

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 826

An Act to amend and reenact §§ 4.1-132, 4.1-201, 4.1-206, 4.1-209, 4.1-212, 4.1-221.1, 4.1-325, and 4.1-325.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-201.1, relating to alcoholic beverage control; permissible conduct by manufacturers and wine or beer wholesalers; tastings; service items and novelties.

[S 685]

Approved April 7, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-132, 4.1-201, 4.1-206, 4.1-209, 4.1-212, 4.1-221.1, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-201.1 as follows:

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

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

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

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

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

A. ~~This title shall not~~ *Nothing in this title or any Board regulation adopted pursuant thereto shall prohibit:*

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

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

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

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

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

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

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

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

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

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

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

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

13. *Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in the Commonwealth, from distributing to retail licensees and their employees novelties and specialties, including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage advertising. Such items may be distributed to retail licensees in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises.*

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

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

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

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

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

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

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

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

the retail licensee;

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

6. All alcoholic beverage products used in the tasting are purchased from the retail licensee on whose premises the tasting is conducted; except that no more than \$100 may be expended by or on behalf of any such manufacturer or wholesaler at any retail licensed premises during any 24-hour period.

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

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

§ 4.1-206. Alcoholic beverage licenses.

The Board may grant the following licenses relating to alcoholic beverages generally:

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

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

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

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

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

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

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

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

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

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

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

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

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell wine and beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas. However, with regard to a hotel classified by the Board as a resort complex, the Board may authorize the sale and consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board;

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

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

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

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

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

g. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which (i) has seating for more than 20,000 persons and is located in any county with a population between 210,000 and 216,000 or in any city with a population between 392,000 and 394,000, (ii) has capacity for more than 3,500 persons and is located in any county with a population between 65,000 and 70,000 or in a city with a population between 40,000 and 47,000, or (iii) has capacity for more than 9,500 persons and is located in any county operated under the county manager form of government. Such license shall authorize the licensee to sell wine and beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license; and

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

2. Retail off-premises wine and beer licenses, which shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and to deliver the same to purchasers in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

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

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

5. Retail on-and-off premises wine and beer licenses to persons enumerated in subdivision 1 a, which shall accord all the privileges conferred by retail on-premises wine and beer licenses and in addition, shall authorize the licensee to sell wine and beer in closed containers for off-premises consumption and to deliver the same to the purchasers, in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

6. Banquet licenses to persons in charge of banquets, and to duly organized nonprofit corporations or associations in charge of special events, which shall authorize the licensee to sell or give wine and beer in rooms or areas approved by the Board for the occasion for on-premises consumption in such rooms or areas. Except as provided in § 4.1-215, a separate license shall be required for each day of each banquet or special event. For the purposes of this subdivision, when the location named in the original application for a license is outdoors, the application may also name an alternative location in the event of inclement weather. However, no such license shall be required of any hotel, restaurant, or club holding a retail wine and beer license.

7. Gift shop licenses, which shall authorize the licensee to sell wine and beer unchilled, only within the interior premises of the gift shop in closed containers for off-premises consumption and to deliver the wine and beer to purchasers in accordance with Board regulations. All such deliveries of wine or beer shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee.

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

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

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

§ 4.1-212. Permits required in certain instances.

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

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

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

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

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

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

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

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

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

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

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

10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in subdivision (a) (72) of § 8.9A-102 of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the Board may prescribe.

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

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

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

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

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

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

§ 4.1-221.1. Limitation of tasting licenses.

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

§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except in a frozen drink dispenser of a type approved by the Board and in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;
9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;
10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or

obliterated;

11. Allow any immoral, lewd, obscene, indecent or profane conduct, language, literature, pictures, performance or materials on the licensed premises;

12. Allow any striptease act, or the like on the licensed premises;

13. Allow persons connected with the licensed business to appear nude or partially nude;

14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § 4.1-210.

The provisions of this subdivision shall not apply to the delivery of "soju". For the purposes of the previous sentence, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes;

16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

17. Conceal any sale or consumption of any alcoholic beverages;

18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;

19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus; or

22. Make any gift of an alcoholic beverage, other than as a gift made to (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; or (iii) pursuant to subdivision A 11 of § 4.1-201. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision.

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

§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.

A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or employee shall consume any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subsection shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes.

B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not be deemed to be agents of the retail wine or beer licensee.

C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic beverage, other than as a gift made to (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subsection; or (iii) pursuant to subdivision A 11 of § 4.1-201. Any gift permitted by this subsection shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subsection.

D. Any person convicted of a violation of this section shall be subject to a civil penalty in an amount not to exceed \$500.