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HOUSE BILL NO. 2491

House Amendments in [] - February 5, 2007

A *BILL to amend and reenact §§ 4.1-328 and 4.1-329 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 4.1-216.1, relating to alcoholic beverage control; interior advertising; civil penalty.*

Patron Prior to Engrossment—Delegate Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-328 and 4.1-329 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-216.1 as follows:

§ 4.1-216.1. Point of sale advertising materials authorized under certain conditions; permits; civil penalties.

A. *As used in this section:*

"Authorized vendor" and "vendor" means any person, other than a wholesale wine or beer licensee, that a manufacturer has authorized to engage in a business consisting in whole or in part of sale and distribution of any articles of tangible personal property bearing any of the manufacturer's alcoholic beverage trademarks.

"Alcoholic beverage advertising material" or "advertising material" shall mean any item, other than an illuminated device, which contains one or more references to a brand of alcoholic beverage and which is used to promote the sale of alcoholic beverages within the interior of a licensed retail establishment and which otherwise complies with Board regulations.

"Manufacturer" means any brewery, winery, distillery, bottler, broker, importer and any person that a brewery, winery or distiller has authorized to sell or arrange for the sale of its products to wholesale wine and beer licensees in Virginia or, in the case of spirits, to the Board.

B. Notwithstanding the provisions of § 4.1-215 or 4.1-216 and Board regulations adopted thereunder, a manufacturer or its authorized vendor, and a wholesale wine and beer licensee may [~~sell, rent,~~] lend, buy for, or give to a retail licensee any alcoholic beverage advertising material [~~on any item of tangible personal property~~ made of paper, cardboard, canvas, rubber, or plastic] provided the advertising materials have a wholesale value of [~~\$10~~ \$40] or less per item.

C. Alcoholic beverage advertising materials, other than those authorized by subsection B to be given to a retailer, may be sold to a retail licensee by a manufacturer or its authorized vendor provided that (i) all advertising materials are sold at prices not less than cost and (ii) the wholesale value of the advertising material does not exceed \$250 per item. [Wholesale licensee may not sell, rent, give, lend or install advertising materials authorized by this subsection.]

Any person that sells such advertising materials to a retail licensee on behalf of a distiller, other than an employee of the distiller, shall hold a solicitor's permit for spirits or be an authorized vendor.

A retail licensee shall retain for at least two years a record of each payment made for the purchase of advertising materials along with an invoice or sales ticket containing a description of the item so purchased.

D. Except as otherwise provided in this title, a retail licensee shall not display in the interior of its licensed establishment any alcoholic beverage advertising materials, other than those that may be lawfully obtained and displayed in accordance with this section or Board regulation.

E. Authorized vendors of alcoholic beverage advertising materials shall obtain a permit from the Board in order to make sales of the advertising materials to retail licensees. The Board shall charge a fee for the issuance of the permits sufficient to recover the costs of administering the permit system.

F. Neither a manufacturer nor its authorized vendor may utilize any direct or indirect charge, invoice, allocation or fee of any kind, including add-ons to the price of beer or wine sold to wholesale licensees, in order to recover any direct or indirect expenses incurred in selling advertising materials to retail licensees, nor shall any costs incurred in the installation of such materials on the premises of retail licensees or the cost incurred in the manufacture or transportation of such materials be recovered directly or indirectly from wholesale licensees through any charge or device.

G. Nothing in this section shall be construed to prohibit any advertising materials permitted under Board regulations in effect on January 1, 2007.

§ 4.1-328. Prohibited trade practices; penalty.

A. No licensee person subject to the jurisdiction of the Board shall violate, attempt to violate, solicit another person to violate or consent to any violation of § 4.1-216 or 4.1-216.1, or regulations adopted

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59 pursuant to subdivision B 3 of § 4.1-111.

60 B. Any person convicted of a violation of this section, § 4.1-216 or of Board regulations adopted
61 pursuant to subdivision B 3 of § 4.1-111 shall be guilty of a Class 1 misdemeanor found by the Board
62 to have committed a violation of this section shall be subject to a civil penalty as provided in § 4.1-227.

63 C. No person shall be deemed guilty of a Class 1 misdemeanor or to have admitted such guilt by
64 virtue of the fact that administrative sanctions have been imposed pursuant to § 4.1-227 either as a result
65 of Board proceedings or the acceptance by the Board of an offer in compromise in response to the
66 institution of such administrative proceedings.

67 § 4.1-329. Illegal advertising materials; penalty.

68 No retail licensee person subject to the jurisdiction of the Board shall induce, attempt to induce, or
69 consent to, any manufacturer, bottler, wholesaler, or importer as defined in § 4.1-216.1, or any
70 wholesale licensee selling, renting, lending, buying for or giving to such retailer any person any
71 advertising materials or decorations under circumstances prohibited by law this title or Board
72 regulations.

73 Any person convicted of a violation of found by the Board to have violated this section shall be
74 guilty of a Class 1 misdemeanor subject to a civil penalty as provided in § 4.1-227.

75 2. That the Alcoholic Beverage Control Board shall (i) include as part of its inspection of any
76 retail licensee's records, a review of evidence of payment required by this act to be maintained by
77 that retail licensee involving the purchase of alcoholic beverage advertising materials and (ii)
78 report annually to the House Committee on General Laws and the Senate Committee on
79 Rehabilitation and Social Services the following information: (a) the results of any audits of retail
80 records involving purchases of interior advertising materials authorized by this act; (b) the extent
81 to which the Board has achieved compliance with the provisions of this act; and (c) an analysis of
82 the operations of its system of permits issued to authorized vendors of manufacturers and the
83 extent to which the Board has made the permit fees charged such vendors adequate to defray the
84 cost of the permit system.