

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 513

*An Act to amend and reenact §§ 4.1-100, 4.1-111, 4.1-204, 4.1-227, 4.1-324, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; powers and duties of the Alcoholic Beverage Control Board generally; prohibited acts by licensees; exceptions.*

[H 1075]

Approved March 10, 2008

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

**1. That §§ 4.1-100, 4.1-111, 4.1-204, 4.1-227, 4.1-324, and 4.1-325 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-100. Definitions.

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.

"Internet wine retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"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.

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"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.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"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 park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

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 or a limited mixed beverage restaurant 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 other than a limited mixed beverage restaurant 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.

*"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda or soda water that may also be mixed with brandy, triple sec, or other similar spirits.*

"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.

#### § 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

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

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

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

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

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. *Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.*

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

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

§ 4.1-204. Records of licensees; inspection of records and places of business.

A. Manufacturers, bottlers or wholesalers. - Every licensed manufacturer, bottler or wholesaler shall keep complete, accurate and separate records in accordance with Board regulations of all alcoholic beverages purchased, manufactured, bottled, sold or shipped by him, and the applicable tax required by § 4.1-234 or 4.1-236, if any.

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

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

D. Wine shippers and beer shippers. - Every wine shipper licensee and every beer shipper licensee shall keep complete, accurate, and separate records in accordance with Board regulations of all shipments of wine or beer to persons in the Commonwealth. Such licensees shall also remit on a monthly basis an accurate account stating whether any wine, farm wine, or beer products were sold and shipped and, if so, stating the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is shipped.

E. Delivery permittees. - Every holder of a delivery permit issued pursuant to § 4.1-212.1 shall keep complete, accurate, and separate records in accordance with Board regulations of all deliveries of wine or beer to persons in the Commonwealth. Such permittees shall also remit on a monthly basis an accurate account that sets forth the total quantities of wine and beer sold and the total price charged for such wine and beer. Such records shall include the names and addresses of the purchasers to whom the wine and beer is delivered. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report to the Board for that month; however, every permittee must submit a report to the Board no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

F. Inspection. - The Board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth and to the premises of both (i) every wine shipper licensee and beer shipper licensee and (ii) every delivery permittee wherever located where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place and all records, invoices and accounts therein. The Board may engage the services of alcoholic beverage control authorities in any state to assist with the inspection of the premises of a wine shipper licensee, a beer shipper licensee, or delivery permittee, or any applicant for such license or permit.

*For purposes of a Board inspection of the records of any retail licensees, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public. At any other time of day, if the retail licensee's records are not available for inspection, the retailer shall provide the records to a special agent of the Board within 24 hours after a request is made to inspect the records.*

§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or

places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

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

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both.

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

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

E. The Board shall, by regulation, (i) designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation and (ii) *provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server training certified in advance by the Board.* The Board shall establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of this subsection, shall be advised of the option of ~~(i)~~ (a) accepting the suspension authorized by the Board's schedule, ~~(ii)~~ (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or ~~(iii)~~ (c) proceeding to a hearing.

§ 4.1-324. Illegal sale or keeping of alcoholic beverages by licensees; penalty.

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, *except that a mixed beverage licensee may combine wine or spirits, or both, with beer pursuant to a patron's order;*
3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations, *except that a mixed beverage licensee may (i) make sangria that contains brandy, triple sec, or other similar spirits and (ii) combine beer or spirits, or both, with wine pursuant to a patron's order;*
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;

12. *Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except: (i) for a frozen alcoholic beverage; and (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; or*

13. *Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.*

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

C. *Neither this section nor any Board regulation shall prohibit an on-premises restaurant licensee from using alcoholic beverages that the licensee otherwise is authorized to purchase and possess for the purposes of preparing and selling for on-premises consumption food products with a final alcohol content of more than one-half of one percent by volume, as long as such food products are sold to and consumed by persons who are 21 years of age or older.*

§ 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 *(i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board and (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;*

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 (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; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A 12 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; *or*

23. *Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.*

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