This section also contains technical corrections.

~~§ 4-12 4.1-106 . Liability of Board members; suits by and against Board.— (a) A. No Board member of the Board may be sued civilly for doing or omitting to do any act in the performance of his duties as prescribed by this chapter title , except by the Commonwealth, and then only in the Circuit Court of the City of Richmond. Such proceedings by the Commonwealth shall be instituted and conducted by the Attorney General.~~

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-20 4.1-107 . Counsel for members, agents and employees of Board.—If any member, agent , or employee of the Board shall be arrested, indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Board chairman of the Board may employ special counsel approved by the Attorney General to defend such member, agent , or employee. The compensation for special counsel ; employed pursuant to this section, shall, subject to the approval of the Attorney General, be paid in the same manner as other expenses incident to the administration of this chapter title are paid.~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-10-1 4.1-108 . Hearings; representation by counsel.—Any individual, partnership, association or corporation who is a licensee of the Board or applicant for any license issued granted by the Board pursuant to this title shall have the right to be represented by counsel at any Board hearing for which he has received notice. The licensee or applicant shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation and draw conclusions and make arguments before the Board or hearing officers without being in violation of the provisions of § 54.1-3904.~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-10 4.1-109 . Allowances Hearings; allowances to witnesses.— When witness attendance or the service of process in a hearing before the Board is at the instance of the Board, the witness Witnesses subpoenaed to appear on behalf of the Board shall be entitled to the same allowance for expenses and compensation as witnesses for the Commonwealth in criminal cases ; such in accordance with § 14.1-189. Such allowances to shall be paid out of the fund from which other costs incurred by the Board are directed to be paid upon certification to the Comptroller.~~

DRAFTING NOTE: No substantive change in the law. Language has been added to clarify that the Board is not responsible for the payment of witnesses not subpoenaed on behalf of the Board. This clarifying language conforms to current Board practice.

~~§ 4-17 4.1-110 . Orders Purchase orders of Board for alcoholic beverages.— (a) A. Every order of the Board for the purchase of alcoholic beverages shall be authenticated by the chairman of the Board or by , a member of the Board authorized by the Board, or by some officer or agent of the Board , authorized and designated by the Board, to authenticate such orders. No order shall be binding unless so authenticated.~~

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

~~(c) C. All cancellations of orders made by the Board shall be authenticated in the same manner and a duplicate thereof kept as herein provided required by subsection B .~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-36. Hours of sale for licensees.—The Board shall prescribe by regulations, which it may from time to time alter, amend or repeal, between what hours and on what days wine and beer shall not be sold, or allowed to be consumed upon the premises of any licensed establishment, by persons licensed under the provisions of this chapter.~~

DRAFTING NOTE: No substantive change in the law. This section appears as subsection B1 of proposed § 4.1-111 (§ 4-11, Regulations of the Board).

~~§ 4-98.5. Hours of sale.—Mixed beverages may be sold in a city, town, county, or supervisor's election district of a county only at such times as beer, wine, or beverages as defined in § 4-99 may be sold therein.~~

DRAFTING NOTE: No substantive change in the law. This section has been merged with existing § 4-36 (relating to hours of sale) and appears as subsection B1 of proposed § 4.1-111 (§ 4-11 (Regulations of the Board)).

~~§ 4-98.14. Regulations of Board.—The Board is authorized to adopt regulations having the force and effect of law necessary to carry out the provisions and purposes of this chapter and to insure the operation of orderly and reputable places. Such regulations shall be adopted, altered, repealed or amended in the same manner as is required under Chapter 1 (§ 4-1 et seq.) of this title and the Administrative Process Act (§ 9-6.14:1 et seq.).~~

DRAFTING NOTE: No substantive change in the law. This section deleted because it is duplicative of existing § 4-11.

~~§ 4-11 4.1-111 . Regulations of Board.— (a) A. The Board may from time to time make such reasonable promulgate regulations ; including the regulation of the sale of alcoholic beverages in kegs, not inconsistent with this chapter title or the general laws of the Commonwealth, as it shall deem deems necessary to carry out the purposes and provisions of this chapter title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages ; or any one or more of such illegal acts . From time to time the The Board may alter, repeal or amend such regulations or any of them . Such regulations shall be adopted promulgated , altered, repealed or amended in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) and shall have the force and effect of law. The Board shall certify to the clerks of all circuit courts copies of all regulations adopted by it. Such clerks shall keep on file for public inspection all such regulations certified to them by the Board.~~

B. The Board shall promulgate regulations which:

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

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

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of

the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

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

(b) Such C. Board regulations shall be uniform in their application, except as provided in § 4-36, those relating to hours of sale for licensees.

(e) Justices and courts D. Courts shall take judicial notice of the Board regulations of the Board made and filed in accordance with the provisions of this section .

E. The Board's power to regulate shall be broadly construed.

DRAFTING NOTE: Subsection A is a rewrite of existing § 4.11. The requirement for the Board to certify copies of Board regulations to the clerks of court has been deleted because the Clerks Association advises that such copies are never requested. Subsection B is comprised of existing §§ 4-36 and 4-98.5, 4-98.2E, and 4-79.1C, respectively, which require the Board to promulgate regulations in these areas. At the request of the Board, subsection B4 was added so that the Board could address the various recordkeeping requirements through regulation. Finally, subsection E was added to clarify that the Board has very broad powers to regulate all aspects of alcoholic beverage control.

~~§ 4-144. 4.1-112. Board to enforce chapter; regulations~~ Regulations relating to transportation of beer and wine coolers.—The Board is hereby authorized to may promulgate and enforce regulations relating to the administration and enforcement of the provisions of this chapter or to the transportation of beer and beverages wine coolers through the Commonwealth, including a regulation to prohibit prohibition against the direct shipment of beer or beverages wine coolers from points outside the Commonwealth to installations of the United States Armed Forces armed forces located within the Commonwealth for resale on such installation.

DRAFTING NOTE: No substantive change in the law. This section, found in existing Chapter 4 (Excise tax), has been moved to proposed Chapter 1 — under the regulatory authority of the Board. This section was maintained to ensure that the Board could regulate in this area and that shipments of beer and wine coolers go through a wholesaler before they go to the military.

~~§ 4-69.2 4.1-113 . Advertising Board not to regulate certain advertising~~ in the interiors of retail establishments.— A. The Board shall not regulate the use of advertising materials or decorations within the premises of a retail on-premises licensee (i) where such advertising materials or decorations cannot be seen from the street or roadway outside of the licensed establishment, and (ii) if the retail establishment is located within an enclosed area with no street or roadway, where such advertising or decorations cannot be seen more than fifteen feet from the nearest window. The provisions of this

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

C. This section shall not restrict or deny to the Board its duties and authority pursuant to §§ 4-70.1, 4-81 and subdivisions (k), (l), (m), (p), and (u) of § 4-98.10 4.1-216, 4.1-317, and subdivisions 11, 12, 13, 16, and 21 of § 4.1-325 , nor shall the provisions of this section authorize any manufacturer, bottler, wholesaler or importer of any alcoholic beverages to sell, rent, lend, buy for, or give to any retailer any advertising materials or decorations under any circumstances otherwise prohibited by law. If any retail licensee shall induce, attempt to induce, or consent to, any manufacturer, bottler, wholesaler, or importer selling, renting, lending, buying for or giving to such retailer any advertising materials or decorations under circumstances prohibited by law, then such retail licensee shall be guilty of a misdemeanor.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. The last sentence of this section has been moved to proposed Chapter 3, Prohibited Practices; Penalties.

§ 4-98.7 4.1-114 . Annual review of operations of licensed establishments certain mixed beverage licensees.— The Board shall at least annually review the operations of each establishment holding a mixed beverage restaurant license and each person holding a caterer's

license to determine whether during the preceding license year the gross receipts from the sale of food and nonalcoholic beverages at such establishment or by such caterer were less than forty-five percent of its gross receipts from the sale thereof of mixed beverages and food, and if so such licensee has met the food-beverage ratio required by § 4.1-210. If not met, the license issued granted to the person operating such establishment or catering business such licensee may be suspended or revoked. If the license is revoked, no new license may be granted to such person the licensee with respect to such establishment or catering business for at least one year from the date of the revocation. For the purposes of this section and § 4-98.2 4.1-210 "nonalcoholic beverage" shall not be deemed to include any beverages, ice, water or other mixer served with an alcoholic beverage.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-13 4.1-115 . Reports and accounting systems of Board; auditing books and records.— (a) A. The Board shall from time to time make reports to the Governor as he may require covering such matters in connection with the administration and enforcement of this chapter as he may require, and title. Additionally, the Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year, which shall contain:

(1) 1. A statement of the nature and amount of the business transacted by each government store under this chapter during the year;

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

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

(4) 4. General information and remarks as to about the working of the law alcoholic beverage control laws within the Commonwealth; and

(5) 5. Any other information as shall be requested by the Governor.

(b) B. The Board shall maintain an accounting system in compliance with generally accepted accounting principles and approved in accordance with § 2.1-196.1.

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

(c) The books and records of the Board shall at all times be subject to examination and audit by the Auditor of Public Accounts, and by such other persons as the Governor may authorize.

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Changes made to this section are made at the request of the Auditor of Public Accounts, with the concurrence of the Department of Planning and Budget, and the State Comptroller. Basic bookkeeping and accounting systems no longer have separate profit and loss accounts but are accumulations of accounts shown on a statement. This section has been changed to reflect this fact. Changes to this section also revise technical terminology and record keeping procedures.

Subsection B has been added to allow the Board to keep a modern accounting system to reflect changes in generally accepted accounting principles and also allows the State Comptroller to ensure that the system will provide information for the state's accounting system. The Board will have more flexibility in determining the information that it needs to reflect changes in demands for financial information.

Subsection D has been added to provide for an annual audit of the office by a specific date. Additionally, it states in law that the annual cost of the audit shall be borne by the Board which is currently handled through a transfer in the Appropriation Act. The Board is allowed to employ individuals to perform other audits that it may feel necessary. This accomplishes the same objective as the deleted language which precedes it, and also serves to substitute for other language in existing §§ 4-14 and 4-21.

~~§ 4-14. Records of Board; system of accounts.—(a) The Board shall keep such complete and accurate records as shall be necessary to show:~~

- ~~(1) All moneys received by the Board;~~
 - ~~(2) All moneys paid into the treasury of the Commonwealth by the Board, and all disbursements made pursuant to the order of the Board;~~
 - ~~(3) The amount of moneys on hand;~~
 - ~~(4) The kinds and amounts of alcoholic beverages on hand and the location thereof;~~
 - ~~(5) All indebtedness and all contracts of the Board;~~
 - ~~(6) The names, addresses and compensation of all officers, agents and employees of the Board;~~
 - ~~(7) All receipts from and costs and expenses incurred for and on behalf of each government store; and~~
 - ~~(8) All real estate owned or leased and all real estate sold by the Board.~~
- ~~(b) The Auditor of Public Accounts shall devise and install a system of accounts for the Board.~~

DRAFTING NOTE: No substantive change in the law. This section has been deleted at the request of the Auditor of Public Accounts, with the concurrence of the Department of Planning and Budget, and the State Comptroller. This section has been deleted because it is duplicative of the rewrite of existing § 4-13 (proposed § 4.1-115).

~~§ 4-21. Quarterly accounts submitted to Governor; annual audit.—(a) The accounts of the Board shall be made up to and including March 31, June 30, September 30 and December 31 in each year, and at such other times as may be determined by the Governor, and in every case the Board shall prepare a balance sheet and statement of profit and loss and submit the same to the Governor.~~

~~(b) The accounts of the Board shall be audited annually as of June 30 by the Auditor of Public Accounts, or by such other person as the Governor may designate, and the report of such Auditor containing such particulars as the Governor may require shall be made to the Governor within fifty days after the close of the audit period.~~

~~(c) The Governor may require that the accounts of the Board be audited by the Auditor of Public Accounts, or by such other person as the Governor may designate, at such other time or times as he may see fit.~~

DRAFTING NOTE: No substantive change in the law. This section has been deleted at the request of the Auditor of Public Accounts, with the concurrence of the Department of Planning and Budget, and the State Comptroller. This section has been deleted because it is duplicative of the rewrite of existing § 4-13 (proposed § 4.1-115).

~~§ 4-23 4.1-116 . Disposition of moneys collected by Board; special fund creation of Enterprise Fund; reserve fund .— A. All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer, in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description whatever, as required of state departments, divisions, officers, boards, commissions, institutions or other state agencies collecting or receiving public funds or money belonging to or for the use of the Commonwealth by § 2.1-180.~~

All moneys so paid into the state treasury, less the net profits determined as provided in ~~§ 4-22, pursuant to subsection C~~ shall be set aside as and constitute a special fund an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, officers, agents, and employees of the Board; and; (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this chapter title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages under the provisions of subdivision (g) of ~~§ 4-7, and including all expenses, when approved by the Governor, incurred by the Comptroller, the State Treasurer and the Auditor of Public Accounts pursuant to the provisions of this chapter, and are hereby specifically appropriated for such purposes, to be paid out by the State~~

Treasurer on warrants of the Comptroller issued on vouchers signed by the fiscal officer designated by the Board and countersigned by the chairman, or another member of the Board designated by the Board or by some officer or agent of the Board authorized and designated by the Board for such purpose, or, as the case may be, by the Comptroller, the State Treasurer, or the Auditor of Public Accounts, or their duly authorized agents .

B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within fifty days after the close of each quarter or as otherwise provided in the appropriations act. As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2,500,000 in connection with the administration of this title and to provide for the depreciation on the buildings, plant and equipment owned, held or operated by the Board.

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

DRAFTING NOTE: No substantive change in the law. Subsection A of this section is a rewrite of existing § 4-23. Subsection B is a rewrite of the first sentence of existing § 4-22. The definition of "net profits" from existing § 4-22 now appears as subsection C. The definition of "net profits" has been amended at the request of the Auditor of Public Accounts to delete the phrase " , other than capital expenditures for buildings, plants and equipment" to provide an accounting definition of that term.

§ 4-22 4.1-117 . 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 \$2,500,000 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, 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 the moneys so transferred quarterly or as otherwise provided in the appropriations act by the Comptroller to the general fund of the state treasury shall during any quarter exceed the sum of \$187,500, two-thirds of all moneys in excess of such sum so transferred and so paid into the general fund of the state treasury during such quarter \$187,500 shall be apportioned by the Comptroller and distributed quarterly within ten days following such transfer. Such payments shall be made by warrants of the Comptroller drawn on the Treasurer of Virginia to the several counties, cities , and towns of the Commonwealth, appropriated on the basis of the population of the respective counties, cities , and towns, according to the last preceding United States census ; for which purpose such portion of the moneys is hereby appropriated . However, in the case of any town which came into existence in or about the year 1691 which is now the county seat of any county having a population of less than ~~36,000~~ 45,000 but more than ~~35,000~~ 40,000 , and the boundaries of such town are not fixed, such portion of the moneys appropriated shall be based on an estimate of the population of such town made by the Center for Public Service. 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 city or greater part thereof seeking an increase under the provisions of this chapter is located is hereby authorized and empowered to may appoint two disinterested persons as commissioners, neither of whom shall reside in the county, city , or town which is the subject of the annexation proceedings ; who shall proceed to . The commissioners so appointed shall determine the population of the territory annexed to the town or city as of the date of the last preceding United States census, and report their findings to the court, and future distributions of the moneys allocated under the provisions of this chapter shall be made in accordance therewith. The Comptroller shall make no adjustments in his distribution of profits until the Secretary of the Commonwealth transmits to the Comptroller, pursuant to § 15.1-1041 (f), a copy of the court order granting the petition of annexation.

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 ~~§ 4-22~~, other than capital expenditures for buildings, plants and equipment.

DRAFTING NOTE: No substantive change in the law. The first sentence of the first paragraph and also the last paragraph of this section have been merged with proposed § 4.1-119 (existing § 4-23 as subsections B and C, respectively). Population brackets have been updated for Yorktown. The remainder of this section (4-22) contains technical corrections.

~~§ 4-145 4.1-118 . Certain information not to be made public.—Neither the Board nor any employee thereof its employees shall divulge any information regarding (i) the purchase orders and invoices for beer and beverage invoicees and wine filed with the Board by wholesale beer and beverage distributors and wine licensees , or regarding (ii) beer and beverage and wine taxes collected from, refunded to, or adjusted for any private person ; firm, or corporation . The provisions of § 58.1-3 shall apply, mutatis mutandis, to beer and beverage wine taxes collected pursuant to this chapter title and to purchase orders and invoices for beer and beverage invoicees wine filed with the Board by wholesale beer distributors and wine licensees . Nothing contained in this section shall be construed to prohibit the use or release of such information or documents by the Board when considering the granting, denial, revocation, or suspension of a license or permit, or the assessment of any penalty against a licensee or permittee. Moreover, nothing in Nor shall this section prohibit the Board or its employees from compiling and disseminating to any member of the public aggregate statistics statistical information pertaining to (i) malt beverage excise tax collection as long as such information does not reveal or disclose excise tax collection from any identified licensee of the Board ; (ii) the total quantities of wine sold or shipped into the Commonwealth by each out-of-state winery, distributor, or importer for resale in the Commonwealth by wholesale wine licensees collectively; and (iii) the total amount of wine sales in the Commonwealth by wholesale wine licensees collectively .~~

DRAFTING NOTE: No substantive change in the law. This section comes from existing Chapter 4 (Excise tax). Subsection H of existing § 4-22.1 relating to nondisclosure of wine invoices and excise tax by wine wholesalers has been added to this section. Clauses (ii) and (iii) are from existing § 4-22.1. The remainder of existing § 4-22.1 is found in Article 3 (Taxes) of Chapter 2. This section also contains technical corrections.

~~§ 4-15 4.1-119 . Operation of government stores.—A. The Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, and vermouth , in such counties, cities , and towns as shall be considered advisable by the Board ; government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, in accordance with the provisions of this chapter, and it . The Board may discontinue any such store or stores when in its discretion it is advisable to do so .~~

~~B. The Board shall from time to time fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages shall be are sold in such government stores. The difference Differences in the cost of operating stores, and market competition and market conditions may be reflected in the sale price of alcoholic beverages sold at such government stores. The Board may sell alcoholic beverages to federal instrumentalities duly (i) authorized and operating under the laws of the Congress United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at such discount prices as the Board may determine, which discount prices may be greater or less than the wholesale price to charged other authorized purchasers.~~

~~C. The sale of alcoholic Alcoholic beverages at each government store stores shall be conducted sold by a manager, and by such other officers, agents and employees as may be appointed hereunder employees of the Board , who shall ; under the direction of the Board, be responsible for the carrying carry out of the provisions of this chapter and the title and Board regulations of the Board insofar as they relate to governing the conduct operation of such store government stores and the sale of alcoholic beverages thereat .~~

~~D. No All alcoholic beverages shall be sold in a government store except stores shall be in a closed package containers , sealed and containing such label as the Board shall prescribe affixed with labels prescribed by the Board .~~

~~E. No alcoholic beverages shall be consumed in a government store by any person.~~

~~F. With respect to purchases by licensees of the Board at government stores , the Board shall accept in payment for any such purchase or series of purchases at government stores cash, or electronic fund transfer , or check, payable to the Board in the exact amount of any such purchase or series of purchases.~~

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

H. The Board may from time to time adopt regulations relating to the sale, delivery and shipment of alcoholic beverages, and alter, amend or repeal the same in order to prevent the unlawful sale and delivery thereof in and from government stores.

DRAFTING NOTE: No substantive change in the law. Vermouth has been added in subsection A to clarify that the Board may sell it. Subsection H has also been deleted because it is duplicative of existing § 4-11. The remainder of this section contains technical corrections.

~~§ 4-28. Beverages sold at retail only at government stores; exceptions.—No alcoholic beverage having an alcoholic content of more than fourteen percent by volume shall be sold at retail in the Commonwealth of Virginia, except at government stores or except by licensees under the provisions of Chapter 1-1 (§ 4-98.1 et seq.) or as otherwise provided in this section of this title. Nothing in this section shall be construed to prohibit sales authorized by § 4-85, nor shall this section be construed to allow the sale of wine by the Board other than wine produced by farm wineries.~~

Subject to the limitations set forth hereafter in this paragraph, port, sherry, tokay, muscatel and vermouth wines, and any other wine containing more than fourteen percent but not more than twenty-one percent of alcohol by volume approved by the Board as to content, container, label or such similar 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 likewise may specify by appropriate regulation the types of establishments at which such wines may be offered for sale in order that there may be an orderly distribution of such wines without adversely affecting the health, safety and welfare of the public and the purposes of this chapter.

Nothing in this title shall prohibit the sales of wines containing more than fourteen percent but less than twenty-one percent of alcohol by volume 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 1-1 (§ 4-98.1 et seq.) to sell wine for consumption on premises only nor prohibit such retail licensees from selling such wine for consumption on the premises .

DRAFTING NOTE: This section, originally aimed at who could sell fortified wines, has been deleted because it is obsolete. In 1985, the prohibition against sale by the Board of wine, other than wine produced by farm wineries, was enacted. This provision, contained in the last two lines of the first paragraph, has been deleted because it is duplicative of existing § 4-15.

~~§ 4-15.01. Sale of vermouth and wine produced by farm wineries in government stores.—Notwithstanding any other provisions of state law, general or special, or any rule or regulation promulgated pursuant thereto, it shall be legal for all stores operated by the Department of Alcoholic Beverage Control to sell vermouth and wine produced by farm wineries to the public in closed containers for off-premises consumption. The procurement of vermouth and wine produced by farm wineries by the Board are exempt from Chapter 7 (§ 11-25 et seq.) of Title 11.~~

DRAFTING NOTE: This section has been deleted because the sale of vermouth and wine produced by farm wineries and the procurement exemption contained therein are duplicative of existing §§ 4-15 (operation of government stores) and 4-18 (purchases and printing).

~~§ 4-19 4.1-120 . When government stores closed.—No sale or delivery of alcoholic beverages shall be made at any government store, nor shall any such store be kept open for the sale of alcoholic beverages:~~

1. On Sunday;
2. On Thanksgiving Day, Christmas Day and New Year's Day; or
3. During such other periods and on such other days as the Board may direct.

DRAFTING NOTE: No change in the law.

~~§ 4-45 4.1-121 . Local option; holding referendum *Referendum on establishment of government stores* .— (a) Upon a petition of the registered A. The qualified voters of any county, city , or town having a population of 900 1,000 or more inhabitants, according to the last preceding United States census, filed may file a petition with the circuit court of the county or city or the circuit court of the county wherein the town or the greater part thereof is situated ; signed by a number, not less than ten percent of the number of voters registered therein on the January 1 preceding the filing of the petition, but in no event less than 100 , asking that a referendum be held on the question shall of whether the sale by the Board of alcoholic~~

beverages, other than beer and wine not produced by farm wineries by the Alcoholic Beverage Control Board, should be permitted in the county, city or town, within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ten percent of the number registered in the jurisdiction on January 1 preceding its filing, or by at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall by order entered of record in accordance with ~~§ 24.1-165~~ require the regular election officials of the county, city, or town, on the date fixed in the order, to open the polls and take the sense of the qualified voters of the county, city or town, conduct a referendum on the questions submitted as herein provided question. The clerk of the county or city circuit court shall cause a publish notice of such election to be published the referendum in some a newspaper published in or having a of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The regular election officers of the county, city or town at the time designated in the order authorizing the vote shall open the polls at the various voting places in the county, city or town and conduct the election in such manner as is provided by law in other elections insofar as the same is applicable. The election shall be by ballot and the ballot shall be prepared by the electoral board and distributed to the various election precincts as in other elections. On question on the ballot used shall be printed the following :

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

In the blanks shall be inserted the name of the county, city or town in which the election is held.

The ballots shall be counted, returns made and canvassed as in other elections referendum shall be ordered and held and the results certified by the electoral board to the circuit court of the county or city as provided in § 24.1-165. Thereupon the court shall enter of record an order duly certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.

(b) After an election, such as is provided for in this section, shall have B. Once a referendum has been held in any county, city or town, no other such election upon referendum on the same question shall be held in the county, city, or town until the expiration of within four years from of the date of such the prior election; ; provided this shall not preclude there being held in referendum. However, a town having a population of 900 or more inhabitants according to the last preceding United States census shall not be prescribed from holding a referendum within such period an election within such town although an election has been held in the county in which the town or a part thereof is located less than four years prior thereto.

DRAFTING NOTE: The minimum population of 900 required for a town to be eligible no doubt was set to cover specific circumstances when the present section was enacted in 1934. It has no significance today and the proposed section suggests that the size be set at 1,000. This number is the population required for the incorporation of a new town, it is commonly used as a classification throughout the Code, and it is consistent with the minimum size for a town to permit the sale of mixed beverages pursuant to existing § 4-98.12.

Section 1-13.22 of the Code of Virginia provides that the word "population" is to be construed to refer to the last United States census unless clearly indicated otherwise, and the redundant language is deleted in this proposed section.

Section 24.1-165 of the Code of Virginia provides in detail for the ordering, conduct, and determination of results of referenda. Much of the existing § 4-45 provisions now are redundant and are deleted in the proposed new section.

§ 4-45.2. Determining validity of petition for election.—In order to determine the validity of any petition filed under § 4-45, the court or judge may, before calling the election, refer the petition to a master in chancery for an investigation and report as to (1) the qualification as voters of the county, city or town of the persons whose names appear thereon, (2) the genuineness of the signatures to such petition, (3) the number of qualified voters signing such petition and/or (4) any other matter or inquiry deemed pertinent by the court or judge. The costs of the reference, including a fee for the master in chancery as fixed by the court or judge, shall be taxed as a part of the costs of the proceeding.

DRAFTING NOTE: Existing § 4-45.2 was enacted over 50 years ago and predates the present system of city and county registrars and the Commonwealth's central voter registration system.

Matters relating to the validity of petitions now are routinely referred to the registrars. The court could, pursuant to Chapter 23 of Title 8.01, appoint a commissioner in chancery in this instance, but the provisions of this existing section are obsolete and do not reflect current practice.

§-445.3. Determining population not shown by latest United States census.—If the last preceding United States census gives no figures for the population of the city or town with respect to which a petition is filed under §-445, the petition shall not on that account be dismissed but all proceedings thereon shall be stayed pending the determination of the population of the town. The court or judge shall order a census taken of the population of the town and if the population meets the requirements of the statute under which the petition is filed the petition shall be proceeded upon as provided by law. Such population may be determined as in equity causes upon a reference to a master and the costs of the reference including his fees shall be paid as part of the costs of election.

DRAFTING NOTE: This section is unnecessary, since the only instances in which population must be determined is in establishing the qualification of a town under existing § 4-45. The United States Census reports the population of each existing town. If a new town is to be incorporated between decennial censuses, the law requires that the circuit court determine that the proposed territory contains at least 1,000 people (see § 15.1-967). If existing § 4-45 is revised as proposed, the fact that the court has incorporated a new town automatically qualifies it under the local option alcoholic beverage sales provisions.

§ 4-46 4.1-122 . Effect of local option elections referenda .— (a) A. If in any election referendum held under the provisions of § 4-45 4.1-121 in any county, city, or town, a majority of the qualified voters voting therein shall vote "No" on the question shall the sale, by the Alcoholic Beverage Control Board, of alcoholic beverages other than beer and wine not produced by farm wineries 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 referendum was entered of record, none of the alcoholic beverage or beverages voted 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 such county, city, or town authorized under this chapter title to acquire the same alcoholic beverages for the purpose of resale. This subsection shall not apply to corporations operating dining cars, buffet cars, club cars and passenger boats common carriers of passengers by train, boat or airplane selling wine and beer to bona fide passengers.

(b) B. If any such election be in any such referendum 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 alcoholic beverages by the Alcoholic Beverage Control Board and in such a subsequent election a majority of the voters of the county, city, or town voting therein vote "Yes" on the question shall the sale of alcoholic beverages by the Alcoholic Beverage Control Board other than beer and wine not produced by farm wineries be permitted therein stated in § 4.1-121, then such alcoholic beverages as have been permitted to be sold by such election referendum may, in accordance with the provisions of this chapter title, 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 is entered of record.

(b1) C. If any election shall have been referendum is held under the provisions of § 4-45 4.1-124, in any county, town or supervisor's election district of a county and the majority of voters voting in such election shall have referendum voted "Yes," the sale by the Board of alcoholic beverages, other than beer and wine not produced by farm wineries by the Board likewise, shall be permitted in such county, town or supervisor's election district of a county and thereafter. Notwithstanding this section and any referendum held under § 4.1-121 to the contrary, persons licensed to sell mixed beverages in such county, town or supervisor's election district of a county shall also be permitted to sell wine and beer for on-premises consumption only, provided the appropriate license fees are paid for the privilege; this section and any election held under §-445 to the contrary notwithstanding.

(b2) Notwithstanding the fact that prior to July 1, 1977, an election shall have been held under the provisions of §-445 in any county, city, or town in which the majority of voters voting in such election shall have voted "No" on the question shall the sale of beer be permitted therein, on and after July 1, 1977, persons in such county, city or town may secure the appropriate license as provided in §-425 for the sale of beer and sell beer for consumption both on and off the premises.

(b3) Notwithstanding the fact that prior to July 1, 1980, an election shall have been held

under the provisions of §-445 in any county, city, or town in which the majority of voters voting in such election shall have voted "No" on the question shall the sale, other than by the Alcoholic Beverage Control Board, of wine (containing more than three and two-tenths percent of alcohol by weight) be permitted therein, on and after July 1, 1980, persons in such county, city, or town may secure the appropriate license as provided in §-426 for the sale of wine and may sell wine having an alcoholic content of not more than twenty-one percent by volume for consumption both on and off the premises .

(e) D. 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 § §-448 and 4-50 4.1-200 to and by persons therein authorized to sell the same alcoholic beverages , nor to prevent the delivery or shipment of alcoholic beverages under Board regulations of the Board into any county, city , or town, except as otherwise prohibited by this chapter title .

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

DRAFTING NOTE: No substantive change in the law. Subsections (b2) and (b3) have been deleted as obsolete since the sale of beer and wine was legalized without the need for a referendum via HB 1984, Ch. 683 (1977), and SB 397, Ch. 541 (1980), respectively. This section contains technical corrections. References to 3.2 wine have been deleted because the age distinction for drinking it no longer exists.

~~§ 4-96.3~~ 4.1-123 . Referendum on Sunday beer and wine sales.— Upon a petition of the registered ~~Either the qualified voters or the governing body~~ of any county, city , or town ; filed ~~may file a petition~~ with the circuit court thereof, signed by a number not less than ten per centum of the number of persons registered to vote therein on the January 1 preceding the filing of the petition, but in no event less than 100, or by petition of the governing body thereof filed with such court, of the county or city or of the county wherein the town or the greater part thereof is situated asking that a referendum be held on the question hereafter set out, of whether the sale of beer and wine on Sunday should be permitted within that jurisdiction. The petition of voters shall be signed by qualified voters equal in number to at least ten percent of the number registered in the jurisdiction on January 1 preceding its filing, or at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall by order entered of record in accordance with ~~§-24.1-165~~ require the regular election officials for such of the county, city , or town , on the date fixed in the order, to open the polls and take the sense of the qualified voters of the county, city or town conduct a referendum on the question submitted as herein provided . The clerk of the circuit court for such county, city or town shall cause a publish notice of such election to be published twice, the first publication to be at least forty-five days before the election, the referendum in some a newspaper published in or having a of general circulation in the county, city , or town once a week for three consecutive weeks prior to the referendum .

The regular election officials for such county, city or town at the time designated in the order authorizing the vote shall open the polls at the various voting places in the county, city or town and conduct the election in such manner as is provided by law in other elections insofar as the same is applicable. The elections shall be by ballot and the ballot shall be prepared by the electoral board and distributed to the various election precincts as in other elections. On question on the ballot used shall be printed the following :

"Shall the sale of beer and wine between the hours of twelve o'clock post meridian p.m. of each Saturday and six o'clock ante meridian a.m. of each Monday be permitted in the (name of county, city , or town)? "

The ballots shall be counted, returns made and canvassed as in other elections referendum shall be ordered and held and the results certified by the electoral board to the circuit court of such county, city or town as provided in § 24.1-165 . Thereupon the court shall enter of record an order duly certified by the clerk of the court to be transmitted to the board Board and to the governing body of such the county, city , or town.

An Notwithstanding an ordinance adopted pursuant to § 4.1-129, an affirmative majority vote on such the question shall be binding on the governing body of such the county, city , or town and not advisory in nature requiring , and the governing body to shall take all actions required of it to legalize such Sunday sales.

DRAFTING NOTE: Section 24.1-165 provides in detail for the ordering, conduct, and determination of results of referenda. Redundant and obsolete provisions in existing § 4-96.3

therefore are stricken. The terms of the notice of the referendum has been changed to make uniform the publishing requirement for all referenda. Reference to existing § 4-97 (local ordinances governing sale of wine and beer) has been made in the last paragraph.

§ 4-98.12 4.1-124 . Holding of local option elections Referendum on the sale of mixed beverages .—A. The provisions of this chapter title relating to the sale of mixed beverages shall not become effective in any town, county, or supervisor's election district of a county until (i) a petition, signed by a number of qualified a majority of the voters voting in a referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by restaurants licensed under this title. The qualified voters of such a town, county, or supervisor's election district of a county equal to ten percent of the number of voters registered therein on the January 1 preceding the filing of the petition and in no event signed by fewer than 100 registered voters of such town, county, or supervisor's election district of a county, is filed may file a petition with the circuit court of the county, asking that a referendum be held on the question ; "May mixed alcoholic beverages be sold in (the name of such town, county, or supervisor's election district of a county) by restaurants licensed under Chapter 1-1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia?"; (ii) following of whether the sale of mixed beverages by restaurants licensed by the Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ten percent of the number registered in the town, county, or supervisor's election district on January 1 preceding its filing, or at least 100 qualified voters, whichever is greater. Upon the filing of such a petition, and under no other circumstances, the court shall ; by order entered of record in accordance with § 24.1-165, require the regular election officials of the county to open the polls and take the sense of the qualified voters conduct a referendum on such the question ; and (iii) a majority of the voters voting in such election shall have voted "Yes . "

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

The regular election officers of the county shall open the polls at the various voting places in such town, county, or supervisor's election district of a county on the date specified in such order and conduct such election in the manner provided by law. The election shall be by ballot which shall be prepared by the electoral board of the county and on which question on the ballot shall be printed the following :

" May Shall the sale of mixed alcoholic beverages by restaurants licensed by the Alcoholic Beverage Control Board be sold permitted in (name of town, county, or supervisor's election district of county) by restaurants licensed under Chapter 1-1 of Title 4 of the Code of Virginia ? "

In the blank shall be inserted the name of the town, county, or supervisor's election district of a county in which such election is held.

The ballots shall be counted, returns made and canvassed as in other elections, referendum shall be ordered and held and the results certified by the electoral board to the court ordering such election as provided in § 24.1-165 . Thereupon, such the court shall enter of record an order proclaiming the results of such election, and a duly certified copy of such order shall by the clerk of the court to be transmitted to the Board and to the governing body of such the town or county. This chapter shall become effective in such Mixed beverages permitted to be sold by such referendum may in accordance with this title be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of a county on or after thirty days following the entry of such the order if a majority of the voters voting in such election the referendum have voted "Yes."

The provisions of this section shall be applicable to towns having a population in excess of 1000 inhabitants according to the last preceding United States census to the same extent and subject to the same conditions and limitations as are otherwise applicable to counties under this section ; such . Such towns shall be treated as separate local option units , and residents of any such town shall not be eligible to vote in any election referendum held pursuant to this section for any county in which the town is located.

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

B. C. Notwithstanding the provisions of subsection A of this section , beginning on January 1,

1986, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 33 (§ 15.1-1373 et seq.) of Title 15.1, (i) provided such authority operates under a partnership agreement between three or more ~~incorporated towns~~ ~~counties~~, cities, or ~~counties~~ ~~towns~~ and such jurisdictions participate administratively and financially in the authority, and (ii) provided that the sale of mixed beverages is permitted in one of the member ~~towns~~ ~~counties~~, cities, ~~counties~~ ~~towns~~, or a supervisor's election district of one of the counties, and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

~~C. D.~~ Notwithstanding the provisions of subsection A of this section and of subsection ~~(b)~~ C of § 4-46 4.1-122, beginning on July 1, 1986, the sale of mixed beverages by licensees of the Board, and the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, by the Board, shall be allowed in any city of the first or second class in Virginia in the Commonwealth.

~~D. E.~~ Notwithstanding the provisions of subsection A of this section, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § 4-98.2 4.1-210. ~~No~~ However, no license ~~granted under~~ authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

DRAFTING NOTE: Language duplicated or superceded by § 24.1-165 on the conduct of referenda is deleted. Proposed subsection B dealing with the frequency of referenda comes from existing § 4-98.13.

~~§ 4-98.12:1 4.1-125~~. Section ~~4-98.12 4.1-124~~ applicable to certain towns.—The provisions of § ~~4-98.12 4.1-124~~ shall be applicable mutatis mutandis to any town within the Commonwealth which is entirely surrounded by a base of the United States armed forces.

DRAFTING NOTE: This section was enacted by the General Assembly in 1968 when existing § 4-98.12 was also enacted. At that time, the provisions of existing § 4-98.12 did not include towns. Now the provisions of existing § 4-98.12 apply to towns having a population in excess of 1,000. The existing section was put in for the town of Quantico which has a current population of 610.

~~§ 4-98.12:2 4.1-126~~. Licenses for establishments in national forests, certain adjoining lands and on the Blue Ridge Parkway.— A. Notwithstanding the provisions of § ~~4-98.12 4.1-124~~, mixed beverage licenses provided for in § ~~4-98.2~~ may be granted for establishments located (i) on property owned by the federal government in Jefferson National Forest, George Washington National Forest or the Blue Ridge Parkway (ii) at altitudes of ~~3800~~ 3,800 feet or more above sea level on property adjoining the Jefferson National Forest, (iii) at an altitude of ~~2800~~ 2,800 feet or more above sea level on property adjoining the Blue Ridge Parkway at Mile Marker No. 189, and (iv) on property within one-quarter mile of Mile Marker No. 174 on the Blue Ridge Parkway.

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Subsection B has been added from the second enactment clause of Chapter 876 of the 1992 Acts of Assembly. This provision was added at the end of the 1992 Session by the Governor.

§ 4-47 4.1-127. Contests of local option elections referenda.—The regularity or legality of any such election called and held as herein provided referendum held pursuant to §§ 4.1-121, 4.1-123 and 4.1-124 shall be subject to the inquiry, determination, and judgment of the circuit or corporation court which entered the order setting forth the results of such election, ordered the referendum. The court shall proceed upon complaint of fifteen or more qualified voters of such the county, city, or town, filed within thirty days after the date of such order the results of the referendum are certified, and setting out fully the grounds of contest. Such The complaint and the proceedings thereon shall conform as nearly as practicable to the provisions of § 15.1-569,

and the judgment of the court duly entered of record shall be a final determination of the regularity and legality of such election *the referendum* .

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-98.12. Subsequent elections; application of §§ 4-45.2, 4-45.3, and 4-47.—After an election is held in a town, county, or supervisor's election district of a county under § 4-98.12, no further such election may be held in such town, county, or supervisor's election district of a county for a period of twenty-three months. The provisions of §§ 4-45.2, 4-45.3 and 4-47 pertaining to the determination of the validity of petitions for elections, population, and contests of local option elections, respectively, shall apply mutatis mutandis to elections held pursuant to this chapter.~~

DRAFTING NOTE: This section is being deleted because it is duplicative of existing §§ 4-47 and 24.1-165. Existing §§ 4-45.2 and 4-45.3 have also been deleted for the same reason. The provisions contained in this section dealing with the frequency of the referenda have been merged as subsection B in existing § 4-98.12.

~~§ 4-96 4.1-128 . Local ordinances or resolutions regulating alcoholic beverages.— A. No county, city , or town shall, except as otherwise provided in § 4-38 §§ 4.1-205 or § 4-97 4.1-129 , pass or adopt any ordinance or resolution regulating or prohibiting which regulates or prohibits the manufacture, bottling, possession, sale, distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in Virginia the Commonwealth .~~

~~B. However, the governing body of any county, city , or town may prohibit adopt an ordinance which (i) prohibits the acts described in subsection A of § 4-78 4.1-308 subject to the provisions of subsection B of § 4-78 4.1-308 , or the acts described in § 4-78.1 4.1-309 , and may provide a penalty for violation thereof : The governing body of any county, city, or town may, subject to § 4-78 C or § 4-112.3, also adopt an ordinance regulating or prohibiting ; and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, and public streets. Otherwise,~~

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only. References to 3.2 beverages have been deleted as 3.2 wine and beer are included in the definition of wine and beer, respectively.

~~§ 4-97 4.1-129 . Ordinances Local ordinances regulating time of sale of wine and beer.—The governing body of each county shall have authority to may adopt ordinances effective in that portion of such county not embraced within the corporate limits of any city or incorporated town, and the governing body of each city and town shall have authority to may adopt ordinances effective in such city or town, prohibiting the sale of beer and wine, or either beer or wine wine or beer, or both , between the hours of twelve o'clock post meridian p.m. of each Saturday and six o'clock ante meridian a.m. of each Monday, or fixing hours within said such period during which wine and beer, or either wine or beer, or both , may be sold ; and prescribing . Such governing bodies shall provide for fines and other penalties for violations of any such ordinances which shall be enforced by proceedings in like manner and with like right of appeal as if such the violations were Class 1 misdemeanors ; provided, however, that such , with a right of appeal pursuant to § 16.1-106. Such ordinances shall not affect the sale of beer and wine on passenger trains or steam vessels while operating in interstate commeree wine and beer on common carriers of passengers by train, boat or airplane .~~

~~Upon the adoption of any such ordinance a A copy thereof, duly certified by the clerk of the governing body adopting the same, of any ordinance adopted pursuant to this section shall be certified by the clerk of the governing body adopting it, and transmitted to the Board ; and thereafter every retail license issued by the Board for the sale of beer and wine or either of them in the county, city or town in which such ordinance was adopted, shall be limited in accordance with the provisions of such ordinance. Upon receipt of the record of the conviction of any licensee of the Board for the violation of any such ordinance, the Board may, in its discretion, suspend or revoke such license .~~

~~On and after the effective date of any ordinance adopted pursuant to the provisions of this section, the provisions of such ordinance shall have like effect upon the sale of beverages as defined in § 4-99, and further during the hours between which wine and beer or wine or beer shall not be sold, persons holding licenses to sell wine, beer and beverages or one or more of such shall not permit the consumption of either wine, beer or beverages upon the premises~~

mentioned in such licenses no retail licensee authorized to sell wine or beer, or both, shall sell or permit the drinking of wine or beer on the premises of such licensee during the hours limited by the ordinance .

No provision herein contained, nor any ordinance passed in pursuance thereof, shall be construed as in any way altering, amending or repealing §§ 18.2-341 through 18.2-343.

DRAFTING NOTE: The revocation/suspension provision for violation of an ordinance regulating the time of sale of wine or beer has been deleted because violation of any ordinance is already grounds for suspension or revocation under existing § 4-37.

The last paragraph of this section relating to Sunday closing laws (§§ 18.2-341 through 18.2-343) has been deleted. The ruling in *Benderson Development Co. v. Sciortino* 236 Va. 136 (1988) held that Sunday closing laws are special laws and therefore unconstitutional and void. The remainder of this section contains technical corrections.

§ 4-84.1 4.1-130 . Importation of beverages not under customs or internal revenue bonds and storage in approved warehouses; release.— (a) A. Notwithstanding the provisions of § 4-84 4.1-310 , alcoholic beverages not under United States customs bonds or internal revenue bonds may be transported into Virginia and stored in Virginia and stored in the Commonwealth in warehouses which have been approved by the Board for that purpose.

The Board may refuse to approve any warehouse as a place where alcoholic beverages may be stored if it shall have has reasonable cause to believe that the owner or operator of such the warehouse is a person to whom or the place sought to be approved is one for which the Board may refuse to grant a license under the provisions of § 4-37 4.1-222 , which shall apply mutatis mutandis, unless it is clearly apparent that the provisions of such section sought to be used are inapplicable.

The Board may disapprove any warehouse which has been approved as a place where alcoholic beverages may be stored if it shall have has reasonable cause to believe that a ground exists for which would warrant the suspension or revocation of the Board may suspend or revoke a license under the provisions of § 4-37 4.1-225 , which shall apply mutatis mutandis, unless it is clearly apparent that the provisions of such section sought to be used are inapplicable.

(b) Such alcoholic B. Alcoholic beverages stored in such warehouses in Virginia the Commonwealth pursuant to this section shall be released only on permits issued by the Board for delivery to the Board or to persons entitled to receive the same in Virginia them within or outside the Commonwealth.

(c) The Board shall have the power to make such regulations as it deems expedient or necessary for the purpose of carrying out the provisions of this section and to insure that such alcoholic beverages shall be handled only in a manner provided by law.

DRAFTING NOTE: Subsection C has been deleted because it is duplicative of the general regulatory power of the Board pursuant to existing § 4-11. The remainder of this section contains technical corrections.

§ 4-85 4.1-131 . Importation of beverages under customs bonds and holding in warehouses; release.— (a) A. Alcoholic beverages may be imported into Virginia the Commonwealth under United States customs bonds ; and be held in Virginia the Commonwealth in United States customs bonded warehouses ; and alcoholic . Alcoholic beverages may be removed from any such warehouse, wherever situated, to such a warehouse located in Virginia the Commonwealth and be held in Virginia the Commonwealth .

(b) Such alcoholic B. Alcoholic beverages so imported or removed to such warehouses in Virginia the Commonwealth , shall be released from customs bonds in Virginia the Commonwealth only (i) for delivery to the Board, or to licensees of the Board entitled to receive the same in Virginia them in the Commonwealth , as provided in § 4-84, 4.1-310; or (ii) to ships actually boats engaged in foreign trade or , trade between the Atlantic and Pacific ports of the United States or , trade between the United States and any of its possessions outside of the several states and the District of Columbia, or for shipment outside of the Commonwealth ; or (iii) in accordance with the provisions of subsection (c) of this section C for the official or personal use of persons who are on duty in the United States as members of the armed forces of any foreign country, or for the personal use of any such person or of any member of his their immediate family, authorized by federal laws and regulations to receive the same imported alcoholic beverages free of customs duties and internal revenue taxes.

(e) C. Persons operating United States customs bonded warehouses and holding wholesale or retail licenses issued by the Board, are authorized to licensed as wholesalers or retailers may make sales and deliveries, in such reasonable quantities as the Board may determine determined by the Board , of alcoholic beverages held in customs bond to foreign armed forces personnel as provided in subsection (b) of this section B. . Such sales may be made only on permits issued by the Board ; such permits which shall also cover the transportation of such imported alcoholic beverages, either by such the (i) operator of a customs bonded warehouse ; or by the (ii) purchaser from such the operator, from such customs bonded warehouse to the place of duty or residence of such authorized persons.

(d) The Board shall have the power to make such regulations as it deems expedient or necessary for the purpose of carrying out the provisions of this section, and to insure that such alcoholic beverages shall be handled only in the manner provided by law.

DRAFTING NOTE: Subsection (d) has been deleted as it is duplicative of the regulatory powers of the Board found in existing § 4-11. The remainder of the section contains technical corrections.

§ 4-86 4.1-132 . Transportation into Commonwealth under internal revenue bond and holding in warehouses; release.— (a) A. Alcoholic beverages may be transported into Virginia the Commonwealth under United States internal revenue bonds ; and be held in Virginia the Commonwealth in United States internal revenue bonded warehouses ; and alcoholic . Alcoholic beverages may be removed from any such warehouse, wherever situated, to such a warehouse located in Virginia the Commonwealth and be held in Virginia the Commonwealth .

(b) Such alcoholic B. Alcoholic beverages so transported or removed to such warehouses in Virginia, the Commonwealth shall be released from internal revenue bonds in Virginia, the Commonwealth only on permits issued by the Board for delivery to ships actually (i) boats engaged in foreign trade or , trade between the Atlantic and Pacific ports of the United States , or trade between the United States and any of its possessions outside of the several states and the District of Columbia, or on permits issued by the Board for delivery to (ii) installations of the United States Department of Defense.

(e) The Board shall have the power to make such regulations as it deems expedient or necessary for the purpose of carrying out the provisions of this section, and to insure that such alcoholic beverages shall be handled only in a manner provided by law.

DRAFTING NOTE: Subsection (c) has been deleted as it is duplicative of the regulatory powers of the Board in existing § 4-11. The remainder of this section contains technical corrections.

§ 4-1. Citation of chapter.—This chapter may be cited as “The Alcoholic Beverage Control Act.”

DRAFTING NOTE: This section has been repealed as unnecessary.

§ 4-6. Main office of Board.—The main office of the Board shall be located in the City of Richmond.

DRAFTING NOTE: This section has been deleted as unnecessary. According to the Board, the main office of the Board is well established in Richmond.

§ 4-6.1. Word “Commission” to be taken to refer to Alcoholic Beverage Control Board.—Whenever in this title or in this Code, the word “Commission” shall appear, and the clear context of the meaning of the section, article or chapter in which it is contained is intended to refer to the Alcoholic Beverage Control Commission, it shall be taken to mean the Alcoholic Beverage Control Board.

DRAFTING NOTE: This section has been deleted as unnecessary. This section dates back to 1976 when the “Board” was a “Commission” and this section was put in for transitional use only.

§ 4-9. Purchase of shares of companies manufacturing alcoholic beverages.—In exercising the broad general powers conferred on the Board by subdivisions (a) and (1) of § 4-7, the Board shall not purchase any shares of companies manufacturing alcoholic beverages except in cases where the ownership of such shares will confer the privilege of purchasing, or receiving as dividends, a per share allotted quantity of such beverages. Any such shares so purchased shall not be held as an investment, but, after the exercise of the purchasing privilege incident thereto,

of the receipt of such dividends in merchandise form as the shares may entitle the owner thereof to receive, the shares shall be sold by the Board as soon as they can be sold without undue sacrifice in price.

The Board may purchase or sell any such shares only in cases where the purchase or sale of the specific shares proposed to be purchased or sold has been approved in writing by the Governor.

DRAFTING NOTE: This section has been deleted because it is obsolete. The Board has indicated that this practice is no longer in use.

~~§ 4-16. Rationing system.—Notwithstanding the authority conferred upon it by § 4-15 or by any other provisions of this chapter or of the law to adopt regulations relating to the sale, delivery and shipment of alcoholic beverages, the Board shall not, in case of continuance or future establishment of any rationing system, impose any fee for sales permits or ration books or otherwise require the payment of any sum or amount as a condition precedent to obtaining a sales permit or ration book or as prerequisite otherwise to compliance with the regulations adopted by the Board in connection with putting into effect the rationing system.~~

The Board is directed to provide as a part of any individual rationing system which it adopts some appropriate provision by which either the husband or wife may purchase for the other such rationed quantities as the spouse for whom the purchase is made is entitled to purchase under the rationing system, with the power reserved to the Board by unanimous action to discontinue this provision should it be so abused as to interfere materially with a just and equitable distribution of the available supply of alcoholic beverages among the eligible citizens of the Commonwealth.

DRAFTING NOTE: This section has been deleted as obsolete. This section dates back to 1944 and was used for emergency situations.

~~§ 4-30. License covers operations under 3.2 percent law.—Any person holding a license issued under the provisions of this chapter for the manufacture, bottling or sale of any alcoholic beverages shall not be required to pay any additional state or local license tax for any license to manufacture, bottle or sell, as the case may be, any beverages under the provisions of Chapter 2 (§ 4-99 et seq.) of this title. Such person shall have the privilege to manufacture, bottle or sell, as the case may be, any beverages under the provisions of such chapter as long as his license under this chapter remains in full force and effect.~~

DRAFTING NOTE: This section has been deleted as obsolete. The "3.2" chapter (existing Chapter 2, §§ 4-99 et seq.) has been repealed in its entirety since the legal drinking age in Virginia is 21 years for all alcoholic beverages. Additionally, 3.2% beverages have been included in the definition of wine and beer as appropriate in the proposed recodification.

~~§ 4-68. Mixing deleterious substances with alcoholic beverages.—If any person shall for any purpose whatsoever, mix or permit or cause to be mixed with any alcoholic beverages kept for sale, sold or supplied by him as a beverage, any drug, or any form of methyl alcohol, or any crude, unrectified or impure form of ethyl alcohol, or any other deleterious substance or liquid, he shall be guilty of a misdemeanor.~~

DRAFTING NOTE: This section has been deleted as unnecessary. The Board has indicated that the conduct prohibited by this section is already addressed in the prohibited practices chapter of the proposed recodification.

~~§ 4-76. Selling bay rum.—If any person shall sell any bay rum in this Commonwealth except upon the prescription of a physician he shall be guilty of a misdemeanor, unless such bay rum contains not less than one-fourth of a grain of tartar emetic per fluid ounce.~~

DRAFTING NOTE: This section has been deleted as obsolete.

~~§§ 4-96.1, 4-96.2. Expired.—~~

DRAFTING NOTE: These sections have been deleted since their provisions have expired. There is no annotation in the Code which indicates their content or expiration date.

~~§ 4-98. Beverages containing not more than 3.2 percent of alcohol.—The provisions of this chapter shall not apply to the manufacture, bottling, selling, offering for sale, distributing, carrying, shipping, transporting, possession, drinking, using, advertising and dispensing in Virginia of beer, wine, similar fermented malt, and fruit juice, containing not more than three and~~

two-tenths percent of alcohol by weight, except as otherwise provided by § 4-39.

DRAFTING NOTE: This section has been deleted as obsolete. See Drafting Note for repealed § 4-39.

~~§ 4-98.8. Application of provisions of Chapter 1 of this title.— Where, in Chapter 1 (§ 4-1 et seq.) of this title, reference is made to "this chapter," this shall be deemed to include also this Chapter 1.1 (§ 4-98.1 et seq.) so that the provisions of such Chapter 1 relating to alcoholic beverages including wine and beer, shall be applicable to mixed beverages except where the provisions of such Chapter 1 are expressly made inapplicable to or are plainly inconsistent with the provisions of this Chapter 1.1.~~

DRAFTING NOTE: This section has been deleted as obsolete. Organizationally, all provisions relating to mixed beverages have been combined with wine, beer, and alcoholic beverages generally in the proposed recodification.

~~§ 4-98.15. Not set out.—~~

DRAFTING NOTE: This section has been deleted as unnecessary. Although the provisions are not set out, this section is a severability clause enacted in 1968 and is duplicative of § 1-17.1 in Title 1.

~~§ 4-143. Disposition of money collected.—All moneys collected by the Board under the provisions of this chapter shall be promptly paid into the general fund of the state treasury.~~

DRAFTING NOTE: This section has been deleted as duplicative of existing § 4-23 (proposed § 4.1-116).

CHAPTER 2.

Administration of Licenses.

CHAPTER DRAFTING NOTE: Chapter 2 represents the "A to Z" of licensure and has been organized into three articles dealing with each aspect of licensure. Article 1 contains exemptions from licensure and provision for record keeping by all licensees. Under Title 4, record keeping requirements were scattered throughout the title and each section contained itemized requirements to be met by licensees. In proposed Title 4.1, the record keeping requirements have been centralized and reflect general record keeping requirements with authority given to the Board to establish the type of records to be kept and the duration of their retention by regulation.

In Article 2, Licenses Granted by the Board, licenses are organized by the type of beverage, with the privileges of each license updated to reflect actual practice of the Board, as appropriate. Licenses for wholesale druggists and taverns have been deleted as obsolete. Limitations on licenses have been set out separately. All permits which the Board is authorized to issue have been centralized in Article 2. Article 2 also contains provision for revocation and suspension of licenses.

Article 3 sets out application procedures and fees for licenses and permits. State and local taxes on licenses as well as excise and related taxes on licensees are also contained in Article 3. Distinction in tax rates for cities of the first and second class have been deleted as obsolete. In Title 4, excise tax on beer is set out as a separate chapter; however, in proposed Title 4.1, these taxes have been incorporated into Article 3.

Article 1.

General Provisions.

~~§ 4-48. Medicines and other articles.—The provisions of this chapter shall not be construed to prevent in any county, city or town, nor to require any person to be licensed under the provisions of this chapter to engage in:~~

~~(a) The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business, of any medicine containing sufficient medication to prevent the same being used as a beverage;~~

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

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

(d) The manufacture and sale of food products known as flavoring extracts which shall be so manufactured and sold for cooking and culinary purposes only and not to be sold for beverage purposes.

The Board may by regulations, which it may from time to time alter, amend or repeal, permit the manufacture, sale, delivery and shipment of "sterno," canned heat, and other similar substances, without requiring a license therefor.

DRAFTING NOTE: No substantive change in law. The provisions of this section as well as existing § 4-50(d), and selected parts of § 4-89 have been added together under a section entitled Exemptions. The provision relating to the Board's regulation of sterno and canned heat has been deleted as obsolete. This section appears in Article 1, General Provisions, of proposed Chapter 2.—Administration of Licenses.

§-4-50. Physicians and others who may administer alcoholic beverages; charge for such beverages in institutions.—(a) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when in the judgment of the physician the use of alcoholic beverages is necessary.

(b) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer such beverages to the patient.

(c) A veterinarian who deems it necessary may in the course of his practice administer or cause to be administered alcoholic beverages to a dumb animal.

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

DRAFTING NOTE: No substantive change in law. Subsection (d) of this section as well as existing § 4-48 and selected parts of § 4-89 have been added together under a section entitled Exemptions. Subsections (a), (b), and (c) of this section have been deleted as obsolete. This section appears in Article 1, General Provisions, of proposed Chapter 2.—Administration of Licenses.

§-4-89. Wines and beer for home consumption; sale of cider to distillers and wine to wineries; alcoholic beverages in residences and clubs; sale of beer on government reservations; certain alcoholic beverages at private meetings, parties or at special events; certain activities by breweries and distilleries.—The provisions of this chapter shall not be construed to prevent:

1. Any person from manufacturing at his residence for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both;

2. Any person from manufacturing and selling cider to persons holding distillery licenses issued under the provisions of this chapter, or any person from manufacturing wine from grapes grown by such person and selling the same to persons holding winery licenses issued under the provisions of this chapter, under the supervision of, and regulations issued by, the Board;

3. Any person from keeping and possessing alcoholic beverages in his residence for the

personal use of himself, his family, his servants or his guests, if such alcoholic beverages shall have been lawfully acquired by him, nor to prevent such person, his family or servants from giving or serving such alcoholic beverages to guests in such residence when such gift or service is in no wise a shift or device to evade the provisions of this chapter;

4. Any club licensed under the provisions of this chapter from keeping for its members any alcoholic beverages lawfully acquired by such members, provided such alcoholic beverages shall not be sold, dispensed or given away in violation of any provisions of this chapter; and it shall be lawful for any member to consume on the club premises any alcoholic beverages lawfully acquired;

5. Any person from having grain, fruit or fruit products and any other substance, when grown or lawfully produced by him, distilled by any person holding a distiller's license under the provisions of this chapter, and selling the alcoholic beverages so distilled to the Board or selling or shipping the same to any person outside of the Commonwealth under regulations of the Board; provided, that no alcoholic beverages so distilled shall be withdrawn from the place where distilled except upon and pursuant to permits and regulations of the Board;

6. Any person duly authorized to manufacture and sell, or either, in Virginia or elsewhere, alcoholic beverages other than beer or wine, from soliciting and taking orders from the Board for such alcoholic beverages;

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

8. The receipt by a person operating a brewery licensed by the Board of deliveries and shipments of beer in barrels or other closed containers from another brewery or breweries owned by such person or the sale, delivery or shipment of such beer, in accordance with the regulations of the Board, to persons licensed under the provisions of this chapter to sell beer at wholesale or retail for the purpose of resale, to owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside 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;

9. The issuance by the Board of any retail license authorized by this chapter or Chapter 1-1 to a person licensed as a brewery or winery pursuant to the provisions of §-425, or who has applied to the Board for a brewery or winery license, or to a lessee of such person, or a wholly owned subsidiary of such person or its lessee, provided the places of business or establishments for which the retail licenses are desired are located upon the premises occupied or to be occupied by such brewery or winery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary;

10. The keeping and consumption of any alcoholic beverages, lawfully acquired, at a private meeting or private party limited in attendance to members and guests of a particular group, association or organization at a banquet or similar affair, or at a special event, for which a banquet license shall have been granted by the Board;

11. The receipt by a person operating a distillery licensed by the Board of deliveries and shipments of alcoholic beverages, other than wine and beer, in barrels, bottles or other closed containers from another distillery or distilleries owned by such person or the sale, delivery or shipment of such alcoholic beverages, in accordance with the regulations of the Board, to the Board, and 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;

12. The receipt by a person operating a winery licensed by the Board of deliveries and shipments of wine in barrels, bottles or other closed containers from another winery or wineries owned by such person or the sale, delivery or shipment of such wine, in accordance with the regulations of the Board, to persons licensed under the provisions of this chapter to sell wine at wholesale for the purpose of resale, and 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;

(m) The receipt by a person operating a fruit distillery licensed by the Board of deliveries and shipments of alcoholic beverages made from fruit or fruit juices in barrels, bottles or other closed containers from another fruit distillery or fruit distilleries owned by such person or the sale, delivery or shipment of such alcoholic beverages, in accordance with the regulations of the

Board, 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.

DRAFTING NOTE: No substantive change in law. Subdivisions 1, 2, 3, 7, and 10 of this section (existing 4-89), as well as the provisions of existing §§ 4-48 and 4-50(d) have been added together under a section entitled Exemptions. This section appears in Article 1, General Provisions, of proposed Chapter 2.—Administration of Licenses.

§ 4.1-200. *Exemptions from licensure.—A. The licensure requirements of this chapter shall not apply to:*

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

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

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

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

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

6. *Any person who manufactures at his residence for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both.*

7. *Any person who keeps and possesses lawfully acquired alcoholic beverages in his residence for his personal use or that of his family, servants or guests. Such alcoholic beverages may be served or given to guests in such residence by such person, his family or servants when such service or gift is in no way a shift or device to evade the provisions of this title.*

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

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

10. *The keeping and consumption of any lawfully acquired alcoholic beverages at a private meeting or private party limited in attendance to members and guests of a particular group, association or organization at a banquet or similar affair, or at a special event, if a banquet license has been granted.*

DRAFTING NOTE: The contents of this section are a rewrite of existing §§ 4-48, 4-50(d) and 4-89 (subdivisions 1, 2, 3, 7, and 10). Exemptions for physicians, dentists and veterinarians have been deleted. The Department of Health Professions has indicated there is no basis for retaining them because dentists, physicians, and veterinarians can prescribe alcohol under the Drug Control Act. Alcohol under the Drug Control Act is a nonscheduled drug.

§ 4.1-201. *Conduct not prohibited by this chapter; limitation.—A. This chapter shall not prohibit:*

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

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

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

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers from other breweries owned by such person or the sale, delivery or shipment of such beer, in accordance with Board regulations to: (i) persons licensed to sell beer at wholesale; (ii) persons licensed to sell beer at retail for the purpose of resale, only as provided in subdivision B5 of § 4.1-216; (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iv) persons outside the Commonwealth for resale outside the Commonwealth;

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

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

7. The receipt by a winery licensee of deliveries and shipments of wine in closed containers from other wineries owned by such licensee or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth;

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

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

DRAFTING NOTE: The contents of this section are a rewrite of existing § 4-89 (subdivisions 4, 5, 6, 8, 9, 11, 12, and 13). References to barrels and bottles have been deleted as "containers", defined in Chapter 1, includes these.

~~§ 4-37.2: 4.1-202.~~ To whom privileges conferred by licenses extend; liability for violations of law ; etc .—The privilege of any person licensed under this chapter licensee to sell or serve alcoholic beverages shall extend to such licensee and to all persons employed by agents or employees of such licensee for the purpose of selling or serving alcoholic beverages under such license. In the discretion of the Board the The licensee may be held liable for any violation of any provision of this title or any Board regulation of the Board committed by such agents or employees in connection with their employment.

DRAFTING NOTE: Provisions of existing § 4-98.4 merged with this section. Under existing § 4-98.4, liability of licensees for the actions of their agents or employees is not discretionary with the Board, however "may" is retained in this section to reflect the provisions of existing § 4-37.2 and to give the Board flexibility in this area.

~~§ 4-98.4.~~ To whom privileges conferred by licenses extend; liability for violations of law,

etc.—The privilege of any person licensed under this chapter to sell or serve mixed beverages shall extend to such licensee and to all persons employed by such licensee for the purpose of selling or serving such mixed beverages under such license and such licensee shall be liable for a violation of a provision of this title or a regulation of the Board committed by such employees in connection with their employment.

DRAFTING NOTE: This section merged with existing § 4-37.2 above.

§ 4-34. 4.1-203. Separate license for each place of business; transfer or amendment; posting; expiration; carriers.— (a) Designation of place of business. - A. Each license issued *granted* 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. - B. 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 § 4.1-230 if the effect of the amendment is to reduce materially the privileges of an existing license.

(c) Posting. - - C. Each such license shall be kept posted in a *location* conspicuous place by the licensee to the public at the place where he the licensee carries on the business for which the license is issued *granted* .

(d) Continuance of licenses. - The D. The privileges conferred by any license issued *granted* by the Board pursuant to this chapter , except for *temporary licenses, banquet , and mixed beverage special events* licenses, unless otherwise provided, shall continue until June 30 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. Any continuation beyond the original expiration date shall be conditioned upon the payment of the subsequent annual license tax as required by law.

Effective July 1, 1981, licenses may be issued or reissued, at the discretion of the Board, upon payment of the appropriate prorated license tax for a period of not less than one month nor more than twelve months, as necessary to distribute annual reissuance of licenses as equally as practicable on a monthly basis throughout the twelve months of the year. The privileges conferred by any license issued or reissued thereafter shall continue until the last day of the twelfth month next ensuing or the last day of the designated month of expiration, except the license may be sooner terminated as aforesaid and license periods may be adjusted as is necessary to maintain distribution of annual license reissuances as equally as practicable on a monthly basis for any cause for which the Board would be entitled to refuse to grant a license, by operation of law, voluntary surrender, or order of the Board .

Any The Board may permit a licensee who fails to pay by midnight ; June 15 or by midnight of the fifteenth day of the twelfth month or of the designated month of expiration, whichever is applicable, 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 *civil* penalty of twenty-five dollars or ten percent of such tax, whichever is greater.

(d1) Temporary licenses. - Notwithstanding subsection (d) hereof, the Board may issue a temporary license for any of the licensed retail operations authorized by §-4-25 or §-4-26.2. Such licenses may be issued only after application has been filed in accordance with the provisions of §-4-30 and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is not issued, the applicant is entitled to a hearing on the issue of qualifications. The decision to refuse to grant a temporary license shall not be subject to a hearing. If a temporary license is issued, the Board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

A temporary license may be revoked summarily by the Board for any cause set forth in §-4-37 without complying with the provisions of subsection (B) of that section. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or

upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

(e) Common carriers. - - E. Subsections (a) and (c) of this section A and C shall not apply to common carriers operating dining cars, buffet cars and club cars of passengers by train, boat, or airplane.

DRAFTING NOTE: Changes made to conform to current practice of Board relating to the continuance of licenses, which are now staggered throughout the year instead of all licenses expiring on June 30 of each year. Also, subsection (d1) (Temporary licenses) has been moved to the end of the licenses section of Article 2 of proposed Chapter 2.—Administration of Licenses. This section also contains technical corrections.

§-408.6. Records to be kept by licensees.—All licensees under this chapter shall keep records as required by subsection B of §-444 concerning the purchase of alcoholic beverages, the sale of mixed beverages and, in the case of persons holding a mixed beverage restaurant license, concerning the sale of full meals and nonalcoholic beverages, to enable the Board to enforce the provisions of this chapter. All such records shall be open for inspection by the Board or its authorized representatives at all times.

DRAFTING NOTE: This section has been merged with existing § 4-44 and is set out as proposed § 4.1-204 which follows.

§-4134. Records, invoices, and accounts of manufacturers, bottlers, wholesalers and operators of boats and dining cars.—A. Every manufacturer, bottler and wholesaler licensed in the Commonwealth shall keep a complete, accurate and separate record of all beer and beverages manufactured, bottled, purchased, sold or shipped by him. Such record shall show:

1. The quantities of all such beer or beverages manufactured, bottled, purchased, sold or shipped by him;

2. The dates of all sales, purchases and deliveries;

3. The names and addresses of all persons to or from whom such sales, purchases and deliveries are made; and

4. The price charged for such sales, purchases and deliveries.

B. Every manufacturer and wholesaler, at the time of delivering beer or beverages to any person, shall also prepare a duplicate invoice showing:

1. The date of delivery;

2. The quantity and value of each delivery; and

3. The name of the purchaser to whom the delivery is made.

C. Persons operating boats, dining cars, buffet cars or club cars upon or in which beer or beverages are sold shall keep such records of the sale of such beer or beverages as the Board shall prescribe by regulation.

DRAFTING NOTE: This section has been merged with existing § 4-44 and is set out as proposed § 4.1-204 which follows.

§-4135. Records, invoices and accounts of retailers.—Every retailer shall keep a complete, accurate, and separate record of:

1. All purchases of beer and beverages;

2. The dates of such purchases;

3. The kinds and quantities of beer and beverages purchased;

4. The prices charged therefor; and

5. The names and addresses of the persons from whom purchased.

DRAFTING NOTE: This section was merged into existing § 4-44 and is set out as proposed § 4.1-204 which follows.

§ 4-137. Inspection.—All records, invoices and accounts required by §§ 4-134 and 4-135 shall be kept by each manufacturer, bottler, wholesaler and retailer at the place of business designated in his license and shall at all times be open to inspection by the Board and any agent designated thereby. The Board and its agents at all times shall be allowed free access during business hours to every place in Virginia where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein.

DRAFTING NOTE: This section has been merged into existing § 4-44 and is set out as proposed § 4.1-204 which follows.

§ 4-44. 4.1-204. Records of licensees; examination inspection of records and places of business.—A. Manufacturers, bottlers or wholesalers. - Every person who is licensed in Virginia to manufacture, to bottle or to sell at wholesale any alcoholic beverages licensed manufacturer, bottler, or wholesaler shall keep a complete, accurate and separate record records in accordance with Board regulations of all alcoholic beverages purchased, manufactured, bottled and , sold ; or manufactured, bottled or sold, shipped by him . Such records shall show the quantities of all such alcoholic beverages manufactured and bottled, or manufactured or bottled, by him, the dates of all sales and deliveries or shipments, the names and addresses of all persons to whom sales and deliveries or shipments are made, the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor , and the excise tax applicable thereto under §4-128 tax required by §§ 4.1-234 or 4.1-236 , if any.

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

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

C. D. Inspection. - All such records, invoices and accounts shall be kept by each such licensee at the place of business designated in his license and shall at all times be open to inspection by the Board and any person or persons that may be designated as an agent by the Board.

The Board and its duly authorized special agents shall at all times be allowed free access during business reasonable hours to every place in this the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein. However, records of retail licensees of the Board shall be open for inspection by the Board or its authorized representatives at all times.

DRAFTING NOTE: No substantive change in law. Existing §§ 4-98.6, 4-134, 4-135, and 4-137 (record keeping) were merged into this section (4-44). Reference to 3.2% beverages have been deleted as 3.2% beer and wine are now included in the definition of beer and wine, respectively. At the Board's request, general record keeping requirements of the above mentioned sections have been set out in statute with the power given to the Board to address specific record keeping requirements (retention, what is included in each record, etc.) through regulation. As a result, the Board has been given the authority to regulate in the record keeping area in existing § 4-11 in Chapter 1.

§ 4.1-205. Local licenses.—A. In addition to the State licenses provided for in this chapter, the governing body of each county, city, or town in the Commonwealth may, by ordinance, provide for the issuance of county, city, or town licenses, and to charge and collect license taxes therefor, to persons licensed by the Board to manufacture, bottle or sell alcoholic beverages

within such county, city, or town, except for temporary licenses authorized by § 4.1-211. Subject to § 4.1-233, the governing body of a county, city, or town may classify licenses and graduate the license taxes therefor in the manner it deems proper.

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

DRAFTING NOTE: No substantive change in the law. The contents of this section come from existing § 4-38. Proposed subsection A is existing § 4-38 A and C, and proposed subsection B is existing § 4-38 D.

Article 2.

Licenses Granted By Board; Limitations;

Revocation and Suspension.

§ 4-25. Licenses granted by Board.—A. The Board may grant, subject to revocation, as provided in § 4-27, the following licenses under the provisions of this chapter:

1. Distillers' licenses, which shall authorize the licensees to manufacture alcoholic beverages other than wine and beer, and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to the Board, and 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.

2. Fruit distillers' licenses, which shall authorize the licensees to manufacture any alcoholic beverages made from fruit or fruit juices, and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to the Board, and 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.

3. Winery licenses, which shall authorize the licensees to manufacture wines and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to persons licensed under the provisions of this chapter to sell the wine so manufactured at wholesale for the purpose of resale, and 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, and shall in addition authorize the licensee to operate distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit juices only, which shall be used only for the fortification of wine produced by the licensee.

4. Brewery licenses, which shall authorize the licensees to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to persons licensed under the provisions of this chapter to sell the beer so manufactured at wholesale or retail for the purpose of resale, and to owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside 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; and except further that beer reconstituted from beer concentrate, other than reconstituted beer originally manufactured, concentrated, and reconstituted at the same plant located in this Commonwealth, may not be sold by any licensees under this subdivision to persons licensed under the provisions of this chapter to sell beer at retail for purposes of resale.

5. Bottlers' licenses, which shall authorize the licensees to acquire and receive deliveries and shipments of beer in barrels or other closed containers and to bottle, sell, and deliver or ship the same, in accordance with regulations of the Board, to persons licensed under the provisions of this chapter to sell the same at wholesale for the purpose of resale and to owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside 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.

6. Wholesale beer licenses, which shall authorize the licensees to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to persons licensed under the provisions of this chapter to sell the same at wholesale or retail for the purpose of resale, and to owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside 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.

7. Beer importers' licenses, which shall authorize persons licensed within or outside this Commonwealth to sell and deliver or ship beer into this Commonwealth, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to persons in this Commonwealth licensed under the provisions of this chapter to sell beer at wholesale for the purpose of resale. It shall be unlawful for any such person licensed under this chapter to sell beer at wholesale, to purchase beer for resale from a person outside this Commonwealth who does not hold a beer importer's license.

8. Wholesale druggist licenses to wholesale druggists, which licenses shall authorize the licensees to buy alcohol from the Board and to sell and deliver or ship the same in accordance with regulations of the Board and under its supervision, to druggists for the purpose of compounding and resale, and to persons duly authorized to operate pharmacies outside of Virginia for the purpose of compounding and 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.

9. Wholesale wine distributors' licenses, which shall authorize the licensees to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles, or other closed containers, to persons licensed to sell the same in Virginia, and 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 selling or receiving the same.

10. Wine importers' licenses, which shall authorize persons licensed within or outside this Commonwealth to sell and deliver or ship wine, in accordance with the regulations of the Board, in barrels, bottles, or other closed containers, to persons in this Commonwealth licensed under the provisions of this chapter to sell wine at wholesale for the purpose of resale, and 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.

It shall be unlawful for any person holding a wholesale wine distributors' license issued under this chapter to purchase wine for resale from a person outside this Commonwealth in the United States or any of its possessions who does not hold a wine importers' license.

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

a. Hotels, which licenses shall authorize the licensees to sell wine and beer in dining rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such rooms or in private guest rooms thereof;

b. Restaurants, which licenses shall authorize the licensees to sell wine and beer in the dining rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such dining rooms and such designated rooms;

c. Clubs, which licenses shall authorize the licensees to sell wine and beer in the dining rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such rooms or in private guest rooms thereof;

d. Persons operating dining cars, buffet cars, and club cars, which licenses shall authorize the licensees to sell wine and beer in the dining cars, buffet cars, and club cars of trains, either with or without meals, for consumption on the premises only in such cars when carrying passengers;

e. Persons operating as air carriers of passengers on regular schedules in foreign, interstate, or intrastate commerce, which licenses shall authorize the licensees to sell wine and beer for consumption by passengers in such airplanes anywhere in or over the Commonwealth when in transit and in designated rooms of establishments of such carriers at airports in Virginia, §-4-07 notwithstanding;

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

g. Persons operating food concessions at coliseums, stadia, or similar facilities, which license shall authorize the licensee to sell wine, wine coolers, or similar products that qualify as beverages as defined in §-4-90, and beer during the performance of professional sporting exhibitions or events in paper, plastic, or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, as well as additional locations designated by the Board, in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, nothing herein shall be construed to prohibit any person from keeping and consuming his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license;

h. Persons operating boats for which certificates as a sight-seeing carrier by boat or a special or charter party by boat have been issued by the State Corporation Commission pursuant to § 56-45-7.8, which licenses shall authorize the licensees to sell wine and beer on such boats operated by them either with or without meals for consumption on the premises when carrying passengers.

12. Retail on-premises beer licenses to:

a. Hotels, which licenses shall authorize the licensees to sell beer in the dining rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such rooms or in private guest rooms thereof;

b. Restaurants, which licenses shall authorize the licensees to sell beer in dining rooms thereof, either with or without meals, for consumption on the premises only in such dining rooms;

c. Clubs, which licenses shall authorize the licensees to sell beer in the dining rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such rooms or in private guest rooms thereof;

d. Persons operating boats, dining cars, buffet cars, and club cars, which licenses shall authorize the licensees to sell on the boats, dining cars, buffet cars, and club cars so operated by them beer in the dining rooms and other designated rooms of the boats and in the dining cars, buffet cars, and club cars of trains, either with or without meals, for consumption on the premises only in such rooms, or in such cars when carrying passengers;

e. (1) Grocery stores situate in any town or in a rural area outside of the corporate limits of any city or town, which licenses shall authorize the licensees to sell beer in such establishments for consumption on the premises. No such license shall be issued for any such establishment unless it shall appear affirmatively that a substantial public demand for such licensed establishment exists, and that public convenience and the purposes of this chapter will be promoted by the issuance of such license.

(2) Taverns situate within the corporate limits of any city of the first class, which licensees shall authorize the licensees to sell beer in such establishments for consumption on the premises only. No such license shall be issued for any such establishment unless it shall appear affirmatively that a substantial public demand for such licensed establishment exists, and that public convenience and the purposes of this chapter will be promoted by the issuance of such license.

f. Persons operating food concessions at coliseums, stadia, or similar facilities, which license shall authorize the licensee to sell beer during the performance of professional sporting exhibitions or events in paper, plastic, or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, as well as additional locations designated by the Board, in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, nothing herein shall be construed to prohibit any person from keeping and consuming his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

13. Retail off-premises wine and beer licenses which shall authorize the licensees to sell wine and beer at retail only in closed packages for consumption off the premises of such licensees, and to deliver or ship the same to the purchasers thereof, in accordance with regulations of the Board.

14. Specialty shop licenses which shall authorize the licensees to sell wine and beer at retail only in closed packages for consumption off the premises of such licensees, and, the provisions of § 4-78 notwithstanding, to give for consumption on the premises a sample of wine, not to exceed one-quarter ounce by volume to any person to whom wine may be lawfully sold. "Specialty shop" is defined as an establishment provided with adequate inventory, shelving, and storage facilities where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

15. Convenience grocery store licenses which shall authorize the licensees to sell beer and wine at retail only in closed packages for consumption off the premises of such licensees. A "convenience grocery store" is defined as an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale, and (ii) maintains an inventory of edible items intended for human consumption having a wholesale value of no less than \$2,000 and consisting of a variety of such items of the types normally sold in grocery stores, and (iii) has gross sales of no less than \$2,000 per month of edible items, and (iv) does not sell any petroleum related service with the sale of petroleum products. Nothing in this section shall be construed to invalidate or restrict a license issued prior to and otherwise in compliance with existing laws and regulations on July 1, 1970.

16. Retail off-premises winery licenses, which shall be issued only to persons holding winery licenses, which licenses shall authorize the licensees to sell wine at retail at the place of business designated in the winery license, in closed packages for consumption off the premises of such licensees and to deliver or ship the same to the purchasers thereof, in accordance with regulations of the Board.

17. Retail off-premises beer licenses which shall authorize the licensees to sell beer at retail only in closed packages for consumption off the premises of such licensees and to deliver or ship the same to the purchasers thereof, in accordance with regulations of the Board.

18. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 11 of this section, which licenses shall confer all the rights and powers conferred by retail on-premises wine and beer licenses and in addition thereto shall authorize the licensees to sell wine and beer at retail in closed packages for consumption off the premises of such licensees and to deliver or ship the same to the purchasers thereof, in accordance with regulations of the Board.

19. Retail on-and-off premises beer licenses to persons enumerated in subdivision 12 of this section, which licenses shall confer all the rights and powers conferred by retail on-premises beer licenses and in addition thereto shall authorize the licensees to sell beer at retail in closed packages for consumption off the premises of such licensees and to deliver or ship the same to the purchasers thereof in accordance with regulations of the Board.

20. Banquet licenses to persons in charge of banquets or special events which licenses shall authorize the licensees to sell or give wine and beer in rooms or areas approved by the Board for the occasion, which rooms or areas shall be so located that participants in the affair will be reasonably shielded from public view, for consumption on the premises. A separate license shall be required for each banquet or special event; but no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license issued under the provisions of this chapter.

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

22. Licenses to bed and breakfast establishments, as defined in § 4-2, which licenses shall authorize the licensees to serve alcoholic beverages in dining rooms and other designated rooms thereof to persons to whom overnight lodging is being provided, with or without meals, for

consumption on the premises only in such rooms and without regard to the amount of gross receipts from the sale of food prepared and consumed on the premises.

23. Retail wine off-premises licenses to persons operating gift shops which shall authorize the licensee to sell at retail wine which has been purchased from and received from farm wineries and wholesale licensees of the Board; to sell the same only in closed packages for consumption off the premises; to sell the same only within the interior premises of the store, and to deliver or ship the same to purchasers thereof in accordance with this chapter. No chilled wine may be sold under the privileges of the gift shop retail license.

A "gift shop" shall be defined as any bona fide retail store selling, predominantly, gifts, books, specialty items, original and handmade arts, collectibles, crafts, floral arrangements or other original and handmade products which is open to the public on a regular basis, in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine. The Board shall consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered a gift shop within the meaning of this subdivision.

In granting licenses under this subdivision, the Board may impose restrictions and conditions upon the purchase and sale of wine as may be deemed reasonable by the Board to ensure that the distribution of wines is orderly, lawful and only incidental to the principal business of the licensee. In no event shall the sale of wine exceed twenty-five percent of the total annual gross sales at the gift shop.

B. The term "designated rooms" as used in this section shall mean rooms approved by the Board for particular licensees.

C. A type of business operated by a licensee under this section, prior to July 1, 1956, which has maintained its same character since first becoming licensed, and for so long as it maintains the same character, may continue to be licensed without interruption even though the business becomes incorporated, provided the sole stockholder of the corporation is the same person to whom the license was previously issued.

D. No beer importer licensed pursuant to subdivision A 7 of this section or wine importer licensed pursuant to subdivision A 10 of this section shall sell and deliver or ship any brand of beer or wine to wholesale licensees for the purpose of resale until such importer has also complied with the provisions of this subsection for each such brand.

Any importer licensed under the provisions of this chapter, if not also the owner of the brand to be imported into this Commonwealth, shall provide to the Board written authorization from the brand owner for the importer (i) to sell and deliver or ship such brand into this Commonwealth; and (ii) to establish written agreements of a definite duration and within the meaning of the Beer Franchise Act (~~§ 4-118.3 et seq.~~) and the Wine Franchise Act (~~§ 4-118.42 et seq.~~), on behalf of the brand owner, as its authorized representative, with each wholesale licensee to whom the importer sells any brand of beer or wine owned by the brand owner. Furthermore, each licensed importer which imports a brand into the Commonwealth of which it is not the owner shall file and maintain with the Board a current list of all wholesale licensees authorized by the importer, as the authorized representative of the brand owner, to distribute such brand within this Commonwealth. The Board shall adopt such regulations as are necessary to implement this subsection.

DRAFTING NOTE: Provisions shown as stricken above have been reconfigured by type of beverage and are now set out as proposed §§ 4.1-206 through 4.1-210. Wholesale druggists licenses were deleted because they can be regulated under existing regulation, and currently, there are no licensed wholesale druggists. Licenses for taverns (§ 4-25(A)12(e)2) have been deleted since there are no licensed taverns and this type of establishment can be licensed as a restaurant.

~~§ 4-25.1. Farm wineries; licenses granted by Board; tax and fee.—A. The Board may grant farm winery licenses, which shall authorize the licensees to manufacture wine containing fourteen percent or less of alcohol by volume and to sell, deliver or ship such wine, in accordance with regulations of the Board, in barrels, bottles or other closed containers, to the Board, to persons licensed under the provisions of this chapter to sell the wine so manufactured at wholesale or retail for the purpose of resale, § 4-64 notwithstanding, or to persons outside of Virginia. No deliveries or shipments shall be made into any state which prohibits consignees from receiving or selling such wine. In addition, licensees shall be authorized to acquire and receive deliveries and shipments of wine manufactured by the licensees and to sell and deliver or ship this wine, in accordance with Board regulations, to persons licensed to sell wine in~~

Virginia, § 4-64 notwithstanding. Such licenses also shall authorize the licensees to sell wine at retail at the places of business designated in the licenses. For each licensee, these business places shall include not more than two additional retail establishments located within a reasonable distance of the farm winery of that licensee. Wine may be sold at these business places for consumption on the premises and in closed packages for consumption off the premises, including delivery and shipment of such wine to purchasers thereof, in accordance with such Board regulations.

B. No more than twenty-five percent of the fruits, fruit juices or other agricultural products used by the owner or lessee of a farm winery shall be grown or produced outside this Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board is authorized to permit the use of a greater quantity of out-of-state products if supplies grown or produced in this Commonwealth are insufficient for a person holding a farm winery license to achieve the level of production which otherwise could be anticipated during a given license year.

C. The tax on state licenses issued pursuant to the provisions of this section shall be \$145.

D. Applicants for farm winery licenses shall pay the application fee required by § 4-30 at the time the application is filed.

DRAFTING NOTE: No substantive change in law. This section is now set out as proposed § 4.1-207 (5) under Wine licenses. Subsection B has been moved to the Limitation on Licenses section in Article 2 of this proposed Chapter 2. Also subsections C and D have been moved to the taxes and application fee section, respectively, of proposed Article 3 of Chapter 2.

§ 4-26. Registration of wine and beer salesmen; permits and proration of fees.—(a) Registration and permits. - No person representing any wholesaler engaged in the sale of wine and beer, or either, but not holding a license therefor, or holding a wine or beer importer's license outside this Commonwealth issued by the Board, shall solicit the sale of, or sell, wine and beer, or either, in this Commonwealth without first registering with the Board and obtaining a permit. Every application for registration shall be on such form as shall be prescribed by the Board and shall be accompanied by a fee of \$125 for each such person. Each permit issued hereunder shall expire on June 30 next succeeding the date of issuance, unless sooner suspended or revoked by the Board. Any such permit may be suspended or revoked at any time by the Board. Permits issued hereunder shall confer upon the holders thereof no authority to solicit the sale of, or to sell, wine and beer, or either, in this Commonwealth except as otherwise provided by law.

(b) Proration of permit fees. - The fee on each such permit shall be subject to proration to the following extent: If the permit is issued in the second quarter of any year the fee shall be decreased by one-fourth; if issued in the third quarter of any year the fee shall be decreased by one-half; and if issued in the fourth quarter of any year the fee shall be decreased by three-fourths.

(c) Payment of cost or monetary penalties. - The Board, in suspending any permit, may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the permit holder pay the cost incurred by the Board in investigating the permit holder and in holding the proceeding resulting in such suspension, or it may impose a monetary penalty not to exceed \$1,000 for the first offense, \$2,500 for the second offense, or \$5,000 for the third offense in lieu of such suspension or any portion thereof, or both after the enactment hereof.

(d) Offers in compromise. - Following notice to the permit holder of a hearing which may result in the suspension or revocation of his permit, the Board in its discretion may accept from the permit holder an offer in compromise to pay a monetary penalty not exceeding \$1,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

DRAFTING NOTE: No substantive change in law. Subsection (a) has been set out in the permits section (§ 4.1-211). The remainder of this section is found in proposed § 4.1-229.

§ 4-20. Sale of sacramental wines.—Any person holding a wholesale wine distributor's license may, under such regulations as the Board prescribes, sell wines containing more than fourteen per centum of alcohol by volume for use only for sacramental purposes.

DRAFTING NOTE: No substantive change in the law. Provisions set out under wholesale wine licenses.

§ 4-08.2. Mixed beverage restaurant license, caterer's license and special events license.—A. In any city, or in any town, county, or supervisor's election district of a 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, as defined in § 4-08.1, and whose gross receipts from the sale of food cooked, or prepared, and consumed on the premises and nonalcoholic beverages served on the premises shall, after issuance of such license, amount to at least forty-five percent of its gross receipts from the sale of mixed beverages and food. 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 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 and to sell for consumption on the premises to registered guests and at scheduled functions of such hotel or motel only in the bedroom or private rooms thereof spirits packaged in original closed containers purchased from the Board. Nothing herein shall be construed to prohibit any person from keeping and consuming his own lawfully acquired spirits in bedrooms or private rooms. If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensee to sell and serve mixed beverages for consumption on the premises of such club specified in such license. However, where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on another portion of the premises of the same hotel or motel building, this fact shall not prohibit the issuance of a license by the Board to such club qualifying in all other respects, and where the club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises amount to at least forty-five percent of its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board. 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, or in any town, county, or supervisor's election district of a 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 250 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 food cooked, prepared and consumed on the premises and nonalcoholic beverages served on the premises shall, after issuance of such license, amount to at least forty-five percent of its gross receipts from the sale of mixed beverages and food. 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, or in any town, county, or supervisor's election district of a 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.

D. In any city, or in any town, county, or supervisor's election district of a county where this chapter shall become effective as hereafter provided, the Board may grant, subject to such conditions as it may specify, an annual mixed beverage special events license to a duly organized nonprofit corporation or association operating a performing arts facility, or to a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture, provided that the operation in either case is upon premises owned by the applicant or occupied under a bona fide lease the original term of which was for more than one year's duration, which license shall authorize the sale, on the dates of performances or events in furtherance of objects of the nonprofit corporation or association, of mixed beverages, wine and beer for on-premises consumption in areas upon the licensed premises approved by the Board.

E. In any city, or in any town, county, or supervisor's election district of a county where this chapter shall become effective as hereafter provided, the Board may grant, in addition to the

mixed beverage caterer's license authorized by subsection B above and subject to such conditions as it may specify by regulation; a caterer's license to any person engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in this chapter or Chapter 1 (§ 4-1 et seq.) of this title. Such license may be issued pursuant to regulations which shall be promulgated by the Board. These regulations shall include the requirement that the caterer notify the Board in advance of any event to be served by the caterer under his license. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this subsection and nonalcoholic beverages served there shall amount to at least forty-five percent of the gross receipts from the sale of mixed beverages and food.

DRAFTING NOTE: Provisions now set out under Mixed Beverages Licenses.

§ 4-08.3. Mixed beverage carrier license.—If this chapter shall become effective in any city, town, county, or supervisor's election district of a county in or through which is operated a common carrier of passengers by train, ship, or airplane, the Board may grant to persons operating such common carrier of passengers a mixed beverage carrier license. Such license shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any train, ship, or airplane operated by such carrier; and in rooms designated by the Board of establishments of air carriers of passengers at airports in Virginia.

DRAFTING NOTE: No change in law. Provisions set out in Mixed Beverage Licenses.

§ 4.1-206. Alcoholic beverage licenses.—The Board may grant the following licenses relating to alcoholic beverages generally:

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

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

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

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

DRAFTING NOTE: This section is a rewrite of existing § 4-25 A (subdivisions 1, 2, 21 and 22).

§ 4.1-207. Wine licenses.—The Board may grant the following licenses relating to wine:

1. *Winery licenses, which shall authorize the licensee to manufacture wines and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth. In addition, such license shall authorize the licensee to operate distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit juices only, which shall be used only for the fortification of wine produced by the licensee.*

2. *Wholesale wine licenses, which shall authorize the licensee to acquire and receive*

deliveries and shipments of wine and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, and (iii) religious congregations for use only for sacramental purposes.

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

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

4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the licensee to sell wine at the place of business designated in the winery license, in closed containers for off-premises consumption and to deliver or ship the wine to the purchasers in accordance with Board regulations.

5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing fourteen percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board; (ii) persons licensed to sell the wine so manufactured at wholesale or retail for the purpose of resale, § 4.1-326 notwithstanding; or (iii) persons outside the Commonwealth. In addition, the licensee may acquire and receive deliveries and shipments of wine manufactured by the licensee and to sell and deliver or ship this wine, in accordance with Board regulations, to persons licensed to sell wine in the Commonwealth, § 4.1-326 notwithstanding.

Such licenses shall also authorize the licensee to sell wine at retail at the places of business designated in the licenses, which may include no more than two additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption, including delivery and shipment of such wine to purchasers in accordance with Board regulations.

DRAFTING NOTE: This section is a rewrite of § 4-25 A (subdivisions 3, 9, 10, 16, and § 4-25.1). Subdivision 2(iii) of this section is a rewrite of existing § 4-29 (sacramental purposes). The reasonable distance requirement for retail establishments of farm wineries has been deleted to conform with Board practice. Also, the wholesale wine distributor's license has been renamed "wholesale wine license" here and throughout the title with no substantive change in the privileges conferred. The word "distributor" added nothing to this type of license and the same privilege under a beer license is called a wholesale beer license.

§ 4.1-208. Beer licenses.—The Board may grant the following licenses relating to beer:

1. Brewery licenses, which shall authorize the licensee to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with Board regulations, in closed containers to (i) persons licensed to sell the beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale, only as provided in subdivision B5 of § 4.1-216, (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

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

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

No wholesale beer licensee shall purchase beer for resale from a person outside the

Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

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

5. Retail on-premises beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas;

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

c. Persons operating boats for which certificates as a sight-seeing carrier by boat, or a special or charter party by boat have been issued by the State Corporation Commission pursuant to § 56-457.8, which shall authorize the licensee to sell beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers.

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

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

6. Retail off-premises beer licenses which shall authorize the licensee to sell beer in closed containers for off-premises consumption and to deliver or ship the beer to purchasers in accordance with Board regulations.

7. Retail on-and-off premises beer licenses to persons enumerated in subdivision 5 a and d, which shall accord all the privileges conferred by retail on-premises beer licenses and in addition, shall authorize the licensee to sell beer in closed containers for off-premises consumption and to deliver or ship the beer to purchasers in accordance with Board regulations.

DRAFTING NOTE: This section is a rewrite of § 4-25 A (subdivisions 4, 5, 6, 7, 12, 17 and 19). On-premises beer licenses for taverns have been deleted since the Board can license these establishments as restaurants if a community need exists or the best purpose of the ABC laws would be promoted (the criteria under existing law for licensing taverns). In subdivision 5a of this section, the privilege for restaurant on-premises beer license has been expanded to allow the service of beer in other areas approved by the Board in the restaurant and not just in the dining rooms. This change brings parity between on-premises beer licenses and on-premises wine and beer licenses concerning where certain alcoholic beverages may be sold within the restaurant. Additionally, in subdivision 5b, changes have been made to conform to Board practice which allows common carriers by train to sell beer in dining, buffet, and club cars but allow purchasers to consume the beer at their seats. The reason for this change is that dining, buffet, and club cars don't have sufficient space for seating passengers. Finally, in subdivision 5c, the requirement for selling and consuming beer only "in dining rooms and other designated rooms of the boat" have been deleted to conform with the same change by the 1992 General Assembly (HB 995, CH. 215) with regard to the retail sale of wine and beer. As a result, there is no room requirement for retail beer only and wine and beer licensees on boats. At the Board's request to conform to Board practice, retail on- and off-premises beer licenses have been limited to only hotels, clubs, restaurants, and certain grocery stores as enumerated in subdivision 5d. This change would remove the off-premises privilege for boats, trains, and coliseum on-premises licensees.

§ 4.1-209. Wine and beer licenses.—The Board may grant the following licenses relating to wine and beer:

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

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas;

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

c. Persons operating boats for which certificates as a sight-seeing carrier by boat, or a special or charter party by boat have been issued by the State Corporation Commission pursuant to § 56-457.8, which shall authorize the licensee to sell wine and beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers;

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

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

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

2. Retail off-premises wine and beer licenses which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and to deliver or ship the same to purchasers in accordance with Board regulations.

3. Gourmet shop licenses which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and, the provisions of § 4.1-308 notwithstanding, to give to any person to whom wine or beer may be lawfully sold, (i) a sample of wine, not to exceed one ounce by volume or (ii) a sample of beer not to exceed two ounces by volume, for on-premises consumption.

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

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

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. A separate license shall be required for each day of each banquet or special event. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses which shall authorize the licensee to sell wine and beer unchilled, only within the interior premises of the gift shop in closed containers for off-premises consumption and to deliver or ship the wine and beer to purchasers in accordance with Board regulations.

DRAFTING NOTE: This section is a rewrite of existing § 4-25A (subdivisions 11, 13, 14, 15,

18, 20 and 23). The term "specialty shop" has been changed to "gourmet shop" to more accurately reflect the type of establishment licensed. For gourmet shop licenses, the amount of the wine samples allowed to be given out has been increased from one-quarter ounce to one ounce at the Board's request. Additionally, beer samples, not to exceed two ounces, has been permitted under the gourmet shop licenses. Reflecting a change in policy, gift shop licenses have been expanded to include the sale of beer in addition to wine. The reason is two-fold. The definition of "gift shop" should be expanded to include historic site or museum specialty stores which are a creature of Board regulation to remove the confusion between these similar-type establishments. Also, historic specialty stores provide for the sale of wine and beer. The Board currently licenses 3 similar establishments — gourmet shops, gift shops, and historic specialty stores, via statute, statute, and regulation, respectively. As a result of this change, there are now only 2 types of "specialty" licenses — gourmet shop and gift shop.

With reference to banquet licenses (§ 4-25 A(20)), the phrase "... in which rooms or areas shall be so located that participants in the affair will be reasonably shielded from public view, ... " has been deleted to comport with actual Board practice. This is an area of contention for restaurant licensees.

At the Board's request, the application of subdivision 5 has been restricted to hotels, restaurants, and clubs. Before this change, retail on- and off-premises licenses were available to common carriers, hospitals and coliseum. Changes have also been made in subdivision 1b to conform to Board practice which allows common carriers by train to sell wine and beer in dining, buffet, and club cars but allow purchasers to consume the wine and beer at their seats. The reason for this change is that dining, buffet, and club cars don't have sufficient space for seating passengers.

§ 4.1-210. Mixed beverages licenses.—A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant license, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas on the premises of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least forty-five percent of the gross receipts from the sale of mixed beverages and food.

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

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

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

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

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

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

B. The granting of any license under subdivisions 1 and 5 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

DRAFTING NOTE: This section is a rewrite of existing §§ 4-98.2 and 4-98.3, including the creation of one class of caterer's license at the Board's request by a merger of subsections B and D of existing § 4-98.2. For mixed beverage restaurant licenses, where the restaurant is located on the premises of a hotel or motel, service of alcoholic beverages has been expanded to include "designated areas" to provide consistency in the treatment of alcoholic beverage service in hotels, regardless of whether the licensed restaurant located within the hotel is owned by the hotel or is separately owned.

§ 4.1-211. *Temporary licenses.*—Notwithstanding subsection D of § 4.1-203, the Board may grant a temporary license to any of the licensed retail operations authorized by §§ 4.1-206 through 4.1-210. A temporary license may be granted only after an application has been filed in accordance with the provisions of § 4.1-230 and in cases where the sole objection to granting a license is that the establishment will not be qualified in terms of the sale of food. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications. The decision to refuse to grant a temporary license shall not be subject to a hearing.

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

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

DRAFTING NOTE: No substantive change in the law. This section is a rewrite of existing § 4-34(d1).

~~§ 4-50. Sale of alcoholic beverages by fiduciaries, persons acting under court authority or secured parties, etc.—The provisions of § 4-58 shall not apply to any administrator, executor, personal representative, trustee, or receiver duly appointed or qualified by a court to handle the affairs or manage the business of any deceased or other person licensed to sell alcoholic beverages under the provisions of this chapter or Chapter 1-1 (§ 4-98.1 et seq.), or to any trustee, curator, committee, guardian, receiver or other fiduciary appointed or qualified in any court proceeding including a bankruptcy proceeding, or to a secured party, provided such person so appointed sells such alcoholic beverages in accordance with the provisions of this section and has obtained a special permit issued by the Board which authorizes the appointee to continue to~~

operate under the licenses previously issued to such person for such period as the Board may see fit under the circumstances.

The provisions of §-458 shall not apply to one-time sales of lawfully acquired alcoholic beverages belonging to any person, or which may constitute a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien, or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, made by a sheriff, administrator, executor, personal representative, receiver, or other officer acting under authority of a court having jurisdiction in this Commonwealth, or by any secured party as defined in §-8.9-105 (m) of the Virginia Uniform Commercial Code, provided such sales are made upon permits issued by the Board and are made only to persons who are licensed or hold a permit to sell alcoholic beverages in this Commonwealth, or 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.

In addition, the provisions of §-458 shall not apply to any person who purchases at a foreclosure, secured creditor's, or judicial auction sale the premises or property of a person licensed by the Board under this chapter or Chapter 1-1 (§-408.1 et seq.) and has become lawfully entitled to the possession of the licensed premises, provided such purchaser has applied for and obtained a temporary permit from the Board which authorizes the exercise of the privileges of any licenses held by the previous owner to the extent determined by the Board. Such temporary permit may be issued in advance, conditioned on the above requirements, and may be revoked summarily in the same manner as a temporary license may be revoked under §-434 (d1). The temporary permit shall authorize the purchaser or permittee to continue to operate the establishment in the manner authorized by law, to the same extent as a person holding such licenses issued by the Board, for a period not to exceed sixty days. The fee for a temporary permit shall be one-sixth of the combined fee required by this chapter or Chapter 1-1 (§-408.1 et seq.) for applicable licenses to sell wine, beer, or mixed beverages.

Nothing in this section shall authorize any brewery, winery, or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default.

DRAFTING NOTE: No substantive change in law. The provisions of this section appear in the permits section of Article 2, Licenses Granted by the Board, which follows.

§ 4.1-212. *Permits required in certain instances.—The Board may grant the following permits which shall authorize:*

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

2. *Any person having any interest in the manufacture, distribution, or sale of spirits or other alcoholic beverages to solicit any mixed beverage licensee, his agent, employee, or any person connected with the licensee in any capacity in his licensed business to sell or offer for sale such spirits or alcoholic beverages.*

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

4. *Any person to transport lawfully purchased alcoholic beverages within, into or through the Commonwealth.*

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

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

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

8. *The release of alcoholic beverages from United States customs bonded warehouses for delivery in accordance with subsection B of § 4.1-132.*

9. *A secured party or any trustee, curator, committee, guardian, receiver or other fiduciary appointed or qualified in any court proceeding, to continue to operate under the licenses*

previously issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board deems appropriate.

10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien, or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver, or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in § 8.9-105 (m) of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth, or to persons outside the Commonwealth for resale outside the Commonwealth.

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

Nothing in subdivisions 9, 10, or 11 shall authorize any brewery, winery, or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default, except to the extent authorized by subdivision B3a of § 4.1-216.

DRAFTING NOTE: No substantive change in the law. Existing §§ 4-26 (permits to wine and beer salesmen), 4-98.16c (solicitation of spirits), 4-61.2 (culinary permits), 4-72.1 (transportation permits), 4-77 (keeping of still apparatus), 4-84.1b, 4-86b (release of alcoholic beverages from warehouses, and 4-59 (sale by fiduciaries), respectively, make up the contents of this proposed section. In subdivision 11, the time period for temporary permits has been expanded, in the Board's discretion, past the existing 60 days to facilitate banks and other lending institutions' selling of real estate acquired by foreclosure.

§ 4.1-213. *Manufacture and sale of cider.*—A. Any winery licensee or farm winery licensee may manufacture and sell cider to (i) the Board, (ii) any wholesale wine licensee, (iii) any retail licensee approved by the Board for the purpose of selling cider and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

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

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

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

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

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

G. "Cider" means any beverage obtained by the fermentation of the natural sugar content of apples, either with or without sugar, carbonated or otherwise, and containing not more than seven percent of alcohol by volume.

This section shall not limit the privileges set forth in subdivision A8 of § 4.1-200, nor shall any person be denied the privilege of manufacturing and selling sweet cider.

DRAFTING NOTE: No substantive change in the law. This section is a rewrite of existing § 4-27 which technical corrections only.

§ 4.1-214. Limitations on licenses; sale outside the Commonwealth.—No deliveries or shipments of alcoholic beverages or cider as defined in § 4.1-213 to persons outside the Commonwealth for resale outside the Commonwealth authorized by this chapter shall be made into any state the laws of which prohibit the consignee from receiving or selling the same.

DRAFTING NOTE: No substantive change in the law. The language reflected in this proposed section comes from existing §§ 4-25, 4-25.1, 4-27 and 4-37 and was put in a separate section to avoid repetitive language.

§ 4-32. No retail licenses to manufacturers, bottlers and wholesalers.—No retail license or banquet license for the sale of alcoholic beverages shall be issued to any manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in this Commonwealth or not, nor to any officer or director of any such manufacturer, bottler or wholesaler, nor to any partnership, association or corporation, any partner, member or stockholder of which is an officer or director of any such manufacturer, bottler or wholesaler, nor in any instances where such manufacturer, bottler or wholesaler and such retailer are under common control, directly or indirectly, by stock ownership or otherwise. This section shall not apply to corporations operating dining cars, buffet cars, club cars or boats.

DRAFTING NOTE: No substantive change in the law. This section has been merged with existing § 4-32.1 and appears as proposed § 4.1-215, Limitation on Manufacturers, etc.

§ 4-32.1. Issuance of licenses to manufacturing or wholesaling entities.—A. Nothing in this title shall prohibit the issuance of a retail license authorized by this title to a corporation which is a subsidiary of a corporation which owns or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of alcoholic beverages; provided that such manufacturer, bottler or wholesaler of alcoholic beverages does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to such retail licensee, and that such retail licensee is not required by agreement or otherwise to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers.

B. Nothing in this title shall prohibit a manufacturer, bottler or wholesaler of alcoholic beverages from having a financial interest in a corporation which has a retail license as a result of a holding company, which owns or has an interest in such manufacturing, bottling or wholesaling entity, owning or acquiring an interest in a corporation which has a retail license; provided that such manufacturer, bottler or wholesaler of alcoholic beverages does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to such retail licensee, and that such retailer is not required by agreement or otherwise to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or wholesalers.

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

DRAFTING NOTE: No substantive change in the law. This section has been merged with existing § 4-32 and now appears as proposed § 4.1-215, below.

§ 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.—A. Unless exempted pursuant to subsection C, no retail license or banquet license for the sale of alcoholic beverages shall be granted to any (i) manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not; (ii) officer or director of any such manufacturer, bottler or wholesaler; (iii) partnership, association or corporation, where any partner, member or stockholder is an officer or director of any such manufacturer, bottler or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of alcoholic beverages; or (v) manufacturer, bottler or wholesaler of alcoholic beverages who has a financial interest in a corporation which has a retail license as a result of a holding company, which owns or has an interest in such manufacturer, bottler or wholesaler of alcoholic beverages. Nor shall such licenses be granted in any instances where such manufacturer, bottler or wholesaler and such retailer are under common control, by stock ownership or otherwise.

B. This section shall not apply to:

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

2. Brewery or winery licensees engaging in conduct authorized by subdivision A5 of § 4.1-201; or

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

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

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing §§ 4-32 and 4-32.1, the tied house provisions. Subdivision B2 comes from existing § 4-89 (9).

§ 4-79.1 4.1-216 . ~~Manufacturers~~ Further limitations on manufacturers , bottlers, importers, brokers or wholesalers; ownership interests prohibited; exceptions; prohibited trade practices ; penalties .—A. Definitions. - As used in this section:

“Broker” means any “ person ,” as defined in §-4-2 , other than a manufacturer or a licensed beer or wine importer, who regularly engages in the business of bringing together sellers and purchasers of alcoholic beverages for resale and arranges for or consummates such transactions with persons in ~~Virginia~~ the Commonwealth to whom such alcoholic beverages may lawfully be sold and shipped into ~~Virginia~~ the Commonwealth pursuant to the provisions of this chapter title .

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

B. Prohibited Ownership Interests. - 1. Except as provided in this title, no manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages, whether licensed in ~~this~~ the Commonwealth or not, shall acquire or hold any financial interest, direct or indirect, (i) in the business for which any retail license is issued, or (ii) in the premises where the business of a retail licensee is conducted.

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

3 2 . Service as a member of the board of directors of a corporation licensed as a retailer the shares of stock of which are sold to the general public on any national or local stock exchange shall not be deemed to be a financial interest, direct or indirect, in the business or the premises of the retail licensee.

4 3 . A brewery, winery or subsidiary or affiliate thereof (, hereinafter collectively referred to as “ a financing corporation “) , may participate in financing the business of a wholesale licensee in ~~Virginia~~ the Commonwealth by providing debt or equity capital or both but only if done so in accordance with the provisions of this subsection.

a. In order to assist a proposed new owner of an existing wholesale licensee, a financing corporation may provide debt or equity capital, or both, if prior approval of the Board has been obtained pursuant to subdivision 4 3 b of this subsection B. A financing corporation which proposes to provide equity capital shall cause the proposed new owner to form a Virginia limited partnership in which the new owner is the general partner and the financing corporation is a limited partner. If the general partner defaults on any financial obligation to the limited partner, which default has been specifically defined in the partnership agreement, or, if the new owner defaults on its obligation to pay principal and interest when due to the financing corporation as specifically defined in the loan documents, then, and only then, shall such financing corporation be allowed to take title to the business of the wholesale licensee. Notwithstanding any other law to the contrary and provided written notice has been given to the

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

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

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

Once the Board has issued a wholesale license pursuant to an application filed in accordance with this subdivision 4 3 b, any subsequent change in the partnership agreement or the financing documents shall be subject to the prior approval of the Board. In accordance with the previous paragraph, the Board may require the licensee to resubmit certifications and documentation.

c. If a financing corporation wishes to provide debt financing, including inventory financing, but not equity financing, to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee, it may do so without regard to the provisions of subdivisions 4 3 a and 4 3 b of this subsection B under the following circumstances and subject to the following conditions: (i) in order to secure such debt financing, a wholesale licensee or a proposed new owner thereof may grant a security interest in any of its assets, including inventory, other than the wholesale license itself or corporate stock of the wholesale licensee. In the event of default, the financing corporation may take title to any assets pledged to secure such debt but may not take title to the business of the wholesale licensee and may not manage or operate such business; (ii) debt capital may be supplied by such financing corporation to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee so long as debt capital is provided on terms and conditions which are substantially the same as those available in the financial markets to other wholesale licensees in competition with the wholesale licensee which is being so financed; and (iii) the licensee or proposed new owner shall certify to the Board and provide supporting documentation that the requirements of (i) and (ii) of this subdivision 4 3 c have been met.

Nothing in this section shall be construed to eliminate, affect or in any way modify the requirements of law pertaining to issuance and retention of a wholesale license as they may apply to existing wholesale licensees or new owners thereof which have received debt financing prior to the enactment of this subdivision 4 3 c.

§ 4 . Except for holders of retail licenses issued pursuant to subdivision 9 A5 of § 4-89

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

6 5 . Notwithstanding any provision of this section, including but not limited to those provisions whereby certain ownership or lease arrangements may be permissible, no manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages shall make an agreement, or attempt to make an agreement, with a retail licensee pursuant to which any products sold by a competitor are excluded in whole or in part from the premises on which the retail licensee's business is conducted.

C. Prohibited Trade Practices. - Subject to such exceptions as may be provided by statute or the Board's Board regulations, no manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages, whether licensed in this the Commonwealth or not, shall sell, rent, lend, buy for or give to any retail licensee, or to the owner of the premises in which the business of any retail licensee is conducted, any (i) money, equipment, furniture, fixtures, property, services or anything of value with which the business of such retail licensee is or may be conducted, or for any other purpose, (ii) advertising materials, and (iii) business entertainment, provided that no transaction permitted under this section or by Board regulation of the Board shall be used to require the retail licensee to partially or totally exclude from sale at its establishment alcoholic beverages of other manufacturers or wholesalers. In adopting regulations under this subsection, the Board shall have due regard for the public health and welfare, the quantity and value of the articles or services involved, established trade customs, and the purposes of this title. Regulations adopted under this subsection shall (i) maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers, (ii) prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in Virginia, and (iii) promote reasonable accommodation of arm's-length business transactions.

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

D. Sanctions and Penalties. - Any licensee of the Board, including any manufacturer, bottler, importer, broker, wholesaler or retailer, who violates, attempts to violate, solicits another person to violate or consents to any violation of this section or regulations adopted pursuant to this section, shall be subject to the sanctions and penalties provided in §-437, and in addition, any person who engages in any such proscribed conduct shall be guilty of a Class 1 misdemeanor. No person shall be deemed guilty of a Class 1 misdemeanor or to have admitted such guilt by virtue of the fact that administrative sanctions have been imposed pursuant to §-437 either as a result of Board proceedings or the acceptance by the Board of an offer in compromise in response to the institution of such administrative proceedings.

DRAFTING NOTE: No substantive change in the law. This proposed section is a rewrite of existing § 4-79.1. References to the Board's regulatory authority in subsection C have been deleted and moved to the "Regulations of the Board" section in proposed Chapter 1 (General Provisions). The remainder of subsection C and all of subsection D have been moved to Article 2 of proposed Chapter 3 (Prohibited Practices).

§ 4.1-217. *Limitation on brewery licenses.*—No beer reconstituted from beer concentrate, other than reconstituted beer originally manufactured, concentrated, and reconstituted at the same plant located in the Commonwealth, shall be sold by any brewery licensee to persons licensed to sell beer at retail for purposes of resale.

DRAFTING NOTE: No substantive change in the law. The language in this proposed section comes from existing § 4-25 A4.

§ 4.1-218. *Limitation on wine and beer importers.*—Wine importer licensees and beer importer licensees shall not sell and deliver or ship any brand of beer or wine to wholesale

licensees for the purpose of resale until such importer has also complied with the provisions of this section and Board regulations for each such brand.

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

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing § 4-25 D.

§ 4.1-219. *Limitation on farm wineries.*—At least fifty-one percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than twenty-five percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient for a farm winery licensee to achieve the level of production which otherwise could be anticipated during a given license year. As used in this section, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm winery, the term "farm" as used in this section includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing § 4-25.1B and § 4-2 (definition of farm winery).

§ 4.1-220. *Limitation on gift shop licenses.*—In no event shall the sale of wine and beer exceed twenty-five percent of the total annual gross sales at the gift shop.

DRAFTING NOTE: This provision is taken from existing § 4-25 A 23. Since the sale of beer has been included as a privilege for gift shops, the 25% limitation has been applied to the sale of beer as well.

~~§ 4-98.11.~~ 4.1-221. *Alcoholic beverages sold as mixed beverages to be purchased from Board Limitation on mixed beverage licensees ; exceptions.*—~~(a) All A. Unless excepted by subsection B, all alcoholic beverages sold as mixed beverages in establishments licensed under this chapter, or sold by caterers licensed pursuant to subsection (e) of § 4-98.2, shall be purchased from the Board. Such purchases may be made at government stores or at warehouses operated by the Board.~~

~~(b) Notwithstanding the provisions of subsection (a) of this section, persons holding mixed B. Mixed beverage carrier licenses issued by the Board as common carriers of passengers by train, ship or airplane licensees may obtain from other lawful sources alcoholic beverages to be sold as mixed beverages on trains, ships boats or airplanes of the licensees provided there is paid to the Board in lieu of the taxes otherwise directly imposed under Chapters 1 (~~§ 4-1 et seq.~~) and 1-1 (~~§ 4-98.1 et seq.~~) of this title chapter and any markup otherwise charged by the Board , a tax of ten cents for each of the average number of drinks of mixed beverages fixed determined by the Board as having been consumed within the geographical confines of the Commonwealth on such trains, ships boats or airplanes. Such tax shall be calculated on the basis of the proportionate number of revenue passenger miles traveled within the Commonwealth by such a licensee in relation to the total quantity of all alcoholic beverages obtained either within or without inside or outside the Commonwealth by the licensee for consumption on trains, ships boats or airplanes of the licensee. Such tax shall be paid to the Board on a quarterly basis commencing on July 1, 1972, and thereafter paid by the Board into the state treasury to the credit of the Treasurer of Virginia as provided in § 4-23 .~~

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

DRAFTING NOTE: Subsection C has been added to provide for the service of pre-mixed, mixed beverages (i.e., Seagram's Breezes) which service shall be subject to Board regulation.

The remainder of this section contains technical corrections only.

§ 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 percent 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 in any court.

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 (~~§ 4-00 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. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false and fraudulent.

n. Is violating or allowing the violation of any provision of this chapter or of Chapter 2 (~~§ 4-00 et seq.~~) of this title in his establishment at the time his application for a license is pending.

o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located.

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

q. Is an officer or employee of the Alcoholic Beverage Control Board.

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 Commonwealth 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 values 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 subdivision 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. In reaching a conclusion in this respect the Board shall 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 this chapter, including any objection which may have been filed by a local governing body. Local governing bodies shall be notified by the Board of the license application through the city or county attorney or the chief law-enforcement officer of the locality and shall submit any objections to the issuance of a license within thirty days of the filing of the application.

4. That there exists any law, ordinance, or regulation of the United States, of this Commonwealth 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 reasonable notice to the applicant as required by § 9-6.14:12 of the Administrative Process Act.

C. The Board shall refuse to grant any retail 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 Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth; 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.

E. The Board shall not issue any wholesale beer license or wholesale wine distributor's license to any person who has not resided in the Commonwealth 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 Commonwealth 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 Commonwealth, 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 Commonwealth 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.

F. 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 Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor, unless refusal to 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.

G. 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 this act.

H. 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.

I. The Board shall not issue any license until the license tax required by § 4-33 is paid to the Board.

J. The action of the Board in granting or in refusing to grant any license under the provisions of this chapter shall be subject to review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). Such review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

K. 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 \$10,000, 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, and conditioned upon such person's (i) securing wine only in a manner provided by law; (ii) remitting to the Board the proper tax thereon; (iii) keeping such records as may be required by law or the regulations of the Board; and (iv) abiding 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. The Board is authorized to waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

DRAFTING NOTE: No substantive change in the law. This section (4-31) has been merged with existing § 4-98.9 (Refusal to grant licenses). Section 4-31 can be found in proposed § 4.1-222 which follows.

§ 4-98.9. Refusal, revocation or suspension of licenses.—The Board may refuse to grant, revoke or suspend licenses applied for or granted pursuant to this chapter under the conditions specified in §§ 4-31, 4-37, 4-105 and 4-114 of this title and for violations of this chapter and regulations of the Board, and shall refuse to grant, and will revoke or suspend licenses applied for or granted, should the Board, in its sound discretion determine that in the licensed establishment there is entertainment of a lewd, obscene or lustful nature including specifically such as is commonly called stripteasing, topless entertainers, and the like, or which has employees who are not clad both above and below the waist, or uncommonly expose the body, or which has employees who solicit the sale of alcoholic beverages.

DRAFTING NOTE: No substantive change in the law. This section has been added to existing § 4-31 (Refusal to grant licenses) and to existing § 4-37 (Revocation/suspension of licenses). Sections 4-31 and 4-37 can be found in proposed §§ 4.1-222 and 4.1-225, respectively.

§ 4.1-222. Conditions under which Board may refuse to grant licenses.—A. The Board may refuse to grant any license if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a partnership or association, any partner or member thereof, or if the applicant is a corporation, any officer, director, or manager thereof or shareholder owning ten percent or more of its capital stock:

a. Is not twenty-one years of age or older;

b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of any state, or of the United States;

c. Has been convicted, within the five years immediately preceding the date of the application for such license, of a violation of any law applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

d. Is not a person of good moral character and repute;

e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be licensed;

g. Has maintained a noisy, lewd, disorderly or unsanitary establishment;

h. Has demonstrated, either by his police record or by his record as a former licensee of the Board, a lack of respect for law and order;

i. Is unable to speak, understand, read, and write the English language in a reasonably satisfactory manner;

j. Is a person to whom alcoholic beverages may not be sold under § 4.1-304;

k. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of narcotics;

l. Has misrepresented a material fact in applying to the Board for a license;

m. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false and fraudulent;

n. Is violating or allowing the violation of any provision of this title in his establishment at the time his application for a license is pending;

o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located;

p. Is physically unable to carry on the business for which the application for a license is filed or has been adjudicated incompetent; or

q. Is a member, agent, or employee of the Board.

2. The place to be occupied by the applicant:

a. Does not conform to the requirements of the governing body of the county, city, or town in which such place is located with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;

b. Is so located that granting a license and operation thereunder by the applicant would result in violations of this title, Board regulations, or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;

c. Is so located with respect to any church; synagogue; hospital; public, private or parochial school, college or university; public or private playground or other similar recreational facilities; or any state, local or federal government-operated facility, that the operation of such place

under such license will adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or institutions;

d. Is so located with respect to any residence or residential area that the operation of such place under such license will adversely affect real property values or substantially interfere with the usual quietude and tranquility of such residence or residential area; or

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

3. The number of licenses existent in the locality is such that the granting of a license is detrimental to the interest, morals, safety, or welfare of the public. In reaching such conclusion the Board shall consider the (i) character of, population of, the number of similar licenses and the number of all licenses existent in the particular county, city, or town and the immediate neighborhood concerned; (ii) effect which a new license may have on such county, city, town or neighborhood in conforming with the purposes of this title; and (iii) objections, if any, which may have been filed by a local governing body.

4. There exists any law, ordinance, or regulation of the United States, the Commonwealth or any political subdivision thereof, which warrants refusal by the Board to grant any license; or

5. The Board is not authorized under this chapter to grant such license.

B. The Board may refuse to grant any retail wine and beer license, retail beer license, or retail wine or winery license to any person who has not resided in the Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor, unless refusal to grant the license would in the opinion of the Board substantially impair the transferability of the real property upon which the licensed establishment would be located.

DRAFTING NOTE: This section is a rewrite of existing § 4-31 A and F. The last sentence of subsection A3 (notice to localities of license application) from this section has been moved to the application for licenses section of Article 3 of this chapter.

§ 4.1-223. Conditions under which Board shall refuse to grant licenses.—The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any person who has not resided in the Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor. Nothing in the foregoing provision shall affect the validity of any license granted prior to June 29, 1954, nor prohibit the granting of a new license after such date to such person now licensed as a wholesale distributor of beer or wine, whether the new license is for the same, different, or additional establishments.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations

relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

~~§ 4-98.17. Licenses not to be issued to officers or employees of Board nor to certain corporations; disclosure of interests on application.—No 5. Mixed beverage license provided for in this chapter shall be issued to any officer member, agent, or employee of the Alcoholic Beverage Control Board nor or to any corporation or other business entity in which such an officer member, agent, or employee is a stockholder or has any other economic interest.~~

Whenever any other elective or appointive official of ~~this~~ the Commonwealth or any political subdivision thereof applies for such a license or ~~renewal~~ continuance thereof he shall state on ~~such~~ the application the official position ~~which~~ he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it ~~must~~ shall state on ~~such~~ the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § 4.1-231 is paid to the Board.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing §§ 4-31 B through I and K and 4-98.17 and contain technical corrections only. Existing § 4-31 (relating to the Board's refusal to grant a wine and beer license in localities where the qualified voters have voted against the sale of wine and beer) has been deleted since wine and beer are allowed to be sold without a local option. Existing § 4-98.9 has been merged in this section as subdivision 3.

§ 4.1-224. Notice and hearings for refusal to grant licenses; Administrative Process Act; exceptions.—A. The action of the Board in granting or in refusing to grant any license shall be subject to review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), except as provided in subsections B and C. Review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

B. The Board may refuse a hearing on any application for the granting of any retail alcoholic beverage or mixed beverage license, including a banquet license, provided such:

1. License for the applicant has been refused or revoked within a period of twelve months;
2. License for any premises has been refused or revoked at that location within a period of twelve months; or
3. Applicant, within a period of twelve months immediately preceding, has permitted a license granted by the Board to expire for nonpayment of license tax, and at the time of expiration of such license, there was a pending and unadjudicated charge, either before the Board or in any court, against the licensee alleging a violation of this title.

C. If an applicant has permitted a license to expire for nonpayment of license tax, and at the time of expiration there remained unexecuted any period of suspension imposed upon the licensee by the Board, the Board may refuse a hearing on an application for a new license until after the date on which the suspension period would have been executed had the license not have been permitted to expire.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing § 4-31 G through J.

§ 4-37. Suspension or revocation of 4.1-225. Grounds for which Board may suspend or revoke licenses; monetary penalties.—A. Grounds for suspension or revocation.—The Board may suspend or revoke any licenses issued by it other than a brewery license, in which case the Board may impose penalties as provided in subsection C of this section § 4.1-227, if it has reasonable cause to believe that:

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 percent or more of its capital stock:

- a. Has misrepresented a material fact in applying to the Board for such license - ;

b. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false or fraudulent ; ;

c. Within the five years ~~next~~ immediately preceding the date of the hearing held in accordance with § 4.1-227 , has (i) been convicted of a violation of any law, ordinance, or regulation of ~~this~~ the Commonwealth, ~~or of any county, city, or town in the Commonwealth,~~ of any state, or of the United States of America, ~~or of any county, city, or town in this Commonwealth~~ , applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages, ~~or has ;~~ (ii) violated any provision of ~~this chapter or Chapter 2 (§ 4-00 et seq.) Chapter 3 (§ 4.1-300 et seq.)~~ of this title, ~~or has ;~~ (iii) committed a violation in bad faith of ~~Chapter the Wine Franchise Act (§ 4-118.3 4.1-400 et seq.) or Chapter the Beer Franchise Act (§ 4-118.42 4.1-500 et seq.)~~ of this title, ~~or has in bad faith;~~ (iv) violated or failed or refused to comply with any regulation, rule, or order of the Board ; ; or has (v) failed or refused to comply with any of the conditions or restrictions of the license issued granted by the Board ; ;

d. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States ; ~~or has been convicted of any crime or offense involving moral turpitude in any court. ;~~

e. Is not the legitimate owner of the business conducted under the license issued granted by the Board, or other persons have ownership interests in the business which have not been disclosed ; ;

f. ~~Has become insolvent or cannot~~ Cannot demonstrate financial responsibility sufficient to meet adequately the requirements of the business conducted under the license issued granted by the Board ; ;

g. Has been intoxicated, as defined in this chapter , or under the influence of some self-administered drug, while upon the licensed premises ; ;

h. 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 illegal gambling to take place upon such premises ; ;

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

j. ~~Has~~ Subsequent to the granting of his original license, has demonstrated by his police record subsequent to the issuance of his original license a lack of respect for law and order ; ;

k. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than twenty-one years of age ; , (ii) interdicted ; , or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises ; ~~or has allowed the consumption of beverages, as defined in Chapter 2 (§ 4-00 et seq.) of this title, by any person whom he knew or had reason to believe was less than twenty-one years of age as specified in § 4-112 or intoxicated. ;~~

l. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this chapter. title;

m. Is physically unable to carry on the business conducted under such license or has been adjudicated incompetent ; ;

n. Has allowed any lewd, obscene or indecent literature, pictures or materials upon the licensed premises ; ;

o. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises ; ; or

p. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-248.7; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein.

2. ~~That the~~ *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~~ *establishment* is located, with respect to sanitation, health, construction, or equipment, or to any similar requirements established by the laws of ~~this the~~ Commonwealth or by the ~~Board~~ regulations of the Board. ;

b. Has been adjudicated a common nuisance under the provisions of this ~~chapter~~ *title* or § 18.2-258 ; ;

c. Has become a meeting place or rendezvous for ~~illegal gambling, illegal~~ 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~~ *establishment* in addition to any other competent evidence in making such determination. A ~~place at which pari-mutuel wagering is licensed under the provisions of Chapter 20 (§ 50.1-364 et seq.) of Title 50.1 shall not be subject to the provisions of this section solely on the basis of being a meeting place for gamblers.~~

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.~~

4. ~~That the~~ 3. *The* licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. *Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.*

5. *Any other cause authorized by this title.*

B. Notice and hearing. - Before the Board may impose a monetary penalty against the holder of a brewery license or suspend or revoke any license issued under the provisions of this chapter except temporary licenses authorized in § 4-34, reasonable notice of such proposed or contemplated action by the Board shall be given to the licensee affected. Such notice shall be in accordance with the provisions of § 0-6.14:12 of the Administrative Process Act.

C. Payment of costs or monetary penalties. - The Board in suspending any license may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a monetary penalty not to exceed \$1,000 for the first offense, a monetary penalty not to exceed \$2,500 for the second offense, a monetary penalty not to exceed \$5,000 for the third offense in lieu of such suspension or any portion thereof, or both after the enactment hereof.

In case of an offense by the holder of a brewery license, the Board may require that the holder of such brewery license pay the costs incurred by the Board in investigating the licensee, and for the first offense may impose a monetary penalty not to exceed \$25,000, for the second offense a monetary penalty not to exceed \$50,000 and for the third or any subsequent offense may suspend or revoke such license or in lieu of any suspension or portion thereof impose a monetary penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from the manufacture of beer or selling beer manufactured by it to the owners of boats

registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside of Virginia.

D. Offers in compromise. - Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board in its discretion may accept from the licensee an offer in compromise to pay a monetary penalty not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

E. Review. - The action of the Board in suspending or revoking any license or in imposing a monetary penalty against the holder of a brewery license pursuant to the provisions of this chapter shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (~~§ 0-6.14:1 et seq.~~). Upon judicial review of a suspension or revocation or imposition of such monetary penalty such review or appeal shall extend to the entire evidential record of the proceedings provided by the agency in accordance with the Administrative Process Act (~~§ 0-6.14:1 et seq.~~). The jurisdiction of the circuit court, in any case involving such petition, shall extend to the entire record of the proceedings before the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding ~~§ 8.01-676.1~~, the final judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

F. Disposition of beverages on hand. - Alcoholic beverages, other than beer and wine, 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: (i) 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 (ii) 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 (iii) 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 and wine 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. 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~~.

DRAFTING NOTE: No substantive change in law. The provisions of existing §§ 4-37.1 and 4-98.9 have been added as a new section. Also, existing subsections B through E, and F of § 4-37 have been made into separate sections, respectively. Other changes include technical amendments. In subdivision 2c, the term "homosexual" has been deleted as unconstitutional.

§ 4.1-226. Grounds for which Board shall suspend or revoke licenses.—The Board shall suspend or revoke any licenses, other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it finds that:

1. A licensee has violated or permitted the violation of § 18.2-331, relating to the illegal possession of a gambling device, upon the premises for which the Board has granted a license for the sale of alcoholic beverages to the public.

2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the

waist, or who uncommonly expose the body, or (ii) are employees who solicit the sale of alcoholic beverages.

DRAFTING NOTE: No substantive change in law. The provisions of existing §§ 4-37.1 and 4-98.9 make up this proposed section. Also, existing subsections B through E, and F of § 4-37 have been made into separate sections, respectively. Other changes include technical corrections.

~~§ 4-37.1. Effect of illegal possession, etc., of gambling device on A.B.C. license.—After a hearing, the Board shall suspend or revoke the license of any person who it shall find has violated or permitted the violation of § 18.2-221 upon premises for which such Board shall have issued a license for the sale of wine or beer to the public.~~

DRAFTING NOTE: No substantive change in law. Provisions of this section appear as subdivision 1 in proposed § 4.1-226.

§ 4.1-227. *Suspension or revocation of licenses; notice and hearings; imposition of penalties.—A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 9-6.14:12 of the Administrative Process Act.*

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation, and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both.

C. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

D. In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may (i) impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, (ii) suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing § 4-37 B, C, D and E. "Monetary penalties" have been changed to "civil penalties" to correctly categorize these penalties and clarify that the money collected goes to the Board (which is current practice) and not the Literary Fund. The Executive Secretary of the Supreme Court of Virginia as well as an opinion of the Attorney General indicated that the term "monetary penalty" should be used only in a criminal context. This change has been made throughout Title 4 as appropriate.

§ 4.1-228. *Suspension or revocation; disposition of beverages on hand; termination.—A. Alcoholic beverages, other than beer and wine, owned by or in possession of, or for sale by, any licensee at the time the license of such person is suspended or revoked may be disposed of as follows:*

1. Sold by such person to the Board at prices and terms agreed upon by the Board and such person;

2. Sold to persons in the Commonwealth licensed to sell such alcoholic beverages upon permits granted by the Board and conditions specified by the Board; or

3. Sold to persons outside the Commonwealth for resale outside the Commonwealth upon permits granted by the Board.

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

C. All alcoholic beverages owned by or in possession of any person whose license is suspended or revoked shall be disposed of by such person in accordance with the provisions of this section within sixty days from the date of such suspension or revocation.

D. Alcoholic beverages owned by or in possession of, or for sale by, persons whose licenses have been terminated other than by suspension or revocation may dispose of them in accordance with subsections A or B within such time as the Board deems proper. Such period shall not be less than sixty days.

E. All alcoholic beverages owned by or remaining in the possession of any person described in subsections A, B or D after the expiration of such period shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4.1-338.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing § 4-37F.

§ 4.1-229. *Suspension or revocation of permits; grounds; notice and hearing; exception.—A.* The Board may suspend or revoke any permits. The suspension or revocation of any permit shall be in accordance with §§ 4.1-225 and 4.1-227.

B. This section shall not apply to temporary permits granted under § 4.1-212 which may be revoked summarily in the same manner as a temporary license may be revoked under § 4.1-211.

DRAFTING NOTE: No substantive change in the law. Subsection A is a merger of existing §§ 4-26, 4-98.16c, 4-62.1, relating to permits, and reflects actual Board practice as it relates to permits issued pursuant to existing §§ 4-72.1, 4-77, 4-84.1b and 4-86B. Subsection B is a rewrite of existing § 4-59.

Article 3.

Applications For Licenses and Permits; Fees; Taxes.

§ 4-30. ~~4.1-230.~~ Applications for licenses; publication ; notice to localities; fees; permits .—A. Every person intending to apply for any license provided for under the provisions of authorized by this chapter, except banquet licenses, or mixed beverage special events licenses issued under the provisions of Chapter 1-1 (~~§ 4-98.1 et seq.~~) , or beer or wine importers' licenses located outside of this the Commonwealth, shall, not more than thirty days and not less than ten days before applying to the Board for such license ; (i) post a notice of such intention for ten calendar days on the front door of the building, place or room where he proposes to engage in such business and (ii) publish a copy of such notice at least once in a newspaper published in or having a general circulation in the county, city, or town wherein such person proposes to engage in such business. In the case of operators of boats, dining cars, buffet cars, club cars, and airplanes a common carrier of passengers by train, boat, or airplane the posting and publishing of notice shall not be required.

B. Every person desiring a license under the provisions of this chapter, after After publishing notice of his intention as provided in subsection A of this section , a person shall file with the Board an application therefor on forms provided by the Board and a statement in writing and , under oath , setting forth any information required by the Board shall require . However, applications Applications for banquet licenses or mixed beverage special events licenses issued under the provisions of Chapter 1-1 (~~§ 4-98.1 et seq.~~) shall not be required to be under oath, but the information contained therein shall be certified as true by the applicant.

The Except for applicants for banquet licenses or mixed beverage special events licenses, the Board shall conduct a background investigation, to include a criminal history records search, on each applicant for a license under the provisions of this chapter, except in the case of applicants for banquet licenses or special events licenses issued under the provisions of Chapter

1.1 (§ 4-98.1 et seq.) of this title .

The Board shall notify the local governing body of each license application through the county or city attorney or the chief law enforcement officer of the locality. Local governing bodies shall submit objections to the granting of a license within thirty days of the filing of the application.

C. Each applicant shall pay the required application fee set forth in §§ 4-33 and 4-98.18. The fee shall be paid at the time the application is filed. Each license application fee shall be \$50, except for banquet licenses or mixed beverage special events licenses, in which case the application fee shall be \$15. Application fees shall be in addition to the state license tax required pursuant to § 4.1-231 and shall not be refunded.

D. It shall be unnecessary for a person desiring to continue for another year the privileges of a license issued by the Board pursuant to this chapter to file any application therefor, pay an application fee, or comply with the publication and posting requirements of this section. Subsection A shall not apply to the continuance of licenses granted under this chapter.

E. Permits. - Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the Board. In the case of applications to solicit the sale of (i) wine and beer or (ii) spirits, each application shall be accompanied by a fee of (i) \$125 and (ii) \$300, respectively. The fee on each such permit shall be subject to proration to the following extent: If the permit is granted in the second quarter of any year the fee shall be decreased by one-fourth; if granted in the third quarter of any year the fee shall be decreased by one-half; and if granted in the fourth quarter of any year the fee shall be decreased by three-fourths. Each such permit shall expire on June 30 next succeeding the date of issuance, unless sooner suspended or revoked by the Board. Such permits shall confer upon their holders no authority to make solicitations in the Commonwealth as otherwise provided by law. The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied by the number of months for which the permit is granted.

DRAFTING NOTE: No substantive change in the law. Existing §§ 4-33E, 4-25.1D, part of 4-26 (a) and (b), and 4-98.16C and D, relating to application fees for licenses and permits, were merged into this section (4-30) as subsection E. The last paragraph in subsection B comes from existing § 4-31 A3 relating to notification of localities of license applications. In subsection E, the proration of the fee for a temporary permit was changed from 1/6 to 1/12 to conform this section to the change in proposed § 4.1-213 (11) of Article 2 of this chapter which gives the Board authority to grant temporary permits for more than sixty days.

~~§ 4-33. Taxes on state licenses.—~~A. Amount of tax. - The taxes on state licenses issued pursuant to the provisions of this chapter shall be as follows:

1. For each distiller's license, if to manufacture not in excess of 5,000 gallons of alcohol or spirits, or both, during the year in which the license is issued, \$350; and if to manufacture more than 5,000 gallons during such year, \$2,860 per annum;

2. For each winery license, if to manufacture not in excess of 5,000 gallons of wine during the year in which the license is issued, \$350, and if to manufacture more than 5,000 gallons during such year, \$2,860 per annum;

3. For each brewery license, if to manufacture not in excess of 10,000 barrels of beer during the year in which the license is issued, \$1,650 per annum, and if to manufacture more than 10,000 barrels during such year, \$ 2,300 per annum;

4. For each bottler's license, \$1,100 per annum;

5. For each wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year, per annum;

6. For each wholesale wine distributor's license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year, and for each wholesale druggist's license, \$55 per annum;

7. For each retail on-premises wine and beer license to a hotel, restaurant, club or other

person (except a person operating a boat, dining car, buffet car, club car or airplane), \$230 per annum; for each such license to a person operating a boat, dining car, buffet car or club car, \$230 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in this Commonwealth, and for each such license issued to a person operating as an air carrier of passengers, \$575 per annum;

8. For each retail on-premises beer license to a hotel, restaurant, club or other person (except a person operating a boat, dining car, buffet car or club car), \$110 per annum; for each such license to a person operating a boat, dining car, buffet car or club car, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in this Commonwealth;

9. For each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, \$175 per annum;

10. For each retail winery off-premises license, \$110 per annum;

11. For each retail off-premises beer license, \$90 per annum;

12. For each retail on-and-off premises wine and beer license to a hotel, restaurant, club or other person (except a person operating a boat, dining car, buffet car or club car), \$460 per annum; for each such license to a person operating a boat, dining car, buffet car or club car, \$460 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in this Commonwealth;

13. For each retail on-and-off premises beer license to a hotel, restaurant, club or other person (except a person operating a boat, dining car, buffet car or club car), \$230 per annum; for each such license to a person operating a boat, dining car, buffet car or club car, \$230 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in this Commonwealth;

14. For each banquet license, \$30;

15. For each fruit distiller's license, \$2,860 per annum;

16. For each beer importer's license, \$285 per annum;

17. For each hospital license, \$110 per annum;

18. For each wine importer's license, \$285 per annum;

19. For each banquet facility license, \$145 per annum;

20. For each temporary license authorized by § 4-34, one-half of the tax imposed by this section on the license for which the applicant applied.

21. For each license issued to a bed and breakfast establishment, \$25 per annum;

22. For each gift shop license, \$175 per annum.

B. Proration of tax. - The tax on each such license, except banquet licenses, 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 issued in the fourth quarter of any year the tax shall be decreased by three-fourths. If the license on which the tax is prorated is a distiller's license to manufacture not in excess of 5,000 gallons of alcohol or spirits, or both, during the year in which the license is issued, or a winery license to manufacture not in excess of 5,000 gallons of wine during the year in which the license is issued, the number of gallons permitted to be manufactured shall be prorated likewise. Should the holder of a distiller's license or a winery license to manufacture not in excess of 5,000 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was issued, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.

Notwithstanding the foregoing, the tax on each license issued or reissued for a period of less than twelve months under an annual reissuance system pursuant to subsection (d) of § 4-34 shall

be equal to one-twelfth of the taxes required by subsection A of this section, computed to the nearest cent, multiplied by the number of months in the license period.

C. Other state taxes. - Nothing in this chapter shall be construed as exempting any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$162,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$162,800 of wine purchases shall be disregarded. If any such beer wholesaler or wholesale wine distributor pays no separate beverage license tax under Chapter 2 (§ 4-09 et seq.) of this title by reason of ~~§ 4-30~~, the words "beer" and "wine" as used in the foregoing proviso shall be construed to include the beverages covered by such chapter.

D. Refunds. - The Board is hereby authorized to correct erroneous assessments made by it against any person and to make refunds of any amounts collected pursuant to erroneous assessments, or collected as taxes on licenses, which are subsequently refused or application therefor withdrawn, and to allow credit for license taxes paid by any licensee for any license which is subsequently merged or changed into another license during the same license year, or subsequently adjusted under an annual reissuance system pursuant to subsection (d) of § 4-34. No refund shall be made of any such amount, however, unless made within one year from the date of collection of the same.

E. The application fee required by ~~§ 4-30~~ shall be fifty dollars, except for banquet licenses or special events licenses issued under the provisions of Chapter 1.1 (§ 4-08.1 et seq.), in which case the application fee shall be fifteen dollars. Such fee shall be in addition to the license tax required by this section and shall not be refunded if the license is refused, the application withdrawn, or under any other circumstances.

DRAFTING NOTE: No substantive change in law. The tax provisions covered by this section have been merged with current § 4-98.18 relating to taxes on mixed alcoholic beverages and are set out as proposed § 4.1-231.

~~§ 4-35. Refund of additional license tax where licensee changed name or form of organization.—~~In any case where a licensee under this chapter has changed its name or form of organization during a license year without any change being made in its ownership, and because of such change has been required to pay an additional license tax for such year, the Board shall refund to such licensee the amount of such tax so paid in excess of the required license tax for such year.

Any amount required to be refunded under this section shall be paid by the State Treasurer out of moneys appropriated to the Board, and in the manner prescribed in ~~§ 4-23~~.

DRAFTING NOTE: No substantive change in the law. Subsection D of existing § 4-33 relating to refunds was added with this section and appears as subsection B in the proposed section on State License Taxes.

~~§ 4-08.18. 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:

a. For each restaurant with a seating capacity at tables for up to 100 persons, \$430 per annum;

b. For each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons, \$750 per annum;

c. For each restaurant with a seating capacity at tables for more than 150 persons, \$1,100 per annum;

d. For each caterer authorized by subsection B of § 4-08.2, \$1,430 per annum, and for each caterer authorized by subsection E of § 4-08.2, \$1,430 per annum. No licensee under this subdivision shall be required to purchase a separate license provided in subdivision e or f of

this subsection;

e. Mixed beverage special events licenses, \$35 for each day of each event; and

f. Annual mixed beverage special events licenses, \$430 per annum.

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

a. For each club with not more than 200 resident members based on the average membership during the preceding twelve months, \$575 per annum;

b. For each club with more than 200 but not more than 500 resident members based on the average membership during the preceding twelve months, \$1,430 per annum; and

c. For each club with more than 500 resident members based on the average membership during the preceding twelve months, \$2,125 per annum.

3. Mixed beverage carrier licenses:

a. One hundred forty-five dollars per annum for each of the average number of dining cars, buffet cars or club cars operated daily in this Commonwealth by a common carrier of passengers by train;

b. Four hundred thirty dollars per annum for each passenger ship operated by a common carrier of passengers by ship; and

c. One thousand one hundred thirty-five dollars per annum for each license issued to a person operating common carriers of passengers by airplane.

4. Temporary mixed beverage licenses authorized by §-434, one-half of the tax imposed by this section on the license for which the applicant applied.

B. The privileges conferred by any license issued by the Board pursuant to this chapter, except mixed beverage special events licenses, unless otherwise provided, shall continue until June 30 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.

Notwithstanding the foregoing, the provisions of subsection (d) of §-434 having to do with a system of annual reissuance of licenses so as to distribute such reissuances as equally as practicable on a monthly basis throughout the twelve months of the year shall apply mutatis mutandis to licenses issued pursuant to the provisions of this chapter on and after July 1, 1981.

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 (§-41 et seq.) of this title.

D. The provisions of subsections B through E of §-433 having to do with the proration of tax, other state taxes, application fees 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.

DRAFTING NOTE: No substantive change in law. Provisions covered by this section have been merged with existing § 4-33 (state license taxes) and are set out below.

§ 4.1-231. Taxes on state licenses.—A. The annual taxes on state licenses shall be as follows:

1. Alcoholic Beverage Licenses. - For each:

a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, \$350; and if more than 5,000 gallons manufactured during such year, \$2,860;

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

c. Banquet facility license, \$145; and

d. Bed and breakfast establishment license, \$25.

2. Wine Licenses. - For each:

a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$350, and if more than 5,000 gallons manufactured during such year, \$2,860;

b. Wholesale wine license, \$715 for any wholesaler who sells 150,000 gallons of wine or less per year, \$1,100 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and \$1,430 for any wholesaler who sells more than 300,000 gallons of wine per year;

c. Wine importer's license, \$285;

d. Retail off-premises winery license, \$110; and

e. Farm winery license, \$145.

3. Beer Licenses. - For each:

a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$1,650, and if more than 10,000 barrels manufactured during such year, \$3,300;

b. Bottler's license, \$1,100;

c. Wholesale beer license, \$715 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,100 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,430 for any wholesaler who sells more than 600,000 cases of beer a year;

d. Beer importer's license, \$285;

e. Retail on-premises beer license to a hotel, restaurant, club or other person (except a common carrier of passengers by train or boat), \$110; for each such license to a common carrier of passengers by train or boat, \$110 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;

f. Retail off-premises beer license, \$90; and

g. Retail on-and-off premises beer license to a hotel, restaurant, club, or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$230.

4. Wine and Beer Licenses. - For each:

a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person (except a common carrier of passengers by train, boat or airplane), \$230; for each such license to a common carrier of passengers by train or boat, \$230 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$575;

b. Retail on-premises wine and beer license to a hospital, \$110;

c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$175;

d. Retail on-and-off premises wine and beer license to a hotel, restaurant, or club, \$460; and

e. Banquet license, \$30 per license granted by the Board.

5. Mixed Beverage Licenses. - For each:

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

i. With a seating capacity at tables for up to 100 persons, \$430;

ii. With a seating capacity at tables for more than 100 but not more than 150 persons, \$750; and

iii. With a seating capacity at tables for more than 150 persons, \$1,100.

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

i. With an average yearly membership of not more than 200 resident members, \$575;

ii. With an average yearly membership of more than 200 but not more than 500 resident members, \$1,430; and

iii. With an average yearly membership of more than 500 resident members, \$2,125.

c. Mixed beverage caterer's license, \$1,430;

d. Mixed beverage special events licenses, \$35 for each day of each event;

e. Annual mixed beverage special events licenses, \$430.

f. Mixed beverage carrier licenses:

i. \$145 per annum for each of the average number of dining cars, buffet cars or club cars operated daily in the Commonwealth by a common carrier of passengers by train;

ii. \$430 per annum for each common carrier of passengers by boat; and

iii. \$1,135 for each license granted to a common carrier of passengers by airplane.

6. Temporary Licenses. - For each temporary license authorized by § 4.1-211, one-half of the tax imposed by this section on the license for which the applicant applied.

B. The tax on each such license, except banquet and mixed beverage special event licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year the tax shall be decreased by one-fourth; if granted in the third quarter of any year the tax shall be decreased by one-half; and if granted in the fourth quarter of any year the tax shall be decreased by three-fourths.

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

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

Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than twelve months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period.

C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. The

contents of this section are a rewrite of the tax provisions of existing §§ 4-33, 4-25.1C, and 4-98.18. In subdivisions 3g and 4d, technical changes have been made to conform with changes in Article 2 of this chapter relating to which retail on-premises licensees may also have off-premises privileges. In subdivision 5a, technical changes have been made to conform with changes in Article 2 of this chapter relating to separate ownership of restaurants located on the premises of hotels.

§ 4.1-232. Refund of state license tax.—A. *The Board may correct erroneous assessments made by it against any person and make refunds of any amounts collected pursuant to erroneous assessments, or collected as taxes on licenses, which are subsequently refused or application therefor withdrawn, and to allow credit for any license taxes paid by any licensee for any license which is subsequently merged or changed into another license during the same license year. No refund shall be made of any such amount, however, unless made within three years from the date of collection of the same.*

B. In any case where a licensee has changed its name or form of organization during a license year without any change being made in its ownership, and because of such change is required to pay an additional license tax for such year, the Board shall refund to such licensee the amount of such tax so paid in excess of the required license tax for such year.

C. Any amount required to be refunded under this section shall be paid by the State Treasurer out of moneys appropriated to the Board, and in the manner prescribed in § 4.1-116.

DRAFTING NOTE: The contents of this section are a rewrite of existing §§ 4-33D and 4-35. The time limitation for a refund has been increased from one year to three years to conform with other tax refunds.

§ 4-38. Local licenses and taxes.—A. Provision for licenses and taxes. - In addition to the foregoing state licenses provided for in this chapter, the governing body of each county, city or town in the Commonwealth is hereby authorized to provide by ordinance for the issuance of county, city or town licenses, and to charge and collect license taxes therefor, to persons licensed by the Board to manufacture, bottle or sell alcoholic beverages within such county, city or town, except for temporary licenses authorized by § 4-34. The license taxes which may be charged and collected by such counties, cities or towns shall not exceed the following sums:

1. For each distiller's license, \$1,000 per annum; no such local license shall be required for any person who shall manufacture not more than 5,000 gallons of alcohol or spirits or both during such license year;

2. For each winery license, \$1,000 per annum;

3. For each brewery license, \$1,000 per annum;

4. For each bottler's license, \$500 per annum;

5. For each wholesale beer license, in a city of the first class, \$250, in a city of the second class, \$125, and in a county or town, \$75 per annum;

6. For each wholesale wine distributor's license, \$50 per annum, and for each wholesale druggist license, \$10 per annum;

7. For each retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, in a city of the first class \$150, in a city of the second class \$75, and in a county or town \$37.50 per annum;

8. For each retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license in a city of the first class, \$100, in a city of the second class, \$50, and in a county or town, \$25, per annum;

9. For each banquet license, \$5;

10. For each fruit distiller's license, \$1,500 per annum;

11. For each hospital license, \$10 per annum;

12. For each license issued to a bed and breakfast establishment, \$40 per annum;

13. For each gift shop license, in a city of the first class, \$150; in a city of the second class, \$75; and in a county or town, \$37.50 per annum.

B. Common carriers. - No local license tax shall be either charged or collected for the privilege of selling wine and beer, or beer, in dining rooms and other designated rooms of boats, and in dining cars, buffet cars and club cars of trains, when carrying passengers and in rooms designated by the Board of establishments of air carriers of passengers at airports in Virginia for consumption on the premises only.

C. Classification. - The governing body of a county, city or town may, in its discretion, classify licenses and graduate the license taxes therefor in such manner as it may deem proper.

D. State licenses required. - No county, city or town shall issue any such local license to any person, unless such person shall hold or shall secure simultaneously therewith the proper state license provided for in this chapter. If any person shall hold any such local license without at the same time holding the proper state license provided for by this chapter, such local license, during the period when such person does not hold the proper state license, shall confer no rights, powers or privileges under the provisions of this chapter upon such person.

E. Merchants' and restaurants' license taxes. - The governing body of each county, city or town in the Commonwealth, in imposing local wholesale merchants' license taxes measured by purchases, local retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales, may include alcoholic beverages in the base for measuring such local license taxes the same as if the alcoholic beverages were nonalcoholic. No local alcoholic beverage license authorized by this chapter shall be construed as exempting any licensee from any local merchants' or local restaurant license tax, but such local merchants' and local restaurant license taxes may be in addition to the local alcoholic beverage license taxes authorized by this chapter. The governing body of any county, city or town, in adopting an ordinance under this section, shall provide that, in ascertaining the liability of a beer wholesaler to local merchants' license taxation under the ordinance, and in computing the local wholesale merchants' license tax on such beer wholesaler, purchases of beer up to a stated amount shall be disregarded, which stated amount shall be the amount of beer purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale beer license tax paid by such wholesaler. Such ordinance shall also provide that, in ascertaining the liability of a wholesale wine distributor to local merchants' license taxation under the ordinance, and in computing the local wholesale merchants' license tax on such wholesale wine distributor, purchases of wine up to a stated amount shall be disregarded, which stated amount shall be the amount of wine purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local wholesale wine distributors' license tax paid by such wholesale wine distributor. If any such beer wholesaler or wholesale wine distributor pays no separate beverage license tax under Chapter 2 (§ 4-90 et seq.) of this title by reason of § 4-30, the words "beer" and "wine" as used in the foregoing proviso shall be construed to include the beverages covered by such chapter.

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

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

DRAFTING NOTE: No substantive change in law. The provisions of this section have been merged with existing § 4-98.19 relating to local taxes on mixed beverages and moved to the general provisions and the local taxes sections, as appropriate, of this chapter. Language relating to 3.2% beer and wine have been deleted.

§ 4-98.10. 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 Commonwealth may, by ordinance, adopt and impose upon persons holding mixed beverage restaurant and caterers' licenses for establishments located within such city, town or county, except for temporary licenses authorized by § 4-34, 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

up to 100 persons;

(ii) Three hundred fifty dollars per annum for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons;

(iii) Five hundred dollars per annum for each restaurant with a seating capacity at tables for more than 150 persons;

(iv) Five hundred dollars per annum for each caterer; and

(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, \$350 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.

DRAFTING NOTE: No substantive change in law. The provisions of this section have been merged with existing § 4-38 and are set out below.

§ 4.1-233. Taxes on local licenses.—A. In addition to the state license taxes, the annual local license taxes which may be collected shall not exceed the following sums:

1. Alcoholic beverages. - For each:

a. Distiller's license, \$1,000; no local license shall be required for any person who manufactures not more than 5,000 gallons of alcohol or spirits or both during such license year;

b. Fruit distiller's license, \$1,500; and

c. Bed and breakfast establishment license, \$40.

2. Beer. - For each:

a. Brewery license, \$1,000;

b. Bottler's license, \$500;

c. Wholesale beer license, in a city, \$250, and in a county or town, \$75; and

d. Retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license in a city, \$100, and in a county or town, \$25.

3. Wine. - For each:

a. Winery license, \$1,000;

b. Wholesale wine license, \$50; and

4. Wine and Beer. - For each:

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

b. Hospital license, \$10; and

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

5. Mixed Beverages. - For each:

a. Mixed beverage restaurant license, including restaurants located on premises of and

operated by hotels or motels, or other persons:

- i. With a seating capacity at tables for up to 100 persons, \$200;
 - ii. With a seating capacity at tables for more than 100 but not more than 150 persons, \$350; and
 - iii. With a seating capacity at tables for more than 150 persons, \$500.
- b. Private, nonprofit club operating a restaurant located on the premises of such club, \$350;
 - c. Mixed beverage caterer's license, \$500; and
 - d. Mixed beverage special events licenses, \$10 for each day of each event.

B. Common carriers. - No local license tax shall be either charged or collected for the privilege of selling alcoholic beverages in (i) passenger trains, boats, or airplanes, and (ii) rooms designated by the Board of establishments of air carriers of passengers at airports in the Commonwealth for on-premises consumption only.

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

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

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

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

DRAFTING NOTE: The contents of this section are a rewrite of existing §§ 4-38 B, E, F, and G and 4-98.19(a). Distinctions between cities of the first and second classes have been deleted as obsolete. As a result, local taxes on certain licenses now reflect the city of the first class rate. Also in subdivision 5a, technical changes have been made to conform with changes in Article 2 of this chapter relating to separate ownership of restaurants located on the premises of hotels.

§ 4-98.20. Application of tax levied under § 4-22.1.—The state tax levied under § 4-22.1 shall apply to all alcoholic beverages purchased by any holder of a mixed beverage restaurant license or mixed beverage carrier license either from government stores or from warehouses established or maintained by the Virginia Alcoholic Beverage Control Board.

DRAFTING NOTE: No substantive change in the law. This section has been merged into existing § 4-22.1 which follows.

§ 4-22.1. 4.1-234. Tax on wine and other alcoholic beverages; collection, computation, and distribution of taxes; exceptions; refunds and adjustments.—A. There In addition to the taxes imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, is hereby levied a tax of forty cents is levied on each liter of wine sold in Virginia the Commonwealth . Additionally, on

vermouth and wine produced by farm wineries winery wine sold to consumers by the Board the state tax shall be four percent of the price charged.

B. There is hereby levied on other alcoholic beverages sold by the Board a tax of twenty percent of the price charged. *This subsection shall also apply to all alcoholic beverages purchased from the Board by any mixed beverage licensee.*

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

DRAFTING NOTE: No substantive change in law. This section (existing § 4-22.1) was broken down into two separate sections and rewritten for clarification. This section is comprised of subsections A, B and E of existing § 4-22.1. It also contains language from existing § 4-98.20, relating to excise tax on mixed beverages.

§ 4.1-235. *Collection; computation, distribution of tax on wine and other alcoholic beverages; refunds and adjustments.*- G A . The Board shall collect the state taxes hereby levied pursuant to § 4.1-234 as follows:

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

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

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

D B . The amount of tax collected under this section during each quarter shall, within fifty days after the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from the special fund described in § 4.1-116 to the general fund of the state treasury. ~~In June, 1981, and every June of every year thereafter, the~~ The Board shall, not later than June 20 of every year , estimate the yield of the state tax on sales imposed by this section § 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on account of an overestimate or underestimate as may be indicated within fifty days after the close of the quarter ending on June 30.

Forty-four percent of the amount derived from the liter tax herein levied pursuant to § 4.1-234 shall be transferred to the general fund and paid to the several counties, cities, and towns of the Commonwealth in proportion to their respective population populations , and is hereby appropriated for such purpose.

The term "population" as used herein shall mean the population according to the last preceding United States census. If the population of any city or town has 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 counties, cities , and towns shall in no event receive from the taxes derived herein from the sale of wines less cash revenue than was received by such counties, cities , and towns for the year ending June 30, 1976.

Twelve percent of the amount derived from the liter tax herein levied shall be retained by the Board as operating revenue and distributed as provided in § 4.1-117.

E. The provisions of this section shall not apply to (i) sales of wine to wholesale wine distributors for resale to retail licensees, but the provisions of this section shall apply to such resale, (ii) sales, other than by or through government stores, of alcoholic beverages for manufacturing and industrial purposes, or either of such purposes, (iii) sales, other than by or through government stores, of alcohol for hospital or laboratory purposes, or either of such purposes, (iv) alcoholic beverages shipped from Virginia to points outside Virginia for resale outside Virginia, (v) sales to any instrumentality of the federal government, and (vi) beer.

F. The term "wholesale wine distributor," as used in this section, means one who holds a wholesale wine distributor's license issued under the provisions of this chapter. The term "retail licensee," as used in this section, means one who is licensed under this chapter to sell wine at retail. C. As used in this section, the term "net sales" shall mean gross sales less refunds to customers. The definitions contained in this chapter shall apply to the words and terms used in this section.

G D . The Virginia Alcoholic Beverage Control Board shall be empowered to may make a refund or adjustment of any tax paid to it under this chapter section when (i) the wine upon which such tax has been paid has been condemned and is not permitted to be sold in Virginia the Commonwealth , or whenever (ii) wine is returned by a retail licensee to a wholesale wine distributor licensee for refund in accordance with Board regulations or approval of the Board; provided . Any claim for such refund or adjustment shall be made to the Board in the report filed with the Board by the wholesale wine distributor licensee for the period in which such return and refund occurs.

H. Neither the Board nor any employee thereof shall divulge any information regarding the purchase orders and wine invoices filed with the Board by wholesale wine distributors, or regarding wine taxes collected from, refunded to, or adjusted for any private person, firm, or corporation. The provisions of § 58.1-3 shall apply, mutatis mutandis, to wine taxes collected under this section and to purchase orders and wine invoices filed with the Board by wholesale wine distributors. Nothing contained in this section shall be construed to prohibit the use or release of such information or documents by the Board when considering the granting, denial, revocation, or suspension of a license or permit, or the assessment of any penalty against a licensee or permittee nor shall it preclude the Board or its employees from publishing and distributing periodic statistical information (i) as to the total quantities of wine sold or shipped into the Commonwealth by each out-of-state winery, distributor, or importer for resale in Virginia by wholesale wine distributors collectively, and (ii) as to the total amount of wine sales in Virginia by wholesale wine distributors collectively.

DRAFTING NOTE: No substantive change in law. This section, made up of existing § 4-22.1 C, D, and G, was rewritten for clarification. This section also contains language from existing § 4-98.20, relating to excise tax on mixed beverages. Existing subsection H, relating to the divulging of certain information by Board employees, was merged with § 4-145 and placed in Chapter 1. Definition of "population" has been deleted because it is defined in Title 1. Also, "wholesale wine distributor" and "retail licensee" definitions in existing subsection F have been deleted as unnecessary.

§ 4-128. Excise tax levied; rate.—There is hereby levied on all beer and beverages sold in Virginia an excise tax at the rate of seven dollars and ninety-five cents per barrel of thirty-one gallons, and a tax at the same rate on such beer and beverages in barrels of more or less than thirty-one gallons. However, on such beer and beverages in bottles of not more than seven ounces each the tax shall be two cents per bottle. On beer and beverages in bottles of more than seven ounces each but not more than twelve ounces each the tax shall be two and sixty-five hundredths cents per bottle. On such beer and beverages in bottles of more than twelve ounces each the tax shall be two and twenty-two one hundredths mills per ounce per bottle. The tax herein levied shall be paid by the manufacturer, bottler or wholesaler selling such beer or beverages to persons licensed to sell beer at retail.

DRAFTING NOTE: No substantive change in law. Existing §§ 4-128, 4-129, and 4-130 have been merged together and are set out as proposed § 4.1-236 which follows. Existing § 4-128 is set out as proposed § 4.1-236 A and B. Also, references to 3.2% beverages have been deleted since 3.2% beverages has been incorporated into the definition of "beer" and "wine" in proposed Chapter 1.—General Provisions.

§ 4-129. When seller to pay tax.—Any person selling or offering for sale in the Commonwealth any beer or beverages purchased or obtained from any person not licensed

either as a manufacturer, bottler, or wholesaler under the provisions of this title, and on which the excise tax herein levied has not been paid, shall pay the tax levied in § 4-128.

DRAFTING NOTE: No substantive change in law. This section is set out as proposed § 4.1-236C.

§ 4-130. Exemptions.—A. The excise tax herein provided for shall not be chargeable against any manufacturer, bottler or wholesaler on any beer or beverages:

1. Shipped out of the Commonwealth by such manufacturer, bottler or wholesaler for resale outside of the Commonwealth;

2. Sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States;

3. 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;

4. Shipped to a post exchange of the armed services of the United States for resale by such post exchange, whether such post exchange is located on a United States military or naval reservation or not;

5. Shipped to any instrumentality of the United States which is exempt on Constitutional grounds from the excise tax levied by this section; or

6. Sold and delivered to foreign ships or aircraft actually engaged in foreign commerce or commerce between any ports of the United States or commerce between the United States and any of its possessions outside of the several states and the District of Columbia.

B. The exemptions allowed in subdivisions 1, 4, and 5 of subsection A of this section shall be applicable only if, in each case, evidence satisfactory to the Board is submitted in writing that such beer or beverages were so shipped.

DRAFTING NOTE: No substantive change in law. This section is set out as proposed § 4.1-236D.

§ 4.1-236. Excise tax on beer and wine coolers; payment of tax; exceptions.—A. There is levied on all beer and wine coolers sold in the Commonwealth an excise tax at the rate of:

1. Twenty-five and sixty-five hundredths cents per gallon per barrel;

2. Two cents per bottle on bottles of not more than seven ounces each;

3. Two and sixty-five hundredths cents per bottle on bottles of more than seven ounces each but not more than twelve ounces each;

4. Two and twenty-two one hundredths mills per ounce per bottle on bottles of more than twelve ounces each.

B. The tax herein levied shall be paid by the manufacturer, bottler or wholesaler selling beer or wine coolers to licensed retailers.

C. Any person selling or offering for sale in the Commonwealth any beer or wine coolers purchased or obtained from any person not licensed either as a manufacturer, bottler, or wholesaler under this chapter, and on which the excise tax herein levied has not been paid, shall pay the tax.

D. This section shall not apply to any manufacturer, bottler or wholesaler of any beer or wine coolers, which are:

1. Shipped out of the Commonwealth by such manufacturer, bottler or wholesaler for resale outside of the Commonwealth;

2. Sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed forces of the United States;

3. Sold to the Veterans Administration for resale to veterans of the armed forces of the

United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration within the geographical confines of the Commonwealth;

4. Shipped to a post exchange of the armed forces of the United States for resale by such post exchange, whether such post exchange is located on a United States military reservation or not;

5. Shipped to any instrumentality of the United States which is exempt on constitutional grounds from the excise tax levied by this section; or

6. Sold and delivered to foreign boats or aircraft actually engaged in foreign commerce or commerce between any ports of the United States or commerce between the United States and any of its possessions outside of the several states and the District of Columbia.

The exceptions allowed in subdivisions 1, 4, and 5 of this subsection shall be applicable only if, in each case, evidence satisfactory to the Board is submitted in writing that such beer or wine coolers were so shipped.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing §§ 4-128 (excise tax rate), 4-129 (when seller to pay excise tax) and 4-130 (exemptions). Subsections A and B are existing § 4-128. Subsection C is existing § 4-129; and subsection D is existing § 4-130. In subdivision A1, the tax rate for barrels has been reconfigured to reflect a per gallon basis for clarity.

§ 4-141. Refund of taxes on beer and beverages subsequently destroyed or damaged.—*In any case in which beer or beverages were or are (i) damaged, destroyed, or otherwise deemed to be unsalable by reason of fire or any other providential cause before sale to the consumer, (ii) destroyed voluntarily because such beer or beverages were defective and such destruction was made in the presence of an agent of the Board and such fact is certified to by affidavit of the agent, or (iii) destroyed in any manner while in possession of a common, private or contract carrier, the manufacturer, bottler or wholesaler shall make report thereof to the Board as a portion of the report required by § 4-131. If the tax levied by § 4-128 has been paid, the Board, upon satisfactory proof, shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper.*

DRAFTING NOTE: No substantive change in the law. Technical corrections only. This section has been rewritten and is set out as proposed § 4.1-237.

§ 4-142. Refund of tax paid on exempt beer and beverages.—*Whenever it is proved to the satisfaction of the Board that any person has purchased beer or beverages that have been sold by him in such manner as to be exempt from the excise tax levied under § 4-128, the Board shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper.*

DRAFTING NOTE: No substantive change in the law. Technical corrections only. This section has been rewritten and is set out as proposed § 4.1-237.

§ 4.1-237. Refund and adjustments on excise tax on beer and wine coolers.—A. *Whenever it is proved to the satisfaction of the Board that the tax levied pursuant to § 4.1-236 has been paid and that beer or wine coolers were or are (i) damaged, destroyed, or otherwise deemed to be unsalable by reason of fire or any other providential cause before sale to the consumer, (ii) destroyed voluntarily because the beer or wine coolers were defective and after notice to and approval by the Board of such destruction, or (iii) destroyed in any manner while in possession of a common, private or contract carrier, the Board shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper. The manufacturer, bottler or wholesaler shall make a report thereof to the Board as a portion of the report required by § 4.1-239.*

B. Whenever it is proved to the satisfaction of the Board that any person has purchased beer or wine coolers which have been sold by him in such manner as to be exempt from the excise tax levied under § 4.1-236, the Board shall certify such facts to the Comptroller for approval of a refund payment from the state treasury to such extent as may be proper.

DRAFTING NOTE: No substantive change in the law. The contents of this section are a rewrite of existing §§ 4-141 and 4-142. Subsection A is existing § 4-141 and subsection B is existing § 4-142.

§ 4-138 4.1-238 . Bond required to secure excise tax liability on beer and wine coolers .—A.

No Every manufacturer, bottler or wholesaler shall be licensed, as a condition precedent to obtaining a license to sell beer or beverages wine coolers to a licensed retailer until he files, shall file a bond with the Board in such sum and with such surety as the Board shall find deems adequate to cover the tax liability of each such manufacturer, bottler, or wholesaler. The sum of such bond shall be proportioned to the volume of business of each such manufacturer, bottler or wholesaler, but shall in no event be less than \$1,000 or more than \$100,000. Such bond shall be conditioned upon the payment by such manufacturer, bottler or wholesaler of the tax imposed by this chapter in accordance with the provisions of this chapter § 4.1-236.

B. The Board is authorized to may waive the requirement of both the surety and the bond, in cases where a manufacturer, bottler or wholesaler has previously demonstrated his financial responsibility.

C. Upon the termination of such the bond, its guaranty or surety, the Board, upon reasonable notice to the manufacturer, bottler, or wholesaler so licensed, may suspend the license so granted until such times as the required bond is filed or the proper surety or guaranty is given.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ ~~4-131~~ 4.1-239. Monthly reports; and payment of excise tax on beer and wine coolers; filing by nonresident manufacturer; commissions.— A. On or before the tenth day of each month each manufacturer, bottler, wholesaler or other person selling beer or beverages wine coolers in the Commonwealth who is chargeable with the payment of excise taxes imposed by § 4.1-236 or § ~~4-129~~ shall file a report under oath with the Board, on forms prescribed by the Board, showing the quantity of all beer and beverages wine coolers manufactured, bottled or sold by such person during the preceding calendar months. Such report shall also show the amount of tax, if any, for which such person is liable under the provisions of this chapter, and contain any other information that the Board may require. Corporations Common carriers of passengers by train or boat licensed to sell beer or beverages wine coolers in dining cars, buffet cars, club cars or on such boats shall have thirty days from the end of each calendar month to file such reports. At the time of such filing, such person shall pay the Board all such excise taxes chargeable against him under the provisions of this chapter § 4.1-236, unless such the taxes have been previously paid.

§ ~~4-132~~. Filing by nonresident manufacturers.— Nonresident manufacturers, B. In addition to the requirements of subsection A, on or before the fifteenth day of each month, each nonresident manufacturer shall forward a copy of each invoice required pursuant to § ~~4-134~~ by Board regulation or a listing of all such invoices for the preceding month to the Board as a condition of shipment into or doing business in Virginia the Commonwealth.

§ ~~4-133~~. Commissions.— C. Any person filing the report required by § ~~4-131~~ this section and paying such excise tax required by subsection B of § ~~4-138~~ 4.1-236 shall be allowed a commission of one percent of the amount of tax due as compensation for the expense of maintaining records and preparing reports so as to account for and remit the tax levied by this chapter § 4.1-236. Such commission shall also be allowed as compensation for the expense, if any, of compliance with the requirements of § ~~4-138~~ 4.1-238. Such commission shall be accounted for in the form of a deduction from the amount of tax which would otherwise be due.

DRAFTING NOTE: No substantive change in law. Technical corrections only. The contents of this section are a rewrite of existing §§ 4-131, 4-132 and 4-133. References to 3.2% beverages have been deleted and cross-references corrected.

CHAPTER 3.

Prohibited Practices; Penalties; Procedural Matters.

CHAPTER DRAFTING NOTE: In Chapter 3, all penalty provisions for the Title have been centralized. Chapter 3 contains three articles. Article 1 relates to prohibited practices generally. Article 2 is prohibited practices by licensees. Procedural matters (i.e., search, seizure and forfeiture procedures, etc.) are reflected in Article 3.

Penalty provisions have been classified according to existing ABC law and the criminal classification system found in Title 18.2.

Additionally, differing age requirements for consumption of alcoholic beverages have been replaced with 21 years, the legal drinking age in Virginia. Sections relating to confiscation and forfeiture procedures for vehicles have been cross-referenced, where appropriate, to Chapter 22

of Title 19.2 which reflects the most current law on the subject.

Article 1.

Prohibited Practices Generally.

§ 4-57 4.1-300 . Illegal manufacture and bottling; being found at distillery, winery or brewery ; penalty .— (a) A. Except as otherwise provided in §§ 4-48 and 4-89 4.1-200 and 4.1-201 , if any no person shall manufacture alcoholic beverages in this the Commonwealth alcoholic beverages without being licensed under the provisions of this chapter title to manufacture such alcoholic beverages ; or if . Nor shall any person , other than one who holds a brewery license licensee or a bottler's license under the provisions of this chapter shall licensee, bottle beer or wine 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, 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) B. The presence of mash at an unlicensed distillery shall constitute manufacturing within the meaning of this section.

C. Any person found guilty of a violation of any provision of convicted of a violation of this section shall be punished by confinement in a state correctional facility 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 \$1,000 guilty of a Class 6 felony .

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

DRAFTING NOTE: Felony penalty has been classified as Class 6 in accordance with the criminal classification system. Undesignated felonies are Class 6 and punished by 1 to 5 years in a state facility. As a result, prison time would be increased by two years for violation of this section.

Existing subsection B has been deleted because it poses a constitutional question as written. The constitutional problem presented involves an impermissible shifting away from the Commonwealth of the burden of proving an element of the offense—knowledge. The subsection, in essence, establishes a non-rebuttable presumption that mere presence at the scene of illegal manufacturing proves knowledge of the illegal activity and participation in it. It is unlawful to relieve the state of the requirement that it prove each and every element of a criminal offense beyond a reasonable doubt. See *Inre v. Winship* ; *Mullaney v. Wilbur* ; *Sandstrom v. Montana* . The offense is being at a place where alcoholic beverages are illegally manufactured or bottled, without regard to actual knowledge of such illegal manufacture. (i.e., a person was merely at the site because of car trouble and was calling AAA.)

In reviewing this issue, the Code Commission felt that the offense of aiding and abetting the illegal manufacture of alcoholic beverages is covered under existing § 4-87 (proposed § 4.1-322).

The remainder of this section contains technical corrections.

§ 4-57.1 4.1-301 . Conspiracy to violate § 4-57 4.1-300; penalty .—If two or more persons shall conspire together to do any act which is in violation of any provisions of § 4-57 4.1-300 , and one or more of such these persons do does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of a Class 6 felony and upon conviction thereof be punished by confinement in a state correctional facility 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 \$1,000 .

DRAFTING NOTE: Felony penalty has been classified as a Class 6 in accordance with the criminal classification system. Undesignated felonies are Class 6 and punished by 1 to 5 years in a state facility. As a result, prison time would be increased by 2 years for violation of this section. The remainder of the section contains technical corrections.

§ 4-58 4.1-302 . Illegal sale of alcoholic beverages in general ; penalty .—If any person who

is not licensed under the provisions of this chapter to sell alcoholic beverages in this Commonwealth shall sell any alcoholic beverages other than except as permitted by the provisions of this chapter title, he shall be guilty of a Class 1 misdemeanor.

The punishment for any violation of the provisions of this section shall be a fine of not less than \$100 nor more than \$1,000 and confinement in jail for not less than thirty days nor more than twelve months. In the event of a second or subsequent conviction under this section, the a jail sentence so of no less than thirty days shall be imposed shall and in no case be suspended.

The 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, subsection (b).

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Misdemeanor penalty has been classified according to existing law. Mandatory minimum penalties have been deleted except for the mandatory, nonsuspendable 30 days jail time for subsequent convictions of this section. The last paragraph is deleted because the bonding option is available under proposed § 4.1-349.

§ 4-71 4.1-303 . Purchase of alcoholic beverages from person not authorized to sell ; penalty .—If any person shall, in this Commonwealth, buy buys alcoholic beverages from any person other than the Board, a government store or some a person authorized under the provisions of this chapter or Chapter 1-1 (§ 4-98.1 et seq.) of this title to sell the same alcoholic beverages, he shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Misdemeanor penalty classified according to existing law.

§ 4-62 4.1-304 . Persons to whom alcoholic beverages may not be sold; penalties ; forfeiture .— A. If any No person shall, except pursuant to the provisions of § 4-48 or §-4-50 4.1-200 , sell any alcoholic beverages to any person and when at the time of such sale shall know he knows or have has reason to believe that the person to whom the sale is made is (i) less than twenty-one years of age, except as to beer as provided herein or (ii) interdicted, or (iii) intoxicated ; he shall be guilty of a misdemeanor . If a person shall sell beer to another 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 less than twenty-one years of age or had not attained the age of nineteen years by July 1, 1985, he shall be guilty of a misdemeanor.

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

DRAFTING NOTE: No substantive change in the law. Existing § 4-62 has been broken down into two separate sections. Subsection A is now reflected as proposed § 4.1-304. Subsection B appears as proposed § 4.1-305. References to any drinking age less than 21 years has been deleted as obsolete. Misdemeanor penalty has been classified in accordance with existing law.

B. If any § 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; exceptions; penalty; forfeiture.—A. No person to whom an alcoholic beverage may not lawfully be sold under this section § 4.1-304 shall purchase or possess any alcoholic beverage, except (i) pursuant to the provisions of § 4-48 or § 4-50, he shall be guilty of a misdemeanor subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than twenty-one years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties .

B. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and

In addition to the penalties otherwise prescribed for a violation of this section, upon conviction, such person's license to operate a motor vehicle in this the Commonwealth may be suspended for a period of not more than one year.

C. 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 4.1-338 .

The provisions of this subsection shall not be applicable to (i) 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 or (ii) any regularly

employed member of a state, federal, or local law-enforcement agency when possession of an alcoholic beverage is necessary in the performance of his duties.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. In subsection A, at the request of the Board, "officer" has replaced "agency" for clarification. Misdemeanors have been classified in accordance with existing law.

~~§ 473 4.1-306 . Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.— (a) [Repealed.]~~

~~(b) A. If any person shall purchase purchases alcoholic beverages for another person, and at the time of such purchase shall know knows or have has reason to believe that the person for whom the alcoholic beverage was purchased was such a person as is enumerated in §-462 as a person to whom such alcoholic beverages shall not be sold (i) less than twenty-one years of age, (ii) interdicted, or (iii) intoxicated , he shall be guilty of a Class 1 misdemeanor.~~

~~(c) Any person convicted of a violation of any provision of this section shall be punished as is provided in §-492.~~

~~(d) B. Any alcoholic beverages purchased in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with the provisions of § 4-55 4.1-338 .~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§-463 4.1-307 . Persons by whom alcoholic beverages may not be sold or served for on-premises consumption ; penalty .— (a) It shall be unlawful for any person to No person shall permit anyone employed by him under the age of (i) eighteen years to sell, serve or dispense in any manner alcoholic beverages for on-premises consumption, except pursuant to the provisions of §-448 or §-450. It shall be unlawful for any person licensed under the provisions of this chapter to permit any one employed by him under the age of § 4.1-200 or (ii) twenty-one years to prepare or mix alcoholic beverages in the capacity of bartender.~~

~~(b) Any person found guilty convicted of a violation of the provisions of this section shall be punished as is provided for in § 4-92 guilty of a Class 1 misdemeanor .~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Penalty provisions set out as Class 1 misdemeanor in accordance with existing § 4-92.

~~§ 478 4.1-308 . Drinking alcoholic beverages, or tendering offering to another, in public place; penalty ; exceptions .—A. If any person takes a drink of alcoholic beverages or tenders offers a drink thereof to another, whether accepted or not, at or in any public place (as defined in §-42) , he shall be guilty of a Class 4 misdemeanor.~~

~~B. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in the dining room or other designated room, as defined in §-425, of a hotel, restaurant, club or boat, or in a dining car, club car, or buffet car of any train, or wine, wine coolers, or similar products that qualify as beverages as defined in §-400, and beer only within all seating areas, concourses, walkways, concession areas, as well as other additional locations designated by the Board, in coliseums, stadia, or similar facilities, during the performance of a professional sporting exhibition or event, provided such alcoholic beverages and beverages are served in a paper, plastic or similar disposable container, or in any other rooms or areas approved by the Board in a licensed establishment, provided such hotel, restaurant, club, boat, dining car, club car, buffet car, coliseum, stadium or similar facility or other establishment, or the person who operates the same ; including a concessionaire, is licensed to sell alcoholic beverages at retail for on-premise consumption in such dining room, room, car, seating areas, concourses, walkways, concession areas, as well as other additional locations designated by the Board, in such coliseum, stadium or similar facility or establishment, such alcoholic beverages, and the alcoholic beverages drunk or offered were purchased therein.~~

~~C. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the Board in any local public park at an event for which a banquet license or mixed beverage special events license has been issued or granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired alcoholic beverages or tendering offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been issued granted .~~

D. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another on a chartered watercraft boat being used for the transportation of passengers for compensation which is not licensed by the Board and which does not sell alcoholic beverages.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Specific places identified in subsection B where drinking is allowed because those places are licensed have been deleted in favor of a general reference to licensed establishments. In subsection C, "in any local public park" has been deleted at the request of the Board since this section generally prohibits public drinking except in those rooms or areas covered by retail licenses or banquet and mixed beverage special events licenses. "Boat" has been used in place of "watercraft" for consistency throughout the title.

~~§ 478.1~~ 4.1-309 . Drinking or possession of possessing alcoholic beverages in or on public school grounds ; penalty .— If any person, in or upon the grounds of any free public elementary or secondary school, during school hours or school or student activities, takes a No person shall possess or drink of any alcoholic beverage or has in his possession any alcoholic beverage, he shall in or upon the grounds of any public elementary or secondary school during school hours or school or student activities.

Any person convicted of a violation of this section shall be guilty of a Class 2 misdemeanor punishable by confinement in jail for not more than six months and a fine of not more than \$1,000, either or both .

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Misdemeanor penalty has been classified according to punishment established by this section. As a result, a statement of punishment is unnecessary.

§ 484 4.1-310 . Illegal importation, shipment and transportation of alcoholic beverages ; penalty; exception .— (a) A. No alcoholic beverages , other than wine or beer , shall be imported, shipped, transported or brought into this the Commonwealth unless the same be consigned to the Board. The However, the Board ; however, may permit such alcoholic beverages ordered by it from without this outside the Commonwealth for (i) persons for industrial purposes, for manufacturing (ii) the manufacture of articles allowed to be manufactured under § 448 4.1-200 , for wholesale druggists, for druggists or for (iii) hospitals, to be shipped or transported direct directly to such persons ; provided, that on . On such orders or shipments of alcohol , the Board shall charge no profit other than only a reasonable permit fee to be fixed by the Board .

(b) B. No wine shall be imported, shipped, transported or brought into this the Commonwealth unless the same be it is consigned to persons holding a wholesale wine distributors' licenses issued pursuant to the provisions of this chapter licensee .

(c) C. No beer shall be imported, shipped, transported or brought into this the Commonwealth except to persons licensed under the provisions of this chapter to sell the same it .

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

(d) E. The provisions of this chapter shall not prevent or prohibit (i) any person from bringing, in his personal possession or in his accompanying baggage, into this the Commonwealth not for resale, alcoholic beverages in an amount not to exceed one gallon ; or four liters if any part of the alcoholic beverages being transported is contained held in metric-sized packages containers , (ii) the shipment or transportation into this the Commonwealth upon a permit issued by the Board of a reasonable quantity of alcoholic beverages in the personal or household effects of a person moving his residence to this the Commonwealth, or (iii) the possession or storage of alcoholic beverages on passenger boats, dining cars, buffet cars and club cars, duly licensed under the provisions of this chapter title , of common carriers engaged in interstate or foreign commerce.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. A Class 1 misdemeanor penalty has been added in accordance with existing law (§ 4-92) which says violation of any provision is a Class 1 misdemeanor.

~~§ 472.1~~ 4.1-311 . Regulations and permits for transportation Limitations on transporting lawfully purchased alcoholic beverages; penalty .—A. The transportation of alcoholic beverages lawfully purchased in this the Commonwealth in excess of the following limits is prohibited

except in accordance with *Board* regulations adopted by the Board pursuant to this section :

1. Wine and beer - , no limitation.

2. Alcoholic beverages other than those described in 1 above - *wine and beer*, three gallons ; provided ; however, that not more than one gallon thereof shall be in packages containing containers holding less than one-fifth of a gallon. If any part of the alcoholic beverages being transported is contained held in metric-sized packages containers , the three-gallon limitation shall be construed to be 12 liters, and not more than 4 liters thereof shall be in packages containers smaller than 750 milliliters.

B. The transportation of alcoholic beverages lawfully purchased outside of this the Commonwealth, within, into or through this the Commonwealth, in quantities in excess of one gallon ; or four liters if any part of the alcohol being transported is contained held in metric-sized packages containers , is prohibited except in accordance with *Board* regulations adopted by the Board pursuant to this section.

C. The Board may adopt such regulations governing the transportation of alcoholic beverages, whether lawfully purchased in this Commonwealth or not, as it may deem necessary to confine such transportation within, into or through this Commonwealth, to legitimate purposes, and the Board may issue transportation permits in accordance with such regulations.

D. C. Any person transporting alcoholic beverages ; in violation of this section shall be guilty of a Class 1 misdemeanor and punished as provided in §-492 .

DRAFTING NOTE: No substantive change in law. Existing subsection C relating to regulatory power of the Board has been deleted as duplicative of the Board's general regulatory power (§ 4-11). Transportation permits authorized by subsection C have been moved to proposed permit section of Chapter 2 — Administration of Licenses. Misdemeanor penalty has been classified according to existing law (§ 4-92).

§ 4-74 4.1-312 . Carrying Limitation on carrying alcoholic beverages in motor vehicle transporting passengers for hire ; penalty .—The transportation of alcoholic beverages in any motor vehicle which is being used, or is licensed, for the transportation of passengers for hire is prohibited, except when carried in the possession of a passenger who is being transported for compensation at the regular rate and fare charged other passengers.

Any person violating convicted of a violation of this section shall be deemed guilty of a Class 1 misdemeanor ; and upon conviction thereof shall be punished accordingly .

DRAFTING NOTE: No substantive change in the law. Misdemeanor penalty has been classified according to existing law.

§ 4-75 4.1-313 . Possessing, transporting, etc., alcoholic beverages illegally acquired ; penalty .— If any A. No person, other than a common carrier, shall have, possess, keep, carry, ship or transport alcoholic beverages upon which the tax imposed by the laws of Congress the United States 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, upon due proof, evidence that the tax imposed has not been paid.

It shall be unlawful to B. No person shall possess alcoholic beverages in amounts in excess of the limits provided in § 4-72.1 4.1-311 in containers not bearing evidence showing the same to that they have been purchased from the Board or a person licensed to sell the same under the provisions of this chapter them, or other evidence that the tax due to the Commonwealth or the markup required by the Board has been paid, unless it can be proved that the alcoholic beverages were lawfully acquired by the possessor thereof .

The punishment for any violation of the provisions of this section, shall be a fine of not less than \$100 nor more than \$1,000 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. The court before whom any person is convicted for the violation of this section may require such person to give bond as is provided in §-492 C. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor .

DRAFTING NOTE: No substantive change in law. Misdemeanor penalty has been classified in accordance with existing law. The second paragraph has been deleted because federal stamps

and seals are no longer used.

§ 4-77 4.1-314 . Keeping, possessing or storing still or distilling apparatus without a permit ; penalty .— If any No person shall keep, store or have in his possession any still, or distilling apparatus, without a permit from the Board ; he .

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

DRAFTING NOTE: No substantive change in law. Misdemeanor penalty has been classified according to existing law.

§ 4-61 4.1-315 . Possession without license to sell alcoholic beverages upon premises of restaurant ; etc. ; exceptions; penalty.— A. No alcoholic beverages shall be kept or allowed to be kept upon any premises or upon the person of any proprietor or person employed upon the premises of a restaurant ; or other place ; where food or refreshments of any kind are furnished for compensation, except such alcoholic beverages as such person owning or operating such place of business is authorized under this chapter, or under Chapter 1-1 (§ 4-98.1 et seq.) of this title, licensed to purchase and to sell at such place of business. The restrictions in this

B. This section shall not apply to (i) any residence as that term is defined in §-4-2 , nor to (ii) alcoholic beverages in the possession of a passenger being transported for compensation as provided in subsection D of § 4-78 4.1-308 , nor to (iii) dining rooms areas in restaurants licensed by the Board ; while such rooms areas are in use for private meetings or parties limited in attendance to members and guests of a particular group, association or organization, nor to or (iv) licensed restaurants licensed by the Virginia Alcoholic Beverage Control Board in office buildings, industrial or similar facilities while such restaurant is closed to the public and while such restaurant is in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building ; or facility.

C. Any person convicted of a violation of the provisions of this section shall be guilty of a Class 1 misdemeanor and punished as provided in §-4-92 .

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-61.1 4.1-316 . Keeping ; etc., or drinking alcoholic beverages upon premises of club ; penalty .- No person operating a club for profit or otherwise, either public or private, shall (i) keep or allow to be kept any alcoholic beverages , either by himself or any other person; upon its the premises any alcoholic beverages, or beverages as defined in §-4-99, nor shall he or (ii) permit the consumption drinking of any alcoholic beverages or beverages as defined in §-4-99, upon its the premises, unless he shall have a license is licensed to sell alcoholic beverages ; or beverages as defined in §-4-99, issued by the Virginia Alcoholic Beverage Control Board .

Any person violating the provisions convicted of a violation of this section shall be punished in accordance with the provisions of § 4-92 guilty of a Class 1 misdemeanor .

DRAFTING NOTE: No substantive change in the law. Technical corrections only. References to beverages defined in existing § 4-99 (i.e. 3.2%) have been deleted as 3.2% beverages are now defined as wine or beer, as appropriate.

§ 4-81 4.1-317 . Maintaining common nuisances; punishment; bonds penalties .— (a) A. All houses, boathouses, buildings, tents, club or fraternity or lodge rooms, boats, cars and places of every description ; including drugstores, where alcoholic beverages are manufactured, stored, sold, dispensed, given away or used contrary to law, by any scheme or device whatever, shall be deemed common nuisances.

Any No person who maintains or who aids or abets shall maintain, aid, abet or knowingly is associated associate with others in maintaining such a common nuisance ; is .

Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor ; and, in .

B. In addition, after due notice and opportunity to be heard on the part of any owner or lessor not involved in the original offense, by a proceeding analogous to that provided in § 4-56 § 4.1-339 through 4.1-348 and upon proof of guilty knowledge, judgment may be given that such house, building, tent, boathouse, car or other place, or any room or part thereof, be closed up ; but the . The court may , upon the owner or lessor giving bond in the penalty of not less than \$500 and with security to be approved by the court, conditioned that the premises shall not be

used for unlawful purposes, or in violation of the provisions of this chapter for a period of five years, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 4-82 4.1-335 .

~~(b) C. In no a proceeding under the provisions of this section shall judgment shall not be entered against the owner, lessor, or lienholder of property unless it be is proved : (1) that he (i) knew of the unlawful use of the property ; and (2) that he (ii) had the right, because of such unlawful use, to enter and repossess the property.~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Penalty provision has been classified according to existing law.

~~§ 4-82 4.1-318 . Violations by armed person ; penalty .— If any No person shall unlawfully manufacture, transport or sell any alcoholic beverages ; as herein defined , and at the time of such the unlawful manufacturing, transporting, or selling or aiding or assisting in any manner in such act, shall carry on or about his person, or have on or in any vehicle which he may be using to aid him in any such purpose, or have in his possession, actual or constructive, at or within 100 yards of any place where any such alcoholic beverages are being unlawfully manufactured, transported or sold, any firearm, or any weapon of like kind, he dangerous weapon as described in § 18.2-308.~~

~~Any person convicted of a violation of this section shall be guilty of a Class 6 felony ; and on conviction shall be confined in a state correctional facility not less than one year nor more than three years, or, in the discretion of the jury, or the court trying the case without a jury, confined in jail for not less than six months nor more than twelve months .~~

DRAFTING NOTE: Felony penalty has been classified as Class 6 in accordance with the criminal classification system. Undesignated felonies are Class 6 and punished by 1 to 5 years in a state facility. As a result, prison time would be increased by two years for violation of this section. As a result, statement of the punishment is unnecessary. Additionally, "firearm, or weapon of like kind" has been replaced by the term "dangerous weapon as described in § 18.2-308" which defines dangerous weapon as "(i) any pistol, revolver, or other weapon designed or intended to propel a missile or any kind, or (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, blackjack, or (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or (v) any weapon of like kind." This section dates back to 1934 and "weapons" has been updated to reflect the sophistication of weapons since 1934.

~~§ 4-70 4.1-319 . Disobeying subpoena; hindering conduct of hearing ; penalty .— If any No person shall (i) fail or refuse to obey any subpoena issued by the Board or by , any Board member, officer or agent authorized by the Board to issue such subpoena, or shall (ii) hinder the orderly conduct and decorum of any hearing held and conducted by the Board, or by , any Board member, officer or agent thereof authorized by the Board to hold and conduct such hearing ; he .~~

~~Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor. Any person violating any provision of this section may be prosecuted and punished in the county or city in which the hearing is held.~~

DRAFTING NOTE: No substantive changes in the law. Technical corrections only. The last sentence of this section is unnecessary and has been deleted since criminal prosecutions are held where the offense occurs.

~~§ 4-69 4.1-320 . Illegal advertising ; penalty; exception .— If any Except in accordance with Board regulations, no person shall advertise in or send any advertising matter into this the Commonwealth about or concerning alcoholic beverages other than such alcoholic beverages as those which may legally be manufactured or sold without any a license under the provisions of this chapter, except in accordance with rules and regulations of the Board, he .~~

~~Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor ; provided, that neither .~~

~~Neither this section nor any rule or Board regulation of the Board shall be construed to prohibit : (i) the awarding of watches of a wholesale value of less than \$100 by a licensed distillery, winery or brewery, to participants in athletic contests; or (ii) the exhibition or display~~

of automobiles, boats, or aircraft regularly and normally used in racing or other competitive events and the sponsorship of an automobile, boat or aircraft racing team by a licensed distillery, winery or brewery and the display on the automobile, boat or aircraft and uniforms of the members of the racing team the trademark or brand name of an alcoholic beverage manufactured by a distillery, winery or brewery; or (iii) the sponsorship of a professional athletic event, including, but not limited to, golf, auto racing or tennis, by a licensed distillery, winery or brewery or the use of any trademark or brand name of any alcoholic beverage in connection with such sponsorship; or (iv) the advertisement of beer or any alcoholic beverage by the display of such product's name on any scale model, reproduction or replica of any motor vehicle, aircraft or watercraft offered for sale.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Misdemeanor penalty has been classified in accordance with existing law. The term watercraft has been maintained here (and not changed to "boat" as done elsewhere in the title) because it has broader application to include jet skis, etc.

~~§ 4-92~~ 4.1-321 . Delivery of alcoholic beverages to prisoners in jail prohibited; penalty .— It shall be unlawful for any No person to shall deliver, or cause to be delivered, to any prisoner in the jail of any county, city or town any local correctional facility , any alcoholic beverage as defined in § 4-2 .

Any person violating convicted of a violation of this section shall be guilty of a Class 1 misdemeanor ; and upon conviction thereof, shall be fined not less than \$10 nor more than \$100; provided, however, that this section shall not apply to any case where the jail physician prescribed any such beverage for use by any such jail prisoner .

DRAFTING NOTE: No substantive change in the law. Technical corrections only. The term "jail" has been updated to "local correctional facility". Misdemeanor penalty has been classified according to existing law. Exception for delivering alcoholic beverages to prisoners on orders of jail physician has been deleted as obsolete. This provision has been on the books since 1942.

§ 4.1-322. Possession of alcoholic beverages by interdicted persons; penalty.—No person who has been interdicted pursuant to § 4.1-333 shall possess any alcoholic beverages, except those acquired in accordance with § 4.1-200.

Any interdicted person found in possession of alcoholic beverages in violation of this section shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: No substantive change in the law. This section is a rewrite of existing § 4-52(b). Misdemeanor penalty classified in accordance with existing law.

§ 4-87 4.1-323 . Attempts; aiding or abetting ; penalty .— It shall be unlawful for any No person to shall attempt to do any of the things prohibited by this chapter title or to aid or abet another in doing, or attempting to do, any of the things prohibited by this chapter title .

On an indictment, information or warrant for the violation of any provisions of this chapter title , the jury or the trial justice or the court trying the case without a jury may find the defendant guilty of an attempt, or being an accessory, and the punishment shall be the same as if the defendant were solely guilty of such violation.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-90.2.~~ Paper, plastic or similar disposable containers authorized.—Any sale or serving of beer otherwise legal under the provisions of this title and the rules and regulations promulgated pursuant thereto shall not be illegal because such beer was served in a paper, plastic or other similar disposable container.

DRAFTING NOTE: This section has been repealed because the Board does not restrict selling or serving of alcoholic beverages by type of container. Finally, in 1980, the Board, by memorandum, indicated that the origin of this section was unknown.

Article 2.

Prohibited Practices By Licensees.

§ 4-60 4.1-324 . Illegal sale or keeping of alcoholic beverages by licensees ; penalty .— If any person who holds a license issued under the provisions of this chapter, A. No licensee shall:

~~(a) Shall sell 1. Sell any alcoholic beverages of a kind other than that which such license or this chapter title authorizes him to sell ; or ;~~

~~(b) Shall sell 2. Sell beer to which wine, spirits or alcohol ; or more than one of any such alcoholic beverages, has been added ; or ;~~

~~(c) Shall sell 3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations of the Board, or ;~~

~~(d) Shall sell 4. Sell alcoholic beverages of a kind which such license or this chapter title authorizes him to sell, but to any person other than to those to whom such license or this chapter title authorizes him to sell ; or ;~~

~~(e) Shall sell 5. Sell alcoholic beverages which such license or this chapter title authorizes him to sell, but in any place or in any manner other than such license or this chapter title authorizes him to sell ; or ;~~

~~(f) Shall sell 6. Sell any alcoholic beverages when forbidden by the provisions of this chapter, or title;~~

~~(g) Shall keep 7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic beverages other than that which he is authorized to sell by such license or by this chapter, or title;~~

~~(h) Shall, if holding a brewery license, bottler's license or wholesale beer license, sell 8. Sell any beer to a person to whom a retail license has been issued licensee, except for cash, or if the seller holds a brewery, bottler's or wholesale beer license;~~

~~(i) Shall sell 9. 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 10. Sell any wine for delivery within the Commonwealth of Virginia to a person to whom a retail license has been issued licensee , except for cash, he if the seller holds a wholesale wine or farm winery license.~~

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor, except such persons who shall be guilty of the violation of subdivision (a) of this section .

Any person found guilty of a violation of subdivision (a) shall be punished by a fine of not less than \$100 nor more than \$1,000 and confinement in jail for not less than thirty days nor more than twelve months. The court before whom such person is convicted may require him to give bond as is provided in § 4-02, subsection (b).

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Mandatory minimum penalties have been removed in favor of classified misdemeanors.

~~§ 4-08.10 4.1-325 . Prohibited acts by mixed beverage licensees ; penalty.— No A. In addition to § 4.1-324, no mixed beverage licensee under this chapter, nor any agent or employee of such licensee shall :~~

~~(a) Shall sell 1. Sell or serve any alcoholic beverage other than as authorized by law ; or ;~~

~~(b) Shall sell 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law ; or ;~~

~~(c) Shall allow 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title ; or ;~~

~~(d) Shall keep 4. Keep at the place described in his license any alcoholic beverage other than that which he is authorized licensed to sell under licenses issued to him by the Board, or ;~~

~~(e) Shall misrepresent 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale ; keep ;~~

6. Keep any alcoholic beverage otherwise other than in the bottle or container in which it was purchased by him except in a frozen drink dispenser of a type approved by the Alcoholic Beverage Control Board and in the case of wine, in containers of a type approved by the Board

pending automatic dispensing and sale of such wine ; ~~refill~~

7. ~~Refill~~ or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage ; ~~or~~ ;

~~(f) Shall sell~~ 8. ~~Sell~~ or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser thereof without first advising such purchaser of the difference ; ~~or~~ ;

~~(g) Shall remove~~ 9. ~~Remove~~ or obliterate any label, mark or stamp affixed to any bottle or container of alcoholic beverage ~~beverages~~ offered for sale ~~or deliver~~ ;

10. ~~Deliver~~ or sell the contents of any bottles or containers ~~the container if the~~ label, mark or stamp ~~on which~~ has been removed or obliterated ; ~~or~~ ;

~~(h) Shall allow~~ a person less than twenty-one years of age to loiter in the licensed establishment; ~~or~~

~~(i) Shall employ~~ a person less than eighteen years of age in ~~or about~~ that portion of the licensed establishment used for the sale and consumption of mixed beverages; however, such person may be employed for the purpose of seating customers or busing tables in that portion of a licensed establishment in which each customer is purchasing a meal, ~~or~~

~~(i1) Shall employ~~ a person less than twenty-one years of age to serve in the capacity of bartender in the preparation or mixing of alcoholic beverages, ~~or~~

~~(j) [Repealed.]~~

~~(k) Shall allow~~ 11. ~~Allow~~ any immoral, lewd, obscene, indecent or profane conduct, language, literature, pictures, performance or materials on the licensed premises ; ~~or~~ ;

~~(l) Shall allow~~ 12. ~~Allow~~ any striptease act, or the like on the licensed premises ; ~~or~~ ;

~~(m) Shall allow~~ 13. ~~Allow~~ persons connected with the licensed business to appear nude or partially nude ~~or to wear garb stressing near nudity or nudity~~, ~~or~~ ;

~~(n) Shall consume~~ 14. ~~Consume~~ or allow the consumption by an employee of a mixed beverage, other alcoholic beverage or beverage as defined in ~~§-4-00~~ any alcoholic beverages while on duty ; ~~or~~ ;

~~(o) Shall deliver~~ 15. ~~Deliver~~ to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure ~~be is~~ broken or unbroken except as ~~may otherwise be provided by, or in accordance with 4.1-210;~~

~~(p) Shall be~~ 16. ~~Be~~ intoxicated while on duty or employ an intoxicated person on the licensed premises ; ~~or~~ ;

~~(q) Shall conceal~~ 17. ~~Conceal~~ any sale or consumption of mixed beverages, any alcoholic beverages or beverages as defined in ~~§-4-00~~, ~~or~~ ;

~~(r) Shall fail~~ 18. ~~Fail~~ or refuse to make samples of any alcoholic beverages ; mixed beverages or beverages as defined in ~~§ 4-00~~ available to the Board upon request or obstruct special agents of the Board in the discharge of their duties ; ~~or~~ ;

~~(s) Shall store~~ 19. ~~Store~~ alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises ; ~~or~~ ;

~~(t) Shall allow~~ 20. ~~Allow~~ any person to receive a percentage of the income of the licensed business or have any beneficial interest in such business, ~~or except in accordance with Board regulation;~~

~~(u) Shall knowingly~~ 21. ~~Knowingly~~ employ in the licensed business any person who has the general reputation as a prostitute, ~~homosexual~~, panderer, gambler, habitual law violator, person of ill repute, user of or peddler of narcotics or person who drinks to excess ~~or any "B-girl,"~~ ; or

~~(v) Shall keep~~ 22. ~~Keep~~ on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus ; ~~or~~ .

~~(w) Shall advertise~~ the sale of alcoholic beverages ~~on or off~~ the licensed premises ~~other~~

than as permitted by the Board.

If any B. Any person shall be found guilty convicted of violating any a violation of the provisions of this section he shall be punished by a fine of not less than \$50 nor more than \$500 or by confinement in jail for not less than thirty days nor more than twelve months, or both shall be guilty of a Class 1 misdemeanor .

DRAFTING NOTE: This section comes from the existing mixed beverage chapter and contains technical corrections. Existing subsections (h) (i), (il) and (w) have been deleted because (h) has never been enforced by the Board, (i) and (il) are duplicative of existing § 4-63, and (w) is duplicate of the general powers of the Board to control the sale of alcoholic beverages. Mandatory minimum penalties have been deleted. Certain unconstitutional language has been deleted.

§ 4-64. Sale of wine not purchased from Board or wholesale licensee.— —If any person 4.1-326. Sale of; purchase for resale; wine or beer from a person without a license; penalty.—No licensee , other than a common carrier operating in interstate or foreign commerce, licensed under the provisions of this chapter licensed to sell wine or beer at retail shall sell purchase for resale or sell any wine not purchased or beer purchased from some person holding anyone other than a wholesale wine distributors' license issued by the Board, he shall be guilty of a misdemeanor or farm winery licensees or brewery, bottlers or wholesale beer licensees .

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

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Existing § 4-66 (sale of beer) has been merged with this section (existing § 4-64) at the request of the Board since purchasing wine or beer from wholesale licensees is required for both wine and beer retail licensees. It is the position of the Board that it is easier to detect the illegal purchase by retailers. Additionally, the penalty provisions are the same.

§ 4-66. Purchase of beer or beverages for resale from a person without a license.—If any person, other than a common carrier operating in interstate or foreign commerce, licensed under the provisions of this chapter to sell beer or beverages at retail, purchases any beer, or beverages as defined in § 4-90, for resale from anyone other than a person holding a brewery, bottlers' or wholesale beer license in this Commonwealth, he shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: This section (4-66) has been merged with § 4-64 at the Board's request.

§ 4-34.1 4.1-327 . Prohibiting transfer of wine or beer by licensees ; penalty .— A. No person holding a retail license under § 4-25 licensee, except (i) a retail on-premises wine and beer licensee or (ii) a retail on-premises beer licensee, shall transfer any wine or beer from one licensed place of business to another licensed place of business whether such places of business are under the same ownership or not.

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

This section shall not apply to a person, firm or corporation holding a retail on-premises wine and beer license only or a retail on-premises beer license only.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Subsection B has been added to specify the penalty for the act made illegal under this section. The last paragraph of this section has been merged into existing subsection A as the exceptions.

§ 4.1-328. Prohibited trade practices; penalty.—A. No licensee shall violate, attempt to violate, solicit another person to violate or consent to any violation of § 4.1-216 or regulations adopted pursuant to subdivision B3 of § 4.1-111.

B. Any person convicted of a violation of this section, § 4.1-216 or of Board regulations adopted pursuant to subdivision B3 of § 4.1-111 shall be guilty of a Class 1 misdemeanor.

C. No person shall be deemed guilty of a Class 1 misdemeanor or to have admitted such guilt by virtue of the fact that administrative sanctions have been imposed pursuant to § 4.1-227 either as a result of Board proceedings or the acceptance by the Board of an offer in compromise in response to the institution of such administrative proceedings.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. This section

is a rewrite of subsection D, the penalty provision, of existing § 4-79.1. The remainder of existing § 4-79.1 is in proposed Chapter 2 (Administration of Licenses) as a limitation on licenses (proposed § 4.1-000). Existing § 4-92 provides that conviction for a violation of any Board regulations is punishable as a Class 1 misdemeanor.

~~§ 4-69.2~~ **4.1-329. Illegal advertising materials; penalty.**— *No retail licensee shall induce, attempt to induce, or consent to, any manufacturer, bottler, wholesaler, or importer selling, renting, lending, buying for or giving to such retailer any advertising materials or decorations under circumstances prohibited by law.*

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

DRAFTING NOTE: No substantive change in the law. This is the penalty provision from existing § 4-69.2. The remainder of existing § 4-69.2, relating to advertising, is now found in proposed Chapter 1 (General Provisions).

~~§ 4-98.16~~ **4.1-330 . Solicitation by persons interested in manufacture, etc., of alcoholic beverages; penalty.**—A. No person having any interest, direct or indirect, in the manufacture, distribution, or sale of spirits or other alcoholic beverages shall, ~~except in a manner prescribed by the Board and in compliance with subsections G and D of this section without a permit~~, solicit either directly or indirectly, (i) a *mixed beverage licensee under this chapter* or ; (ii) any agent, servant, or employee of such licensee ; ; or (iii) any person connected with the licensee in any capacity whatsoever in his licensed business, to sell or offer for sale the particular spirits or other alcoholic beverage in which such person may be so interested.

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

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

~~B. If any person licensed under this chapter,~~ **B. No mixed beverage licensee or any agent, servant, or employee of such licensee, or any person connected with the licensee in any capacity whatsoever in his licensed business shall, either directly or indirectly, be a party to, consent to, solicit, or aid or abet another in a violation of subsection A ; he shall be guilty of a misdemeanor and .**

~~The Board may suspend or revoke the license issued granted to such licensee by the Board under this chapter may be suspended or revoked. The Board , or may impose a monetary civil penalty not to exceed \$25,000 in lieu of such suspension or any portion thereof, or both.~~

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

~~C. Before any person shall make solicitations as provided in subsection A of this section, he shall first register with the Board and obtain a permit. Every application for registration shall be on such form as shall be prescribed by the Board and shall be accompanied by a fee of \$300 for each such person, except in the case of applications for solicitation for the sale of beer or wine, which shall be governed by the provisions of §-4-26. Each permit issued hereunder shall expire on June 30 next succeeding the date of issuance, unless sooner suspended or revoked by the Board. In addition to the penalties which may be imposed in subsection A, permits may be suspended or revoked at any time by the Board for violations of the provisions of this chapter or Chapter 1 (§ 4-1 et seq.) of this title, or of the Board's regulations. Permits issued hereunder shall confer upon the holders thereof no authority to make solicitations in this Commonwealth except as otherwise provided by law.~~

~~D. The provisions of subsections (b), (c), and (d) of §-4-26 relating to the proration of permit fees, payment of costs or monetary penalties and offers in compromise shall apply mutatis mutandis to permits issued pursuant to the provisions of this section.~~

DRAFTING NOTE: No substantive change in law. Technical corrections only. Misdemeanor penalties have been classified as Class 1 in accordance with existing law. Subsections C and D appear in proposed Chapter 2 (Administration of Licenses) in the permit section.

~~§ 4-136. Retention of records; penalty for failure to keep proper records.—A copy of all records and invoices required by §§ 4-134 and 4-135 shall be retained by the manufacturer, bottler, wholesaler or retailer for a period of two years, subject to the use and inspection of the Board or its agents. Any person who fails to produce such records and invoices upon demand of the Board or its agents shall be guilty of a Class 1 misdemeanor.~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only. The last sentence of this section has been merged with proposed § 4.1-331 below. At the Board's request, records retention requirements will be addressed by the Board in regulation.

~~§ 4-65 4.1-331 . Failure to pay tax or to deliver, keep and preserve records and accounts, or to allow examination and inspection ; penalty .— Any person licensed under the provisions of this chapter who No licensee shall fail or refuse to (i) pay any excise tax provided for in § 4-128 § 4.1-234 or 4.1-236 , or shall fail or refuse to (ii) deliver, keep and preserve such records, invoices and accounts as are required by §-444 § 4.1-204 or Board regulation , or shall fail or refuse to (iii) allow such records, invoices and accounts or his place of business to be examined and inspected as herein provided in accordance with § 4.1-204.~~

~~Any person convicted of a violation of this section , shall be guilty of a Class 1 misdemeanor.~~

DRAFTING NOTE: No substantive change in the law. technical corrections only. Existing § 4-136 (record retention for beer excise tax) has been merged with this section. Reference to Board regulation is made since the Board, by regulation, will set out the record retention requirements for all licensees.

~~§ 4-139 4.1-332 . Penalties Nonpayment of excise tax on beer and wine coolers; additional penalties .—A. Any No person ; except as herein provided, who sells shall sell beer or beverages wine coolers to retailers or consumers, without paying the excise tax imposed by § 4-128 as provided therein, and any 4.1-236. No retailer ; except as herein provided, who purchases, receives, transports, stores or sells shall purchase, receive, transport, store or sell any beer or beverages wine coolers on which such retailer has reason to know such tax has not been paid and may not be paid .~~

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

~~B. In addition to subsection A, on each manufacturer, bottler or wholesaler who fails to make any return and pay the full amount of the tax required by § 4.1-236, there shall be imposed a civil penalty to be added to the tax in the amount of five percent of the proper tax due if the failure is for not more than thirty days, with an additional five percent for each additional thirty days, or fraction thereof, during which the failure continues. Such civil penalty shall not exceed twenty-five percent in the aggregate. In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any excise tax due on beer and wine coolers, a civil penalty of fifty percent of the amount of the proper tax due shall be assessed. All penalties and interest shall be payable to the Board and if not so paid shall be collectible in the same manner as if they were a part of the tax imposed.~~

~~C. After reasonable notice to the manufacturer, bottler, wholesaler or retailer, the Board may suspend or revoke the license of the manufacturer, bottler, wholesaler or retailer who has failed to make any return or to pay the full amount of the excise tax.~~

~~B. Any person who fails, neglects or refuses to comply with or violates any provision of this chapter which contains no specific penalty for the violation thereof, or any of the regulations promulgated by the Board under the provisions of this chapter shall be guilty of a Class 2 misdemeanor.~~

DRAFTING NOTE: Existing §§ 4-139 and 4-140 are the penalty provisions for violation of the beer excise tax requirements. Since the chapter dedicated exclusively to beer excise taxes no longer exists in the proposed redraft of Title 4, the penalty sections have been merged and appear as part of Article 2 of proposed Chapter 3 — Prohibited Practices. The remainder of the beer excise tax chapter appears in Article 3—Taxes of proposed Chapter 2—Administration of Licenses. Wine coolers are specifically referenced here since they are included with beer for excise tax purposes. As drafted subsection A is existing § 4-139, and subsections B and C are

existing § 4-140. Additionally, existing subsection D has been deleted since the chapter dedicated exclusively to beer excise tax no longer exists in the proposed redraft of Title 4. Existing § 4-92 makes all violations of Title 4 a Class 1 misdemeanor. As a result of this change, the Class 2 misdemeanor penalty for beer excise tax violations has been increased to Class 1 to conform with the remainder of violations in the Title. This section also contains technical corrections.

Article 3.

Procedural Matters.

~~§ 4-51 4.1-333~~ . Interdiction of intoxicated driver or habitual drunkard.— ~~(a) Entry of order of interdiction.~~ - A. When after a hearing upon due notice it shall be made to appear appears to the satisfaction of the circuit court of any county or city ; or the judge thereof in vacation, that any person, residing or sojourning within such county or city, has on or after March 21, 1934, been convicted of driving or running any automobile, car, truck, motorcycle, engine or train while intoxicated or has shown himself to be an habitual drunkard, the court ; or the judge thereof in vacation, may make enter an order or of interdiction prohibiting the sale of alcoholic beverages to such person until further ordered. The court or judge entering any such order shall cause file a copy of the same to be forthwith filed order with the Board.

~~(b) Publication of order.~~ - Upon such order of interdiction being filed with the Board, it shall cause a copy thereof to be published at least once in a newspaper having a general circulation in the county or city in which the court which issued the order is held, and in such other newspaper as the Board may direct. It shall thereafter as long as such order shall remain in effect be unlawful, as provided in § 4-62, for anyone to sell alcoholic beverages to such interdicted person except in accordance with the provisions of §§ 4-48 and 4-50.

~~(c) Amendment or cancellation of order.~~ - B. The court or judge entering any order of interdiction may thereafter at any time alter, amend or cancel the same such order as in its judgment it shall deem deems proper. A copy of each such any alteration, amendment and or cancellation shall be filed with the Board and published as hereinbefore provided as to orders of interdiction .

~~(d) Private hearing.~~ - Any hearing or investigation under this section by any court or judge may be held in private if the court or judge or person accused shall so direct.

DRAFTING NOTE: This section is a rewrite of existing § 4-51. Subsection b has been deleted because publication of the order of interdiction, in contemporary society, serves no practical purpose. Subsection D has been deleted because closed criminal proceedings are unconstitutional (*Vescuso v. Commonwealth* , 5 Va. Appeals 59 (1987)).

NOTE: The Board indicates that it receives approximately 50 orders of interdiction yearly, at a cost of approximately \$2,500 for publication in accordance with this section. Additionally, part of this section as well as existing § 4-52 (which make it unlawful to sell to interdicted people) pose enforcement problems because there is no way for retailers to identify interdicted persons. Other methods currently exist in the law to address habitual drunkenness, driving while intoxicated, and common nuisances (i.e., Habitual Offender Statute (Title 46.2), and Injunction).

~~§ 4-52 4.1-334~~ . Interdiction for illegal manufacture, possession, transportation or sale of alcoholic beverages ; possession by interdicted person unlawful .— ~~(a) When any person has been found guilty of the illegal manufacture or the illegal , possession or the illegal , transportation , or the illegal sale of alcoholic beverages or maintaining a common nuisance as defined in § 4-81 4.1-317 , the court or the judge thereof trying the case, may without further notice or additional hearing enter an order of interdiction prohibiting the sale of alcoholic beverages to such person for one year from the date of the entry of the order, and thereafter if further ordered. Such orders of interdiction shall be published in the same manner and shall have the same effect as orders of interdiction provided for in §-4-51.~~

~~(b) The possession of alcoholic beverages, except such alcoholic beverages as may have been, or may be, acquired in accordance with the provisions of §§-4-48 and 4-50, or either of them, by any person who has been interdicted under the provisions of this chapter, shall be unlawful, and any interdicted person found in possession of alcoholic beverages in violation of the provisions of this section shall, notwithstanding any other provision of this chapter to the contrary, be guilty of a misdemeanor and punished as provided in §-4-92.~~

DRAFTING NOTE: Subsection B appears in Article 1 (Prohibited Practices Generally) of proposed Chapter 3 — Prohibited Acts. The remainder of this section contains technical corrections. See also "NOTE" under the previous section (§ 4-51).

§ 4-82 4.1-335 . Enjoining nuisances.— The A. In addition to the penalties imposed by § 4.1-317, the Board, its duly authorized special agents, the attorney for the Commonwealth, or any citizen of the county, city, or town, where such a common nuisance as is defined in § 4-81 4.1-317 exists; or is kept or maintained, may; in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to abate and perpetually to enjoin the same common nuisance .

B. The courts of equity shall have jurisdiction thereof, and in every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two reputable citizens, that alcoholic beverages are manufactured, stored, sold, dispensed, given away, or used in any house, building, boathouse, club room, fraternity room, lodge room, hotel, boardinghouse, apartment house, lodging house, boat, tent, or any place in such house, building or other place described in § 4.1-317 contrary to the laws of this the Commonwealth, an injunction shall be granted as soon as the bill is presented to the court or judge in vacation. The injunction shall enjoin and restrain the owners, tenants, their agents, employees, servants, and any person connected with such house, building or other place named in this section, and all persons whomsoever from manufacturing, storing, selling, dispensing, giving away, or using alcoholic beverages in such house, building or other place named in this section, and on such premises. The injunction shall also restrain all persons from removing any alcoholic beverage then on such premises until the further order of the court. Upon the hearing of the cause, when it shall have been matured and set for hearing as required by law, upon deposition of witnesses, documentary and oral evidence, if the court or judge in vacation, shall be is satisfied that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it or he shall continue the injunction against such house, building or place for such a period of time as the court or judge may think deems proper; with the right to dissolve the. The injunction upon the application of the owner of such house, building or place may be dissolved if a proper case is shown for dissolution.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-53 4.1-336 . Contraband beverages and other articles subject to forfeiture.—All stills and distilling apparatus and materials for the manufacture of the same alcoholic beverages, and all alcoholic beverages and materials used in the their manufacture thereof, and, all containers in which alcoholic beverages may be found, which are kept, stored, possessed, or in any manner used in violation of the provisions of this chapter title, and any firearms or weapons of a like kind dangerous weapons as described in § 18.2-308, which may be used, or which may be found upon the person or in any vehicle which such person is using, to aid such person in the unlawful manufacture, transportation or sale of alcoholic beverages, or found in the possession of such person, or any horse, mule or other beast of burden, any wagon, automobile, truck or vehicle of any nature whatsoever which shall be are found in the immediate vicinity of any place where alcoholic beverages are being unlawfully manufactured and which such animal or vehicle is being used to aid in the unlawful manufacture, shall be deemed contraband and shall be forfeited to the Commonwealth.

Proceedings for the confiscation of the above property shall be in accordance with § 4-55 4.1-338 for all such property except motor vehicles. The which proceedings for the confiscation of motor vehicles so used shall be in accordance with § 4-56 §§ 4.1-339 through 4.1-348 .

Such firearms or weapons of a like kind which shall be dangerous weapons seized by any officer charged with the enforcement of this chapter title shall be forfeited to the Commonwealth upon the conviction of the person or persons owning or possessing such weapons or firearms and shall be sold by order of court and the proceeds of such sale shall be paid into the Literary Fund.

DRAFTING NOTE: Technical corrections only. "Firearms and weapons of like kind" have been replaced with "dangerous weapons as described in § 18.2-308". For definition of "dangerous weapon" see drafting note for proposed § 4.1-317.

§ 4-54 4.1-337 . Search warrants.— (a) A. If there be complaint on oath is made that alcoholic beverages are being manufactured, sold, kept, stored, or in any manner held, used or concealed in a particular house, or other place, in violation of law, the justice of the peace, trial justice, or circuit or corporation court or judge thereof in vacation, magistrate, or other person having authority to issue criminal warrants, to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic beverages. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of Virginia the Commonwealth pertaining to search warrants.

(b) B. Warrants issued under this chapter title for the search of any automobile, boat, conveyance or vehicle, whether of like kind or not, or for the search of any trunk, grip or other article of baggage, whether of like kind or not, for alcoholic beverages, may be executed in any part of the Commonwealth where the same they are overtaken, and shall be made returnable before any trial justice, or circuit or corporation court or judge thereof in vacation, within whose jurisdiction such automobile, boat, conveyance, vehicle, truck, grip or other article of baggage, or any of them, were transported or attempted to be transported contrary to law.

DRAFTING NOTE: "Justice of the peace," "trial justice" and "corporation court" have been deleted as they are obsolete terms. The remainder of this section contains technical corrections.

§ 4-55 4.1-338 . Confiscation proceedings; disposition of forfeited articles.— A. All proceedings for the confiscation of articles , *except motor vehicles*, declared contraband and forfeited to the Commonwealth under this chapter shall be as provided in this section:

(a) B. Production of seized property ; etc . - Whenever any article ; *which under the provisions of this chapter is declared contraband under the provisions of this title*, and required to be forfeited to the Commonwealth, has been seized, with or without a warrant, by any officer charged with the enforcement of this chapter title , he shall produce the *same, contraband article* and *the any* person in whose possession it was found ; *if any* . In those cases where no person is found in possession of such articles the return shall so state and a copy of the warrant shall be posted on the door of the buildings or room wherein the *same was articles were found*, or if there *be is* no door, then in any conspicuous place upon the premises.

In case of seizure of a still, doubler, worm, worm tub, mash tub, fermenting tub, or other distilling apparatus, for any offense involving *their forfeiture of the same* , where said apparatus shall be of less than five hundred dollars' value, and where it shall be is impracticable to remove the *same such distilling appartus* to a place of safe storage from the place where seized, the seizing officer is authorized to may destroy the *same such apparatus* only so far as necessary to prevent the use thereof, of all or any part thereof, for the purpose of distilling. *Such The* destruction shall be in the presence of at least one credible witness, and such witness shall unite with *join* the said officer in a duly sworn report of said *the* seizure and destruction, to be made to the Board ; *in which* . The report they shall set forth the grounds of the claim of forfeiture, the reasons for *such* seizure and destruction, *their an* estimate of the fair cash value of the apparatus destroyed, and *also* of the materials remaining after such destruction ; *and* . The report shall include a statement that, from facts within their own knowledge, *they the seizing officer and witness* have no doubt whatever that said *the* distilling apparatus was set up for use, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove *the same such apparatus* to a place of safe storage.

In case of seizure of any quantity of mash, or of alcoholic beverages on which the tax imposed by the laws of Congress the United States has not been paid, for any offense involving forfeiture of the same, the seizing officer is authorized to may destroy the *same them* to prevent the use thereof of all or any part thereof for the purpose of unlawful distillation of spirits or any other violation of the provisions of this chapter title . *Such The* destruction shall be in the presence of at least one credible witness, and such witness shall unite with *join* the said officer in a duly sworn report of said *the* seizure and destruction, to be made to the Board ; *in which* . The report they shall set forth the grounds of the claim of forfeiture, the reasons for seizure and destruction, and a statement that, from facts within their own knowledge, *they the seizing officer and witness* have no doubt whatever that said *the* mash was intended for use in the unlawful distillation of spirits, or that said *the* alcoholic beverages were intended for use in violation of one or more of the provisions of this chapter title .

(b) C. Hearing and determination. - Upon the return of the warrant as provided in this section, the trial justice, court or judge shall fix a time not less than ten days, unless waived by the accused in writing, *the accused having the right to do so*, and not more than thirty days thereafter, for the hearing of *on* such return ; *when he shall proceed to hear and to determine* whether or not the articles so seized, or any part thereof, were used or in any manner kept, stored or possessed in violation of any of the provisions of this chapter title .

At such hearing if no claimant shall appear *appears* , the trial justice, court or judge shall declare the articles seized forfeited to the Commonwealth and, if such articles *be are* not necessary as evidence in any pending prosecution, shall turn *the same them* over to the Board as herein required . At such hearing any Any person claiming any an interest in any of the articles seized may appear *at the hearing* and file a written claim setting forth particularly the character and extent of his interest ; *whereupon*, if the trial *be* before a trial justice, *he* . The court shall *forthwith* certify the warrant and the articles seized along with the any claim filed therein to the circuit ; *corporation or husting*s court having jurisdiction, which court shall docket

the case. Thereupon the court shall hear and determine the validity of such claim.

If ; upon such hearing; the evidence warrants, the court shall thereupon enter a judgment of forfeiture ; and order the articles so seized to be turned over to the Board as is herein required . Action under this section and the forfeiture of any articles thereunder hereunder shall not be a bar to any prosecution under any other provision of this chapter title .

(e) D. Disposition of forfeited beverages and other articles. - Any articles forfeited to the Commonwealth and turned over to the Board in accordance with the provisions of this section, shall either be destroyed or sold by the Board as in its discretion shall be deemed it deems proper. The net proceeds from every such sale shall be paid into the Literary Fund. If the Board shall be of the opinion believes that any alcoholic beverages forfeited to the Commonwealth and turned over to the Board in accordance with the provisions of this section ; for any reason cannot be sold and should not be destroyed, it may give the same such alcoholic beverages for medicinal purposes to any institution in this the Commonwealth regularly conducted as a hospital, nursing home or sanatorium for the care of persons in ill health or as a home devoted exclusively to the care of aged people, to supply the needs of such institution for alcoholic beverages for such purposes ; , provided, however, that (i) the State Health Commissioner has issued a certificate stating that such institution has need for such alcoholic beverages ; and that (ii) preference shall be is accorded by the Board to institutions supported either in whole or in part by public funds. A record shall be made showing the amount issued in each case, to whom issued and the date when issued shall be made , and shall be kept in the office offices of the State Health Commissioner and in the office of the Board. No charge shall be made of to any patient for the alcoholic beverages supplied to him where the same they have been received from the Board pursuant to this section ; and such . Such alcoholic beverages shall be administered only pursuant to §-450 or upon approval of the patient's physician.

DRAFTING NOTE: "Hustings courts" and similar obsolete terms have been deleted. The \$500 limit imposed in the second paragraph of subsection A has been deleted because the Task Force felt it should be within the discretion of the Board to seize or destroy distilling apparatus without regard to dollar amount. The remainder of this section contains technical corrections.

§ 4-56 4.1-339 . Search ; and seizure and forfeiture of conveyances or vehicles used in violation of law; disposition of beverages; arrests.— (a) Search, seizure and delivery to sheriff. - A. When any officer charged with the enforcement of the alcoholic beverage control laws of this the Commonwealth has reason to believe that alcoholic beverages illegally acquired, or being illegally transported, are in any conveyance or vehicle of any kind, either on land or on water (except a conveyance or vehicle owned or operated by a railroad, express, sleeping or parlor car or steamboat company, other than barges, tugs or small craft), he shall obtain a legal search warrant and search such conveyance or vehicle. If such illegally acquired alcoholic beverages or alcoholic beverages being illegally transported in amounts in excess of one quart or one liter if in a metric-sized container are found therein , the officer shall seize the same alcoholic beverages , seize and take possession of such conveyance or vehicle, and deliver the same and the alcoholic beverages so seized them to the sheriff of the county or city, or the chief law-enforcement officer of the city locality in which such seizure was made, taking his receipt therefor in duplicate.

(b) Arrests. - B. The officer making such seizure shall also arrest all persons found in charge of such conveyance or vehicle and shall forthwith report in writing such seizure and arrest to the attorney for the Commonwealth for the county or city in which such seizure and arrest were made.

DRAFTING NOTE: Existing § 4-56 has been broken down to improve readability and understanding. This proposed section contains subsections (a) and (b) of existing § 4-56, with technical amendments.

(e) Notice § 4.1-340. Notice to Commissioner of Department of Motor Vehicles; duties of Commissioner proceedings by attorney for the Commonwealth; filing of information; procedures in lieu of filing information . - If the conveyance so seized is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Department of Motor Vehicles, by letter, of such seizure and the motor number of the vehicle so seized. The Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, and the amount thereof. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

The Commissioner's certificate concerning such registration and lien shall be received in evidence in any civil or criminal proceeding, brought under any provision of this chapter, in which such facts may be material to the issue involved. A. The procedure for notification of the Commissioner of the Department of Motor Vehicles of the seizure of a vehicle pursuant to § 4.1-339 shall be in accordance with § 19.2-375.

(d) Proceedings by attorney for the Commonwealth. - B. Within sixty days after receiving notice of any such the seizure of a motor vehicle pursuant to § 4.1-339, the attorney for the Commonwealth shall file, in the name of the Commonwealth, an information against the seized property ; in the clerk's office of the circuit court of the county or of the corporation court of the city ; wherein the seizure was made.

Such information shall allege the seizure, and set forth in general terms the grounds for forfeiture of the seized property, and shall pray that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such property should not be condemned and sold to enforce the forfeiture. Such information shall be in the form and contain those provisions required by §§ 19.2-370 and 19.2-371.

The owner of and all persons in any manner then indebted or liable for the purchase price of the property, and any person having a lien thereon, if they are known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice hereinafter provided for, in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on the information, if they are residents of this Commonwealth. If they are unknown or nonresidents, or cannot with reasonable diligence be found in the Commonwealth, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in such county or city, or if none is published therein, then in some newspaper having general circulation therein, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of such conveyance or vehicle. The attorney for the Commonwealth shall notify, in accordance with § 19.2-376, the owner, purchaser, lienor, and all other persons who are in any manner then indebted or liable for the purchase price of the property.

(d1) C. In lieu of filing an information ; as provided in subsection (d), the attorney for the Commonwealth may, upon payment of costs incident to the custody of the seized property, return the seized property to an owner or lienor, without requiring that such owner or lienor file bond as provided in subsection (e) § 4.1-341, if he believes that: (i) such owner was the actual bona fide owner of the conveyance or vehicle at the time of the seizure, that he was ignorant of such illegal use thereof, and that such illegal use was without his connivance or consent ; express or implied ; or (ii) such lienor was ignorant of the fact that such conveyance or vehicle was being used for illegal purposes, when it was so seized, that such illegal use was without such lienor's connivance or consent, express or implied, that he held a bona fide lien on such property and had perfected the same lien in the manner prescribed by law, prior to such seizure, and that the lien is equal to or more than the value of the conveyance or vehicle.

In the event the conveyance or vehicle has been sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid the provisions of this section § 4.1-339, the Commonwealth shall have a right of action against such seller for the proceeds of the sale.

DRAFTING NOTE: Subsections (c), (d) and (d1) of existing § 4-56 make up the provisions of this proposed section. Subsections (c) and the second and third paragraphs of (d) have been deleted and in their place a cross reference to the general forfeiture statutes in Title 19.2 has been made as these sections are identical.

(e) § 4.1-341 . Bond to secure possession ; appearance by claimant; jury trial . - If the owner or lienor of the seized property desires to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the clerk of the court where such information is filed.

The sheriff of the county or city in which the trial court is located shall promptly inspect and appraise the property, under oath, at its fair cash value, and forthwith make return thereof in writing to the clerk's office of the court in which the proceedings are pending. Upon the return of the appraisal, the owner or lienor may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the conveyance or vehicle plus the court costs which may accrue, with security to be approved by the clerk and conditioned for the performance of the final judgment of the court, on the trial of the information. A further condition shall be that, if upon the hearing on the information, the judgment of the court is that

such property, or any part thereof, or such interest and equity as the owner or lienor may have therein, is forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized and forfeited and costs. Upon such judgment, execution may issue, on which the clerk shall endorse, "no security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lienor. A. The posting of bond by an owner or lienor to secure possession of property seized pursuant to § 4.1-339 shall be in accordance with § 19.2-377.

(f) ~~Appearance by claimant.~~ - B. Any person claiming to be the owner of such seized property, or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed. Such appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof. In either case, ~~such~~ the defendant shall set forth fully any reason or cause which he may have to show against the forfeiture of the property.

(g) ~~Jury trial finding for claimant.~~ - C. If ~~such~~ the claimant denies that illegally acquired alcoholic beverages or alcoholic beverages being illegally transported in amounts in excess of one quart or one liter if in a metric-sized container, were in such conveyance or vehicle at the time of the seizure thereof, and demands a trial by jury of the issue thus made, the court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed by law. If ~~such~~ the jury finds on the issue in favor of ~~such~~ the claimant, or if the court trying such issue without a jury so finds, the judgment of the court shall be to entirely relieve the property from forfeiture, and no costs shall be taxed against ~~such~~ the claimant.

DRAFTING NOTE: This section is comprised of subsections (e), (f) and (g) of existing § 4-56. Subsection (e) has been deleted and replaced with a cross reference to § 19.2-377 as these sections are identical. This section also contains technical corrections.

(h) § 4.1-342. Rights of innocent owner. - If it appears to the satisfaction of the court that a claimant, if he claims to be the owner, was the bona fide owner of the conveyance or vehicle seized pursuant to § 4.1-339 at the time of the seizure; that he was ignorant of such illegal use thereof; that ~~such~~ the illegal use was without his connivance or consent; ~~express or implied;~~ and that ~~such~~ the innocent owner has perfected his title to the conveyance or vehicle, if it is a motor vehicle, if application for the title was made ten days prior to its seizure or within ten days from the time it was acquired, the court shall relieve the conveyance or vehicle from forfeiture and restore it to its innocent owner, although the jury, or the court trying the case without a jury, has found against the claimant or the claimant has admitted that the conveyance or vehicle at the time of seizure contained illegally acquired alcoholic beverages or alcoholic beverages being illegally transported in amounts in excess of one quart, or one liter if in a metric-sized container. In such cases the costs of the proceedings shall be paid by the Commonwealth as now provided by law.

Where it is shown to the satisfaction of the court that the conveyance or vehicle for the forfeiture of which proceedings have been instituted was stolen from the person in possession, relief shall be granted the owner or lienor, either or both, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law.

DRAFTING NOTE: Subsection (h) of existing § 4-56 makes up this section, with technical corrections made.

(i) § 4.1-343. Rights of innocent lienor. - If any ~~such~~ a claimant of property seized pursuant to § 4.1-339 is a lienor, and if it appears to the satisfaction of the court that the owner of the conveyance or vehicle has perfected his title to the conveyance or vehicle; if it is a motor vehicle, prior to its seizure, or within ten days from the time it was acquired, and that ~~such~~ (i) the lienor was ignorant of the fact that ~~such~~ the conveyance or vehicle was being used for illegal purposes; when it was so seized; that ~~such~~, (ii) the illegal use was without ~~such~~ the lienor's connivance or consent; ~~express or implied~~, and that (iii) he held a bona fide lien on such property and had perfected the same ~~it~~ in the manner prescribed by law prior to such seizure ~~(if such conveyance or vehicle is an automobile the memorandum of lien on the certificate of title issued by the Commissioner of the Department of Motor Vehicles on the automobile shall make any other recordation of the same unnecessary)~~, the court shall; by an order entered of record, enter an order to establish the lien, upon satisfactory proof of the amount thereof. If the conveyance or vehicle is an automobile, the memorandum of lien on the certificate of title issued by the Commissioner of the Department of Motor Vehicles shall make

any other recordation of the lien unnecessary.

If, in the same proceeding, it is determined that the owner of the seized property was himself in possession of the same *it* at the time it was seized, and that such illegal use was with his knowledge or consent, the forfeiture hereinbefore in this section declared shall become final as to any and all interest and equity which such owner, or any other person so illegally using the same *it*, may have in such seized property, which and the forfeiture shall be entered of record. In the last-mentioned event, if

If the lien established is equal to or more than the value of the conveyance or vehicle, such the conveyance or vehicle shall be delivered to the lienor, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law; if. If the lien is less than the value of the conveyance or vehicle, the lienor may have the conveyance or vehicle delivered to him upon the payment of the difference. Should the lienor not demand delivery as aforesaid, an order shall be made for the sale of the property by the sheriff of the county or city, in the manner prescribed by law, out of the proceeds of which sale shall be paid, first, the lien, and second, the costs of the proceedings. The residue, if any, shall be paid into the Literary Fund.

DRAFTING NOTE: This section is comprised of subsection (i) of existing § 4-56, with technical corrections made.

(i) § 4.1-344. Sale of forfeited property. - If; however, no valid lien is established against the seized property seized in accordance with § 4.1-339, and upon the trial of the information, it is determined that the owner thereof was himself using the same; property at the time of the seizure, and that such the illegal use was with his knowledge or consent, the property shall be completely forfeited to the Commonwealth, and an order shall be made for the sale of such property by the sheriff of the county or city, in the manner prescribed by law. Out of the proceeds of such sale shall be paid the costs of the proceedings, and the residue shall be paid into the Literary Fund. Failure to maintain on a conveyance or vehicle a permit or other indicia of permission issued by the Board authorizing the transportation of alcoholic beverages within, into or through, the Commonwealth when the other Board regulations of the Board applicable to such transportation otherwise have been complied with shall not be cause for the forfeiture of such conveyance or vehicle. Out of the proceeds of such sale shall be paid the cost, and the residue shall be paid into the Literary Fund.

DRAFTING NOTE: This section is comprised of subsection (j) of existing § 4-56, with technical corrections made.

(j) § 4.1-345. Vehicles seized by Board. - In the case of any motor vehicle seized by agents of the Board in connection with its use in the illegal manufacture, possession, sale, or transportation of alcoholic beverages upon which the tax imposed by the laws of the United States Congress has not been paid, the Board may be permitted the use and operation of such operate the vehicle, after court forfeiture, for investigation of violations of this title. The Board shall have insurance for liability and property damage on each such vehicle used or operated.

DRAFTING NOTE: This section is comprised of subsection (j1) of existing § 4-56, with technical corrections made.

(k) § 4.1-346. Contraband beverages.— In every case, the alcoholic Alcoholic beverages so seized pursuant to § 4.1-339 shall be deemed contraband as provided in § 4-52 4.1-336 and disposed of accordingly. Failure to maintain on a conveyance or vehicle a permit or other indicia of permission issued by the Board authorizing the transportation of alcoholic beverages within, into or through the Commonwealth when the other Board regulations of the Board applicable to such transportation otherwise have been complied with shall not be cause for deeming such alcoholic beverages contraband.

DRAFTING NOTE: This section is comprised of subsection (k) of existing § 4-56, with technical corrections made.

(l) § 4.1-347. Expenses taxed as costs. - In all cases, the The actual expense incident to the custody of the seized property property seized pursuant to § 4.1-339, and the expense incident to the sale thereof, including commissions, shall be taxed as costs.

DRAFTING NOTE: This section is comprised of subsection (l) of existing § 4-56, with technical corrections made.

(m) § 4.1-348. Beverages not licensed under this chapter title.—The provisions of this section §§ 4.1-339 through 4.1-348 shall not apply to alcoholic beverages which may be

manufactured and sold without any license under the provisions of this chapter title .

DRAFTING NOTE: This section is comprised of subsection (m) of existing § 4-56, with technical corrections made.

~~§ 4-92~~ 4.1-349 . Punishment for violations of chapter title or regulations; requiring bond ; appearance by attorney for Commonwealth .— (a) Punishment prescribed. - A. Any person convicted of a misdemeanor under the provisions of this chapter title without specification as to the class of offense or penalty therefor , or convicted of violating any other provision thereof, or convicted of violating any Board regulation made by the Board under the provisions of this chapter , shall be guilty of a Class 1 misdemeanor.

(b) Requiring bond. - B. In addition to the penalties imposed by this chapter title for violations thereof , any court before whom any person is convicted of violating a violation of any provision of this chapter title may require such defendant to execute bond, with approved security, in the penalty of not more than \$1,000, conditioned with the condition that the defendant will not violate any of the provisions of this chapter title , for the term of one year. If any such bond is required and is not given, the defendant shall be committed to jail until it is given, or until he is discharged by the court, provided he shall not be confined therefor for a longer period than six months. If any such bond required by a court is not given during the term of the court by which conviction is had, it may be given before the any judge thereof in vacation or before the clerk of such court.

(c) Cancellation of license. - C. The provisions of this chapter title shall not be construed to prevent the Board from ~~cancelling~~ suspending, revoking or refusing to continue the license of any person convicted of violating a violation of any provision of this chapter title .

(d) Appearance by attorney for Commonwealth. - The attorneys for the Commonwealth are hereby directed to appear and represent the Commonwealth before the court trying any person for any violation of this chapter in their respective jurisdictions, except for drinking in public. D. No court shall hear such a case unless the respective attorney for the Commonwealth or his assistant is present or has been duly notified of that such a case is pending.

DRAFTING NOTE: No substantive change in the law. Technical amendments only. In subsection C. "cancellation" of licenses has been changed to "suspension, revocation or refusal to continue" to conform with actual Board practice. Subsection d, dealing with the presence of the Commonwealth Attorney, has been deleted because it is in conflict with § 15.1-8.1 (1977, c. 548) which makes appearance of the Commonwealth Attorney discretionary on misdemeanor charges. Subsection catchlines have been removed.

~~§ 4-94~~ 4.1-350 . Witness not excused from testifying because of self-incrimination.—No person shall be excused from testifying for the Commonwealth as to any offense committed by another under this chapter title by reason of his testimony tending to incriminate himself, but the him. The testimony given by such person on behalf of the Commonwealth when called to the stand by the trial justice or court trying the case, or by the attorney for the Commonwealth, or when summoned by the Commonwealth and sworn as a witness by the court or clerk and sent before the grand jury, as a witness for the prosecution shall in no case not be used against him nor shall and he shall not be prosecuted as to for the offense as to which he testifies.

DRAFTING NOTE: No substantive change in the law. The language of this section has been updated to conform to other sections of the Code dealing with this issue, notably § 29.1-561. Insertion of the language "called as a witness for the prosecution" eliminates the need to list for whom the witness is called.

~~§ 4-91~~ 4.1-351 . Previous convictions.—In any indictment, information or warrant charging any person with having violated a violation of any provision of this chapter title it may be alleged, and evidence may thereafter be introduced at the trial of such person to prove ; that such person has been previously convicted of a violation or violations of this chapter title .

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-90~~ 4.1-352 . Certificate of chemist as evidence; requiring chemist to appear.—The certificate of any chemist employed by the Commonwealth on behalf of the Board or the Division of Consolidated Laboratory Services , when signed and sworn to by him, shall be evidence in all prosecutions for violations of this chapter title and all controversies in any judicial proceedings touching the mixture analyzed by him ; but, on . On motion of the accused or any party in interest, the court may require the chemist making the analysis to appear as a witness and be subject to cross-examination, provided such motion is made within a reasonable

time prior to the day on which the case is set for trial.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. All analysis for the ABC Board is done by the Division of Consolidated Laboratory Services. This section has been amended to reflect that fact.

§ ~~4-90.1~~ 4.1-353 . Label on sealed container prima facie evidence of alcoholic content.—In any prosecution for violations of this ~~chapter title~~ , the alcoholic content as shown on the label of any sealed container shall be prima facie evidence of the alcoholic content of said container.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ ~~4-88~~ 4.1-354 . No recovery for *alcoholic* beverages illegally sold.—No action to recover the price of any alcoholic beverages sold in contravention of the ~~provision of this chapter title~~ may be maintained.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

CHAPTERS 4 AND 5.

(Wine and Beer Franchise Acts).

CHAPTER DRAFTING NOTE:

1. STATEMENTS OF LEGISLATIVE INTENT.

Chapter 4 (Wine Franchise Act) contains a construction and purpose section which is not found in Chapter 5 (Beer Franchise Act). The Task Force looked at this section in light of past Code Commission policy against legislative intent sections in the Code, but felt that this section was important to the Wine Franchise Act and therefore should be preserved. The Code Commission concurred. The Task Force and Code Commission felt it inappropriate to add a similar legislative intent section to the Beer Franchise Act.

2. DEFINITIONS.

Phrases such as “is licensed as a winery pursuant to § 4-25” have been replaced with “winery licensee” as the term “licensee” has been defined in Chapter 1 as “any person to whom a license has been granted by the Board”. The purpose being to eliminate repetitive language.

Also “or beverages” has been deleted because 3.2% beverages are now defined as wine or beer, as appropriate.

3. APPLICABILITY SECTIONS.

The applicability sections (currently called “coverage”) in each act have been moved to follow the respective definitional sections.

4. SEVERABILITY, AND REASONABLENESS AND GOOD FAITH PROVISIONS.

The Task Force felt that these provisions should be preserved in each act even though (i) the issue of severability is addressed in Title 1 and (ii) reasonableness and good faith are inherent in contract law. With reference to the severability issue, the Code Commission disagreed and the severability section in both the Wine Franchise Act and the Beer Franchise Act was deleted. With reference to the reasonableness and good faith issues, the Code Commission concurred with the Task Force and these provisions were retained.

5. MISCELLANEOUS.

Chapters 4 and 5 also contain technical corrections to word similar provisions in each act identically.

CHAPTER 4.

Wine Franchise Act.

§ 4-118.42 4.1-400 . Construction and purpose.—This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

The underlying purposes and policies of the chapter are:

1. To promote the interest of the parties and the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;
2. To preserve and protect the existing three-tier system for the distribution of wine and beverages , which system is deemed material to the proper regulation by the ~~Alcoholic Beverage Control~~ Board of the distribution of alcoholic beverages;
3. To prohibit unfair treatment of wine wholesalers by wineries, promote compliance with valid franchise agreements, and define certain rights and remedies of wineries in regard to cancellation of franchise agreements with wholesalers;
4. To establish conditions for creation and continuation of all wholesale wine distributorships, including original agreements and any renewals or amendments thereto, to the full extent consistent with the laws and Constitutions of ~~this~~ the Commonwealth and the United States; and
5. To provide for a system of designation and registration of franchise agreements between wineries and wholesalers with the ~~Alcoholic Beverage Control~~ Board as an aid to the ~~Board's~~ Board regulation of the distribution of wine and beverages by wholesalers.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.43 4.1-401 . Chapter title and definitions *Definitions* .— This chapter may be cited as the “Wine Franchise Act.” Unless otherwise required by the context, the terms defined in this section have the meaning given below and such definitions shall be applicable only to the provisions of this chapter. As used in this chapter, unless the context requires a different meaning:

“Agreement” means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a winery and wine wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the winery’s brands of wine or beverages . The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an “ agreement “ within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by a winery for any wine or beverages to a wine wholesaler within ~~this~~ the Commonwealth.
2. The payment by a wine wholesaler and the acceptance of payment by any winery for the shipment of an order of wine or beverages intended for sale in ~~Virginia~~ the Commonwealth .

“Brand” means any word, name, group of letters, symbol or combination thereof adopted and used by a winery to identify a specific wine product and to distinguish that product from other wine produced or marketed by that winery or other wineries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

“Brand extension” and “extension of a brand” mean any “ brand ,” as defined above, which incorporates all or a substantial part of the unique features of a preexisting brand of the same winery and which relies to a significant extent on the good will associated with such preexisting brand.

“Board” means the Alcoholic Beverage Control Board.

“Dual distributorships” means the existence of agreements between a single winery and more than one wholesaler, each selling a different brand, in a given territory as the result of a purchase of another winery.

“Nonsurviving winery” means any winery which is purchased by another winery as provided in § 4-118.46 4.1-405 and, as a result, ceases to exist as an independent ~~commercial~~ legal entity.

“Person” means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. “ Person “ also includes heirs, assigns, personal representatives and guardians.

"Purchase" shall include includes , but is not be limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving winery" means the winery which purchases a nonsurviving winery as provided in § 4-118.46 4.1-405 .

"Territory" or "sales territory" means the area of primary sales responsibility within ~~Virginia~~ the Commonwealth expressly or implicitly designated by any agreement between any wine wholesaler and winery for the brand or brands of any winery.

"Wine wholesaler" means any person holding a wholesale wine license within this Commonwealth pursuant to the provisions of §-4-25 and licensee offering wine for sale or resale to retailers or other wine wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed winery.

"Winery" means every person, including any authorized representative of such person pursuant to subsection D of § 4-25 4.1-218 , that which enters into an " agreement " with any Virginia wholesale wine licensee and that which (i) is licensed as a winery pursuant to the provisions of §-4-25, or is licensed as a Virginia farm winery pursuant to the provisions of §-4-25.1 , (ii) is licensed as a wine importer pursuant to §-4-25 and is not at the same time simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in ~~Virginia the Commonwealth~~ or not, or (iv) without regard to whether such person is licensed in ~~Virginia the Commonwealth~~ , has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.58 4.1-402 . Coverage Applicability .—This chapter shall apply to franchise or distribution all agreements (as "agreement" is defined in §-4-118.43) in effect as of the effective date of this chapter on or after February 18, 1989 , and any renewal or amendment of such agreements. For the purposes of this chapter, an agreement shall be deemed to be in effect or renewed or continued in effect when any of the following acts shall occur occur after the effective date of this chapter:

1. The shipment, preparation for shipment or acceptance of any order by a winery or its agents for any wine or beverages to a wine wholesaler within ~~this the~~ Commonwealth; and
2. The payment by a wine wholesaler and the acceptance of payment by any winery or its agents for the shipment of an order of wine or beverages intended for sale in ~~Virginia the~~ Commonwealth .

DRAFTING NOTE: No substantive change in the law. Catchline has been changed to "Applicability" for clarification. This section, with technical corrections only, has been moved to follow the definitional section. "The effective date of this chapter" has been replaced by "February 18, 1989" (the effective date of the chapter).

§ 4-118.44 4.1-403 . No inducement or coercion.—No winery shall:

1. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to accept delivery of any wine or beverage or any other commodity which shall not have has not been ordered by the wine wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a winery and wine wholesaler.
3. Require a wine wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other winery anywhere in the Commonwealth of Virginia .

DRAFTING NOTE: No substantive change in the law. The words "or beverage" have been deleted as 3.2% wines are now defined as wine.

§ 4-118.45 4.1-404 . Primary area of responsibility.—Each winery which enters into an agreement with a wine wholesaler shall designate a sales territory as the primary area of responsibility of that wholesaler which is applicable to the agreement. The term "primary area of responsibility" shall not be construed as restricting sales or sales efforts by a wine wholesaler

exclusively to retailers located within the designated sales territory, and any agreement to the contrary shall be void. No winery shall enter into any agreement with more than one wholesaler for the purpose of establishing more than one agreement for its brand or brands of wine in any territory ; however, . However, the existence of more than one such agreement as a result of a sale of a winery as contemplated by § 4-118.46 4.1-405 shall not be prohibited. Notwithstanding any other provision in this chapter, a winery may enter into agreements with more than one wholesaler in a sales territory for new brands which are not clearly extensions of existing brands. Territories served by a wine wholesaler on the effective date of this chapter February 18, 1989, shall be deemed designated sales territories within the meaning of this section. Within thirty days of the effective date of this chapter, each Each winery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of what, if any ; variations which exist in such the designated territory in regard to a particular brand or brands . Redesignations occurring after the effective date of this chapter, shall be reported to the Board within thirty days.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.46 4.1-405 . Sale of winery.—A. Except for discontinuance of a brand or for good cause as provided in § 4-118.47 4.1-406 , the purchaser of a winery ; as defined in this chapter, shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers in effect on the date of purchase. The purchaser of a brand from a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B of this section will determine the distribution rights to such brand or any extension thereof ; for . For the limited purpose of making such determination, the winery selling such the brand shall be deemed a nonsurviving winery and the purchaser shall be a surviving winery.

B. For purposes of this section, when a purchase of a winery by or on behalf of another winery causes the selling winery to cease to exist as a separate an independent legal entity, the selling winery shall be regarded as a nonsurviving winery, and the winery on whose behalf the purchase was made shall be regarded as a surviving winery. In any case in which such a purchase of a winery by or on behalf of another winery has created or creates in the future will create a dual distributorship ; as defined herein , the following rules shall apply in order to determine the allocation of any brands which are first marketed in Virginia the Commonwealth by the surviving winery after the effective date of this chapter February 18, 1989 .

1. If the surviving winery distributes in Virginia the Commonwealth any brand or brands of the nonsurviving winery which that winery marketed anywhere prior to the purchase, these brands shall be distributed through those wholesaler(s), if any, any wholesalers who were distributors in Virginia the Commonwealth for the nonsurviving winery. If the nonsurviving winery had no distributors in Virginia the Commonwealth , then the surviving winery's brands, as well as the brands of the surviving winery which were marketed anywhere prior to the purchase, shall be distributed through those wine wholesalers who were wholesaler(s) wholesalers of the surviving winery prior to the purchase.

2. If the surviving winery decides to market in Virginia the Commonwealth a new brand which was not marketed anywhere prior to the purchase, but which is clearly an extension of a brand which did exist prior to the purchase, the new brand shall be distributed through those wholesalers who distributed the brand of which the new brand is an extension.

3. If the surviving winery decides to introduce in Virginia the Commonwealth a new brand which was not marketed anywhere prior to the purchase and which is not a brand extension, the new brand may be distributed through any distributor.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. In subsection B; "separate" legal entity has been changed to "independent" legal entity to conform with the same section in the Beer Franchise Act.

§ 4-118.47 4.1-406 . Cancellation.—Notwithstanding the terms, provisions or conditions of any agreement, no winery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the winery has first complied with the provisions of § 4-118.48 4.1-407 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. " Good cause " shall not include the sale or purchase of a winery. " Good cause " shall include, but is not be limited to the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;

2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the winery including, but not limited to, a substantial failure by a wine wholesaler to (i) maintain a sales volume or trend of his winery's brand or brands comparable to that of other distributors of that brand in the Commonwealth similarly situated, or (ii) render services comparable in quality, quantity or volume to the services rendered by other wholesalers of the same brand or brands within the Commonwealth similarly situated. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Nothing in this section shall be construed to prohibit a winery from proposing or effecting an amendment to a contract with a wine wholesaler in ~~Virginia~~ *the Commonwealth* provided that such amendment is not inconsistent with this chapter.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.48 4.1-407 . Notice of intent to terminate.—A. Except as provided in subsection E below , a winery shall provide a wholesaler at least ninety days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancelation or nonrenewal. After providing such notice, a winery may immediately apply to the Board for a determination that it is likely to incur substantial hardship if required to comply with the ninety-day notice requirement. If the Board makes such a determination, the ninety-day notice requirement shall be reduced to thirty days. In this event, the thirty-day notice period shall be included in the sixty-day opportunity to cure period provided in subsection B.

B. Where ~~such the reason or reasons relate~~ *relates* to a condition ~~or conditions~~ which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and, within ~~such the sixty-day period~~, shall give written notice to the winery if and when such action is taken. A copy of ~~such the~~ notice shall be mailed at the same time to the Board. If ~~such condition or conditions have~~ *has* been rectified by action of the wholesaler, then the proposed amendment, termination, cancelation or nonrenewal shall be void and without legal effect. However, where the winery contends that action on the part of the wholesaler has not rectified one or more of such conditions, ~~such the~~ winery must within fifteen days after the expiration of ~~such the~~ sixty-day period request a hearing before the Board to determine if the condition ~~or conditions have~~ *has* been rectified by action of the wholesaler.

C. Where ~~such the reason or reasons relate~~ *relates* to a condition ~~or conditions~~ which may not be rectified by the wholesaler within ~~such the~~ sixty-day period, ~~such the~~ wholesaler may request a hearing before the Board to determine if there is good cause for ~~such the~~ amendment, termination, cancelation or nonrenewal of the agreement.

D. Upon request in writing *within the ninety-day period provided in subsection A* from such winery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of the wholesaler has rectified ~~such the~~ condition ~~or conditions~~ or, as the case may be, if good cause exists for the amendment, termination, cancelation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the winery shall have the burden of proving the existence of good cause. Where a petition is made to the Board for ~~such a~~ determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof. However, where a petition is made to the Board after the agreement has been terminated in accordance with the procedures set forth in this section, the filing of the petition shall not cause the terminated agreement to be reinstated unless the terminated wholesaler's failure to petition in a timely manner was based upon reasonable reliance on representation or other inducements made by the winery.

E. F. No notice shall be required and an agreement may be immediately ~~terminated~~, amended, *terminated*, canceled or allowed to expire if the reason for the amendment,

termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;
2. An assignment for the benefit of creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
3. Revocation of the wholesaler's license.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.40 4.1-408 . Transfer of business.—A. No winery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more wineries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A of this section , no winery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family of the wholesaler . However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all respects be governed by the provisions of this chapter. As used in this subsection, "family" means and includes the wholesaler's spouse, parent parents , siblings, children, stepchildren , and lineal descendants, including those by adoption ; of the wholesaler .

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.50 4.1-409 . Remedies.—A. In addition to any other sanctions which the Board may be is empowered by law to impose, it shall have the authority to may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a winery is found to have attempted or accomplished an amendment, termination, cancelation, termination or refusal to continue or renew an agreement without good cause as defined in § 4-118.47 4.1-406 , the Board shall , upon the request of the wholesaler involved, shall enter an order requiring (i) that (i) the agreement remain in effect or be reinstated ; or (ii) in the alternative, the Board shall order the winery to pay the wholesaler reasonable compensation for the value of this agreement as determined pursuant to subsection B. Such reasonable Reasonable compensation shall include, but is not be limited to, the following: the

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the winery's products ; the ;
2. The cost of the wholesaler's inventory of the winery's products calculated as the sum of the net price paid by the wholesaler for the inventory ; the ;
3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory ; the ;
4. The cost of transporting the inventory from the winery to the wholesaler's warehouse, plus any handling costs ; ; and the
5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

B. In the event that the winery and the wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, a person qualified by experience to appraise the value of existing businesses shall be appointed arbitrator by the Secretary of the Board. The decision of the arbitrator shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the winery. By entering into an agreement within the meaning of this chapter , the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of

C. In addition to the foregoing remedies, in any case in which a winery is found to have violated ~~§ 4-118.48~~ 4.1-407, the Board may, upon request of the wholesaler involved, order the winery to compensate the wholesaler for any loss proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B of ~~this section~~ and shall be calculated from the date of the violation by the winery to the date the winery initiates remedial action pursuant to an ~~Board order of the Board~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.51~~ 4.1-410. Board proceedings and appellate review.—A. The Board, upon petition by any interested party, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that the winery or wine wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with ~~and governed by~~ the Virginia Administrative Process Act (§ 9-6.14:1 et seq.). Notwithstanding the foregoing, the Board is ~~authorized to~~ may adopt rules of practice and regulations pertaining to proceedings under this chapter, including ~~rules and~~ regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions as it may see fit, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter, the Board or the circuit court reviewing ~~an a Board order of the Board issued pursuant to this chapter~~, for good cause, shall enter an order requiring that information relating to the sale, marketing, or manufacturing practices or processes of the winery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the winery and wholesaler on condition that such information will not be disclosed by the Board, the winery or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter ~~before the Board or the circuit court, as the case may be~~, information so supplied shall be returned to the party furnishing it ~~to the Board or the court~~ or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.52~~ 4.1-411. Price of product.—No winery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any wine or beverage.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.53~~ 4.1-412. Increase of prices.—No winery or wine importer shall increase the prices charged any ~~person holding a wholesale wine license licensee~~ for wine or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery or wine importer, which notice shall contain the amount and effective date of the increase. A copy of ~~such~~ the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked; ~~provided that the~~. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a winery or wine importer so requests and demonstrates good cause therefor.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. "Wine importer" inserted to clarify that this section is applicable to them. As written in existing law, wine importer appears only in the last sentence.

~~§ 4-118.54~~ 4.1-413. Retaliatory action prohibited.—A winery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the winery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not be limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of services or quality of products available to the wholesaler under the agreement.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.55~~ 4.1-414 . Management.—No winery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery for its wholesalers.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.56~~ 4.1-415 . No discrimination.—No winery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.57~~ 4.1-416 . No waiver; conflicts of laws.— A. No winery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a winery and a wine wholesaler pursuant to which the wholesaler is to market the winery's products in ~~Virginia~~ the Commonwealth shall be governed by the laws of ~~Virginia~~ the Commonwealth as the place of performance, notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.59~~ 4.1-417 . Right of free association.—No winery or wholesaler shall restrict or inhibit ; ~~directly or indirectly,~~ the right of free association among wineries or wholesalers for any lawful purpose.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.61.~~ Severability.—If any section, part or provision of this chapter shall be declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in the controversy in which such declaration was made and shall not affect any other section, provision or part thereof.

DRAFTING NOTE: No substantive change in the law. This severability section has been deleted as duplicative of the severability section which appears as § 1-17.1 in Title 1 of the Code of Virginia. It is intended that § 1-17.1 apply to Title 4 as revised. Specifically, § 1-17.1 states, in pertinent part, " ... the provisions of all statutes are severable unless (i) the statute specifically provides that its provisions are not severable, ..." Further, § 1-13, Rules of construction, states "in the construction of this Code and all statutes, the rules shall be observed as set forth in the following sections, unless the construction would be inconsistent with the manifest intent of the General Assembly."

~~§ 4-118.60~~ 4.1-418 . Reasonableness and good faith.—A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement as defined in ~~§ 4-118.43~~ a requirement of reasonableness ; every . Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

CHAPTERS 4 AND 5.

(Wine and Beer Franchise Acts).

CHAPTER DRAFTING NOTE:

1. STATEMENTS OF LEGISLATIVE INTENT.

Chapter 4 (Wine Franchise Act) contains a construction and purpose section which is not found in Chapter 5 (Beer Franchise Act). The Task Force looked at this section in light of past Code Commission policy against legislative intent sections in the Code, but felt that this section was important to the Wine Franchise Act and therefore should be preserved. The Code Commission concurred. The Task Force and Code Commission felt it inappropriate to add a similar legislative intent section to the Beer Franchise Act.

2. DEFINITIONS.

Phrases such as "is licensed as a winery pursuant to § 4-25" have been replaced with "winery licensee" as the term "licensee" has been defined in Chapter 1 as "any person to whom a license has been granted by the Board". The purpose being to eliminate repetitive language.

Also "or beverages" has been deleted because 3.2% beverages are now defined as wine or beer, as appropriate.

3. APPLICABILITY SECTIONS.

The applicability sections (currently called "coverage") in each act have been moved to follow the respective definitional sections.

4. SEVERABILITY, AND REASONABLENESS AND GOOD FAITH PROVISIONS.

The Task Force felt that these provisions should be preserved in each act even though (i) the issue of severability is addressed in Title 1 and (ii) reasonableness and good faith are inherent in contract law. With reference to the severability issue, the Code Commission disagreed and the severability section in both the Wine Franchise Act and the Beer Franchise Act was deleted. With reference to the reasonableness and good faith issues, the Code Commission concurred with the Task Force and these provisions were retained.

5. MISCELLANEOUS.

Chapters 4 and 5 also contain technical corrections to word similar provisions in each act identically.

CHAPTER 5.

Beer Franchise Act.

~~§ 4-118.3. Title of chapter.—This chapter may be cited as the "Beer Franchise Act."~~

DRAFTING NOTE: This section has been repealed as obsolete. This style is no longer used.

~~§ 4-118.4 4.1-500 . Definitions.— Unless otherwise required by the context, the following terms have the meanings given them and such definitions shall be applicable only to the provisions of this chapter As used in this chapter, unless the context requires a different meaning:~~

~~"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a brewery and beer wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the brewery's brands of beer or beverages . The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an " agreement " within the meaning of this definition:~~

~~1. The shipment, preparation for shipment or acceptance of any order by any brewery for any beer or beverages to a beer wholesaler within this the Commonwealth.~~

~~2. The payment by a beer wholesaler and the acceptance of payment by any brewery for the shipment of an order of beer or beverages intended for sale in Virginia the Commonwealth .~~

~~"Beer wholesaler," "wholesaler," "beer distributor," and "distributor" mean any person holding a wholesale beer license licensee , including any successor-in-interest to such person, within this the Commonwealth pursuant to the provisions of § 4-25, and offering beer for sale or resale to retailers or other beer wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewery.~~

~~"Board" means the Alcoholic Beverage Control Board.~~

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a brewery to identify a specific malt beverage product and to distinguish that product from other beers produced or marketed by that brewery or other breweries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any "brand," as defined above, which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with such preexisting brand.

"Brewery" means every person, including any authorized representative of such person pursuant to ~~subsection D of § 4-25~~ 4.1-218 which (i) is licensed pursuant to the provisions of ~~§ 4-25~~ as a brewery located within the Commonwealth of Virginia, (ii) holds a beer importer's license, issued pursuant to ~~§ 4-25~~ and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products (excluding licensed Virginia wholesalers and retailers) or has the contractual right to distribute under its own brand any malt beverage product whether licensed in ~~this~~ the Commonwealth or not, who enters into an "agreement" with any beer wholesaler licensed to do business in ~~this~~ the Commonwealth.

"Dual distributorships" means the existence of agreements between a single brewery and more than one wholesaler in a given territory as the result of a purchase of another brewery.

"Nonsurviving brewery" means any brewery which is purchased by another brewery as provided in ~~§ 4-118.6:1~~ 4.1-504 and, as a result, ceases to exist as an independent ~~commercial~~ legal entity.

"Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and guardians.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving brewery" means a brewery which purchases a nonsurviving brewery as provided in ~~§ 4-118.6:1~~ 4.1-504.

"Territory" or "sales territory" means the area of sales responsibility within ~~Virginia~~ the Commonwealth expressly or impliedly designated by any agreement between any beer wholesaler and brewery for the brand or brands of any brewer.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.18~~ 4.1-501. Coverage Applicability.—The provisions of ~~this~~ This chapter shall cover and apply to all agreements in ~~existence~~ effect on or after January 1, 1978.

DRAFTING NOTE: No substantive change in the law. Catchline changed to Applicability for clarification. This section, with technical corrections only, was moved to follow the definitional section.

~~§ 4-118.5~~ 4.1-502. No inducement or coercion.—No brewery shall:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any beer ~~or beverage~~ or any other commodity which ~~shall not have~~ has not been ordered by the beer wholesaler.

2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewery and beer wholesaler.

3. Require a beer wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other brewery anywhere in the Commonwealth of Virginia.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. The phrase "or beverages" has been deleted as 3.2% beer is now defined as beer in Chapter 1.

§ 4-118.6 4.1-503 . Sales territory.—Each brewery which enters into an agreement with a beer wholesaler shall designate a sales territory for that wholesaler which is applicable to the agreement. No brewery shall enter into any agreement with more than one beer wholesaler for the purpose of establishing more than one agreement for its brand or brands of beer or beverages in any territory ; however . However , the existence of more than one such agreement as a result of a sale of a brewery as contemplated by § 4-118.6-1 4.1-504 shall not be prohibited. Each brewery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of what, if any ; variations which exist in such designated territory with regard to a particular brand or brands . Redesignations shall be reported to the Board within thirty days.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.6-1 4.1-504 . Purchase Sale of brewery.—A. Except for discontinuance of a brand or for good cause as provided in § 4-118.7 4.1-505 , the purchaser of a “ brewery “ as defined in this chapter shall become obligated to all of the terms and conditions of the selling brewery's agreements with distributors in effect on the date of purchase. The purchaser of a “ brand “ from a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreement with distributors concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B of this section will determine the distribution rights to such brand or any extension thereof ; for . For the limited purpose of making such determination, the brewery selling such brand shall be a nonsurviving brewery and the purchaser shall be a surviving brewery.

B. For purposes of this section, when a purchase of a brewery by or on behalf of another brewery causes the selling brewery to cease to exist as an independent commercial legal entity, the selling brewery shall be regarded as a nonsurviving brewery and the brewery on whose behalf the purchase was made shall be regarded as a surviving brewery. The following rules shall apply in order to determine (i) the distribution rights to any brands which are first marketed in Virginia the Commonwealth by the surviving brewery on or after July 1, 1985, with respect to a dual distributorship created prior to July 1, 1985, and (ii) the distribution rights to any brands, regardless of when they were first marketed in Virginia the Commonwealth , with respect to a dual distributorship created on or after July 1, 1985.

1. If the surviving brewery distributes in Virginia the Commonwealth any brand or brands of the nonsurviving brewery which that brewery marketed in Virginia the Commonwealth at any time during the one-year period ending on the day the purchase agreement was made, these brands shall be distributed through those beer wholesalers who were distributors in Virginia the Commonwealth for the nonsurviving brewery ; any brand or . Any brands which the surviving brewery had marketed in Virginia the Commonwealth prior to the purchase shall be distributed through those beer wholesalers who were wholesalers of the surviving brewery prior to the purchase.

2. If the surviving brewery decides to market in Virginia the Commonwealth a new brand which is clearly an extension of a brand already assigned to beer wholesalers in Virginia the Commonwealth , the new brand shall be distributed through those wholesalers who distribute the brand of which the new brand is an extension.

3. If the surviving brewery decides to introduce in Virginia the Commonwealth a new brand which was not marketed in Virginia the Commonwealth at any time during the one-year period ending on the date the purchase agreement was made and which is not a brand extension, the surviving brewery shall market the new brand either through a distributor of the nonsurviving brewery or through a distributor who was a distributor of the surviving brewery prior to the purchase, as the brewery may see fit in any territory.

C. None of the provisions of subsection Subsection B of this section shall have any applicability not apply to determine distributorship rights to any brands or brand extensions which were marketed in Virginia the Commonwealth prior to July 1, 1985, with respect to any dual distributorship created prior to July 1, 1985.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. In subsection B, the change “independent legal entity” has been made to conform with the same section in the Wine Franchise Act.

§ 4-118.7 4.1-505 . Cancellation.—Notwithstanding the terms, provisions or conditions of any agreement, no brewery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the brewery has first complied with the provisions of § 4-118.8 4.1-506 and good cause exists for

amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. " Good cause " shall not include the sale or purchase of a brewery. " Good cause " shall include, but is not be limited to , the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;
2. Bankruptcy or receivership of the wholesaler;
3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
4. Failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him in writing by the brewery, including, but not limited to, a substantial failure by a beer wholesaler to (i) maintain a sales volume of his brewery's brand or brands or (ii) render services comparable in quality, quantity or volume to the sales volumes maintained and services rendered by other wholesalers of the same brand or brands within the Commonwealth, or (iii) failure to obtain the consent of the brewery to a transfer of a wholesaler's business unless a determination has been made by the Board pursuant to § 4-118.0 4.1-507 that such consent was unreasonably withheld by the brewery. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the brewery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.8 4.1-506 . Notice of intent to terminate.—A. Except as provided in subsection E below , a brewery shall provide a wholesaler at least ninety days prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancelation or nonrenewal.

B. Where ~~such~~ the reason or reasons relate *relates* to a condition or conditions which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and shall, within ~~such~~ the sixty-day period, give written notice to the brewery if and when such action is taken ; a . A copy of ~~which~~ the notice shall be mailed at the same time to the Board. If such condition or conditions have *has* been rectified by action of the wholesaler, then the proposed amendment, termination, cancelation or nonrenewal shall be void and without legal effect ; ~~however~~ . *However* , where the brewery contends that action on the part of the wholesaler has not rectified one or more of such conditions ~~such~~ the brewery shall within fifteen days after the expiration of such sixty-day period request a hearing before the Board to determine if the condition or conditions have *has* been rectified by action of the wholesaler.

C. Where ~~such~~ the reason or reasons relate *relates* to a condition or conditions which may not be rectified by the wholesaler within ~~such~~ the sixty-day period, ~~such~~ the wholesaler may request a hearing before the Board to determine if there is good cause for ~~such~~ the amendment, termination, cancelation or nonrenewal of the agreement.

D. Upon request in writing within the ninety-day period provided in subsection A from such brewery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of the wholesaler has rectified ~~such~~ the condition or conditions or , as the case may be , if good cause exists for the amendment, termination, cancelation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the brewery shall have the burden of proving the existence of good cause. Where a petition is made to the Board in a timely manner for ~~such~~ a determination , the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof.

~~E.~~ F. No notice shall be required and an agreement may be immediately ~~terminated~~, amended, *terminated*, canceled or allowed to expire if the reason for the amendment, termination, cancelation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;
2. An assignment for the benefit of creditors or similar disposition of the assets of the

business other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

3. Revocation of the wholesaler's license.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.9~~ 4.1-507 . Transfer of business.—A. No brewery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business, or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more breweries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A of this section , no brewery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the *wholesaler's* family of the wholesaler . However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all other respects be governed by the provisions of this chapter. As used in this subsection, "family" means ~~and includes~~ the *wholesaler's* spouse, parents, siblings, children, stepchildren , and lineal descendants, including those by adoption ; ~~of the wholesaler .~~

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118.10~~ 4.1-508 . Remedies.—A. In addition to any other sanctions which the Board ~~may be is~~ empowered by law to impose, it ~~shall have the authority to~~ may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a brewery is found to have attempted or accomplished an amendment, *termination*, cancelation, *termination* or refusal to continue or renew an agreement without good cause as defined in § ~~4-118.7~~ 4.1-505 , the Board shall, upon the request of the wholesaler involved, ~~(i)~~ enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) ~~in the alternative, order~~ the brewery to pay the wholesaler reasonable compensation for the value of the agreement, which shall be determined in the manner provided for in subsection B of this section . ~~Such reasonable Reasonable~~ compensation shall include, but ~~is not be~~ limited to, the following: ~~(i)~~ the

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the brewery's products ; ~~(ii)~~ the ;

2. The cost of the wholesaler's inventory of the brewery's products calculated as the sum of the net price paid by the wholesaler for the inventory ; the ;

3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory ; the ;

4. The cost of transporting the inventory from the brewery to the wholesaler's warehouse, plus any handling costs ; ; and ~~(iii)~~ the

5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets. ~~However, the~~

The compensation for such assets shall be subject to offset for (i) any sums recovered by the wholesaler in liquidation of the assets and (ii) the value which the assets have to the wholesaler independent of their value for use in distributing the brewery's products.

B. In the event ~~that~~ the brewery and the beer wholesaler are unable to ~~mutually~~ agree on the reasonable compensation to be paid for the value of the agreement , the matter shall be submitted to a panel of three arbitrators. The brewery and the beer wholesaler shall each select one arbitrator and the two arbitrators so selected shall appoint a third arbitrator who shall be a person qualified by experience to appraise the value of existing businesses. The decision of the arbitrator shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewery. By entering into an agreement ~~within the meaning of this chapter~~ , the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a brewery is found to have violated ~~§ 4-118-8~~ 4.1-506, the Board may, upon request of the wholesaler involved, may order the brewery to compensate the wholesaler for any losses proximately resulting from such violation, including, but not limited to, lost profits. Such losses shall be determined in the manner provided in subsection B of this section and shall be calculated from the date of the violation by the brewery to the date the brewery initiates remedial action pursuant to an Board order of the Board.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118-11~~ 4.1-509. Board proceedings and appellate review.—A. The Board, upon petition by any beer wholesaler or brewery, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that a brewery or beer wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ 9-6.14:1 et seq.). Notwithstanding the foregoing, the Board is authorized to may adopt rules of practice and regulations pertaining to proceedings under this chapter, including rules and regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions as it may see fit, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter the Board or the circuit court reviewing an a Board order of the Board issued pursuant to this chapter, for good cause, shall enter an order requiring that information relating to the sale, marketing, or manufacturing practices or processes of the brewery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the brewery and wholesaler on condition that such information will not be disclosed by the Board, the brewery, or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter before the Board or the circuit court, as the case may be, information so supplied shall be returned to the party furnishing it to the Board or the court or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118-12~~ 4.1-510. Price of produce product.—No brewery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any beer or beverage.

DRAFTING NOTE: No substantive change in the law. Technical corrections only. Catchline change to conform to same section in Wine Franchise Act.

~~§ 4-118-12-1~~ 4.1-511. Increase of prices.—No brewery or beer importer shall increase the prices charged any person holding a wholesale beer license licensee for beer or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the brewery or beer importer, which notice shall contain the amount and effective date of the increase. A copy of such the notice shall be sent to the Board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked; provided that the . The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a brewery or beer importer so requests and demonstrates good cause therefor.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

~~§ 4-118-13~~ 4.1-512. Retaliatory action prohibited.—A brewery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not be limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of service or quantity of products available to the wholesaler under the agreement.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.14 4.1-513 . Management.—No brewery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the brewery for all its wholesalers.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.15 4.1-514 . No discrimination.—No brewery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

§ 4-118.16 4.1-515 . No waiver; conflicts of laws.— A. No brewery shall require any wholesaler to waive compliance with any provision of this chapter. *Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance.* Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a brewery and a beer wholesaler pursuant to which the wholesaler is to market the brewery's products in ~~Virginia~~ *the Commonwealth* shall be governed by the laws of ~~Virginia~~ *the Commonwealth* as the place of performance notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

DRAFTING NOTE: No substantive change in the law. Technical changes to conform language to similar provisions in the Wine Franchise Act.

§ 4-118.19 4.1-516 . Right of free association.—No brewery or wholesaler shall restrict or inhibit ~~directly or indirectly~~, the right of free association among breweries or wholesalers for any lawful purpose.

~~§ 4-118.20. Not set out.—~~

DRAFTING NOTE: No substantive change in the law. This severability section has been deleted as duplicative of the severability section which appears as § 1-17.1 in Title 1 of the Code of Virginia. It is intended that § 1-17.1 apply to Title 4 as revised. Specifically, § 1-17.1 states, in pertinent part, " ... the provisions of all statutes are severable unless (i) the statute specifically provides that its provisions are not severable, ..." Further, § 1-13, Rules of construction, states "in the construction of this Code and all statutes, the rules shall be observed as set forth in the following sections, unless the construction would be inconsistent with the manifest intent of the General Assembly."

§ 4-118.20+ 4.1-517 . Reasonableness and good faith.—A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement as defined in § 4-118.4 a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

DRAFTING NOTE: No substantive change in the law. Technical corrections only.

CHAPTER 2:

Beverages of Not More Than Three and Two-Tenths Per Cent Alcohol.

CHAPTER DRAFTING NOTE: Existing Chapter 2 (Beverages of Not More than Three and Two-Tenths Per Cent Alcohol), composed of §§ 4-99 through 4-118.2, has been repealed in its entirety. Since 1986, the legal drinking age in Virginia has been 21 years regardless of the type of alcoholic beverage. This chapter came at a time when 3.2% beer and wine could be consumed by persons 18 years and older. As a result, the provisions of this chapter are obsolete.

In the proposed recodification of Title 4, wine and beer have been redefined to include 3.2% alcoholic beverages by addition of the words, "... and containing one-half of one percent or more of alcohol by volume." Therefore, the manufacture and sale of 3.2% alcoholic beverages will continue to be regulated by the Board under existing law.

Finally, the provisions set out in this chapter are duplicative of the remainder of the title, and are therefore unnecessary to preserve in the recodification.

§ 4-00. Definitions.—As used in this chapter:

“Beverages” means beer and similar fermented malt-based beverages including those blended with fruit juices, containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume); for beer and beverage excise tax purposes only, “beverages” shall include wine, wine coolers, and similar fermented fruit juices containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume).

“Person” means an individual, partnership, association or corporation.

“Wine coolers” means drinks containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight (four percent by volume) consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juices shall be treated as wine, as defined in § 4-2 (26) for all other purposes except for taxation under Chapter 4 (§ 4-127 et seq.) of this title.

§ 4-100. Manufacture, sale, etc., made lawful.—It shall be lawful to manufacture, bottle, sell, offer for sale, distribute, carry, ship, transport, possess, drink, use, advertise and dispense beverages as defined in § 4-00, subject to the provisions, conditions and exceptions hereinafter set forth.

§ 4-101. Necessity for license.—No person shall manufacture or bottle for sale, keep or store for sale, sell or offer for sale beverages, as defined in § 4-00, without first having obtained the license or licenses required under the provisions of this chapter.

§ 4-101.1. License not required for certain sales by certain fiduciaries, persons acting under court authority or secured parties, etc.; permits.—The provisions of § 4-101 shall not apply to any administrator, executor, trustee, or receiver duly appointed or qualified by a court to handle the affairs or manage the business of any deceased or other person licensed to sell beverages under the provisions of this chapter, or to any trustee, curator, committee, guardian, receiver or other fiduciary appointed or qualified in any court proceeding including a bankruptcy proceeding, or to a secured party, provided such person so appointed sells such beverages in accordance with the provisions of this section and has obtained a special permit issued by the Board which authorizes such appointee to continue to operate under the licenses previously issued to such person for such period as the Board may see fit under the circumstances.

The provisions of § 4-101 shall not apply to one-time sales of lawfully acquired beverages belonging to any person, or which may constitute a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien, or liquidation sale to satisfy indebtedness secured by a security interest in beverages, made by a sheriff, administrator, executor, personal representative, receiver, or other officer acting under authority of a court having jurisdiction in this Commonwealth, or by any secured party as defined in § 8.0-105 (m) of the Virginia Uniform Commercial Code, provided such sales are made upon permits issued by the Board and are made only to persons who are licensed or hold a permit to sell alcoholic beverages or beverages in this Commonwealth, or 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.

In addition, the provisions of § 4-101 shall not apply to any person who purchases at a foreclosure, secured creditor's, or judicial auction sale the premises or property of a person licensed by the Board under this chapter and has become lawfully entitled to the possession of the licensed premises, provided such purchaser has applied for and obtained a temporary permit from the Board which authorizes the exercise of the privileges of any licenses held by the previous owner to the extent determined by the Board. Such temporary permit may be issued in advance, conditioned on the above requirements, and may be revoked summarily in the same manner as a temporary license may be revoked under § 4-34 (d1). The temporary permit shall authorize the purchaser or permittee to continue to operate the establishment in the manner authorized by law, to the same extent as a person holding such licenses issued by the Board, for a period not to exceed sixty days. The fee for a temporary permit shall be one-sixth of the fee required by this chapter for applicable licenses to sell beverages.

Nothing in this section shall authorize any brewery, winery, or affiliate or subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default.

§-4102. Kinds of licenses.—Licenses issued under authority of this chapter shall be as follows:

(a) Manufacturers' licenses, which shall authorize the licensees to manufacture beverages and to sell only for cash the same in barrels, bottles or other closed containers to other persons for resale only;

(b) Bottlers' licenses, which shall authorize the licensees to receive shipments of beverages in barrels or other closed containers and to bottle and sell only for cash the same to other persons for resale only;

(c) Wholesalers' licenses, which shall authorize the licensees to sell only for cash beverages in barrels, bottles or other closed containers to other persons for resale only;

(d) Retailers' licenses, which shall authorize the licensees to sell beverages at retail only and not for resale.

§-4103. Board to issue licenses and receive license taxes and fees; regulations; advertising.—(a) Licenses and taxes. - Except as hereinafter otherwise provided, state licenses required by this chapter shall be issued by the Virginia Alcoholic Beverage Control Board, hereinafter referred to as the "Board," on applications filed with the Board on forms provided by it. The license taxes thereon and application fees shall be paid by the applicants to the Board.

(b) Regulations. - The Board shall have the power to pass regulations, having the force and effect of law, necessary to carry out the provisions and purposes of this chapter and to prevent the illegal manufacture, bottling, sale, distribution and transportation of beverages, or any one or more of such illegal acts. From time to time the Board may alter, repeal or amend such regulations, or any of them. Such regulations shall be adopted, altered, repealed or amended in the same manner as is required under Chapter 1 (§-4-1 et seq.) of this title and the Administrative Process Act (§-0-6.14:1 et seq.).

(c) Advertising. - Beverages as defined in this chapter shall be advertised in the Commonwealth only in such manner as is approved by regulations of the Board.

§-4104. Taxes on state licenses; application fees; 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, \$260 per annum; for each bottler's license, \$130 per annum; for each wholesaler's license, \$130 per annum; and for each retailer's license, \$110 per annum.

(2) For every distributing house or place in this Commonwealth, operated by any person and used in whole or in part for distributing beverages among his retail stores in the Commonwealth, a separate state license is hereby required, and the tax on every such license shall be \$50 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 §-4113.

(a1) Application fees. - Each applicant shall pay an application fee of fifty dollars in addition to the license taxes required by this section. Such fee shall not be refunded if the license is refused, the application withdrawn, or under any other circumstances.

(b) Continuation of licenses; penalties. - The privileges conferred by any license issued by the Board pursuant to this chapter shall be deemed to continue until June 30 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. 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 30, 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 merchants' license or state restaurant license or any other state tax whatsoever. 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. However, 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 \$10,000 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 §-4-30.

(d) Disposition of taxes and fees. - All license taxes and application fees 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 Chapter 1 (§-4-1 et seq.) of this title.

§-4-105. Grounds for refusal of licenses; residence requirements; refusal of hearing on application; to whom issued.—A. Grounds for refusal. - The Board may refuse to grant any license it is authorized to issue pursuant to this chapter if it has 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 percent 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 this Commonwealth, or of any state, or of the United States, or has been convicted of any crime or offense involving moral turpitude in any court.

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 this chapter.

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 beverages may not be sold under the provisions of this chapter, or to whom alcoholic beverages may not be sold under the provisions of Chapter 1 (§-4-1 et seq.) of this title.

k. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of narcotics.

l. Has misrepresented a material fact in applying to the Board for a license.

m. Has defrauded or attempted to defraud the Board, or any federal, state or local

government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false or fraudulent.

n. Is violating or allowing the violation of any provision of this chapter or of Chapter 1 (§ 4-1 et seq.) of this title in his establishment at the time his application for a license is pending.

o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located.

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

q. Is an officer or employee of the Alcoholic Beverage Control Board.

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 Commonwealth or by the regulations of the Board.

b. Is so located that violations of this chapter, or of the 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 values 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 beverages are to be sold or consumed.

For the purposes of this subdivision 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 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. In reaching a conclusion in this respect the Board shall 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 conformity with the purposes of this chapter including any objection which may have been filed by a local governing body. Local governing bodies shall be notified by the Board of the license application through the city or county attorney or the chief law-enforcement officer of the locality and shall submit any objections to the issuance of a license within thirty days of the filing of the application.

4. That there exists any law, ordinance, or regulation of the United States, of this Commonwealth 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. Residence requirement for wholesaler's license. - The Board shall not issue any wholesaler's license to any person who has not resided in the Commonwealth 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 Commonwealth 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 Commonwealth, 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 Commonwealth 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.

C. Residence requirement for retailer's license. - The Board may in its discretion refuse to issue any retailer's license to any person who has not resided in the Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor, unless refusal to 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.

D. Refusal of hearing on application. - The Board may in its discretion refuse a hearing on any application for the issuance of any retailer's 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 this title.

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 been permitted to expire.

E. To whom issued. - The Board shall issue licenses under this chapter only to established places of business located in those territories that have held or may hold local option elections, as provided for in §-445 and have voted or may vote against the sale of beer and wine containing more than three and two-tenths percent of alcohol by weight in such territories.

F. Hearing after notice prerequisite to refusal of license. - The Board shall not refuse to grant any licenses which may be issued under authority of this chapter 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 notice 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. The applicant shall not be required to be represented by counsel at the hearing.

§-4106. Licenses for separate places of business; licenses not transferable; posting; peddling prohibited.—Each such license as is hereinbefore provided for in 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.

No such license shall be transferable from one person to another, or from one location to another.

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.

The peddling of beverages to consumers is hereby prohibited.

§-4107. Local licenses and taxes.—(a) Provision for licenses and taxes. - In addition to the foregoing state licenses provided for in this chapter, the governing body of each county, city or

town in the Commonwealth is authorized to provide by ordinance for the issuance of licenses to persons to manufacture, bottle and sell beverages within the county, city or town, respectively, and to charge and collect license taxes therefor. The provisions of any general or special law requiring ordinances adopted by counties to be published, advertised or submitted to and approved by the judge of the circuit court, shall not apply to ordinances provided for hereunder, and any such ordinance adopted by any county shall become effective as provided therein.

(b) Amount of taxes. - The license taxes which may be charged and collected by such counties, cities and towns shall not exceed the following sums: for each manufacturer's license, \$2,000 per annum; for each bottler's license, \$1,000 per annum; for each wholesaler's license, \$1,000 per annum, and for each retailer's license by a county or town, \$10 per annum, and for each retailer's license by a city of the first class, \$50 per annum, and for each retailer's license by a city of the second class, \$25 per annum, and the governing body of each county, city or town may, in its discretion, classify licenses and graduate the license taxes therefor in such manner as it may deem proper.

(c) Distributing house. - For every distributing house or place in any county, city or town operated by any person and used in whole or in part for distributing beverages among his retail stores in this Commonwealth, such county, city or town may require a separate license, and if such license is so required the tax thereon shall be the same as the license tax imposed by such county, city or town on a wholesaler therein.

(d) State licenses required. - No county, city or town shall issue any such local license to any person, unless such person shall hold or shall secure simultaneously therewith the proper state license provided for in this chapter.

(e) Merchants' and restaurants' license taxes. - The governing body of each county, city or town, in imposing local wholesale merchants' license taxes measured by purchases, local retail merchants' license taxes measured by sales, and local restaurant license taxes measured by sales, may include beverages as defined in this chapter in the base for measuring such local license taxes the same as if the beverages were nonalcoholic; and no local beverage license authorized by this chapter shall be construed as exempting any licensee from any local merchants' or local restaurant license tax, but such local merchants' and local restaurant license taxes may be in addition to the local beverage license taxes authorized by this chapter; provided, however, that the governing body of any county, city or town, in adopting an ordinance under this section, shall provide that, in ascertaining the liability of a wholesaler or distributor to local merchants' license taxation under the ordinance and in computing the local wholesale merchants' license tax on such wholesaler or distributor, purchases of beverages up to a stated amount shall be disregarded if such wholesaler or distributor pays a separate beverage license tax under this chapter and is not within the provisions of § 4-30, which stated amount shall be the amount of beverage purchases which would be necessary to produce a local wholesale merchants' license tax equal to the local beverage license tax paid by such wholesaler or distributor.

(f) Delivery by nonresident wholesaler or distributor. - No county, city or town shall impose any local beverage license tax on any wholesaler or distributor for the privilege of delivering beverages in the county, city or town when such wholesaler or distributor maintains no place of business in such county, city or town.

§§ 4-108. Repealed by Acts 1984, c. 675.—

§ 4-109.2. Repealed by Acts 1981, c. 270.—

§ 4-109.3. Markings on containers to identify alcoholic content.—On and after July 1, 1981, when circumstances require that the Board be able to identify 3.2 beverages as such for the purposes of the enforcement of the Alcoholic Beverage Control laws of the Commonwealth, the Board, by regulation, may require that all containers of 3.2 beverages bear markings which will identify the same as containing 3.2 beverages.

§ 4-110. Repealed by Acts 1970, c. 785.—

§ 4-111. Repealed by Acts 1984, c. 675.—

§ 4-112. Concealment of sales or consumption of beverages; sales to intoxicated persons or persons under age; penalties; forfeiture.—A. No person licensed as a retailer under this chapter shall sell, or offer for sale, or permit the consumption of any beverages behind a screen or any other similar device in his place of business which screen or device may conceal such sale, offering for sale, or consumption from the view of persons who may be in such place of

business, and not behind such screen or similar device, or permit the consumption of any beverage by any person to whom such beverage may not be lawfully sold pursuant to this section.

B. If any person shall, except pursuant to the provisions of § 4-48 or § 4-50, sell any beverage as defined in this chapter 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 (i) is intoxicated, or (ii) is under twenty-one years of age or has not attained the age of nineteen years by July 1, 1985, he shall be guilty of a misdemeanor.

C. If any person to whom beverages may not lawfully be sold under this section shall purchase or possess any beverage, except pursuant to the provisions of § 4-48 or § 4-50, he shall be guilty of a misdemeanor. In addition to the penalties otherwise prescribed for a violation of this section, upon conviction, such person's license to operate a motor vehicle in this Commonwealth may be suspended for a period of not more than one year. Any beverage purchased or possessed in violation of this section shall be deemed contraband, forfeited to the Commonwealth and destroyed.

The provisions of this subsection shall not be applicable to (i) the possession of beverages by a person under twenty-one years of age making a delivery of beverages in pursuance of his employment or an order of his parent or (ii) any regularly employed member of a state, federal, or local law enforcement agency when possession of an alcoholic beverage is necessary in the performance of his duties.

§ 4-112.1. Purchase or possession of beverages by other person for person under age; penalty; forfeiture.—(a) If any person shall purchase any beverage as defined in this chapter 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 is less than twenty-one years of age or has not attained the age of nineteen years by July 1, 1985, 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.

§ 4-112.2. Repealed by Acts 1974, c. 460.—

§ 4-112.3. Drinking beverages, or tendering to another, in a public place; penalty.—A. If any person takes a drink of any beverage as defined in this chapter, or tenders a drink thereof to another, whether accepted or not, in a public place as defined in § 4-2, other than in an establishment licensed for on-premises consumption by the Board, or in any area approved by the Board in any local public park at an event for which a banquet license or a mixed beverage special events license has been issued or in approved areas and locations at events for which a coliseum or stadium license has been issued and upon authorization of the licensee, he shall be guilty of a Class 4 misdemeanor.

B. This section shall not prevent any person from drinking beverages or offering a drink thereof to another on a chartered watercraft being used for the transportation of passengers for compensation.

§ 4-112.4. Drinking or possession of beverages in public schools or on public school grounds.—If any person, in or upon the grounds of any free public elementary or secondary school, during school hours or during school or student activities, takes a drink of any beverage as defined in this chapter or has in his possession any such beverage, he shall be guilty of a misdemeanor punishable by confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.

§ 4-113. License to carriers.—The Board is hereby authorized to issue retailers' licenses permitting the sale of beverages at retail on passenger trains in dining cars, buffet cars and club cars, in dining rooms and restaurants on vessels engaged in the transportation of passengers, and in aircraft engaged in the transportation of passengers when such aircraft are equipped for serving meals thereon. The tax on each such license shall be \$200 per annum, except that the tax on retailers' licenses permitting the sale of beverages at retail on passenger trains in dining cars, buffet cars and club cars shall be \$5 per annum for each such car, and on vessels engaged in the transportation of passengers the tax shall be \$50 per annum on each such vessel.

The tax on all such licenses shall be subject to proration.

Every such license shall be good throughout the Commonwealth as a state license. Only one such license shall be required for all cars, vessels or aircraft operated in this Commonwealth by

the same owner or operator. Such licenses shall be issued only to the owners or operators of such cars, vessels or aircraft, but shall cover the privilege of selling such beverages by persons authorized by such owners or operators to sell the same on their cars, vessels or aircraft. No further license tax shall be required by any county, city or town for the privilege of selling beverages on such cars, vessels or aircraft. Licensees under this section shall have thirty days from the end of each month within which to file the monthly reports required by § 4-131.

§ 4-114. Suspension and revocation of licenses; monetary penalties.- A. 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 percent or more of its capital stock:

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

b. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false or fraudulent.

c. 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 Commonwealth, or of any other state, or of the United States of America, or of any county, city, or town in this Commonwealth, applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages or beverages, or has violated any provision of this chapter or Chapter 1 (§ 4-1 et seq.) of this title, or has violated or failed or refused to comply with any regulation 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.

d. 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 in any court.

e. 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.

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

g. Has been intoxicated, as defined in Chapter 1 (§ 4-1 et seq.) of this title, or under the influence of some self-administered drug, while upon the licensed premises.

h. 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.

i. 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 any state, or of the United States of America, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages or beverages.

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

k. Has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises.

l. Has allowed any person to consume upon the licensed premises any alcoholic beverages or beverages except as provided under this chapter.

m. Is physically unable to carry on the business conducted under such license or has been adjudicated incompetent.

n. Has allowed any lewd, obscene or indecent literature, pictures or materials upon the

licensed premises.

e. Has possessed any gambling apparatus, machine or device upon the licensed premises.

p. Has illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana or controlled substances as those terms are defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 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 Commonwealth or by the regulations of the Board.

b. Has been adjudicated a common nuisance under the provisions of Chapter 1 (§ 4-1 et seq.) of this title.

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 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.

B. 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 notice 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. The licensee shall not be required to be represented by counsel at the hearing.

C. The Board in suspending any license may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a monetary penalty not to exceed \$1,000 for the first offense, a monetary penalty not to exceed \$2,500 for the second offense, a monetary penalty not to exceed \$5,000 for the third offense in lieu of such suspension or any portion thereof, or both after the enactment hereof.

D. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board in its discretion may accept from the licensee an offer in compromise to pay a monetary penalty not exceeding \$1,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

§ 4-114.1. Hours and days of sale.—The Board shall prescribe by regulations, which it may from time to time alter, amend or repeal, between what hours and on what days beverages shall not be sold, or allowed to be consumed upon the premises of any licensed establishment, by persons licensed under the provisions of this chapter.

§ 4-114.2. To whom privileges conferred by licenses extend; liability for violations of law, etc.—The privilege of any person licensed under this chapter to sell or serve beverages shall extend to such licensee and to all persons employed by such licensee for the purpose of selling or serving such beverages under such license. In the discretion of the Board the licensee may be held liable for any violation of any provision of this title or any regulation of the Board

committed by such employees in connection with their employment.

§-4115. 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 Commonwealth 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 Commonwealth 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 §-4-00 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 Commonwealth, 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 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.

§-4116. Penalty for violations.—Any person who shall manufacture or bottle for sale or sell or offer for sale any beverages without being licensed as required by this chapter, or shall fail or refuse to pay any tax provided for herein, or shall fail or refuse to deliver, keep and preserve such records, invoices and accounts as are required by §-4-134, or shall fail or refuse to allow such records, invoices, and accounts or his place of business to be examined and

inspected as herein provided; or shall violate any other provision of this chapter for which no other penalty is prescribed; shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished accordingly.

§-4117. Sale of beverages not included in definition; forfeiture of license.—Any person licensed under the provisions of this chapter, who shall sell or promote any sale on his premises or in connection with his business or otherwise, of any alcoholic beverages or liquors not included within the term "beverages" as defined in § 4-00, unless otherwise permitted by law so to do, shall, upon conviction thereof, in addition to any punishment imposed by law for such offense, forfeit any license issued to him under this chapter, and no other license shall be issued to him hereunder within three years from the date of such forfeiture.

§-4118. Local laws repealed.—All local laws, including charter provisions of cities and towns, inconsistent with any of the provisions of this chapter, are hereby repealed to the extent of such inconsistency.

§-4118.1. Certain beverages not to be kept upon premises of licensees; exceptions.—No person who holds a license issued under the provisions of this chapter shall keep or allow to be kept upon the premises described in his license any alcoholic beverages or beverages other than those which he is authorized by such license or this chapter to purchase and to sell, with the following exceptions:

(a) Any club operating under a license issued under this chapter may keep for its members any alcoholic beverages or beverages lawfully acquired by such members and permit the consumption of the same upon the licensed premises;

(b) The Board may grant a permit authorizing such person to keep upon his premises, for culinary purposes only, alcoholic beverages which he is not authorized by any license to sell.

(c) Nothing in this section shall prohibit the keeping or consumption of any lawfully acquired alcoholic beverages in private dining rooms approved by the Board in restaurants licensed by such 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.

§-4118.2. Transportation of certain beverages.—The transportation of beverages defined in § 4-00, other than beverages purchased directly from persons licensed to sell the same in this Commonwealth and those beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through this Commonwealth in quantities in excess of one case, 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 beverages defined in §-4-00, other than beverages purchased directly from persons licensed to sell the same in this Commonwealth and those beverages which may be manufactured and sold without any license under the provisions of this chapter, within, into or through this Commonwealth in quantities in excess of one case that 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 such beverages, other than those purchased directly from persons licensed to sell the same in this Commonwealth and those beverages which may be manufactured and sold without any license under the provisions of this chapter, in excess of one case, in violation of such regulations shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or confinement in jail for not exceeding twelve months, or both, in the discretion of the jury or of the court trying the case without a jury.

"Case," as used in this section unless the context clearly indicates otherwise, shall mean a quantity of beverages not in excess of 384 ounces.

*OTHER AFFECTED SECTIONS IN THE CODE OF VIRGINIA
AS THEY RELATE TO THE RECODIFICATION OF TITLE 4.*

DRAFTING NOTE: The sections which follow have been updated to reflect corrected cross references and other technical corrections as they relate to the recodification of Title 4.

§ 2.1-124. Criminal cases.—Unless specifically requested by the Governor to do so, the

Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving violations of the Alcoholic Beverage Control Act (§ 4-1 4.1-100 et seq.), violation of laws relating to elections and the electoral process as provided in § 24.1-21, laws relating to motor vehicles and their operation, the handling of funds by a state bureau, institution, commission or department, the theft of state property, and cases involving the practice of law without being duly authorized or licensed or the illegal practice of law, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, in his discretion, institute proceedings by information, presentment or indictment, as the one or the other may be appropriate, and conduct the same. In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

§ 3.1-1053. Enforcement of this chapter.—The Department may request the assistance of the Department of Alcoholic Beverage Control in enforcing the provisions of this chapter. The Department of Alcoholic Beverage Control and other state and local law-enforcement agencies shall assist the Department as requested. Nothing in this chapter shall be construed to prevent the Department of Alcoholic Beverage Control from enforcing the provisions of ~~Chapters 1, 1-1 and 2 (§§ 4-1 to 4-118.2)~~ in Title 4 Title 4.1 . In order to carry out the purposes of this chapter, employees of the Department of Alcoholic Beverage Control and the Department of Agriculture and Consumer Services, upon presenting appropriate credentials to the permittee, its agents or the employee in charge, are authorized, with the consent of the permittee, its agent or the employee in charge, or with an appropriate warrant issued by a judicial officer authorized to issue a search warrant:

1. To enter without delay and at any reasonable time, the premises of any industrial ethanol manufacturing plant;
2. To examine the books and records of the permittee to determine that the laws relating to alcohol and ardent spirits are being observed; and
3. To take from the products found on the premises such samples as may be required for the purposes of chemical analysis.

§ 3.1-1058. Definitions.—As used in this chapter:

“Board” means the Virginia Winegrowers Advisory Board.

“Commissioner” means the Commissioner of the Department of Agriculture and Consumer Services or his designated representative.

“Enology” means those practices and body of knowledge involved in the production, aging, storage and packaging of wine.

“Farm winery” or “winery” means an establishment as defined in § 4-2 of this Code 4.1-100 of Title 4.1 .

“Grape grower” means a commercial grower who meets the following standards: (i) sells at least \$10,000 worth of grapes annually; or (ii) has planted at least three acres of vines of a type used for the production of wine.

“Regular meeting” means a meeting of at least six members of the Board held annually.

“Special meeting” means a meeting of at least six members of the Board called by the chairman between regular Board meetings.

“Viticulture” means the cultivation and study of grapes and grapevines.

“Wine” means any beverage as defined in § 4-2 4.1-100 .

“Winegrower” means a person or entity producing wine from approved products grown by that individual.

§ 6.1-18. When security not required.—No bank or trust company of this Commonwealth, with a minimum unimpaired capital stock of \$50,000 or more, shall be required by any officer or court of this Commonwealth to give security upon appointment to or acceptance of any office of trust which it may, by law, be authorized to execute or to give security upon any bond given pursuant to § ~~§ 4-56, 46.1-351.2, 4.1-341~~ or similar statute; provided, however, no bank or trust company shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving bond for such excess. When such bank or trust company shall qualify on any office of trust, the clerk in lieu of collecting the fees under Title 14.1 and probate taxes may render a bill or statement to such bank or trust company to be paid within five business days.

§ 6.1-195.82. When security not required.—No association with a minimum combined unimpaired capital and surplus of \$50,000 or more shall be required by any officer or court of this Commonwealth to give security upon appointment to or acceptance of any fiduciary office which it may, by law, be authorized to execute, or to give security upon any bond given pursuant to § ~~§ 4-56, 46.1-351.2, 4.1-341~~ or similar statute. However, no association shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving security for such excess on its bond, unless the giving of such security is waived under the terms of the governing instrument or by court order.

§ 7.1-21.1. Licensing sale of mixed alcoholic beverages on lands ceded to or owned by United States.—The Virginia Alcoholic Beverage Control Board may license the sale of mixed alcoholic beverages as defined in Chapter ~~1.1~~ (~~§ 4-98.1 et seq.~~) of Title 4 Chapter 1 (~~§ 4.1-100 et seq.~~) of Title 4.1 at places primarily engaged in the sale of meals on lands ceded by the Commonwealth to the United States or owned by the government of the United States or any agency thereof provided that such lands are used as ports of entry or egress to and from the United States, and provided that such lands lie within or partly within the boundaries of any county in this Commonwealth which permits the lawful dispensing of mixed alcoholic beverages. The Board is hereby authorized to adopt rules and regulations governing the sale of such spirits, and to fix the fees for such licenses, within the limits fixed by general law.

§ 9-169. Definitions.—The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires:

1. "Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. "Board" means the Criminal Justice Services Board.

3. "Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so and (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 any private corporation or agency, which within the context of its criminal justice activities employs officers appointed under § 15.1-144, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9-184 et seq.) of Chapter 27 of Title 9 but only to the extent that the private corporation or agency so designated as a "criminal justice agency" performs criminal justice activities.

4. "Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. "Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. "Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. "Department" means the Department of Criminal Justice Services.

8. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and shall include any member of the ~~Regulatory Division special agent~~ of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under the provisions of § 56-353, any officer of the Virginia Marine Patrol, any game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries or any investigator who is a full-time sworn member of the security division of the State Lottery Department. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

10. "Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

§ 15.1-136.2. Definitions.—For the purposes of this article the following words shall have the meanings herein ascribed to them:

"Deceased" shall mean any person whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1 and 65.2-402, as a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any member of the ~~Regulatory Division special agent~~ of the Virginia Alcoholic Beverage Control Board vested with police authority; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; or any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § ~~28.1-185~~ 28.2-900.

"Beneficiary" shall mean the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate.

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol and drug offenses.—A. If a court has found facts which would justify a finding that a child at least thirteen years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of § 18.2-268.2, (iii) a felony violation of §§ 18.2-248, 18.2-248.1 or § 18.2-250, (iv) a misdemeanor violation of §§ 18.2-248, 18.2-248.1, or § 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase or possession of alcohol in violation of § ~~4-62~~ or § ~~4-112~~ 4.1-305, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, or (vii) the unlawful use or possession of a handgun, the court shall order that the child be denied a driver's license. If the offense involves a violation designated under clause (i), (ii), or (iii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of seventeen, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of sixteen, in which case the child's ability to

apply for a driver's license shall be delayed for a period of six months following his sixteenth birthday. If the offense involves a violation designated under clause (i), (ii), (v), or (vi), the court shall impose the license sanction without entering a judgment of guilt and shall defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under subdivision (vii), the denial of driving privileges shall be for a period of not less than thirty days.

B. Any child who has a driver's license at the time of the offense shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii), or (vi) of subsection A, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v) or (vii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of any offense designated in subsection A. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

E. Upon petition made at least ninety days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense. For a second or subsequent such offense, the order may not be reviewed and withdrawn until one year after its issuance.

F. If the finding as to such child involves a violation designated under clause (i), (ii), (v), (vi) or (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251.

§ 18.2-110. Forfeiture of motor vehicles used in commission of certain crimes.—Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is \$200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be

forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

Forfeiture of such vehicle shall be enforced as is provided in § 4-56 § 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of § 4-56 § 4.1-339 through 4.1-348 shall apply, mutatis mutandis, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

The agency seizing the motor vehicle or other conveyance shall, for such period of time as the court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 18.2-265.4. Seizure and forfeiture of drug paraphernalia.—All drug paraphernalia as defined in this article shall be forfeited to the Commonwealth and may be seized and disposed of in the same manner as provided in § 18.2-253 of the Code, subject to the rights of an innocent lienor, to be recognized as under § 4-56 4.1-343 .

§ 18.2-433. Regulation of dance halls by counties, cities and towns.—A public dance hall, within the meaning of this section, shall be construed to mean any place open to the general public where dancing is permitted; provided, however, that a restaurant located in any city licensed under § ~~4-08.1~~ and ~~4-08.2~~ 4.1-210 to serve food and beverages having a dance floor with an area not exceeding ten per centum of the total floor area of the establishment shall not be considered a public dance hall.

The governing body of any county, city or town may, by ordinance, regulate public dance halls in such county, city or town, and prescribe punishment for violation of such ordinance not to exceed that prescribed for a Class 3 misdemeanor.

Such ordinance shall prescribe for: (1) the issuance of permits to operate public dance halls, grounds for revocation and procedure for revocation of such permits; (2) a license tax not to exceed \$600 on every person operating or conducting any such dance hall; and (3) rules and regulations for the operation of such dance halls. Such ordinances may exempt from their operation dances held for benevolent or charitable purposes, or when the same are conducted under the auspices of religious, educational, civic or military organizations.

No county ordinance adopted under the provisions of this section shall be in effect in any town in which an ordinance adopted under the provisions of this section is in effect.

§ 23-7.1:01. Free tuition and required fees for children and spouses of certain law-enforcement officers, correctional and jail personnel, sheriffs, deputy sheriffs, members of the Virginia National Guard, firefighters, and members of rescue squads.—Any child between the ages of sixteen and twenty-five whose parent or any person whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, a firefighter, a member of a rescue squad, a sworn law-enforcement officer, ~~an agent employed by a special agent of the Department of Alcoholic Beverage Control and~~ , vested with police powers ~~comparable to powers vested in sheriffs and local police officers~~ to enforce the alcoholic beverage control laws and the criminal laws of the Commonwealth, a state correctional, regional or local jail officer, a sheriff, a deputy sheriff, or a member of the Virginia National Guard while such member is serving in the Virginia National Guard or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia under the following conditions:

1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education. Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and

are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this section, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

§ 33.1-252. Free use of toll bridges, etc., by certain state officers and employees; penalties.—A. Upon presentation of a toll pass issued pursuant to regulations promulgated by the Commonwealth Transportation Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in this Commonwealth without the payment of toll:

1. The Commonwealth Transportation Commissioner;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Virginia Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. Members of the Alcoholic Beverage Control Board;
7. Employees of the regulatory and hearings divisions of the Department of Alcoholic Beverage Control and employees *special agents* of the Department of Alcoholic Beverage Control vested with police power ;
- 8, 9. [Repealed.]
10. The Commissioner of the Department of Motor Vehicles;
11. Employees of the Department of Motor Vehicles;
12. Employees of the enforcement division of the State Corporation Commission;
13. Local police officers;
14. Sheriffs and their deputies; and
15. Persons operating fire-fighting equipment and ambulances owned by a political subdivision of the Commonwealth or a nonprofit association or corporation.

B. Any tollgate keeper who shall refuse to permit the persons listed in subsection A of this section to pass through such tollgate or over such toll bridge or ferry, or toll road or toll tunnel upon presentation of such a toll pass, shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars, and not less than two dollars and fifty cents. Any person other than those listed in subsection A of this section who shall exhibit any such toll pass for the purpose of using any toll bridge, toll tunnel or ferry shall be guilty of a Class 1 misdemeanor and punished accordingly.

B1. Any vehicle operated by the holder of a valid driver's license issued by Virginia or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in Virginia, except the Norfolk-Virginia Beach Expressway, if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;
2. The driver of the vehicle has been certified, either by a physician licensed by Virginia or any other state or by the Adjudication Office of the United States Veterans Administration, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments which substantially impair his ability to deposit coins in toll baskets;
3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and
4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll

facilities in Virginia. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

C. Nothing contained in this section or in § 33.1-251 or § 33.1-285 shall operate to affect the provisions of § 22.1-187.

D. Notwithstanding the provisions of subsections A and B of this section, only the following persons may use the Chesapeake Bay Bridge-Tunnel or facilities of the Richmond Metropolitan Authority without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commonwealth Transportation Commissioner;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. The Commissioner of the Department of Motor Vehicles;
7. Employees of the Department of Motor Vehicles; and
8. Sheriffs and deputy sheriffs.

§ 46.2-347. Fraudulent use of driver's license or Department of Motor Vehicles identification card to obtain alcoholic beverages; penalties.—Any underage person as specified in § ~~4-62~~ and ~~4-112~~ 4.1-304 who knowingly uses or attempts to use a forged, deceptive or otherwise nongenuine driver's license issued by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any foreign country or government; United States Armed Forces identification card; United States passport or foreign government visa; Virginia Department of Motor Vehicles special identification card; official identification issued by any other federal, state or foreign government agency; or official university or college student identification card to obtain alcoholic beverages or beverages as defined in Chapter 2 (~~§ 4-09~~ et seq.) of Title 4 shall be guilty of a Class 3 misdemeanor, and upon conviction of a violation of this section, the court shall revoke such convicted person's driver's license or privilege to drive a motor vehicle for a period of not less than thirty days nor more than one year.

§ 46.2-867. Racing; seizure of motor vehicle.—If the owner of a motor vehicle is convicted of racing such vehicle in a prearranged, organized, and planned speed competition in violation of § 46.2-865, or is present in the vehicle which is being operated by another in violation of § 46.2-865, and knowingly consents to the racing, the vehicle shall be seized and disposed of in the manner provided in § ~~4-56~~ § 4.1-339 through 4.1-348 for seizure and forfeiture of conveyances or vehicles used in the illegal transportation of alcoholic beverages. Such ~~section~~ sections shall apply mutatis mutandis.

The penalties imposed by ~~this section~~ these sections are in addition to any other penalty imposed by law.

§ 51.1-800. Counties, cities, and certain towns to establish local systems or participate in Virginia Retirement System.—A. Every county and city, and every town having a population of 5,000 or more, shall provide a retirement system for those officers and employees listed in subsection B either (i) by establishing and maintaining a local retirement system which provides a service retirement allowance to each employee who retires at age sixty-five or older which equals or exceeds two-thirds of the service retirement allowance to which the employee would have been entitled had the allowance been computed under the provisions of the Virginia Retirement System or (ii) by participating directly in the Virginia Retirement System. The Board of Trustees of the Virginia Retirement System shall determine whether a local retirement system satisfies the criterion of (i) above, taking into account the difference between the employee contribution rates under the local retirement system and the Virginia Retirement System. If any local retirement system fails to satisfy the criterion of (i) above, the Virginia Retirement System shall promptly notify the governing body of the county, city, or town which maintains such local retirement system of the deficiency. If, within ninety days of such notice, the local retirement system, or its governing body, fails to correct the deficiency or to persuade the Virginia Retirement System that its original findings were in error, then the Virginia Retirement System

shall notify the Comptroller. The Comptroller shall withhold from such locality the payment of its share of net profits from the operation of the alcoholic beverage control system as provided for by § 4-22 4.1-117 until such time as the Virginia Retirement System may notify him that criterion (i) above is being satisfied.

B. The following persons shall be covered by a retirement system as provided in subsection A:

1. Officers and employees who are regularly employed full time on a salaried basis, whose tenure is not restricted to temporary or provisional employment.

2. Officers and employees who are regularly employed full time on a salaried basis, whose tenure is not restricted to temporary or provisional employment by an organization other than a public school board that functions solely within the boundaries of a county, city, or town, unless the cost of the organization's operation is borne by (i) users of services, (ii) more than one county, city, or town, or (iii) an entity other than a county, city, or town.

3. Clerks of the circuit court and deputies or employees of such officers.

C. Nothing in this chapter shall be construed to prohibit a county, city, or town from participating in the Virginia Retirement System and establishing a local retirement system. If a locality participates in the Virginia Retirement System and establishes a local retirement system, pursuant to § 51.1-801, providing supplemental benefits to the state system, the local system shall not be required to satisfy the criterion established in subdivision A (i) of this section.

D. A county, city, or town shall not be required to provide retirement benefits to an employee who enters into an agreement with the local government for inclusion in a deferred compensation plan when the agreement specifically prohibits inclusion in any other retirement system established by the county, city, or town.

§ 54.1-3443. Board to administer article.—A. The Board shall administer this article and may add substances to or delete or reschedule all substances enumerated in the schedules in this article pursuant to the procedures of the Administrative Process Act (§ 9-6.14:1 et seq.). In making a determination regarding a substance, the Board shall consider the following:

1. The actual or relative potential for abuse;
2. The scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the substance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physical dependence; and
8. Whether the substance is an immediate precursor of a substance already controlled under this article.

B. After considering the factors enumerated in subsection A, the Board shall make findings and issue a regulation controlling the substance if it finds the substance has a potential for abuse.

C. If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

D. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of 120 days from publication in the Federal Register of the final order designating a substance as a controlled substance or rescheduling or deleting a substance without following the provisions specified in subsections A and B of this section.

E. Authority to control under this section does not extend to distilled spirits, wine, malt

beverages, or tobacco as those terms are defined or used in Title 4 4.1 .

F. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or state law, be lawfully sold over the counter without a prescription.

§ 58.1-1101. Classification, rate of tax.—A. The subjects of taxation classified by this section are hereby defined as intangible personal property:

1. Capital which is inventory, except wine while in the hands of a farm winery producer as defined in § 4-2 4.1-100 , merchandise located in a foreign trade zone as defined in subdivision 8 of this subsection and any agricultural product held in this Commonwealth by any manufacturer for manufacturing or processing which is of such nature as customarily requires storage and processing for periods of more than one year in order to age or condition such product for manufacture. Such agricultural product shall be includible in inventory for one tax year only and after being taxed for one year shall thereafter be excluded for all succeeding tax years;

2. Capital which is personal property, tangible in fact, used in manufacturing, mining, radio or television broadcasting, dairy, dry cleaning or laundry businesses. Machinery and tools, motor vehicles and delivery equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

2a. Personal property, tangible in fact, used in cable television businesses. Machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

3. Money;

4. Bonds, notes, and other evidences of debt; demands and claims;

5. Shares of stock;

6. Accounts receivable;

7. All imported and exported foreign merchandise or domestic merchandise scheduled for export while in inventory located in a foreign trade zone within the Commonwealth; and

8. Computer application software, except computer application software which is inventory as defined in subdivision 1 of this subsection, is defined as computer instructions, in any form, which are designed to be read by a computer and to enable it to perform specific operations with data or information stored by the computer.

B. [Repealed.]

C. The subjects of intangible personal property set forth in subdivisions 1 through 8 of subsection A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of Virginia.

§ 58.1-3259. Failure of county or city to comply with law on general reassessment of real estate.—If any county or city fails to comply with the provisions of this article requiring a general reassessment of real estate periodically in such county or city by omitting such general reassessment in the year required by this article, or by failing to comply with the provisions of § 58.1-3201 requiring assessment at 100 percent fair market value, the Department, on receiving proof of such delinquency, shall so notify the Comptroller, whereupon the Comptroller shall withhold from such county or city the payment of its share of the net profits of the operation of the alcoholic beverage control system as provided for by § 4-22 4.1-117 until such time as the provisions of § 58.1-3201 have been complied with in such county or city. Results of the Tax Department's official assessment sales ratio study showing such county or city to have a sales assessment ratio lower than 70 percent for the year a general reassessment or annual assessment is effective shall be prima facie proof that such locality has failed to assess at 100 percent.

The Department shall notify the Comptroller to pay over the accumulated profits, less a penalty charge of eight percent annually on receipt of the results of an official assessment sales ratio study showing such county or city to have a sales assessment ratio higher than seventy

§ 58.1-3505. Classification of farm animals, certain grains, agricultural products, farm machinery, farm implements and equipment; governing body may exempt.—A. Farm animals, grains and other feeds used for the nurture of farm animals, agricultural products, farm machinery and farm implements are hereby defined as separate items of taxation and classified as follows:

1. Horses, mules and other kindred animals.
2. Cattle.
3. Sheep and goats.
4. Hogs.
5. Poultry.
6. Grains and other feeds used for the nurture of farm animals.

7. Grain; tobacco; wine produced by farm wineries as defined in § 4-2 4.1-100 and other agricultural products in the hands of a producer.

8. Farm machinery and farm implements, which shall include equipment and machinery used by farm wineries as defined in § 4-2 4.1-100 in the production of wine.

9. Equipment used by farmers or farm cooperatives qualifying under § 521 of the Internal Revenue Code to manufacture industrial ethanol, provided that the materials from which the ethanol is derived consist primarily of farm products.

B. The governing body of any county, city or town may, by ordinance duly adopted, exempt in whole or in part from taxation, or provide a different rate of tax upon, all or any of the above classes of farm animals, grains and feeds used for the nurture of farm animals, farm machinery, implements or equipment set forth in subsection A.

C. Grain; tobacco; wine produced by farm wineries as defined in § 4-2 4.1-100 and other agricultural products shall be exempt from taxation while in the hands of a producer.

§ 58.1-3507. Certain machinery and tools segregated for local taxation only.—A. Machinery and tools, except machinery and equipment used by farm wineries as defined in § 4-2 4.1-100, used in a manufacturing, mining, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property.

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers and cogeneration equipment covered by § 58.1-3506, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

§ 58.1-3833. County food and beverage tax.—A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed eight and one-half percent, when added to the state and local general sales and use tax, of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in §§ 35.1-25 (1), 35.1-25 (2), 35.1-25 (3), and 35.1-25 (5), as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items. The food and beverage tax levied on meals sold by grocery store delicatessens and convenience stores

shall be limited to prepared sandwiches and single-meal platters.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.1-165 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to ten percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4-2 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, any county with a population of at least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county having a county manager plan of government are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, *mutatis mutandis*. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

RECODIFICATION OF TITLE 4: ALCOHOLIC BEVERAGE CONTROL

<p align="center"><u>CURRENT OUTLINE</u></p> <p align="center">Title 4 ALCOHOLIC BEVERAGES AND INDUSTRIAL ALCOHOL</p>	<p align="center"><u>PROPOSED OUTLINE</u></p> <p align="center">Title 4.1 ALCOHOLIC BEVERAGE CONTROL</p>
<p>Chapter 1: Alcoholic Beverage Control §§ 4-1 through 4-98</p> <p>Chapter 1.1: Mixed Beverages §§ 4-98.1 through 4-98.20</p> <p>Chapter 2: Beverages of Not More Than Three and Two-Tenths Per Cent Alcohol §§ 4-99 through 4-118.2</p> <p>Chapter 2.1: Beer Franchise Act §§ 4-118.3 through 4-118.20:1</p> <p>Chapter 2.2: Wine Franchise Act <i>REPEALED</i></p> <p>Chapter 2.3: Wine Franchise Act §§ 4-118.42 through 4-118.61</p> <p>Chapter 3: Industrial Alcohol <i>REPEALED</i></p> <p>Chapter 4: Beer and Beverage Excise Tax §§ 4-127 through 4-145</p>	<p>Chapter 1: General Provisions</p> <ul style="list-style-type: none"> • Definitions • Powers and Duties of Board • Operation of Government Stores • Local Option <p>Chapter 2: Administration of Licenses</p> <p><i>Article 1:</i> General Provisions (including exemptions)</p> <p><i>Article 2:</i> Licenses Granted by Board; Limitations; Revocation and Suspension</p> <ul style="list-style-type: none"> • Alcoholic Beverages • Wine • Beer • Wine and Beer • Mixed Beverages • Permits • Limitations on Licenses <p><i>Article 3:</i> Application Fees/Permit Fees/Taxes on Licenses</p> <p>Chapter 3: Prohibited Acts; Penalties; Procedural Matters</p> <p><i>Article 1:</i> Prohibited Acts Generally</p> <p><i>Article 2:</i> Prohibited Acts by Licensees</p> <p><i>Article 3:</i> Procedural Matters</p> <p>Chapter 4: Wine Franchise Act</p> <p>Chapter 5: Beer Franchise Act</p>

Title 4.1

ALCOHOLIC BEVERAGE CONTROL

Comparative Tables

OLD SECTION	NEW SECTION
§ 4-1	§ Deleted
4-2	4.1-100
4-3	4.1-101
4-4	4.1-102
4-5	Repealed by Acts 1970, c. 463
4-6	Deleted
4-6.1	Deleted
4-7	4.1-103
4-8	4.1-105
4-9	Deleted
4-10	4.1-109
4-10.1	4.1-108
4-11	4.1-111
4-12	4.1-106
4-13	4.1-115
4-14	4.1-115
4-15	4.1-119
4-15.01	4.1-119
4-15.1	Repealed by Acts 1980, c. 624
4-15.2	Repealed by Acts 1981, c. 381
4-15.3	Repealed by Acts 1981, c. 566
4-16	Deleted
4-17	4.1-110
4-18	4.1-104
4-19	4.1-120
4-20	4.1-107
4-21	4.1-115
4-22	4.1-116
	4.1-117
4-22.1	4.1-118
	4.1-234
	4.1-235
4-23	4.1-116
4-24	Repealed by Acts 1980, c. 624
4-24.1	Repealed by Acts 1981, cc. 407, 410

"Repealed" means that the section was repealed prior to this title revision. "Deleted" means that the section is being eliminated by this title revision and there is no corresponding section in the new title.

OLD SECTION	NEW SECTION
§ 4-25	§ 4.1-206
	4.1-207
	4.1-208
	4.1-209
	4.1-214
	4.1-218
4-25.1	4.1-207
	4.1-214
	4.1-230
4-26	4.1-212
	4.1-229
	4.1-230
4-27	4.1-213
	4.1-214
4-28	Deleted
4-29	4.1-207
4-30	4.1-230
4-31	4.1-222
	4.1-223
	4.1-224
4-32	4.1-215
4-32.1	4.1-215
4-33	4.1-230
	4.1-231
	4.1-232
4-34	4.1-203
	4.1-211
4-34.1	4.1-327
4-35	4.1-232
4-36	4.1-111
4-37	4.1-225
	4.1-227
	4.1-228
4-37.1	4.1-226
4-37.2	4.1-202
4-38	4.1-205
	4.1-233
4-39	Deleted
4-40 through 4-42	Repealed by Acts 1984, c. 675
4-43	Repealed by Acts 1970, c. 784
4-44	4.1-204
4-45	4.1-121
4-45.1	Repealed by Acts 1974, c. 460
4-45.2	Deleted
4-45.3	Deleted
4-46	4.1-122
4-47	4.1-127

OLD SECTION

NEW SECTION

§ 4-48	§ 4.1-200
4-49	Repealed by Acts 1982, c. 66
4-50	4.1-200
4-51	4.1-333
4-52	4.1-322
	4.1-334
4-53	4.1-336
4-54	4.1-337
4-55	4.1-338
4-56	4.1-339
	4.1-340
	4.1-341
	4.1-342
	4.1-343
	4.1-344
	4.1-345
	4.1-346
	4.1-347
	4.1-348
4-57	4.1-300
4-57.1	4.1-301
4-58	4.1-302
4-59	4.1-212
4-60	4.1-324
4-61	4.1-315
4-61.1	4.1-316
4-61.2	4.1-212
4-62	4.1-304
	4.1-305
4-63	4.1-307
4-64	4.1-326
4-65	4.1-331
4-66	4.1-326
4-67	Repealed by Acts 1982, c. 65
4-68	Deleted
4-69	4.1-320
4-69.1	Repealed by Acts 1981, c. 574
4-69.2	4.1-113
	4.1-329
4-70	4.1-319
4-71	4.1-303
4-72	Repealed by Acts 1975, c. 480
4-72.1	4.1-311
4-73	4.1-306
4-73.1 through 4-73.2	Repealed by Acts 1974, c. 460
4-74	4.1-312
4-75	4.1-313

OLD SECTION**NEW SECTION**

§ 4-76	§ Deleted
4-77	4.1-212
	4.1-314
4-78	4.1-308
4-78.1	4.1-309
4-79	Repealed by Acts 1989, c. 528
4-79.1	4.1-216
	4.1-328
4-80 through 4-80.1	Repealed by Acts 1970, c. 463
4-80.2	Repealed by Acts 1978, c. 579
4-81	4.1-317
4-82	4.1-335
4-83	4.1-318
4-84	4.1-310
4-84.1	4.1-130
4-85	4.1-131
4-86	4.1-132
4-87	4.1-323
4-88	4.1-354
4-89	4.1-200
	4.1-201
4-90	4.1-352
4-90.1	4.1-353
4-90.2	Deleted
4-91	4.1-351
4-92	4.1-349
4-93	4.1-321
4-94	4.1-350
4-95	Repealed by Acts 1974, c. 460
4-96	4.1-128
4-96.1 through 4-96.2	Expired
4-96.3	4.1-123
4-97	4.1-129
4-98	Deleted
4-98.1	4.1-100
4-98.2	4.1-210
4-98.3	4.1-210
4-98.4	4.1-202
4-98.5	4.1-111
4-98.6	4.1-204
4-98.7	4.1-114
4-98.8	Deleted
4-98.9	4.1-223
4-98.10	4.1-325
4-98.11	4.1-221
4-98.12	4.1-124
4-98.12:1	4.1-125

OLD SECTION	NEW SECTION
§ 4-98.12:2 4-98.13 4-98.14 4-98.15 4-98.16	§ 4.1-126 4.1-124 4.1-111 Deleted 4.1-212 4.1-229 4.1-230 4.1-330
§ 4-98.17 4-98.18 4-98.19 4-98.20 4-99 through 4-118.2 4-118.3 4-118.4 4-118.5 4-118.6 4-118.6:1 4-118.7 4-118.8 4-118.9 4-118.10 4-118.11 4-118.12 4-118.12:1 4-118.13 4-118.14 4-118.15 4-118.16 4-118.17 4-118.18 4-118.19 4-118.20 4-118.20:1 4-118.21 through 4-118.41 4-118.42 4-118.43 4-118.44 4-118.45 4-118.46 4-118.47 4-118.48 4-118.49 4-118.50 4-118.51 4-118.52 4-118.53	§ 4.1-223 4.1-231 4.1-233 4.1-234 Deleted Deleted 4.1-500 4.1-502 4.1-503 4.1-504 4.1-505 4.1-506 4.1-507 4.1-508 4.1-509 4.1-510 4.1-511 4.1-512 4.1-513 4.1-514 4.1-515 Repealed by Acts 1985, c. 549 4.1-501 4.1-516 Deleted 4.1-517 Repealed by Acts 1989, c. 10 4.1-400 4.1-401 4.1-403 4.1-404 4.1-405 4.1-406 4.1-407 4.1-408 4.1-409 4.1-410 4.1-411 4.1-412

OLD SECTION	NEW SECTION
§ 4-118.54	§ 4.1-413
4-118.55	4.1-414
4-118.56	4.1-415
4-118.57	4.1-416
4-118.58	4.1-402
4-118.59	4.1-417
4-118.60	4.1-418
4-118.61	Deleted
4-119 through 4-126	Repealed by Acts 1980, c. 468
4-127	4.1-100
4-128	4.1-236
4-129	4.1-236
4-130	4.1-236
4-131	4.1-239
4-132	4.1-239
4-133	4.1-239
4-134	4.1-204
4-135	4.1-205
4-136	4.1-331
4-137	4.1-204
4-138	4.1-238
4-139	4.1-332
4-140	4.1-332
4-141	4.1-237
4-142	4.1-237
4-143	Deleted
4-144	4.1-112
4-145	4.1-118

Title 4.1
ALCOHOLIC BEVERAGE CONTROL
Comparative Tables

NEW SECTION	OLD SECTION
§ 4.1-100	§ 4-2
	4-98.1
	4-99
	4-127
4.1-101	4-6
4.1-102	4-4
4.1-103	4-7
4.1-104	4-18
4.1-105	4-8
4.1-106	4-12
4.1-107	4-20
4.1-108	4-10.1
4.1-109	4-10
4.1-110	4-17
4.1-111	4-36
	4-98.5
	4-98.14
	4-11
4.1-112	4-144
4.1-113	4-69.2
4.1-114	4-98.7
4.1-115	4-13
4.1-116	4-22
	4-23
4.1-117	4-22
4.1-118	4-145
4.1-119	4-15
4.1-120	4-19
4.1-121	4-45
4.1-122	4-46
4.1-123	4-96.3
4.1-124	4-98.12
	4-98.13
4.1-125	4-98.12:1
4.1-126	4-98.12:2
4.1-127	4-47
4.1-128	4-98
4.1-129	4-97
4.1-130	4-84.1

NEW SECTION	OLD SECTION
§ 4.1-131 4.1-132 4.1-200	§ 4-85 4-86 4-98 4-50 4-89
4.1-201 4.1-202	4-89 4-37.2 4-98.4
4.1-203 4.1-204	4-34 4-98.6 4-134 4-135 4-137
4.1-205 4.1-206 4.1-207	4-44 4-38 4-25 4-25 4-25.1
4.1-208 4.1-209 4.1-210	4-25 4-25 4-98.2 4-98.3
4.1-211 4.1-212	4-34 4-26 4-98.16 4-62.1 4-72.1
4.1-213 4.1-214	4-77 4-84.1 4-86 4-59 4-27 4-25 4-25.1
4.1-215	4-27 4-37 4-32 4-32.1
4.1-216 4.1-217 4.1-218 4.1-219	4-79.1 4-25 4-25 4-25.1 4-2
4.1-220 4.1-221 4.1-222	4-25 4-98.11 4-31

NEW SECTION	OLD SECTION
§ 4.1-223	§ 4-31
	4-98.17
	4-98.9
4.1-224	4-31
4.1-225	4-37
4.1-226	4-37.1
	4-98.9
4.1-227	4-37
4.1-228	4-37
4.1-229	4-26
	4-98.16
	4-62.1
	4-59
4.1-230	4-30
	4-31
	4-33
	4-25.1
	4-26
	4-98.16
4.1-231	4-33
	4-25.1
	4-98.18
4.1-232	4-33
	4-35
4.1-233	4-38
	4-98.19
4.1-234	4-22.1
	4-98.20
4.1-235	4-22.1
4.1-236	4-128
	4-129
	4-130
4.1-237	4-141
	4-142
4.1-238	4-138
4.1-239	4-131
	4-132
	4-133
4.1-300	4-57
4.1-301	4-57.1
4.1-302	4-58
4.1-303	4-71
4.1-304	4-62
4.1-305	4-62
4.1-306	4-73
4.1-307	4-63
4.1-308	4-78

NEW SECTION

OLD SECTION

§ 4.1-309	§ 4-78.1
4.1-310	4-84
4.1-311	4-72.1
4.1-312	4-74
4.1-313	4-75
4.1-314	4-77
4.1-315	4-61
4.1-316	4-61.1
4.1-317	4-81
4.1-318	4-83
4.1-319	4-70
4.1-320	4-69
4.1-321	4-93
4.1-322	4-52
4.1-323	4-87
4.1-324	4-60
4.1-325	4-98.10
4.1-326	4-64
	4-66
4.1-327	4-34.1
4.1-328	4-79.1
4.1-329	4-69.2
4.1-330	98.16
4.1-331	4-65
	4-136
4.1-332	4-139
	4-140
4.1-333	4-51
4.1-334	4-52
4.1-335	4-82
4.1-336	4-53
4.1-337	4-54
4.1-338	4-55
4.1-339	4-56
4.1-340	4-56
4.1-341	4-56
4.1-342	4-56
4.1-343	4-56
4.1-344	4-56
4.1-345	4-56
4.1-346	4-56
4.1-347	4-56
4.1-348	4-56
4.1-349	4-92
4.1-350	4-94
4.1-351	4-91
4.1-352	4-90

NEW SECTION

OLD SECTION

§ 4.1-353	§ 4-90.1
4.1-354	4-88
4.1-400	4-118.42
4.1-401	4-118.43
4.1-402	4-118.58
4.1-403	4-118.44
4.1-404	4-118.45
4.1-405	4-118.46
4.1-406	4-118.47
4.1-407	4-118.48
4.1-408	4-118.49
4.1-409	4-118.50
4.1-410	4-118.51
4.1-411	4-118.52
4.1-412	4-118.53
4.1-413	4-118.54
4.1-414	4-118.55
4.1-415	4-118.56
4.1-416	4-118.57
4.1-417	4-118.59
4.1-418	4-118.60
4.1-500	4-118.4
4.1-501	4-118.18
4.1-502	4-118.5
4.1-503	4-118.6
4.1-504	4-118.6:1
4.1-505	4-118.7
4.1-506	4-118.8
4.1-507	4-118.9
4.1-508	4-118.10
4.1-509	4-118.11
4.1-510	4-118.12
4.1-511	4-118.12:1
4.1-512	4-118.13
4.1-513	4-118.14
4.1-514	4-118.15
4.1-515	4-118.16
4.1-516	4-118.19
4.1-517	4-118.20:1

Principal Changes Made in Title 4 Revision

Compiled By

Division of Legislative Services

Maria J.K. Everett, Staff Attorney

9 January 1993

CHAPTER 1

Areas of Substantive Change

Section Number	Nature of Change	Rationale
4.1-100 {Definitions}	"Convenience grocery store" -- (i) the dollar criteria used in determining its qualifications and (ii) the prohibition against sale of petroleum related services have been eliminated	Board request -- (i) food requirements are set by regulation; (ii) no apparent reason for its inclusion
4.1-100 {Definitions}	"Gift shop" has been expanded to include "historic site or museum specialty stores", the latter being defined in regulation only	Eliminate confusion
4.1-100 {Definitions}	"Restaurant" for the sale of wine and beer has been expanded to include meals and to require food or meals to be prepared on premises of the licensee	Conform to actual practice of Board. By regulation, Board has higher food standard for licensees selling wine than for licensees selling only beer
4.1-111 {Regulations of Board}	Requirement that board send certified copies of their regulations to all clerks of Circuit Court eliminated	Clerks Association says never used
	B4 -- Added all aspects of record keeping to Board's regulatory power	Allows Board to deal with the specifics of record keeping through regulation
	E -- Board's power to regulate shall be broadly construed	Restatement of Board's broad power to regulate to overcome unofficial Attorney General's opinion that Board's regulatory power is limited

Areas of "High" Technical Change

Section Number	Nature of Change	Rationale
4.1-100 {Definitions}	New definitions added: <ul style="list-style-type: none"> • "special agent" • "container" replaces "package" • "licensee" • "with or without meals" 	Clarification and remove the need for repetitious phrases throughout the Title
4.1-100 {Definitions}	Deleted definitions: <ul style="list-style-type: none"> • "Dentist" • "Package" • "Physician" • "Veterinarian" • "Wholesale druggist" 	Obsolete or replaced with more accurate term
4.1-100 {Definitions}	Revised definitions: "designated <u>room</u> " changed to "designated <u>area</u> "	Conform to actual practices which includes service of food and alcoholic beverages on patios, hotel lobbies, terraces, and sidewalk cafes, etc
4.1-403 {Powers of Board}	"beer" and "wine" -- "one-half of one percent or more of alcohol by volume" added in each definition to include 3.2% beer or wine	Chapter dedicated exclusively to 3.2% beer and wine no longer exists in Title 4 revision. Definitions of beer and wine now include 3.2% beverages
4.1-403 {Powers of Board}	(I) -- Power to classify positions and title deleted Approval by Governor of salaries over \$1,000/year eliminated	Dept. of Planning & Budget has this responsibility Obsolete
4.1-403 {Powers of Board}	("L - P") -- Enumerates specific powers of Board which are inferred from other sections in Title 4	Clarification
4.1-111 {Regulations of Board}	(B) -- Instances where Board regulations are mandatory have been pulled together here	Clarification
4.1-115 through 4.1-117 {Accounting System}	Accounting systems and reports of Board updated to reflect current state accounting practices. These sections are now patterned after the record and reporting requirements of the Lottery Department	Changed at request of the Auditor of Public Accounts with the concurrence of the Department of Planning and Budget and the State Comptroller

CHAPTER 1

Areas of "High" Technical Change

{Continued}

Section Number	Nature of Change	Rationale
<p>4.1-118 {Certain Information Not To Be Made Public}</p>	<p>Disclosure of tax information by Board employees prohibited -- this section represents a merger of existing §§ 4-145 (Beer Excise Tax) and 4-22.1 (Tax on Wines and Other Alcoholic Beverages)</p>	<p>Centralization</p>
<p>4.1-119 {Disposition of Money Collected By Board}</p>	<p>Merger of existing §§ 4-22 and 4-23 relating to disposition of money collected by Board. Part of § 4-22 relating to money to localities is set out as a separate section (proposed § 4.1-120)</p>	<p>To clarify that money collected by the Board goes to a special fund for Board after payment into the State Treasury</p>
<p>4.1-123 through 4.1-128 {Local Option}</p>	<p>Under current law, only three local option elections left: 1) Establishment of government stores 2) Sunday wine and beer sales 3) Liquor by the drink All other elections deleted as obsolete</p>	<p>Language in 3 remaining referenda standardized. Re: • notice in newspaper • notice to Board by Court ordering referenda • catchlines cleaned up</p>
<p>4.1-129 {Local Ordinance Regulating Time of Sale of Wine & Beer}</p>	<p>Reference to Sunday closing laws (§§ 18.2-341 - 18.2-343) deleted</p>	<p>Special legislation and has been held unconstitutional</p>

Examples of Technical Corrections ONLY

Section Number	Nature of Change	Rationale
<p>4.1-100 {Definitions}</p>	<p>Existing definitions moved from other chapters in Title 4:</p> <ul style="list-style-type: none"> • "mixed beverages" • "meals" • "restaurant" <p>(from mixed beverages chapter)</p> <ul style="list-style-type: none"> • "wine coolers" <p>(from 3.2 Beverage chapter)</p> <ul style="list-style-type: none"> • "Barrel" <p>(from Beer Excise Tax Chapter)</p>	<p>Centralization</p>
<p>4.1-100 {Definitions}</p>	<p>Definition of "sale or sell" reworded</p>	<p>Clarification</p>
<p>4.1-105 {Police Power of Board}</p>	<p>"Officers" deleted</p>	<p>Term obsolete</p>
<p>4.1-131 {Importation of Beverages Not Under Customs or Internal Revenue Bonds}</p>	<p>Regulatory authority deleted here</p>	<p>Duplicative of existing power of Board to regulate</p>

CHAPTER 2

Areas of Substantive Change

Section Number	Nature of Change	Rationale
4.1-206 {Alcoholic Beverage License}	Wholesale druggist license deleted	Obsolete
4.1-207 {Wine License}	Reasonable distance requirement for farm wineries retail store removed	Conform to Board practice
4.1-208 {Beer License}	<p>(5a) -- Restaurant on-premises: expanded to allow service of beer in other areas (patios, etc.) of restaurant if approved by Board, and not just in dining rooms</p> <p>Tavern licenses (on-premises) deleted</p> <p>(5b) -- No room requirement for trains</p> <p>(5c) -- Room requirement for boats deleted</p> <p>(7) -- Limits retail on- and off-premises beer license to only hotels, restaurants, clubs and rural grocery stores</p>	<p>Parity between on-premises beer and on-premises beer and wine license</p> <p>Can license as restaurants</p> <p>Board request because no room to eat and drink on trains. Allows passengers to take it back to their seats</p> <p>Conform to change in 1992 relating to wine and beer on boats</p> <p>Current Board practice</p>
4.1-209 {Wine & Beer Licenses}	<p>(1b) -- Room requirement for trains deleted</p> <p>(3) -- Gourmet shop license -- increases sample from 1/4 ounce to 1 ounce of wine; adds sampling of 2 ounces of beer</p> <p>(5) -- Limits retail on- and off-premises beer license to only hotels, restaurants and clubs</p> <p>(6) -- Banquet licenses "reasonably shielded from public view" requirement deleted</p> <p>(7) -- Gift shop licenses expanded to include sale of wine and beer. Includes specialty shop license which is found in regulations</p>	<p>Board request; not enough room in dining cars</p> <p>Board request</p> <p>Current Board practice</p> <p>To conform with Board practice</p> <p>To merge two similar type establishments</p>

Areas of Substantive Change

(Continued)

Section Number	Nature of Change	Rationale
<p style="text-align: center;">4.1-210 {Mixed Beverage License}</p>	<p>Service of alcoholic beverages in "designated areas" in hotels regardless of whether the licensed restaurant within the hotel is owned by the hotel or is separately owned</p>	<p>To conform to actual practice</p>
	<p>(B) -- Makes granting a wine or beer license automatic when granting a mixed beverage license</p>	<p>At Board request to conform to actual practice</p>
<p style="text-align: center;">4.1-211 {Temporary Permits}</p>	<p>(11) -- Provides for the extension of the 60-day period for a temporary permit</p>	<p>To compensate for market conditions which make disposition of repossessed property within 60 days hard to accomplish</p>
<p style="text-align: center;">2.1-221 {Limitation on Mixed Beverage License}</p>	<p>(C) -- Added provision that allows, in limited situations, licensees to serve mixed beverages in the original container</p>	<p>Carries an exception for "premixed mixed beverages" (i.e. Seagram Breezes, etc.)</p>
<p style="text-align: center;">4.1-232 {Refund of State License Tax}</p>	<p>(A) -- Time limitation for refunds increased from 1 year to 3 years</p>	<p>To conform with other Virginia tax refunds</p>
<p style="text-align: center;">4.1-233 {Local Taxes}</p>	<p>Distinction between cities of first class, and second class eliminated. Local tax for cities now based on first class rate</p>	<p>Distinction without a difference</p>

Areas of "High" Technical Change

Section Number	Nature of Change	Rationale
4.1-200 {Exemptions}	(§ 4-50) -- Dentists, doctors, and veterinarians exemption removed	Can prescribe alcohol under Drug Control Act
4.1-202 {Privilege of License}	Licensee may/shall be held liable for acts of employees (§§ 4-37.2; 4-98.4)	"May" retained to give Board flexibility
4.1-203 {Separate License for Each Place of Business}	(E) -- Boats and airplanes have been added to the posting and publication exemption for common carriers	Consistency
4.1-204 {Record Keeping}	Specified what must be kept; record keeping requirements found throughout Title 4 (§§ 4-44, 4-134, 4-135, 4-136, 4-137)	Board to dictate content of records by regulation
4.1-210 {Mixed Beverage License}	One class of caterers' license (merger of on-premises caterer and off-premises caterer)	Board request
4.1-220 {Limitation on Gift Shop Licenses}	25% limitation has been applied to the sale of beer	The sale of beer has been added to the privileges of a gift shop license. This conforms beer to the existing limitation on wine
4.1-230 {Applications for Licenses}	Fee for temporary permit reduced from 1/6 to 1/12th	To conform with change that temporary permits may be extended for longer than 60 days

CHAPTER 2

Examples of Technical Corrections ONLY

Section Number	Nature of Change	Rationale
4.1-207 {Wine Licenses}	"Wholesale wine "distributor" -- distributor deleted	Unnecessary; beer = wholesale beer license
4.1-209 {Wine & Beer Licenses}	"Specialty shop" now called "gourmet shop"	To more accurately reflect the type of establishment
4.1-211 {Permits}	Merger of all permits required throughout Title 4	Centralized location.
4.1-214 {Limitations on Licenses}	"Selling or receiving same" -- made one section to apply to all licenses with privilege to sell to out-of-state for resale out-of-state	Avoid repetitive language
4.1-227 {Suspension & Revocation of Licenses}	"Monetary" penalty changed to "civil" penalty	Monetary used in criminal context and denotes money goes to Literary Fund. In practice, money goes to Board
4.1-236 {Excise Tax on Beer & Wine Coolers}	Wine coolers specifically added because they are taxed as beer (A1) -- Tax rate for barrels reconfigured to a per gallon basis	Under current law, wine coolers are wine for all purposes except excise tax purposes. In that case, they are treated as beer Clarification

CHAPTER 3

Areas of Substantive Change

Section Number	Nature of Change	Rationale
<p>4.1-300 {Illegal Manufacture; Being Found at Distillery}</p>	<p>(b) -- Provision that every person found at the scene where there is illegal manufacturing shall be guilty of the illegal manufacture or aiding and abetting has been deleted</p>	<p>Subsection unconstitutional as written and duplicative of existing aiding and abetting section (§ 4.1-322)</p>
<p>4.1-333 {Interdiction for Habitual Drinking}</p>	<p>(b) -- Requirement of publication of orders of interdiction deleted</p> <p>(d) -- Defendant's right to private hearing deleted</p>	<p>Serves no practical purpose</p> <p>Closed criminal proceedings unconstitutional</p>
<p>4.1-338 {Confiscation Proceedings}</p>	<p>\$500 limit imposed on Board as criteria for Board to destroy distilling equipment deleted</p>	<p>Board to have discretion to seize or destroy stills</p>

Areas of "High" Technical Change

Section Number	Nature of Change	Rationale
4.1-301 {Conspiracy to Violate § 4.1-300}	Felony penalty classified as Class 6 -- increases prison time by 2 years	Conformity with criminal classification system
4.1-308 {Drinking on School Grounds}	Misdemeanor penalty classified as Class 1	Conformity with criminal classification system and existing ABC law
4.1-317 {Violations by Armed Persons}	"Firearm or any weapon of like kind" replaced with "dangerous weapon as described in § 18.2-308"	Updated to reflect the sophistication of weapons since this section was written in 1934
4.1-324 {Prohibited Acts by Mixed Beverage Licensees}	(h), (i), (i1), and (w) deleted (h) -- loitering by underaged (i) -- age requirements for employment in licensed establishments (i1) -- age requirement for bartenders (w) -- illegal advertising	(h) -- never enforced by Board (i) & (i1) -- duplicative of existing § 4-63 (w) -- duplicative of Board's general powers
4.1-334 {Interdiction for Illegal Manufacture}	Requirement for publication of orders of interdiction deleted	Serves no practical purpose
4.1-339 through 4.1-348 {Search, Seizures, Forfeiture of Vehicles}	Existing § 4-56 deals with all areas of confiscation of vehicles. This section has been rewritten and broken down into separate sections. Also, cross references to general forfeiture statutes in Title 19.2 made where sections in ABC and Title 19.2 are identical	Clarification Title 19.2 was rewritten based on ABC law and contains the most up-to-date language
4.1-349 {Punishment for Violations of Title or Regulation}	(d) -- Mandatory appearance by Commonwealth's Attorney in prosecutions for violations of the title deleted	In conflict with § 15.1-8.1 which makes appearance by Commonwealth's Attorney in misdemeanor prosecutions discretionary

CHAPTER 3

Examples of Technical Corrections ONLY

Section Number	Nature of Change	Rationale
<p>4.1-302 {Illegal Sale of Alcoholic Beverages}</p>	<p>Deleted bonding requirement for convicted violator</p>	<p>Duplicative of § 4.1-349</p>
<p>4.1-304 {Persons to Whom Alcoholic Beverages Can't Be Sold}</p>	<p>Reference to drinking age less than 21 years deleted</p>	<p>Obsolete</p>
<p>4.1-307 {Drinking in Public}</p>	<p>B -- Specific references to places where "public" drinking may occur, replaced with general reference (i.e., room or area approved by Board)</p>	<p>Eliminate repetitive language</p>
<p>4.1-311 {Limitations on Transporting Alcoholic Beverages}</p>	<p>C -- Regulatory authority deleted Boards issuance of transportation permit moved to Chapter 2</p>	<p>Duplicative of existing Board authority (§ 4.1-111) All permits now in one section in Chapter 2</p>
<p>4.1-337 {Search Warrants}</p>	<p>References to "justice of the peace", "trial justice", and "corporation court" deleted</p>	<p>Obsolete</p>

Areas of "High" Technical Change

Section Number	Nature of Change	Rationale
4-118.61 and 4-118.20 {Severability}	Severability section deleted	Duplicative of general severability clause (§ 1-17.1) in Title 1

Examples of Technical Corrections ONLY

Section Number	Nature of Change	Rationale
Definitions	"Nonsurviving winery" (Chapter 4) "Nonsurviving brewery" (Chapter 5) • In both cases, "independent commercial entity" changed to "independent legal entity"	To conform with same change in § 4.1-405(B) and § 4.1-504(B), respectively
Applicability	"Coverage" replaced by "Applicability" and section moved to follow respective definitional section	Clarification
4.1-111 and 4.1-510 {Price of Product}	"Or beverages" deleted (This is a reference to wine or beer containing 3.2% alcohol by volume)	3.2% wine and beer are now defined in Chapter 1 as wine or beer, as appropriate

SENATE JOINT RESOLUTION NO. 13

Requesting the Virginia Code Commission to revise, rearrange, amend and recodify Title 4 of the Code of Virginia.

Agreed to by the Senate, February 5, 1992

Agreed to by the House of Delegates, March 3, 1992

WHEREAS, the Commonwealth's alcoholic beverages and industrial alcohol laws are set out in Title 4 of the Code of Virginia; and

WHEREAS, the last codification of these laws took place in 1950; and

WHEREAS, the laws and regulations concerning alcoholic beverages have changed substantially in the past four decades; and

WHEREAS, Title 4 contains many obsolete and duplicative provisions; and

WHEREAS, the alcoholic beverages laws of the Commonwealth should be rewritten with an emphasis on plain and precise language easily understood by all citizens and the personnel administering these laws; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Code Commission is requested to study Title 4 of the Code of Virginia and to report its findings in the form of a revision of Title 4 to the General Assembly of Virginia. All agencies of the Commonwealth shall assist the Commission in its study. The Commission may retain such counsel, technical assistance, and other special assistance as it may require.

The Commission shall submit its report to the Governor and the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

**ALCOHOLIC BEVERAGE CONTROL BOARD MEMBERS
AND STAFF**

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**Board Member Assigned to Title 4 Recodification*

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