

16101293D

HOUSE BILL NO. 173

Offered January 13, 2016

Prefiled December 23, 2015

A BILL to amend and reenact § 4.1-325, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to alcoholic beverage control; prohibited practices by mixed beverage licensees; exception.

 Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-325, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 4.1-325. (Effective until July 1, 2018) 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; (iii) *for the transfer of spirits from the original larger bottle or container that was purchased by him to a smaller bottle provided that (a) the smaller bottle is the same brand and type as the spirits contained in the larger bottle or container that was purchased by him and (b) the larger bottle or container is kept in the same serving area; and (iii)* (iv) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from 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:

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

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

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

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

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

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

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

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

75 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a
76 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the
77 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or
78 conduct on any conference, convention, trade show or event held or to be held on the premises of the
79 licensee, when such gift is made in the course of usual and customary business entertainment and is in
80 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection
81 C of § 4.1-209; (iv) pursuant to subdivision A 11 of § 4.1-201; or (v) pursuant to any Board regulation.
82 Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of
83 alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance
84 with this subdivision; or

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

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

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

94 **§ 4.1-325. (Effective July 1, 2018) Prohibited acts by mixed beverage licensees; penalty.**

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

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

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

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

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

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

104 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
105 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
106 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by
107 the Board pending automatic dispensing and sale of such wine; *(iii) for the transfer of spirits from the*
108 *original larger bottle or container that was purchased by him to a smaller bottle, provided that (a) the*
109 *smaller bottle is the same brand and type as the spirits contained in the larger bottle or container that*
110 *was purchased by him and (b) the larger bottle or container is kept in the same serving area; and ~~(iii)~~*
111 *(iv) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall*
112 *prohibit any mixed beverage licensee from premixing containers of sangria, to which spirits may be*
113 *added, to be served and sold for consumption on the licensed premises;*

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

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

119 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages
120 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 subdivision, "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; (iv) pursuant to subdivision A 11 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.