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HOUSE BILL NO. 1439

Offered January 14, 2015

Prefiled December 26, 2014

A *BILL to amend and reenact §§ 4.1-111, 4.1-325, 4.1-325.2, and 4.1-327 of the Code of Virginia, relating to alcoholic beverage control; regulations.*

Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-325, 4.1-325.2, and 4.1-327 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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

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HB1439

59 subsection C of § 4.1-232.

60 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
61 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage
62 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages
63 may not be lawfully sold. Such regulations shall:

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

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

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

80 15. *Permit retail on-premises licensees to temporarily extend their licensed premises up to 12 times*
81 *per year to include outdoor dining areas, whether or not contiguous to the licensed premises, provided*
82 *such areas are under the control of the licensee and approved by the Board.*

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

86 17. *Permit caterer licensees that concurrently hold a restaurant license for the same business*
87 *premises to transfer alcoholic beverage inventory between such licenses, provided the licensee maintains*
88 *records of all such transfers.*

89 18. *Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one*
90 *bottle of wine to a group of two or more patrons, provided only one such gift is given during any*
91 *24-hour period and subject to any Board limitations on the frequency of such gifts.*

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

96 20. *Permit mixed beverage licensees to offer for sale and sell for one price to any person to whom*
97 *alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples one-half ounce*
98 *or smaller of not more than six different spirit products.*

99 21. *Permit mixed beverage licensees to pre-mix containers of sangria and other mixed alcoholic*
100 *beverages and to serve such alcoholic beverages in pitchers, subject to quantity limitations established*
101 *by the Board.*

102 C. The Board may promulgate regulations that:

103 1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be
104 based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit
105 status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the
106 purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its
107 not-for-profit status. The granting of such waiver shall be limited to two events per year for each
108 applicant.

109 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the
110 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of
111 § 4.1-325.2.

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

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

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

116 **§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

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

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

120 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 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

182 accordance with this subdivision; or

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

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

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

192 **§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.**

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

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

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

205 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic
206 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so
207 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to
208 a person responsible for the planning, preparation or conduct on any conference, convention, trade show
209 or event held or to be held on the premises of the licensee, when such gift is made in the course of
210 usual and customary business entertainment and is in no way a shift or device to evade the restriction
211 set forth in this subsection; (iii) pursuant to subsection C of § 4.1-209; ~~or~~ (iv) pursuant to subdivision A
212 12 of § 4.1-201; *or (v) pursuant to any Board regulation.* Any gift permitted by this subsection shall be
213 subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep
214 complete and accurate records of gifts given in accordance with this subsection.

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

217 **§ 4.1-327. Prohibiting transfer of wine or beer by licensees; penalty.**

218 A. No retail licensee, except (i) a retail on-premises wine and beer licensee or (ii) a retail
219 on-premises beer licensee, shall transfer any wine or beer from one licensed place of business to another
220 licensed place of business whether such places of business are under the same ownership or not, *except*
221 *as otherwise provided by Board regulation for mixed-beverage licensees.*

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