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## SENATE BILL NO. 1405

Offered January 18, 2011

A *BILL to amend and reenact §§ 4.1-325 and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; mixed beverage licensees; prohibited acts.*

Patron—Vogel

Referred to Committee on Rehabilitation and Social Services

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

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

§ 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; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. 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, except as provided by Board regulation adopted pursuant to § 4.1-111 B 11;
  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 obscene conduct, language, literature, pictures, performance or materials on the licensed premises;
  12. Allow any striptease act 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:
- a. "Soju." For the purposes of this clause, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes; or
  - b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;
  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;

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

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

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

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

68 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a  
69 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the  
70 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or  
71 conduct on any conference, convention, trade show or event held or to be held on the premises of the  
72 licensee, when such gift is made in the course of usual and customary business entertainment and is in  
73 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection  
74 C of § 4.1-209; ~~or~~ (iv) pursuant to subdivision A 12 of § 4.1-201; ; (v) *to any patron of the retail*  
75 *licensee, limited to one alcoholic beverage per patron during a 24-hour period; or (vi) to a group of*  
76 *two or more patrons of the retail licensee, limited to one bottle of wine per group of patrons during any*  
77 *24-hour period. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title*  
78 *on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in*  
79 *accordance with this subdivision; or*

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

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

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

89 § 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.

90 A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or  
91 employee shall consume any alcoholic beverages while on duty and in a position that is involved in the  
92 selling or serving of alcoholic beverages to customers.

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

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

102 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic  
103 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so  
104 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to  
105 a person responsible for the planning, preparation or conduct on any conference, convention, trade show  
106 or event held or to be held on the premises of the licensee, when such gift is made in the course of  
107 usual and customary business entertainment and is in no way a shift or device to evade the restriction  
108 set forth in this subsection; (iii) pursuant to subsection C of § 4.1-209; ~~or~~ (iv) pursuant to subdivision A  
109 12 of § 4.1-201; (v) *to any patron of the retail licensee, limited to one alcoholic beverage per patron*  
110 *during a 24-hour period; or (vi) to a group of two or more patrons of the retail licensee, limited to one*  
111 *bottle of wine per group of patrons during any 24-hour period. Any gift permitted by this subsection*  
112 *shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall*  
113 *keep complete and accurate records of gifts given in accordance with this subsection.*

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