



State Citations, Titles and Statutory Language Addressing Alcohol Without Liquid (AWOL) Machines

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1. California

- **Citation:** CAL. BUS. & PROF. § 25621 (West 2006).
- **Section Title:** “Sale of alcoholic beverages: alcohol vaporized device”
- **Statutory Language:**

SEC. 1. (a) No person shall purchase, offer for sale, or use any vaporized form of alcohol produced by an alcohol vaporizing device.

(b) For purposes of this section, 'alcohol vaporizing device' means any device, machine, or process that mixes spirits, liquor, or other alcohol product with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

(c) (1) Any person who sells or offers for sale any vaporized form of alcohol produced by an alcohol vaporizing device is guilty of a misdemeanor that shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both.

(2) Any person who purchases or uses any vaporized form of alcohol produced by an alcohol vaporizing device is subject to a fine of two hundred fifty dollars (\$250).

(d) Any person who possesses, sells, or offers for sale any alcohol vaporizing device shall be guilty of a misdemeanor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

2. Colorado

- **Citation:** COLO. REV. STAT. ANN. § 12-47-902.5 (West 2006).
- **Section Title:** “Alcohol-without-liquid devices--legislative declaration--unlawful acts”
- **Statutory Language:**

(1)(a) The general assembly hereby finds and declares that:

(I) Alcohol-without-liquid (AWOL) devices create alcohol vapor by pouring alcohol into a diffuser capsule connected to an oxygen pipe;

(II) AWOL devices enable individuals to inhale or snort the alcohol vapor created from certain alcohol beverages through a tube into the nose or mouth rather than drink the alcohol beverage in its liquid form through the mouth;

(III) Alcohol vapor ingested from an AWOL device bypasses the stomach and the filtering capabilities of the liver and is absorbed through blood vessels in the nose or lungs creating a faster and more intense "high" or intoxicating effect on the brain;

(IV) The popularity of AWOL devices is increasing in the nightclub and bar businesses throughout the nation; and

(V) AWOL devices are being marketed as a way to become intoxicated without a hangover and as a "dieter's dream" because there are no calories associated with inhaling or snorting alcohol vapor.

(b) The general assembly, therefore, determines that:

(I) AWOL devices will substantially increase the economic costs of alcohol abuse in Colorado;

(II) AWOL devices are not conducive to the health, safety, and welfare of the citizens of Colorado; and

(III) The possession, sale, purchase, and use of AWOL devices in this state should be prohibited.

(2) For purposes of this section, "AWOL device" means a device, machine,

apparatus, or appliance that mixes an alcohol beverage with pure or diluted oxygen to produce an alcohol vapor that an individual can inhale or snort.

"AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication.

(3) Except as otherwise provided in subsection (5) of this section, it is unlawful for a person to possess, purchase, sell, offer to sell, or use an AWOL device in this state. A person who violates this section shall be punished in accordance with the provisions of section 12-47-903(2).

(4) In addition to the penalty imposed by this section, if a person that violates subsection (3) of this section is a licensee, the state or local licensing authority may suspend or revoke the license of the licensee in accordance with the provisions of section 12-47-601.

(5)(a) Subsection (3) of this section shall not apply to a hospital, as defined in section 25.5-1-503(3), C.R.S., that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university, as defined in section 23-2-102(3), C.R.S., conducting bona fide research, or to a pharmaceutical company or biotechnology company conducting bona fide research and that complies with the provisions of this subsection (5).

(b) A hospital, state institution, private college or university, pharmaceutical company, or biotechnology company that possesses an AWOL device or that intends to acquire an AWOL device, shall, by September 1, 2005, or within thirty days prior to the acquisition, whichever is later, file with the Colorado department of public health and environment or its designee a notice of possession of AWOL device or a notice of acquisition of AWOL device, as appropriate.

3. Connecticut

- **Citation:** CONN. GEN. STAT. ANN. § 30-116 (West 2007)
- **Section Title:** “Sale, purchase or possession of alcohol vaporization device prohibited. Penalty”
- **Statutory Language:**

(a) For purposes of this section, 'alcohol vaporization device' means a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) No person shall sell, purchase or possess an alcohol vaporization device. No person shall permit such a device on premises licensed for the sale of alcoholic liquor.

(c) Any person who violates subsection (b) of this section shall be fined not more than one thousand dollars or imprisoned not more than six months, or both.

4. Florida

- **Citation:** FLA. STAT. ANN. § 562.61 (West 2006).
- **Section Title:** “Sale, offer for sale, purchase, or use of alcohol vaporizing devices prohibited”
- **Statutory Language:**

(1) For purposes of this section, the term "alcohol vaporizing device" means any device, machine, or process which mixes spirits, liquor, or other alcohol products with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

(2) A person may not sell, offer for sale, purchase, or use an alcohol vaporizing device.

(3)(a) Any person who violates this section by selling or offering for sale an alcohol vaporizing device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates this section by selling or offering for sale an alcohol vaporizing device after having been previously convicted of such an offense within the past 5 years commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates this section by purchasing or using an alcohol vaporizing device commits a noncriminal violation with a fine of \$250.

(4) This section does not apply to the administration or prescription of a product that contains alcohol by a health care practitioner who is licensed under the laws of this state or another state.

5. Idaho

- **Citation:** IDAHO CODE § 23-616 (Michie 2006).
- **Section Title:** “Alcohol without liquid device”
- **Statutory Language:**

(1) As used in this section:

(a) "Alcohol without liquid device" means any machine, device or process that mixes an alcoholic product with oxygen or another gas to produce vaporized alcohol for the purpose of consumption through inhalation.

(b) "Vaporized alcohol" means an alcoholic product created by mixing alcohol with oxygen or another gas to produce a vapor or mist for the purpose of consumption through inhalation.

(2) A person shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device. A premise [premises] licensed pursuant to chapter 9, 10 or 13, title 23, Idaho Code, shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device.

(3) The Idaho state police may promulgate rules to allow for the possession, sale or use of an alcohol without liquid device by certain hospitals, universities, or pharmaceutical or biotechnology companies for bona fide research or medical purposes.

(4) A person who violates this section shall be guilty of a misdemeanor. Upon conviction or a finding of guilt of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

(5) An alcohol without liquid device as defined in this section and except as in this section authorized is hereby declared to be a public nuisance and in this title is referred to as a liquor nuisance pursuant to section 23-701, Idaho Code.

6. Illinois

- **Citation:** 235 ILL. COMP. STAT. 5/6-34 (2007).

- **Section Title:** “Alcohol without liquid machines”

- **Statutory Language:**

(a) No person shall bring into this State for use or sale any alcohol without liquid machine.

(b) For the purposes of this Section, "alcohol without liquid machine" means a device designed or marketed for the purposes of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

7. Iowa

- **Citation:** IOWA CODE ANN. § 123.49 (West 2006).

- **Section Title:** “Miscellaneous prohibitions”

- **Statutory Language:**

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or

beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.

d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such

beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

l. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

8. Kansas

- **Citation:** KAN. STAT. ANN. § 21-4224 (West 2005).
- **Section Title:** “Alcohol without liquid machine; unlawful acts”
- **Statutory Language:**

(a) It shall be unlawful for any person to:

- (1) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or
- (2) purchase, sell or offer for sale an alcohol without liquid machine.

(b) Violation of this section is a class A nonperson misdemeanor.

(c) As used in this section, 'alcohol without liquid machine' means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

9. Louisiana

- **Citation:** LA. REV. STAT. ANN. § 14:93.15 (West 2006).
- **Section Title:** “Alcoholic beverage vaporizer; prohibitions”
- **Statutory Language:**

A. It is unlawful for any person to sell, deliver, give away, purchase, possess, or use an alcoholic beverage vaporizer.

B. This Section shall not apply to any other vaporizer device used for purposes other than vaporizing alcoholic beverages.

C. Whoever violates the provisions of this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

- **Citation:** LA. REV. STAT. ANN. § 26:90.A(16)(a) to (c) (West 2006).
- **Section Title:** “Acts prohibited on licensed premises; suspension or revocation of permits”
- **Statutory Language:**

A. No person holding a retail dealer's permit and no agent, associate, employee, representative, or servant of any such person shall do or permit any of the following acts to be done on or about the licensed premises:...

(16)(a) Sell, deliver, or give away any alcoholic beverage for dispensation by means of an alcoholic beverage vaporizer.

(b) Purchase, possess, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(c) Allow or permit any customer or person to bring, keep, maintain, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

- **Citation:** LA. REV. STAT. ANN. § 26:286.A(16)(a) to (c) (West 2006).
- **Section Title:** “Acts prohibited on licensed premises; suspension or revocation of permits”
- **Statutory Language:**

A. No person holding a retail dealer's permit and no servant, agent, or employee of the permittee shall do any of the following acts upon the licensed premises:...

(16)(a) Sell, deliver, or give away any alcoholic beverage for dispensation by means of an alcoholic beverage vaporizer.

(b) Purchase, possess, or use an alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(c) Allow or permit any customer or person to bring, keep, maintain, or use an

alcoholic beverage vaporizer on the licensed premises or any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

10. Maine

- **Citation:** ME. REV. STAT. ANN. tit. 28-A, § 2088 (West 2006).
- **Section Title:** “Vaporized alcohol”
- **Statutory Language:**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alcohol vaporizing device" means any device, machine or process that mixes an alcoholic product with pure oxygen or another gas to produce vaporized alcohol for the purpose of consumption through inhalation.

B. "Vaporized alcohol" means an alcoholic product created by mixing alcohol with pure oxygen or another gas to produce a vaporized product for the purpose of consumption through inhalation.

2. Use prohibited. A person may not use vaporized alcohol or an alcohol vaporizing device.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection commits a civil violation for which a fine of not less than \$500 and not more than \$3,000 must be adjudged. In addition to a fine imposed under this subsection, a court may make additional orders as described in Title 22, section 2383-C, subsection 6.

3. Selling or furnishing prohibited. A person may not sell, furnish or give away or offer for sale or offer to furnish or give away vaporized alcohol or an alcohol vaporizing device.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection commits a Class E crime for which a fine of not less than \$1,000 and, notwithstanding Title 17-A, section 1301, not more than \$5,000 must be imposed. In addition to a fine imposed under this subsection, if the person is a licensee under chapter 19, 43 or 45, the court may suspend that person's license for up to one year. A violation under this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Exceptions. This section does not apply to vaporized alcohol or alcohol vaporizing devices used for medical or scientific research.

11. Maryland

- **Citation:** 2007 Maryland House Bill 670 (Enacted)
- **Section Title:** To Be Titled
- **Bill Language:**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B - Alcoholic Beverages

16-505.1.

(A) IN THIS SECTION, 'AWOL MACHINE' MEANS AN ALCOHOL WITHOUT LIQUID DEVICE THAT MIXES AN ALCOHOLIC PRODUCT WITH PURE OXYGEN OR OTHER GAS TO PRODUCE A VAPORIZED PRODUCT THAT CAN BE INHALED.

(B) A PERSON MAY NOT:

(1) USE AN AWOL MACHINE TO INHALE ALCOHOL VAPOR OR OTHERWISE INTRODUCE ALCOHOL IN ANY FORM INTO THE HUMAN BODY; OR

(2) WITH THE INTENT TO INTRODUCE ALCOHOL INTO THE HUMAN BODY, POSSESS, PURCHASE, TRANSFER, OR OFFER FOR SALE OR USE

AN AWOL MACHINE.

(C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

(2) EACH VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

12. Michigan

- **Citation:** MICH. COMP. LAWS. ANN. § 436.1105 (West 2006).
- **Section Title:** “Definitions”
- **Statutory Language:**

(1) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcohol vapor device" means any device that provides for the use of air or oxygen bubbled through alcoholic liquor to produce a vapor or mist that allows the user to inhale this alcoholic vapor through the mouth or nose.

(3) "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter.

(4) "Authorized distribution agent" means a person approved by the commission to do 1 or more of the following:

- (a) To store spirits owned by a supplier of spirits or the commission.
- (b) To deliver spirits sold by the commission to retail licensees.

(c) To perform any function needed to store spirits owned by a supplier of spirits or by the commission or to deliver spirits sold by the commission to retail licensees.

(5) "Bar" means a barrier or counter at which alcoholic liquor is sold to, served to, or consumed by customers.

(6) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(7) "Brand" means any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(8) "Brand extension" means any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(9) "Brandy" means an alcoholic liquor as defined in 27 CFR 5.22(d) (1980).

(10) "Brandy manufacturer" means a person licensed under this act to engage in the manufacturing, rectifying or blending, or both, of brandy only and no other distilled spirit. Only a licensed wine maker or a small wine maker is eligible to be a brandy manufacturer. The commission may approve a brandy manufacturer to sell at retail brandy which it manufactures, blends or rectifies, or both, at its licensed premises or at other premises authorized in this act.

(11) "Brewer" means a person located in this state that is licensed to

manufacture and sell to licensed wholesalers beer produced by it. (12) "Brewpub" means a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 5,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in sections 405 and 407.

- **Citation:** MICH. COMP. LAWS. ANN. § 436.1914 (West 2006).
- **Section Title:** “Use or offering for use, sale, etc., of alcohol vapor device; penalties; rules”
- **Statutory Language:**

(1) Except as otherwise provided in subsection (3), a person shall not use or offer for use, possess, sell, or offer for sale an alcohol vapor device.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable in the manner provided for in section 909.

(3) The commission may jointly promulgate rules with the department of community health to allow for the sale or use of an alcohol vapor device for research purposes.

13. Minnesota

- **Citation:** MINN. STAT. ANN. § 340A.706 (West 2006).
- **Section Title:** “Alcohol without liquid devices prohibited”
- **Statutory Language:**

Subdivision 1. Definition. For purposes of this section, an "alcohol without liquid device" is a device, machine, apparatus, or appliance that mixes an alcoholic beverage with pure or diluted oxygen to produce an alcohol vapor that may be inhaled by an individual. An "alcohol without liquid device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended

specifically for medical purposes to dispense prescribed or over-the-counter medications.

Subd. 2. Prohibition. Except as provided in subdivision 3, it is unlawful for any person or business establishment to possess, purchase, sell, offer to sell, or use an alcohol without liquid device.

Subd. 3. Research exemption. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

Subd. 4. Penalty. Except as provided in subdivision 3, it is unlawful for any person or business establishment to utilize a nebulizer, inhaler, or atomizer or other device as described in subdivision 1, for the purposes of inhaling alcoholic beverages.

14. Nebraska

- **Citation:** NEB. REV. STAT. § 53-103 (2007).
- **Section Title:** “Terms, defined”
- **Statutory Language:**

For purposes of the Nebraska Liquor Control Act, unless the context otherwise requires:

(1) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

(2) Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

(3) Wine means any alcoholic beverage obtained by the fermentation of the

natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

(4) Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

(5) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

(6) Near beer means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

(8) Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(9) Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

(10) Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks

for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

(11) Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

(12) Person means any natural person, trustee, corporation, partnership, or limited liability company;

(13) Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

(14) Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission means the Nebraska Liquor Control Commission;

(16) Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

(17) To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

(18) Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

(19) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(20) Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

(21) Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

(22) Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

(23) Brand means alcoholic liquor identified as the product of a specific manufacturer;

(24) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A

commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(25) Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(26) Suspend means to cause a temporary interruption of all rights and privileges of a license;

(27) Cancel means to discontinue all rights and privileges of a license;

(28) Revoke means to permanently void and recall all rights and privileges of a license;

(29) Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

(30) Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

(31) Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state;

(32) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets;

(33) Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

(34) Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

(35) Shipping license means a license granted pursuant to section 53-123.15;

(36) Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

(37) Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

(38) Craft brewery means a brewpub or a microbrewery;

(39) Local governing body means (a) the city council or village board of trustees of a city or village within which the licensed premises are located or (b) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located; and

(40) Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor; and

(41) Micro-distillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually.

15. Nevada

- **Citation:** NEV. REV. STAT. ANN. 202.067 (Michie 2005).
- **Section Title:** “Sale, offer for sale, purchase, possession or use of alcohol vaporizing device; use of brand name of alcoholic beverage in advertisement or promotion of alcohol vaporizing device”
- **Statutory Language:**

1. A person shall not:

(a) Sell or offer for sale, purchase, possess or use an alcohol vaporizing device; or

(b) Use the brand name of any alcoholic beverage in an advertisement or other promotion of an alcohol vaporizing device.

2. A person who violates any provision of subsection 1 is guilty of a misdemeanor.

3. As used in this section:

(a) "Alcohol vaporizing device" means a machine or other device which mixes liquor with pure oxygen or any other gas to produce a vaporized product which is consumed by inhalation.

(b) "Liquor" has the meaning ascribed to it in NRS 369.040.

16. New York

- **Citation:** N.Y. ALCO. BEV. CONT. LAW § 117-b (McKinney 2006).
- **Section Title:** "Possession or use of alcohol vaporizing devices prohibited"
- **Statutory Language:**
 1. For purposes of this section, 'alcohol vaporizing device' means any device, machine or process which mixes spirits, liquor or other alcohol product with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.
 2. No licensee shall knowingly possess or make available for use an alcohol vaporizing device upon the premises of an establishment licensed pursuant to this chapter.
 3. A violation of the provisions of this section shall be an offense punishable by a fine of not more than five thousand dollars. A violation of the provisions of this section after having been previously convicted of such an offense within the

previous five years shall be a class B misdemeanor punishable by a fine of not more than ten thousand dollars.

4. Nothing in this section shall be construed to prohibit the authority from instituting proceedings to suspend, cancel, or revoke a license as provided in section seventeen of this chapter.

- **Citation:** N.Y. GEN. BUS. LAW § 399-dd (McKinney 2006).
- **Section Title:** “Sale of alcohol vaporizing devices prohibited”
- **Statutory Language:**

1. For purposes of this section, 'alcohol vaporizing device' means any device, machine or process which mixes spirits, liquor or other alcohol product with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

2. No person, corporation, partnership or limited liability company shall knowingly sell or offer for sale an alcohol vaporizing device.

3. A violation of the provisions of this section shall be an offense punishable by a fine of not more than five thousand dollars. A violation of the provisions of this section after having been previously convicted of such an offense within the previous five years shall be a class B misdemeanor punishable by a fine of not more than ten thousand dollars.

16. North Carolina

- **Citation:** North Carolina S.B. 125 (Enacted)
- **Section Title:** “Alcohol Vaporizing Devices Prohibited”
- **Bill Language:**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.10 reads as rewritten:

© 2007 Research is current as of August 27th, 2007. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites. Please contact Sarah Kelsey at (434) 973-7800 or sarahkelsey@natlalliance.org with any additional updates or information that may be relevant to this document. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 1414 Prince Street, Suite 312, Alexandria, VA 22314. (703) 836-6100.

'§ 90-113.10. Inhaling fumes for purpose of causing intoxication.

It is unlawful for any person to knowingly breathe or inhale any compound, liquid, or chemical containing toluol, hexane, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, ethyl alcohol, or any other substance for the purpose of inducing a condition of intoxication. This section does not apply to any person using as an inhalant any chemical substance pursuant to the direction of a ~~physician or dentist~~-licensed medical provider authorized by law to prescribe the inhalant or chemical substance possessed.'

SECTION 2. Chapter 90 of the General Statutes is amended by adding a new section to read:

'§ 90-113.10A. Alcohol vaporizing devices prohibited.

It shall be unlawful for any person to knowingly manufacture, sell, give, deliver, possess, or use an alcohol vaporizing device. As used in this section, 'alcohol vaporizing device' or 'AVD' means a device, machine, apparatus, or appliance that is designed or marketed for the purpose of mixing ethyl alcohol with pure or diluted oxygen, or another gas, to produce an alcoholic vapor that an individual can inhale or snort. An AVD does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense either a substance prescribed by a licensed medical provider authorized by law to prescribe the inhalant or chemical substance possessed, or an over-the-counter medication approved by monograph or new drug application under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, et seq.), provided the instrument is not used for the purpose of inducing a condition of intoxication through inhalation. Violation of this section is not a lesser included offense of G.S. 90-113.22.'

17. North Dakota

- **Citation:** 2007 North Dakota H.B. 1082 (Enacted)
- **Section Title:** “Alcohol without liquid devices prohibited – Definition – Penalty.”

- **Bill Language:**

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Alcohol without liquid devices prohibited - Definition - Penalty.

1. A person may not sell, offer to sell, purchase, possess, use, or if that person is a retail alcoholic beverage licensee, have on the premises an alcohol without liquid device. In this section, an 'alcohol without liquid device' means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.

2. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

3. A violation of this section is a class B misdemeanor.

18. Ohio

- **Citation:** OHIO REV. CODE ANN. § 4301.65 (West 2006).
- **Section Title:** “Sale, purchase, or use of alcohol vaporizing device prohibited”
- **Statutory Language:**

(A) As used in this section, "alcohol vaporizing device" means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation.

(B) No person shall sell or offer for sale an alcohol vaporizing device.

(C) No person shall purchase or use an alcohol vaporizing device.

19. Oklahoma

- **Citation:** OKLA. STAT. ANN. tit. 21, § 1220.1 (West 2006).
- **Section Title:** “Prohibition of alcohol inhalation device”
- **Statutory Language:**

It is unlawful for any person to buy, sell, furnish, manufacture or possess any alcohol inhalation device, alcohol infuser or any other device capable of causing a blood or breath alcohol concentration in the human body by means of fumes, vapors, gases, air particles or matter inhaled directly into the central nervous system by mouth or nasal passages. Any person convicted of any violation of this section shall be guilty of a misdemeanor punishable by a fine in the amount of Five Thousand Dollars (\$5,000.00). The Alcoholic Beverage Laws Enforcement Commission is prohibited from licensing any establishment for consumption of alcohol from such prohibited devices, and shall permanently revoke any license issued to any person convicted of any violation of this section. Provided, however, that any inhalation device which may contain alcohol and is intended or used for medicinal purposes, whether it is available for over-the-counter or by prescription purchase, shall be exempt from these provisions.

20. Pennsylvania

- **Citation:** 47 PA. CONS. STAT. ANN. § 1-102 West 2006).
- **Section Title:** “Definitions”
- **Statutory Language:**

The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

"Alcohol" shall mean ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include synthetic ethyl alcohol, but shall not mean or include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes.

"Alcoholic cider" shall mean a beverage which may contain carbonation in an

amount not to exceed three hundred ninety-two one thousandths of a gram per one hundred milliliters and flavors, produced through alcoholic fermentation of only apples or apple juice, consisting of at least one-half of one per centum, but not greater than five and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

"Alcohol service personnel" shall mean any employee of a licensee such as a bartender, waiter or, in the case of a distributor or importing distributor, a salesperson whose primary responsibility includes the resale, furnishing or serving of liquor or malt or brewed beverages. It shall also mean any employee, such as a doorperson, whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises.

"Alcohol vaporizing device" shall mean any device, machine or process which mixes spirits, liquors or other alcoholic products with oxygen or any other gas to produce a vaporized product for consumption by inhalation.

"Alternating brewer" shall mean any person, association, corporation or other business entity licensed by the board to produce malt or brewed beverages at premises that are licensed by another entity under a Pennsylvania manufacturer's license.

"Arts council" shall mean a tax-exempt organization which promotes the visual arts, performing arts or both and which receives funding under the Local Arts Services Program administered by the Pennsylvania Council on the Arts.

"Association" shall mean a partnership, limited partnership or any form of unincorporated enterprise owned by two or more persons.

"Automobile racetrack" shall mean a track used principally for holding automobile races which has a seating capacity in excess of ten thousand.

"Board" shall mean the Pennsylvania Liquor Control Board.

"Bonded warehouse" shall mean and include all places and warehouses legally established under the provisions of the acts of Congress and the administrative provisions of the internal revenue laws of the Government of the United States of America, for the storage, concentration, distribution and holding in bond, (a) of whiskey and any other potable distilled spirits, except ethyl alcohol, when used in

Article VII entitled "Distillery Bonded Warehouse Certificates" and, (b) of alcohol or liquor when otherwise used.

"Case" shall mean a package prepared by the manufacturer for sale or distribution of twelve or more original containers totaling two hundred sixty-four or more fluid ounces of malt or brewed beverages excepting those packages containing twenty-four or more original containers each holding seven fluid ounces or more.

"Club" shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in continuous existence and operation for at least one year, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment. The term includes a privately-owned private golf course.

"Combination package" shall mean a package consisting of liquor or alcohol and a nonliquor or nonalcohol item as packaged by the manufacturer or its representative.

"Container" shall mean and include any receptacle, vessel or form of package, tank, vat, cask, barrel, drum, keg, can, bottle or conduit used or capable of use for holding, storing, transferring or shipment of alcohol, liquor or malt or brewed beverages.

"Continuing care retirement community" shall mean the building or complex operated by a nonprofit entity incorporated under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations) which primarily houses persons over the age

of sixty-two. At least one hundred persons residing in the building or complex must be over the age of sixty-two.

"Corporation" shall mean a corporation or joint-stock association organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country or dependency.

"Denatured alcohol" shall mean and include all alcohol or any compound thereof which by the admixture of such denaturing material or materials is rendered unfit for use as a beverage.

"Denaturing plant" shall mean and include the premises of a distillery used exclusively for the denaturization of alcohol, either specially or completely, by the admixture of such denaturing materials as shall render the alcohol or any compound in which it is authorized to be used unfit for use as a beverage.

"Direct shipper" shall mean a person outside this Commonwealth who obtains a license from the board to accept orders placed for wine from within this Commonwealth by the Internet and who ships or facilitates in any way shipment of wine by a delivery agent or common carrier to a Pennsylvania liquor store.

"Distillery" shall mean and include any premises or plant wherein alcohol or liquor is manufactured, made and distilled from raw materials, blended or rectified, or any place wherein alcohol or liquor is produced by any method suitable for the production of alcohol. The term shall not include a "winery" where alcohol is derived from by-products of wine production by distillation for the sole purpose of adding to the fermented products to fortify the same.

"Distillery Bonded Warehouse Certificate" shall mean a certificate, receipt, contract or other document given upon the storage of whiskey or any other potable distilled spirits, except ethyl alcohol, in a bonded warehouse, and evidencing the ownership of such whiskey or other potable distilled spirits.

"Distillery certificate broker" shall mean and include every person who engages directly or through an agent in selling, purchasing, exchanging, offering for sale or delivery, or entering into agreements for the purchase, sale or exchange, or soliciting subscriptions to or orders for, or undertaking to dispose of, or dealing in any manner in, distillery bonded warehouse certificates.

"Distributor" shall mean any person licensed by the board to engage in the purchase only from Pennsylvania manufacturers and from importing distributors and the resale of malt or brewed beverages, except to importing distributors and

distributors, in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case or original containers containing one hundred twenty-eight ounces or more which may be sold separately.

"Eating place" shall mean a premise where food is regularly and customarily prepared and sold, having a total area of not less than three hundred square feet available to the public in one or more rooms, other than living quarters, and equipped with tables and chairs, including bar seats, accommodating thirty persons at one time. The board shall, by regulation, set forth what constitutes tables and chairs sufficient to accommodate thirty persons at one time.

"Eligible entity" shall mean a city of the third class, a hospital, a church, a synagogue, a volunteer fire company, a volunteer ambulance company, a volunteer rescue squad, a unit of a nationally chartered club which has been issued a club liquor license, a club in a city of the third class which has been issued a club liquor license and which, as of December 31, 2002, has been in existence for at least 100 years, a library, a nationally accredited Pennsylvania nonprofit zoological institution licensed by the United States Department of Agriculture, a nonprofit agricultural association in existence for at least ten years, a bona fide sportsmen's club in existence for at least ten years, a nationally chartered veterans' organization and any affiliated lodge or subdivision of such organization, a fraternal benefit society that is licensed to do business in this Commonwealth and any affiliated lodge or subdivision of such fraternal benefit society, a museum operated by a nonprofit corporation in a city of the third class or township of the first class, a nonprofit corporation engaged in the performing arts in a city of the third class, borough or in an incorporated town, an arts council, a nonprofit corporation that operates an arts facility or museum in a city of the third class in the county of the fourth class, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to protect the architectural heritage of boroughs and which has been recognized as such by a municipal resolution, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) conducting a regatta in a city of the second class with the permit to be used on State park grounds or conducting a family-oriented celebration as part of Welcome America in a city of the first class on property leased from that city for more than fifty years, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) whose purpose is to raise funds for the research and treatment of cystic fibrosis, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of

1986 (26 U.S.C. § 501(c)(3)) whose purpose is to educate the public on issues dealing with watershed conservation, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to provide equine assisted activities for children and adults with special needs, a nonprofit economic development agency in a city of the second class with the primary function to serve as an economic generator for the greater southwestern Pennsylvania region by attracting and supporting film, television and related media industry projects and coordinating government and business offices in support of a production, a county tourist promotion agency as defined in section 3(1) of the act of April 28, 1961 (P.L. 111, No. 50), known as the "Tourist Promotion Law," and located in a city of the third class in a county of the fourth class, a junior league in a third class county that is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)) that is comprised of women whose purpose is exclusively educational and charitable in promoting the volunteerism of women and developing and participating in community projects and that has been in existence for over seventy years or a nonprofit organization as defined under section 501(C)(6) of the Internal Revenue Code of 1986 which is located in a city of the third class in a county of the third class and whose purpose is to support business and industry.

"Enforcement bureau" shall mean the Bureau of Liquor Control Enforcement of the Pennsylvania State Police.

"Equine center" shall mean a facility of at least two hundred fifty acres in size which hosts equestrian shows and which has a primary building with permanent seating for at least six thousand (6,000) people.

"Fraternal benefit society" shall mean a society as defined in the act of December 14, 1992 (P.L. 835, No. 134), known as the "Fraternal Benefit Societies Code."

"Golf course" shall mean a course having a minimum of nine holes and a total length of at least twenty-five hundred yards. The term includes a privately-owned private golf course.

"Holiday" shall mean the first day of January, commonly known as New Year's Day; the third Monday of January, known as Dr. Martin Luther King, Jr., Day; the third Monday in February, known as Presidents' Day; the last Monday in May, known as Memorial Day; the fourth day of July, known as Independence Day; the first Monday of September, known as Labor Day; the fourth Thursday in November, known as Thanksgiving Day; and the twenty-fifth day of December, known as Christmas Day.

"Hotel" shall mean any reputable place operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least six, permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public.

"Importing distributor" shall mean any person licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth and from persons licensed as manufacturers of malt or brewed beverages and importing distributors under this act, and the resale of malt or brewed beverages in the original sealed containers as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises where sold, and in quantities of not less than a case or original containers containing one hundred twenty-eight ounces or more which may be sold separately.

"License period" shall mean the term for which the licenses and permits under the authority of this act are issued. License periods for hotel, restaurant, club and eating place licenses shall be established for a period of up to two years and, for the purpose of efficient and expedient processing, may be staggered. License periods for all other licenses and permits may be set by the board up to a maximum of four years and, for the purpose of efficient and expedient processing, may be staggered. The board shall collect the license/permit fees as authorized for each license/permit on an annual basis and shall prorate the annual license fee when required. The board shall extend and validate license privileges for each one-year portion of the license term upon timely receipt of proper fees, provided that no objection is received from the Department of Revenue or the Department of Labor and Industry. If at any time the licensee/permittee is not in compliance with the provisions of this act or any other laws of this Commonwealth, the licensee/permittee shall be subject to citation by the Pennsylvania State Police's Bureau of Liquor Control Enforcement.

"Limited Winery" shall mean a winery with a maximum output of two hundred thousand (200,000) gallons per year.

"Liquor" shall mean and include any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled

denatured alcohol usable or taxable for beverage purposes which contain more than one-half of one per cent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.

"Malt or Brewed Beverages" shall mean any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider.

"Management company" shall mean any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises.

"Manufacture", when the term is applied to malt or brewed beverages, shall mean and include all means, methods and processes used, employed and made use of, to produce, make and manufacture for commercial purposes, malt or brewed beverages from raw materials; when applied otherwise, it shall mean and include all means, methods and processes used, employed and made use of, to produce and make alcohol or liquor from raw materials, and shall mean and include rectification and blending of alcohol and liquor, the production, recovery or reuse of alcohol in the making, developing, using in the process of manufacture, denaturing, redistilling or recovering of any alcohol or liquor in distilleries, denaturing plants and wineries.

"Manufacturer" shall mean any person, association or corporation engaged in the producing, manufacturing, distilling, rectifying or compounding of liquor, alcohol or malt or brewed beverages in this Commonwealth or elsewhere.

"Manufacturer of malt or brewed beverages" shall mean any person holding a license issued by the board to engage in the manufacture, transportation and sale of malt or brewed beverages; also, any person engaged in the legal manufacture of malt or brewed beverages within the territorial limits of the United States, outside the Commonwealth of Pennsylvania.

"Municipality" shall mean any city, borough, incorporated town, or township of this Commonwealth.

"Nonprimary pari-mutuel wagering location" shall mean a nonprimary location for pari-mutuel wagering as designated by the State Horse Racing Commission or State Harness Racing Commission pursuant to the act of December 17, 1981 (P.L. 435, No. 135), known as the "Race Horse Industry Reform Act."

"Original container" shall mean all bottles, casks, kegs or other suitable containers that have been securely capped, sealed or corked by the manufacturer of malt or brewed beverages at the place of manufacture, with the name and address of the manufacturer of the malt or brewed beverages contained or to be contained therein permanently affixed to the bottle, cask, keg or other container, or in the case of a bottle or can, to the cap or cork used in sealing the same or to a label securely affixed to a bottle or can.

"Package" shall mean any container or containers or receptacle or receptacles used for holding liquor or alcohol as marketed by the manufacturer.

"Patron" shall mean an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises except those actually engaged in an employment related activity.

"Performing arts facilities" shall mean those halls or theaters in which live musical, concert, dance, ballet and legitimate play book-length productions are performed. Performing arts facilities shall not mean those halls or theaters in which burlesque shows or reviews are performed. If the operator of the performing arts facility is a nonprofit entity, the facility must have seating for at least five hundred (500) people; otherwise, the facility must have seating for at least twenty-five hundred (2,500) people.

"Person" shall mean a natural person, association or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment or both, the term "person", as applied to "association", shall mean the partners or members thereof, and as applied to "corporation", shall mean the officers thereof, except, as to incorporated clubs, the term "person" shall mean such individual or individuals who, under the by-laws of such club, shall have jurisdiction over the possession and sale of liquor therein.

"Population" shall mean the number of inhabitants as determined by the last preceding decennial census of the United States, or by any other census subsequently taken by the census bureau of the United States and so certified by it: Provided, however, That such other census shall not be a basis for the fixing of license fees as provided in article IV, sections 405 and 439.

"Potable distilled spirits" shall mean and include any distillate from grains, wine, fruits, vegetables or molasses, except ethyl alcohol, capable of being used for beverage purposes.

"Proper supervision" shall mean a person twenty-five years of age or older who is directly responsible for the care and conduct of a minor or minors while on the licensed premises and who keeps the minor or minors within his or her sight or hearing. If the licensee, an employee of a licensee or anyone else paid by the licensee is performing as proper supervisor, then that person may not perform any other employment-related duties; otherwise, proper supervision shall consist of unpaid volunteers.

"Public hearing" shall mean a hearing held pursuant to public notice.

"Public notice" shall mean notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and the place of the hearing and the particular matter to be considered at the hearing. The first publication shall not be more than 30 days, and the second publication shall not be less than seven days, from the date of the hearing.

"Public venue" shall mean a stadium, arena, convention center, museum, amphitheater or similar structure. If the public venue is a cruise terminal owned or leased by a port authority created under the act of June 12, 1931 (P.L. 575, No. 200), entitled "An act providing for joint action by Pennsylvania and New Jersey in the development of the ports on the lower Delaware River, and the improvement of the facilities for transportation across the river; authorizing the Governor, for these purposes, to enter into an agreement with New Jersey; creating The Delaware River Joint Commission and specifying the powers and duties thereof, including the power to finance projects by the issuance of revenue bonds; transferring to the new commission all the powers of the Delaware River Bridge Joint Commission; and making an appropriation," it shall have no permanent seating requirement. If the public venue is an open-air amphitheater owned by a port authority created under the act of December 6, 1972 (P.L. 1392, No. 298), known as the "Third Class City Port Authority Act," it shall have no permanent seating requirement. If the public venue is owned by a political subdivision, a municipal authority, the Commonwealth, an authority created under the act of July 29, 1953 (P.L. 1034, No. 270), known as the "Public Auditorium Authorities Law," an authority created under Article XXV-A of the act of July 28, 1953 (P.L. 723, No. 230), known as the "Second Class County Code," an art museum established under the authority of the act of April 6, 1791 (3 Sm.L. 20, No. 1536), entitled "An act to confer on certain associations of the citizens of this commonwealth the powers and immunities of corporations, or bodies politic in law," or an authority created under Article XXIII (n) or (o) of the act of August 9, 1955 (P.L. 323, No. 130), known as "The County Code," it shall have permanent

seating for at least one thousand (1,000) people; otherwise, it shall have permanent seating for at least two thousand (2,000) people. The term shall also mean any regional history center, multipurpose cultural and science facility, museum or convention or trade show center, regardless of owner and seating capacity, that has a floor area of at least sixty thousand (60,000) square feet in one building. The term shall also mean a convention or conference center owned by a city of the third class or a university which is a member of the Pennsylvania State System of Higher Education which is operated by a university foundation or alumni association, regardless of seating capacity, that has a floor area of at least fifteen thousand (15,000) square feet in one building.

"Purchase" shall mean obtaining food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration.

"Racetrack" shall mean a primary location for pari-mutuel wagering as designated by the State Horse Racing Commission or State Harness Racing Commission pursuant to the act of December 17, 1981 (P.L. 435, No. 135), known as the "Race Horse Industry Reform Act."

"Regulation" shall mean any regulation prescribed by the board for carrying out the provisions of this act.

"Restaurant" shall mean a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs, including bar seats, accommodating at least thirty persons at one time. The board shall, by regulation, set forth what constitutes tables and chairs sufficient to accommodate thirty persons at one time

"Retail dispenser" shall mean any person licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of one hundred ninety-two fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof.

"Sale" or "Sell" shall include any transfer of liquor, alcohol or malt or brewed beverages for a consideration.

"Service" shall mean the act of providing food, nonalcoholic beverages, liquor, alcohol or malt brewed beverages to a patron.

"Social gathering" shall mean events marketed to or catering to minors in whole or in part for which proper notice has been provided to the Bureau of Enforcement and at which time no alcohol is served and all alcohol is removed or secured by lock and key at the licensed premises.

"Tract" shall mean a contiguous expanse of land under the control of one person.

"Vacate" shall mean to physically leave a licensed premises.

"Whiskey" shall mean and include any alcoholic distillate from a fermented mash of grain, capable of being used for beverage purposes.

"Wine" shall mean liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less. The term "wine" shall not include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.

"Winery" shall mean and include any premises and plants where any alcohol or liquor is produced by the process by which wine is produced, or premises and plants wherein liquid such as wine is produced; and shall include the manufacture by distillation of alcohol from the by-products of wine fermentation when the alcohol so derived is used solely to fortify the fermented products, under such regulations as are or may be promulgated by the proper agency of the United States Government, and such alcohol, for that purpose only, may be sold or exchanged between wineries holding permits in this Commonwealth, without restriction.

- **Citation:** 47 PA. CONS. STAT. ANN. § 4-493 (West 2007)
- **Section Title:** "Unlawful acts relative to liquor, malt and brewed beverages and licensees
- **Statutory Language:**

It shall be unlawful--...

(32) Sale or Purchase of Alcohol Vaporizing Devices. For any licensee, his servants or agents or employees to possess or permit an alcohol vaporizing device on the licensed premises.

21. Tennessee

- **Citation:** TENN. CODE ANN. § 57-4-205 (2006).
- **Section Title:** “Alcohol vaporizing devices; definition; violations”
- **Statutory Language:**

(a) As used in this section, "alcohol vaporizing device" means any device, machine or process that, by means of heat, a vibrating element or any other method, mixes spirits, liquor or other alcoholic product with pure oxygen or other gas to produce a vaporized product that is dispensed for inhalation into the lungs through the nose or mouth.

(b) No licensee shall sell, deliver, or give away, or permit to be sold, delivered, or given away, any alcoholic beverage for dispensation by means of an alcohol vaporizing device.

(c) No licensee shall bring, keep, maintain or use, or permit another to bring, keep, maintain or use, an alcohol vaporizing device on the licensed premises, or on any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(d)(1) A first violation of this section is a Class A misdemeanor and is grounds for suspension of the licensee's license, for a period not to exceed sixty (60) days.

(2) A second violation of this section is a Class A misdemeanor and shall result in the suspension of the licensee's license, for a period of not less than thirty (30) days nor more than ninety (90) days.

(3) A third or subsequent violation of this section is a Class E felony and shall result in suspension of the licensee's license, for a period of one (1) year.

22. Virginia

- **Citation:** VA. CODE ANN. § 4.1-100 (Michie 2006).
- **Section Title:** “Definitions”

- **Statutory Language:**

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

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

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

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

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

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

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable

water and containing one-half of one percent or more of alcohol by volume.

"Board" means the Virginia Alcoholic Beverage Control Board.

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

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

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

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

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

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

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

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

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

"Farm winery" means an establishment (i) located on a farm in 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 18 percent alcohol by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume. 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 shop in determining whether it shall be considered a gift shop.

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

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

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

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

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

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

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

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

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

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

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international

organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

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

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

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

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

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

"Residence" means any building or part of a building or structure where a person

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

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

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

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

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

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

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

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last

four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

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

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

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

- **Citation:** VA. CODE ANN. § 4.1-302.1 (Michie 2006).
- **Section Title:** "Use of alcohol vaporizing devices prohibited; penalty"
- **Statutory Language:**

A. No person shall purchase, offer for sale or use, sell or use any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device.

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

- **Citation:** VA. CODE ANN. § 4.1-324 (Michie 2006).
- **Section Title:** “Illegal sale or keeping of alcoholic beverages by licensees; penalty”
- **Statutory Language:**
 - A. No licensee or any agent or employee of such licensee shall:
 1. Sell any alcoholic beverages of a kind other than that which such license or this title authorizes him to sell;
 2. Sell beer to which wine, spirits or alcohol has been added;
 3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations;
 4. Sell alcoholic beverages of a kind which such license or this title authorizes him to sell, but to any person other than to those to whom such license or this title authorizes him to sell;
 5. Sell alcoholic beverages which such license or this title authorizes him to sell, but in any place or in any manner other than such license or this title authorizes him to sell;
 6. Sell any alcoholic beverages when forbidden by this title;
 7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic beverages other than that which he is authorized to sell by such license or by this title;
 8. Sell any beer to a retail licensee, except for cash, if the seller holds a brewery, bottler's or wholesale beer license;
 9. Sell any beer on draft and fail to display to customers the brand of beer sold or misrepresent the brand of any beer sold;

10. Sell any wine for delivery within the Commonwealth to a retail licensee, except for cash, if the seller holds a wholesale wine or farm winery license; or

11. Keep or allow to be kept or sell any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device.

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

23. Wyoming

- **Citation:** WYO. STAT. ANN. § 12-10-101 (Michie 2006).

- **Section Title:** “Possessing, purchasing or selling an alcohol without liquid device prohibited; exception; definition; penalties”

- **Statutory Language:**

(a) Except as provided in subsection (b) of this section, no person shall possess, purchase, sell or offer to sell an alcohol without liquid device.

(b) This section shall not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research or to a pharmaceutical company or biotechnology company conducting bona fide research.

(c) Any person who violates subsection (a) of this section is guilty of a misdemeanor punishable by a fine of up to two hundred fifty dollars (\$250.00) for the first offense and not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, for second and subsequent offenses.

(d) Except as provided in subsection (b) of this section, any alcohol without liquid device found in Wyoming shall be confiscated and, after an opportunity for a hearing in a court of competent jurisdiction on the issue of whether the device is

an alcohol without liquid device, shall be destroyed. The destruction of the device may be delayed if the device is needed for evidence in a criminal case.

(e) As used in this section "alcohol without liquid device" means a device, machine, apparatus or appliance that mixes alcoholic liquor with pure or diluted oxygen to produce an alcohol vapor that an individual can inhale. An alcohol without liquid device does not include an inhaler, nebulizer, atomizer or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication.