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HOUSE BILL NO. 2074

Offered January 14, 2015

Prefiled January 14, 2015

A *BILL to amend and reenact §§ 4.1-324 and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; beer to which spirits has been added.*

Patron—McClellan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

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

§ 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;

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

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

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

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

12. 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; (ii) *for beer to which spirits has been added*; and (iii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; or

13. 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~~ *is* guilty of a Class 1 misdemeanor.

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

§ 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

INTRODUCED

HB2074

59 licensed to sell;

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

61 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
62 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
63 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by
64 the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board
65 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee
66 from pre-mixing containers of *beer to which spirits has been added* or sangria to be served and sold for
67 consumption on the licensed premises;

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

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

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

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

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

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

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

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

83 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
84 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
85 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
86 the Board who represents a distiller, if such samples are provided in accordance with Board regulations
87 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of
88 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for
89 quality control purposes;

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

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

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

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

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

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

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

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

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

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

109 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a
110 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the
111 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or
112 conduct on any conference, convention, trade show or event held or to be held on the premises of the
113 licensee, when such gift is made in the course of usual and customary business entertainment and is in
114 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection
115 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision
116 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall
117 keep complete and accurate records of gifts given in accordance with this subdivision; or

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

121 normal or customary price charged for the same alcoholic beverage.

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

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

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HB2074