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HOUSE BILL NO. 882

Offered January 8, 2014

Prefiled January 8, 2014

A BILL to amend and reenact §§ 4.1-213, 4.1-324, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; sale of wine and cider in growlers.

Patrons—Carr and Fariss

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-213, 4.1-324, and 4.1-325 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-213. Manufacture and sale of cider.

A. Any winery licensee or farm winery licensee may manufacture and sell cider to (i) the Board, (ii) any wholesale wine licensee, (iii) any retail licensee approved by the Board for the purpose of selling cider and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

B. Any wholesale wine licensee may acquire and receive shipments of cider, and sell and deliver and ship the cider in accordance with Board regulations to (i) the Board, (ii) any wholesale wine licensee, (iii) any retail licensee approved by the Board for the purpose of selling cider and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

C. Any licensee authorized to sell alcoholic beverages at retail may sell cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license authorizes him to sell other alcoholic beverages.

D. *Cider may be sold in kegs of at least one gallon or in growlers or other reusable containers that are federally approved, provided such containers are labeled in accordance with Board regulations and limited for use by persons licensed to sell cider at retail for both off- and on-premises consumption.*

E. No additional license fees shall be charged for the privilege of handling cider.

~~E.~~ F. The Board shall collect such markup as it deems appropriate on all cider manufactured or sold, or both, in the Commonwealth.

~~F.~~ G. The Board shall adopt regulations relating to the manufacture, possession, transportation, and sale of cider as it deems necessary to prevent any unlawful manufacture, possession, transportation, or sale of cider and to ensure that the markup required to be paid will be collected.

~~G.~~ H. For the purposes of this section:

"Chaptalization" means a method of increasing the alcohol in a wine by adding sugar to the must before or during fermentation.

"Cider" means any beverage, carbonated or otherwise, obtained by the fermentation of the natural sugar content of apples (i) containing not more than 10 percent of alcohol by volume without chaptalization or (ii) containing not more than seven percent of alcohol by volume regardless of chaptalization.

This section shall not limit the privileges set forth in subdivision A 8 of § 4.1-200, nor shall any person be denied the privilege of manufacturing and selling sweet cider.

§ 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;

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

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

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

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

67 12. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
68 him except: (i) for a frozen alcoholic beverage; and (ii) in the case of wine, (a) in containers of a type
69 approved by the Board pending automatic dispensing and sale of such wine or (b) *in growlers or other*
70 *reusable containers that are federally approved, provided such containers are labeled in accordance*
71 *with Board regulations and limited for use by persons licensed to sell wine at retail for both off- and*
72 *on-premises consumption; or*

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

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

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

83 **§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

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

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

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

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

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

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

93 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
94 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
95 dispenser of a type approved by the Board; (ii) in the case of wine, (a) in containers of a type approved
96 by the Board pending automatic dispensing and sale of such wine or (b) *in growlers or other reusable*
97 *containers that are federally approved, provided such containers are labeled in accordance with Board*
98 *regulations and limited for use by persons licensed to sell wine at retail for both off- and on-premises*
99 *consumption; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any*
100 Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be
101 served and sold for consumption on the licensed premises;

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

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

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

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

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

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

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

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

117 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
118 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
119 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
120 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 f 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;

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;

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.