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HOUSE BILL NO. 1889

House Amendments in [] - February 1, 2007

A BILL to amend and reenact §§ 4.1-222 and 4.1-225 of the Code of Virginia, relating to alcoholic beverage control; refusal to grant and revocation or suspension of licenses.

Patron Prior to Engrossment—Delegate Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-222 and 4.1-225 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-222. Conditions under which Board may refuse to grant licenses.

A. The Board may refuse to grant any license if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a partnership ~~or association~~, any general partner thereof, or if the applicant is an association, any member thereof, [or limited partner of 10 percent or more with voting rights,] or if the applicant is a corporation, any officer, director, ~~or manager~~ thereof or shareholder owning ~~ten~~ 10 percent or more of its capital stock, or if the applicant is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Is not twenty-one years of age or older;

b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of any state, or of the United States;

c. Has been convicted, within the five years immediately preceding the date of the application for such license, of a violation of any law applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

d. Is not a person of good moral character and repute;

e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be licensed;

g. Has maintained a noisy, lewd, disorderly or unsanitary establishment;

h. Has demonstrated, either by his police record or by his record as a former licensee of the Board, a lack of respect for law and order;

i. Is unable to speak, understand, read and write the English language in a reasonably satisfactory manner;

j. Is a person to whom alcoholic beverages may not be sold under § 4.1-304;

k. Has the general reputation of drinking alcoholic beverages to excess or is addicted to the use of narcotics;

l. Has misrepresented a material fact in applying to the Board for a license;

m. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false and fraudulent;

n. Is violating or allowing the violation of any provision of this title in his establishment at the time his application for a license is pending;

o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located;

p. Is physically unable to carry on the business for which the application for a license is filed or has been adjudicated incapacitated; or

q. Is a member, agent or employee of the Board.

2. The place to be occupied by the applicant:

a. Does not conform to the requirements of the governing body of the county, city or town in which such place is located with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;

b. Is so located that granting a license and operation thereunder by the applicant would result in violations of this title, Board regulations, or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;

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HB1889E

59 c. Is so located with respect to any church; synagogue; hospital; public, private or parochial school,
60 college or university; public or private playground or other similar recreational facilities; or any state,
61 local or federal government-operated facility, that the operation of such place under such license will
62 adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or
63 institutions;

64 d. Is so located with respect to any residence or residential area that the operation of such place
65 under such license will adversely affect real property values or substantially interfere with the usual
66 quietude and tranquillity of such residence or residential area; or

67 e. Under a retail on-premises license is so constructed, arranged or illuminated that law-enforcement
68 officers and special agents of the Board are prevented from ready access to and reasonable observation
69 of any room or area within which alcoholic beverages are to be sold or consumed.

70 3. The number of licenses existent in the locality is such that the granting of a license is detrimental
71 to the interest, morals, safety or welfare of the public. In reaching such conclusion the Board shall
72 consider the (i) character of, population of, the number of similar licenses and the number of all licenses
73 existent in the particular county, city or town and the immediate neighborhood concerned; (ii) effect
74 which a new license may have on such county, city, town or neighborhood in conforming with the
75 purposes of this title; and (iii) objections, if any, which may have been filed by a local governing body
76 or local residents.

77 4. There exists any law, ordinance, or regulation of the United States, the Commonwealth or any
78 political subdivision thereof, which warrants refusal by the Board to grant any license.

79 5. The Board is not authorized under this chapter to grant such license.

80 B. The Board may refuse to grant any retail wine and beer license, retail beer license or retail wine
81 or winery license to any person who has not resided in the Commonwealth for at least one year
82 immediately preceding application therefor, or to any corporation a majority of the stock of which is
83 owned by persons who have not resided in the Commonwealth for at least one year immediately
84 preceding application therefor, unless refusal to grant the license would in the opinion of the Board
85 substantially impair the transferability of the real property upon which the licensed establishment would
86 be located.

87 § 4.1-225. Grounds for which Board may suspend or revoke licenses.

88 The Board may suspend or revoke any license other than a brewery license, in which case the Board
89 may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

90 1. The licensee, or if the licensee is a partnership ~~or association~~, any *general partner thereof*, or if the
91 *licensee is an association*, any member thereof, [*or a limited partner of 10 percent or more with voting*
92 *rights,*] or if the licensee is a corporation, any officer, director, ~~or manager thereof~~ or shareholder
93 owning 10 percent or more of its capital stock, *or if the licensee is a limited liability company, any*
94 *member-manager or any member owning 10 percent or more of the membership interest of the limited*
95 *liability company*;

96 a. Has misrepresented a material fact in applying to the Board for such license;

97 b. Has defrauded or attempted to defraud the Board, or any federal, state or local government or
98 governmental agency or authority, by making or filing any report, document or tax return required by
99 statute or regulation which is fraudulent or contains a false representation of a material fact; or has
100 willfully deceived or attempted to deceive the Board, or any federal, state or local government, or
101 governmental agency or authority, by making or maintaining business records required by statute or
102 regulation which are false or fraudulent;

103 c. Within the five years immediately preceding the date of the hearing held in accordance with
104 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the
105 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,
106 applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated
107 any provision of Chapter 3 (§ 4.1-300 et seq.) of this title; (iii) committed a violation of the Wine
108 Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated
109 or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to
110 comply with any of the conditions or restrictions of the license granted by the Board;

111 d. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude
112 under the laws of any state, or of the United States;

113 e. Is not the legitimate owner of the business conducted under the license granted by the Board, or
114 other persons have ownership interests in the business which have not been disclosed;

115 f. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business
116 conducted under the license granted by the Board;

117 g. Has been intoxicated or under the influence of some self-administered drug while upon the
118 licensed premises;

119 h. Has allowed noisy, lewd or disorderly conduct upon the licensed premises, or has maintained such
120 premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous

for persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

i. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

j. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

k. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;

l. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

m. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;

n. Has allowed any lewd, obscene or indecent literature, pictures or materials upon the licensed premises;

o. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises; or

p. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein.

2. The place occupied by the licensee:

a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. Any other cause authorized by this title.