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SENATE BILL NO. 628

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Wagner
on January 26, 2010)

(Patron Prior to Substitute—Senator Wagner)

A *BILL to amend and reenact §§ 4.1-111 and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; mixed beverage licensees; flavored distilled spirits.*

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-111 and 4.1-325 of the Code of Virginia are amended and reenacted as follows:**

§ 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. *Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.*

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

60 applicant.

61 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the
62 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of
63 § 4.1-325.2.

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

66 E. Courts shall take judicial notice of Board regulations.

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

68 § 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

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

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

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

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

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

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

78 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
79 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
80 dispenser of a type approved by the Board ~~and~~; (ii) in the case of wine, in containers of a type
81 approved by the Board pending automatic dispensing and sale of such wine; *and (iii) as otherwise*
82 *provided by Board regulation*. Neither this subdivision nor any Board regulation shall prohibit any
83 mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption
84 on the licensed premises;

85 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper
86 with the contents of any bottle or container of alcoholic beverage, *except as provided by Board*
87 *regulation adopted pursuant to § 4.1-111 B 11*;

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

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

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

94 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the
95 licensed premises;

96 12. Allow any striptease act on the licensed premises;

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

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

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

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

109 The provisions of this subdivision shall not apply to the delivery of:

110 a. "Soju." For the purposes of this clause, "soju" means a traditional Korean alcoholic beverage
111 distilled from rice, barley or sweet potatoes; or

112 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content
113 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and
114 perishable;

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

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

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

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

121 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;

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.

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.