SENATE BILL NO. 833
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Roem)

A BILL to amend and reenact §§ 4.1-212.1, 4.1-1107, and 18.2-323.1 of the Code of Virginia relating to open containers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-212.1, 4.1-1107, and 18.2-323.1 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-212.1. Delivery of wine and beer; kegs; regulations of Board.

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may deliver the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal off-premises consumption.

B. Any person licensed to sell wine and beer at retail for off-premises consumption in the Commonwealth, and who is not a brewery, winery, or farm winery, may deliver the brands of beer, wine, and farm wine it is authorized to sell in closed containers to consumers within the Commonwealth for personal off-premises consumption. Notwithstanding any provision of law to the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered beer, wine, or farm wine in advance of the delivery or (ii) such other locations as may be permitted by Board regulation.

C. Any person located outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in its state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal off-premises consumption.

D. Any person licensed to sell mixed beverages at retail for off-premises consumption in the Commonwealth may deliver any mixed beverages it is authorized to sell in closed containers to consumers within the Commonwealth for personal off-premises consumption. Notwithstanding any provision of law to

the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered mixed beverages in advance of the delivery or (ii) such other locations as may be permitted by Board regulation.

E. Any distiller that has been appointed as an agent of the Board pursuant to subsection D of § 4.1-119 may deliver to consumers within the Commonwealth for personal consumption any alcoholic beverages the distiller is authorized to sell through organized tasting events in accordance with subsection G of § 4.1-119 and Board regulations. Notwithstanding any provision of law to the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered mixed beverages in advance of the delivery or (ii) such other locations as may be permitted by Board regulation.

F. All deliveries made pursuant to this section shall be to consumers within the Commonwealth for personal consumption only and not for resale. Such deliveries shall be performed by either (i) the owner or any officer, director, shareholder, or employee of the licensee or permittee or (ii) a third-party delivery licensee pursuant to § 4.1-212.2. The licensee performing the delivery shall be liable for any administrative violations of this section or § 4.1-304 committed during transport through completion of the delivery. Alcoholic beverages shall not be delivered after 11:00 p.m. or before 6:00 a.m. Only one individual may take possession of the alcoholic beverages during the course of the delivery. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold, except that the licensee or permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Authority in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. Except as otherwise provided in this subtitle, alcoholic beverages sold for off-premises consumption or delivered pursuant to this section that are not in the manufacturer's original sealed container shall (a) be enclosed in a container that has no straw holes or other openings and is sealed in a manner that allows a person to readily discern whether the container has been opened or tampered with subsequent to its original closure; (b) display the name of the licensee from which the alcoholic beverages were purchased; (c) be clearly marked with the phrase "contains alcoholic beverages"; (d) in the case of wine, beer, or, if purchased from a mixed beverage restaurant or limited mixed beverage restaurant licensee, mixed beverages, have a maximum volume of 16 ounces per beverage; and (e) during delivery, *not* be stored ~~(1) in the trunk of the vehicle, (2) in an area that is rear of the driver's seat, (3) in a locked container or compartment, or (4) in the case of delivery by bicycle, in a compartment behind the bicyclist~~ *in the passenger area, as defined 23 U.S.C. §§ 154(a)(4) and (b)(2) and*

23 C.F.R. § 1270.3(g).

The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (A) the recipient to demonstrate, upon delivery, that he is at least 21 years of age and (B) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

G. In addition to other applicable requirements set forth in this section, the following provisions shall apply to the sale of mixed beverages for off-premises consumption and the delivery of mixed beverages pursuant to this section:

1. No distiller shall sell for off-premises consumption or deliver more than two mixed beverages at any one time;

2. All mixed beverages sold for off-premises consumption or delivered by a mixed beverage restaurant or limited mixed beverage restaurant licensee shall contain at least one mixer; and

3. Mixed beverage restaurant and limited mixed beverage restaurant licensees shall serve at least one meal, as defined pursuant to this subtitle and Board regulations, with every off-premises mixed beverage sale. Each meal shall permit up to two mixed beverages to be sold for off-premises consumption or delivered. In any event, no mixed beverage restaurant or limited mixed beverage restaurant licensee may sell for off-premises consumption or deliver more than four mixed beverages at any one time.

The Board may summarily revoke a licensee's privileges to sell or deliver mixed beverages for off-premises consumption for noncompliance with the provisions of this section or § 4.1-225 or 4.1-325. Any summary revocation by the Board pursuant to this paragraph (i) shall not be subject to the provisions of § 4.1-227, (ii) shall not be subject to appeal, and (iii) shall become effective upon personal service of the notice of summary revocation to the licensee or upon the fourth business day after such notice is mailed to the licensee's residence or the address listed for the licensed premises on the initial license application.

H. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine, beer, or mixed beverages by a licensee or permittee shall constitute a sale in Virginia. The licensee or permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Authority and any sales taxes to the Department of Taxation, if such taxes have not already been paid.

I. Any manufacturer or retailer who is licensed to sell wine, beer, or both for off-premises consumption may sell such wine or beer in kegs, subject to any limitations imposed by Board regulation. The Board may impose a fee for keg registration seals. For purposes of this subsection, "keg registration seal" means any

document, stamp, declaration, seal, decal, sticker, or device that is approved by the Board, designed to be affixed to kegs, and displays a registration number and such other information as may be prescribed by the Board.

§ 4.1-1107. Using or consuming marijuana or marijuana products while in a motor vehicle being driven upon a public highway; penalty.

A. For the purposes of ~~this section~~ *subsection C*:

"Open container" means any vessel containing marijuana or marijuana products, except the originally sealed manufacturer's container.

"Passenger area" means the area designed to seat the driver of any motor vehicle, any area within the reach of the driver, including an unlocked glove compartment, and the area designed to seat passengers. "Passenger area" does not include the trunk of any passenger vehicle; the area behind the last upright seat of a passenger van, station wagon, hatchback, sport utility vehicle or any similar vehicle; the living quarters of a motor home; or the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxi, or limousine, while engaged in the transportation of such persons.

B. It is unlawful for any person to *(i)* use or consume marijuana or marijuana products while driving a motor vehicle *or (ii) knowingly or intentionally possess any marijuana or marijuana products other than in the manufacturer's unopened original container in a motor vehicle in the passenger area, as defined in 23 U.S.C. §§ 154(a)(4) and (b)(2) and 23 C.F.R. § 1270.3(g),* upon a public highway of the Commonwealth ~~or while being a passenger in a motor vehicle being driven upon a public highway of the Commonwealth~~, *including the shoulder thereof, as defined in § 46.2-100. If the seal on a container of marijuana or marijuana products is broken or some of the contents have been removed, the container shall be presumed to be open. For the purpose of this subsection, "public highway" does not include any motor vehicle parking lot.*

C. A judge or jury may make a permissive inference that a ~~person~~ *driver* has consumed marijuana or marijuana products in violation of this section if (i) an open container is located within the passenger area of the motor vehicle, (ii) the marijuana or marijuana products in the open container have been at least partially removed and (iii) the appearance, conduct, speech, or other physical characteristic of such person, excluding odor, is consistent with the consumption of marijuana or marijuana products. Such person may be prosecuted either in the county or city in which the marijuana was used or consumed, or in the county or city in which the person exhibits evidence of physical indicia of use or consumption of marijuana.

D. Any person who violates this section is guilty of a Class 4 misdemeanor.

§ 18.2-323.1. Drinking while operating a motor vehicle; possession of open container in a motor vehicle and presumption; penalty.

A. It is unlawful for any person to *(i)* consume an alcoholic beverage while driving a motor vehicle *or (ii) knowingly or intentionally possess any alcoholic beverage other than in the manufacturer's unopened original container in a motor vehicle in the passenger area, as defined 23 U.S.C. §§ 154(a)(4) and (b)(2) and 23 C.F.R. § 1270.3(g),* upon a public highway of the Commonwealth*, including the shoulder thereof, as defined in § 46.2-100. If the seal on a container of an alcoholic beverage is broken or some of the contents have been removed, the container shall be presumed to be open. For the purpose of this subsection, "public highway" does not include any motor vehicle parking lot.*

B. Unless the driver is delivering alcoholic beverages in accordance with the provisions of § 4.1-212.1, a rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger area of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed, and (iii) the appearance, conduct, odor of alcohol, speech, or other physical characteristic of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

C. For the purposes of ~~this section~~ *subsection B*:

"Open container" means any vessel containing an alcoholic beverage, except the originally sealed manufacturer's container.

"Passenger area" means the area designed to seat the driver of any motor vehicle, any area within the reach of the driver, including an unlocked glove compartment, and the area designed to seat passengers. "Passenger area" does not include the trunk of any passenger vehicle, the area behind the last upright seat of a passenger van, station wagon, hatchback, sport utility vehicle, or any similar vehicle, the living quarters of a motor home, or the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxi, or limousine, while engaged in the transportation of such persons.

D. A violation of this section is punishable as a Class 4 misdemeanor.

2. That the amount reserved equal to 2.5 percent of Federal-aid funds apportioned under 23 U.S.C. §§ 104(b)(1) and (b)(2) for the National Highway Performance Program and the Surface Transportation Block Grant Program shall be deposited to the Virginia Highway Safety Improvement Program

established pursuant to § 33.2-373 of the Code of Virginia.