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SENATE BILL NO. 809

Senate Amendments in [] - January 17, 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 Prior to Engrossment—Senator 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 that the product contains] 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

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59 the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board
60 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee
61 from premixing containers of sangria, to which spirits may be added, to be served and sold for
62 consumption on the licensed premises;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 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 B C of § 4.1-209; (iv) pursuant to subdivision A 10 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 subtitle 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 the Virginia Alcoholic Beverage Control Authority shall report to the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on General Laws by November 1, 2025, regarding the implementation of the provisions of this act, including the number and nature of any violations and the manner in which such violations were addressed.

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