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SENATE BILL NO. 809

Offered January 11, 2023

Prefiled December 12, 2022

A BILL to amend and reenact §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; displays of wine and beer.

Patron—Favola

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-209. Wine and beer license privileges; advertising; displays; tastings.

A. Notwithstanding any provision of law to the contrary, persons granted a wine and beer license pursuant to § 4.1-206.3 may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials (i) otherwise comply with the applicable regulations of the federal Bureau of Alcohol, Tobacco and Firearms and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess.

B. *Persons granted a license to sell wine and beer for off-premises consumption that display such wine and beer outside a clearly discernible location reserved solely for alcoholic beverages shall (i) not place wine or beer in an area immediately adjacent to nonalcoholic beverages containing the same or similar brand name, logo, or packaging as an alcoholic beverage and (ii) equip any such display with signage that indicates the product is an alcoholic beverage, is clearly visible to consumers, and is of sufficient size to notify the consumer of the product's alcohol content. Nothing in this subsection shall prohibit the placement of nonalcoholic wine or beer in or near a display of alcoholic beverages that contain the same or similar brand name, logo, or packaging as the nonalcoholic wine or beer.*

C. Persons granted retail on-and-off-premises wine and beer licenses pursuant to the following provisions may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption:

1. Subdivision A 1, 4, 5, 6, 7, 8, or 14 of § 4.1-206.3;
2. Subdivision B 1, 2, 4, 5, 6, 7, or 8 of § 4.1-206.3;
3. Subdivision C 1 or 2 of § 4.1-206.3;
4. Subdivision D 1 a, b, or d or 2 a of § 4.1-206.3; or
5. Subdivision F 4 or 5 of § 4.1-206.3.

Such licensees may sell or give samples of wine and beer in designated areas at events held by the licensee for the purpose of featuring and educating the consuming public about the alcoholic beverages being tasted. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold. No single sample shall exceed four ounces of beer or two ounces of wine, and no more than 12 ounces of beer or five ounces of wine shall be given or sold to any person per day.

§ 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 subtitle;
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

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59 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee
60 from premixing containers of sangria, to which spirits may be added, to be served and sold for
61 consumption on the licensed premises;

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

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

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

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

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

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

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

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

77 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
78 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
79 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
80 the Board who represents a distiller, if such samples are provided in accordance with Board regulations
81 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of
82 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for
83 quality control purposes;

84 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license
85 whether the closure is broken or unbroken except in accordance with § 4.1-206.3.

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

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

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

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

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

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

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

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

101 21. Keep on the licensed premises, except for the premises of a mixed beverage casino licensee, a
102 slot machine or any prohibited gambling or gaming device, machine, or apparatus;

103 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a
104 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the
105 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or
106 conduct on any conference, convention, trade show or event held or to be held on the premises of the
107 licensee, when such gift is made in the course of usual and customary business entertainment and is in
108 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection
109 B C of § 4.1-209; (iv) pursuant to subdivision A 10 of § 4.1-201; (v) by a mixed beverage casino
110 licensee to a patron of such licensee in accordance with the provisions of subdivision A 15 of
111 § 4.1-206.3; or (vi) pursuant to any Board regulation. Any gift permitted by this subdivision shall be
112 subject to the taxes imposed by this subtitle on sales of alcoholic beverages. The licensee shall keep
113 complete and accurate records of gifts given in accordance with this subdivision; or

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

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

119 C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters,
120 concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or

121 theatrical performances, when the performances that are presented are expressing matters of serious
122 literary, artistic, scientific, or political value.

123 **§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.**

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

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

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

136 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic
137 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so
138 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to
139 a person responsible for the planning, preparation or conduct on any conference, convention, trade show
140 or event held or to be held on the premises of the licensee, when such gift is made in the course of
141 usual and customary business entertainment and is in no way a shift or device to evade the restriction
142 set forth in this subsection; (iii) pursuant to subsection B C of § 4.1-209; (iv) pursuant to subdivision A
143 10 of § 4.1-201; or (v) pursuant to any Board regulation. Any gift permitted by this subsection shall be
144 subject to the taxes imposed by this subtitle on sales of alcoholic beverages. The licensee shall keep
145 complete and accurate records of gifts given in accordance with this subsection.

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