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SENATE BILL NO. 635

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 25, 2008)

(Patron Prior to Substitute—Senator Ticer)

A *BILL to amend and reenact §§ 4.1-324 and 4.1-325 of the Code of Virginia, relating to alcohol content in prepared foods.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-324 and 4.1-325 of the Code of Virginia are amended and reenacted as follows:

§ 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;

3. Sell wine to which spirits or alcohol, or both, have been added, otherwise than as required in the manufacture thereof under Board regulations;

4. Sell alcoholic beverages of a kind which such license or this title authorizes him to sell, but to any person other than to those to whom such license or this title authorizes him to sell;

5. Sell alcoholic beverages which such license or this title authorizes him to sell, but in any place or in any manner other than such license or this title authorizes him to sell;

6. Sell any alcoholic beverages when forbidden by this title;

7. Keep or allow to be kept, other than in his residence and for his personal use, any alcoholic beverages other than that which he is authorized to sell by such license or by this title;

8. Sell any beer to a retail licensee, except for cash, if the seller holds a brewery, bottler's or wholesale beer license;

9. Sell any beer on draft and fail to display to customers the brand of beer sold or misrepresent the brand of any beer sold;

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

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

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.*

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 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;

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

60 offered for sale;

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

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

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

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

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

69 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
70 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
71 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
72 the Board who represents a distiller, if such samples are provided in accordance with Board regulations
73 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of
74 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for
75 quality control purposes;

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

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

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

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

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

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

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

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

92 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a
93 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the
94 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or
95 conduct on any conference, convention, trade show or event held or to be held on the premises of the
96 licensee, when such gift is made in the course of usual and customary business entertainment and is in
97 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection
98 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision
99 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall
100 keep complete and accurate records of gifts given in accordance with this subdivision.

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