

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 404

An Act to amend and reenact §§ 4.1-111, 4.1-201, 4.1-210, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; regulations; samples of alcoholic beverages; combined mixed beverage restaurant and caterer's license.

[H 1439]

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-201, 4.1-210, 4.1-325, and 4.1-325.2 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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, *including a provision that limits infusion containers to a maximum of 20 liters.*

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage

or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title.

14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board are maintained by the parties.

15. *Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour.*

16. *Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any 24-hour period and subject to any Board limitations on the frequency of such gifts.*

17. *Permit the sale of beer and cider for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.*

18. *Permit the sale of wine for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine growlers may be used only by persons licensed to sell wine for both on-premises and off-premises consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces, and (iv) the name and address of the retailer.*

19. *Permit the sale of wine and beer by retailers licensed to sell beer and wine for both on-premises and off-premises consumption, or by gourmet shop licensees for off-premises consumption in sealed containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is placed in the container following an order from the consumer.*

20. *Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the Board.*

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.

§ 4.1-201. Conduct not prohibited by this title; limitation.

A. Nothing in this title or any Board regulation adopted pursuant thereto shall prohibit:

1. Any club licensed under this chapter from keeping for consumption by its members any alcoholic beverages lawfully acquired by such members, provided the alcoholic beverages are not sold, dispensed or given away in violation of this title.

2. Any person from having grain, fruit or fruit products and any other substance, when grown or

lawfully produced by him, distilled by any distillery licensee, and selling the distilled alcoholic beverages to the Board or selling or shipping them to any person outside of the Commonwealth in accordance with Board regulations. However, no alcoholic beverages so distilled shall be withdrawn from the place where distilled except in accordance with Board regulations.

3. Any person licensed to manufacture and sell, or either, in the Commonwealth or elsewhere, alcoholic beverages other than wine or beer, from soliciting and taking orders from the Board for such alcoholic beverages.

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers or the sale, delivery or shipment of such beer, in accordance with Board regulations to (i) persons licensed to sell beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale only as provided in subdivision B 4 of § 4.1-216, (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

5. The granting of any retail license to a brewery, distillery, or winery licensee, or to an applicant for such license, or to a lessee of such person, a wholly owned subsidiary of such person, or its lessee, provided the places of business or establishments for which the retail licenses are desired are located upon the premises occupied or to be occupied by such distillery, winery, or brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary.

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

7. The receipt by a farm winery or winery licensee of deliveries and shipments of wine in closed containers from other wineries or farm wineries located inside or outside the Commonwealth, or the receipt by a winery licensee or farm winery licensee of deliveries and shipments of spirits distilled from fruit or fruit juices in closed containers from distilleries located inside or outside the Commonwealth to be used only for the fortification of wine produced by the licensee in accordance with Board regulations, or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

8. The receipt by a fruit distillery licensee of deliveries and shipments of alcoholic beverages made from fruit or fruit juices in closed containers from other fruit distilleries owned by such licensee, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to persons outside of the Commonwealth for resale outside of the Commonwealth.

9. Any farm winery or winery licensee from shipping or delivering its wine in closed containers to another farm winery or winery licensee for the purpose of additional bottling in accordance with Board regulations and the return of the wine so bottled to the manufacturing farm winery or winery licensee.

10. Any farm winery or winery licensee from selling and shipping or delivering its wine in closed containers to another farm winery or winery licensee, the wine so sold and shipped or delivered to be used by the receiving licensee in the manufacture of wine. Any wine received under this subsection shall be deemed an agricultural product produced in the Commonwealth for the purposes of § 4.1-219, to the extent it is produced from fresh fruits or agricultural products grown or produced in the Commonwealth. The selling licensee shall provide to the receiving licensee, and both shall maintain complete and accurate records of, the source of the fresh fruits or agricultural products used to produce the wine so transferred.

11. Any distiller licensed under this title from serving as an agent of the Board for the sale of alcoholic beverages, other than beer and wine, at a government store established by the Board on the licensed premises of the distiller in accordance with subsection D of § 4.1-119.

12. Any retail on-premises beer licensee, his agent or employee, from giving a sample of beer to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or retail on-premises wine or beer licensee, his agent or employee, from giving a sample of wine or beer to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or any mixed beverage licensee, his agent or employee, from giving a sample of wine, beer, or spirits to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption. Samples of wine shall not exceed two ounces, samples of beer shall not exceed four ounces, and samples of spirits shall not exceed one-half ounce. No more than two product samples shall be given to any person per visit.

13. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, from selling service items bearing alcoholic brand references to on-premises retail licensees or prohibit any such retail licensee from displaying the service items on the premises of his licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" mean articles of tangible personal property normally used by the employees of

on-premises retail licensees to serve alcoholic beverages to customers including, but not limited to, glasses, napkins, buckets, and coasters.

14. Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in the Commonwealth, from distributing to retail licensees and their employees novelties and specialties, including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage advertising. Such items may be distributed to retail licensees in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises.

15. Any (i) retail on-premises wine or beer licensee, his agent or employee from offering for sale or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of wines or beers consisting of samples of not more than five different wines or beers and (ii) *mixed beverage licensee, his agent or employee from offering for sale or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples of not more than five different spirits products.*

16. Any restaurant licensed under this chapter from permitting the consumption of lawfully acquired wine by bona fide customers on the premises in all areas and locations covered by the license. The licensee may charge a corkage fee to such customer for the wine so consumed; however, the licensee shall not charge any other fee to such customer.

17. Any winery, farm winery, wine importer, or wine wholesaler licensee from providing to adult customers of licensed retail establishments information about wine being consumed on such premises.

B. No deliveries or shipments of alcoholic beverages to persons outside the Commonwealth for resale outside the Commonwealth shall be made into any state the laws of which prohibit the consignee from receiving or selling the same.

§ 4.1-210. Mixed beverages licenses.

A. Subject to the provisions of § 4.1-124, the Board may grant the following licenses relating to mixed beverages:

1. Mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve mixed beverages for consumption in dining areas and other designated areas of such restaurant. Such license may be granted only to persons (i) who operate a restaurant and (ii) whose gross receipts from the sale of food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises, after issuance of such license, amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food. For the purposes of this paragraph, other designated areas shall include outdoor dining areas, whether or not contiguous to the licensed premises, which outdoor dining areas may have more than one means of ingress and egress to an adjacent public thoroughfare, provided such areas are under the control of the licensee and approved by the Board.

If the restaurant is located on the premises of a hotel or motel with not less than four permanent bedrooms where food and beverage service is customarily provided by the restaurant in designated areas, bedrooms and other private rooms of such hotel or motel, such licensee may (i) sell and serve mixed beverages for consumption in such designated areas, bedrooms and other private rooms and (ii) sell spirits packaged in original closed containers purchased from the Board for on-premises consumption to registered guests and at scheduled functions of such hotel or motel only in such bedrooms or private rooms. However, with regard to a hotel classified as a resort complex, the Board may authorize the sale and on-premises consumption of alcoholic beverages in all areas within the resort complex deemed appropriate by the Board. Nothing herein shall prohibit any person from keeping and consuming his own lawfully acquired spirits in bedrooms or private rooms.

If the restaurant is located on the premises of and operated by a private, nonprofit or profit club exclusively for its members and their guests, or members of another private, nonprofit or profit club in another city with which it has an agreement for reciprocal dining privileges, such license shall also authorize the licensees to sell and serve mixed beverages for on-premises consumption. Where such club prepares no food in its restaurant but purchases its food requirements from a restaurant licensed by the Board and located on another portion of the premises of the same hotel or motel building, this fact shall not prohibit the granting of a license by the Board to such club qualifying in all other respects. The club's gross receipts from the sale of nonalcoholic beverages consumed on the premises and food resold to its members and guests and consumed on the premises shall amount to at least 45 percent of its gross receipts from the sale of mixed beverages and food. The food sales made by a restaurant to such a club shall be excluded in any consideration of the qualifications of such restaurant for a license from the Board.

2. Mixed beverage caterer's licenses, which may be granted only to a person regularly engaged in the business of providing food and beverages to others for service at private gatherings or at special events, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food.

3. Mixed beverage limited caterer's licenses, which may be granted only to a person regularly

engaged in the business of providing food and beverages to others for service at private gatherings or at special events, not to exceed 12 gatherings or events per year, which shall authorize the licensee to sell and serve alcoholic beverages for on-premises consumption. The annual gross receipts from the sale of food cooked and prepared for service and nonalcoholic beverages served at gatherings and events referred to in this subdivision shall amount to at least 45 percent of the gross receipts from the sale of mixed beverages and food.

4. Mixed beverage special events licenses, to a duly organized nonprofit corporation or association in charge of a special event, which shall authorize the licensee to sell and serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. A separate license shall be required for each day of each special event.

5. Annual mixed beverage special events licenses to (i) a duly organized nonprofit corporation or association operating either a performing arts facility or an art education and exhibition facility, (ii) a nonprofit corporation or association chartered by Congress for the preservation of sites, buildings and objects significant in American history and culture, or (iii) persons operating an agricultural event and entertainment park or similar facility that has a minimum of 50,000 square feet of indoor exhibit space and equine and other livestock show areas, which includes barns, pavilions, or other structures equipped with roofs, exterior walls, and open or closed-door access. The operation in all cases shall be upon premises owned by such licensee or occupied under a bona fide lease the original term of which was for more than one year's duration. Such license shall authorize the licensee to sell alcoholic beverages during scheduled events and performances for on-premises consumption in areas upon the licensed premises approved by the Board.

6. Mixed beverage carrier licenses to persons operating a common carrier of passengers by train, boat or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth. For purposes of supplying its airplanes, as well as any airplanes of a licensed express carrier flying under the same brand, an air carrier licensee may appoint an authorized representative to load distilled spirits onto the same airplanes and to transport and store distilled spirits at or in close proximity to the airport where the distilled spirits will be delivered onto airplanes of the air carrier and any such licensed express carrier. The air carrier licensee shall (i) designate for purposes of its license all locations where the inventory of distilled spirits may be stored and from which the distilled spirits will be delivered onto airplanes of the air carrier and any such licensed express carrier and (ii) maintain records of all distilled spirits to be transported, stored, and delivered by its authorized representative.

7. Mixed beverage club events licenses, which shall authorize a club holding a beer or wine and beer club license to sell and serve mixed beverages for on-premises consumption by club members and their guests in areas approved by the Board on the club premises. A separate license shall be required for each day of each club event. No more than 12 such licenses shall be granted to a club in any calendar year.

8. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 20,000 persons and is located in Prince William County or the City of Virginia Beach. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

9. Annual mixed beverage amphitheater licenses to persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility that has seating for more than 5,000 persons and is located in the City of Alexandria or the City of Portsmouth. Such license shall authorize the licensee to sell alcoholic beverages during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption.

10. Annual mixed beverage motor sports facility license to persons operating food concessions at any outdoor motor sports road racing club facility, of which the track surface is 3.27 miles in length, on 1,200 acres of rural property bordering the Dan River, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

11. Annual mixed beverage banquet licenses to duly organized private nonprofit fraternal, patriotic or charitable membership organizations that are exempt from state and federal taxation and in charge of banquets conducted exclusively for its members and their guests, which shall authorize the licensee to serve mixed beverages for on-premises consumption in areas approved by the Board on the premises of the place designated in the license. Such license shall authorize the licensee to conduct no more than 12 banquets per calendar year.

12. Limited mixed beverage restaurant licenses, which shall authorize the licensee to sell and serve dessert wines as defined by Board regulation and no more than six varieties of liqueurs, which liqueurs shall be combined with coffee or other nonalcoholic beverages, for consumption in dining areas of the restaurant. Such license may be granted only to persons who operate a restaurant and in no event shall the sale of such wine or liqueur-based drinks, together with the sale of any other alcoholic beverages, exceed 10 percent of the total annual gross sales of all food and alcoholic beverages.

13. Annual mixed beverage motor sports facility licenses to persons operating concessions at an outdoor motor sports facility that hosts a NASCAR national touring race, which shall authorize the licensee to sell mixed beverages, in paper, plastic, or similar disposable containers during scheduled events, as well as events or performances immediately subsequent thereto, to patrons in all dining facilities, seating areas, viewing areas, walkways, concession areas or similar facilities, for on-premises consumption.

14. Annual mixed beverage performing arts facility license to corporations or associations operating a performing arts facility, provided the performing arts facility (i) is owned by a governmental entity; (ii) is occupied by a for-profit entity under a bona fide lease, the original term of which was for more than one year's duration; and (iii) has been rehabilitated in accordance with historic preservation standards. Such license shall authorize the sale, on the dates of performances or events, of alcoholic beverages for on-premises consumption in areas upon the licensed premises approved by the Board.

15. *A combined mixed beverage restaurant and caterer's license, which may be granted to any restaurant or hotel that meets the qualifications for both a mixed beverage restaurant pursuant to subdivision A 1 and mixed beverage caterer pursuant to subdivision A 2 for the same business location, and which license shall authorize the licensee to operate as both a mixed beverage restaurant and mixed beverage caterer at the same business premises designated in the license, with a common alcoholic beverage inventory for purposes of the restaurant and catering operations. Such licensee shall meet the separate food qualifications established for the mixed beverage restaurant license pursuant to subdivision A 1 and mixed beverage caterer's license pursuant to subdivision A 2.*

B. The granting of any license under subdivision A 1, 6, 7, 8, 9, 10, 11, 12, 13, ~~or~~ 14, or 15 shall automatically include a license to sell and serve wine and beer for on-premises consumption. The licensee shall pay the state and local taxes required by §§ 4.1-231 and 4.1-233.

§ 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~~ *premixing* containers of sangria, *to which spirits may be added*, 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 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; *or (v) pursuant to any Board regulation.* 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.

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

A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or employee shall consume 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 subsection shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer, 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.

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

C. No retail wine or beer licensee, or his agent or employee shall 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 subsection; (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 subsection; (iii) pursuant to subsection C of § 4.1-209; ~~or~~ (iv) pursuant to subdivision A 12 of § 4.1-201; *or (v) pursuant to any Board regulation.* Any gift permitted by this subsection 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 subsection.

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

2. That on and after July 1, 2015, any licensee of the Alcoholic Beverage Control Board that holds both a mixed beverage restaurant license and a mixed beverage caterer's license for the same business premises may, upon request in writing to the Alcoholic Beverage Control Board, be granted a combined mixed beverage restaurant and caterer's license for the same business premises. The Alcoholic Beverage Control Board may require such licensee to surrender the previously granted mixed beverage restaurant license and mixed beverage caterer's license for the same licensed location. No additional license fee shall be assessed for this change.