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**SENATE BILL NO. 328**

Offered January 11, 2006

Prefiled January 11, 2006

*A BILL to amend and reenact §§ 4.1-201, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; gift of samples by licensees.*

Patron—Wagner

Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-201, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted as follows:**

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

A. This title shall not prohibit:

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

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 However, no alcoholic beverages so distilled shall be withdrawn from the place where distilled except in accordance with Board regulations.

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

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers from other breweries owned by such person or the sale, delivery or shipment of such beer, in accordance with Board regulations to (i) persons licensed to sell beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale only as provided in subdivision 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

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SB328

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

66 *11. Any retail on-premises wine or beer licensee, his agent or employee, from giving a sample of*  
67 *wine or beer, not to exceed two ounces, to persons to whom alcoholic beverages may be lawfully sold*  
68 *for on-premises consumption, or any mixed beverage licensee, his agent or employee, from giving a*  
69 *sample of (i) wine or beer, not to exceed two ounces, or (ii) spirits not to exceed one-half ounce, to*  
70 *persons to whom alcoholic beverages may be lawfully sold for on-premises consumption provided that*  
71 *no more than two products shall be given.*

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

75 § 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

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

78 1. Sell or serve any alcoholic beverage other than as authorized by law;

79 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;

80 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of  
81 this title;

82 4. Keep at the place described in his license any alcoholic beverage other than that which he is  
83 licensed to sell;

84 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

85 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by  
86 him except in a frozen drink dispenser of a type approved by the Board and in the case of wine, in  
87 containers of a type approved by the Board pending automatic dispensing and sale of such wine;

88 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper  
89 with the contents of any bottle or container of alcoholic beverage;

90 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the  
91 purchaser without first advising such purchaser of the difference;

92 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages  
93 offered for sale;

94 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or  
95 obliterated;

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

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

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

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

102 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
103 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
104 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
105 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
106 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of  
107 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for  
108 quality control purposes;

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

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

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

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

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

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

120 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 or, (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 or, (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.