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HOUSE BILL NO. 512

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 7, 2006)

(Patron Prior to Substitute—Delegate Armstrong)

A BILL to amend and reenact §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; wine and beer licenses; tastings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted as follows:

§ 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

60 exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

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

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

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

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

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

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

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

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

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

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

121 § 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 subsection C of § 4.1-209. 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

183 employee shall consume any alcoholic beverages while on duty and in a position that is involved in the
184 selling or serving of alcoholic beverages to customers.

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

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

194 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic
195 beverage, other than as a gift made to (i) to a personal friend, as a matter of normal social intercourse,
196 so long as the gift is in no way a shift or device to evade the restriction set forth in this subsection or;
197 (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade
198 show or event held or to be held on the premises of the licensee, when such gift is made in the course
199 of usual and customary business entertainment and is in no way a shift or device to evade the restriction
200 set forth in this subsection; or (iii) pursuant to subsection C of § 4.1-209. Any gift permitted by this
201 subsection shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The
202 licensee shall keep complete and accurate records of gifts given in accordance with this subsection.

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