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HOUSE BILL NO. 1171

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 8, 2008)

(Patron Prior to Substitute—Delegate Cosgrove)

A BILL to amend and reenact §§ 4.1-225, 4.1-226, 4.1-325, and 4.1-325.2 of the Code of Virginia, relating to alcoholic beverage control; prohibited acts; grounds for suspension or revocation of mixed beverage license; exceptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-225, 4.1-226, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and reenacted as follows:

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

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

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee 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. Has misrepresented a material fact in applying to the Board for such license;

b. 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 or fraudulent;

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

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

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

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

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

h. Has allowed noisy, lewd or disorderly conduct upon the licensed premises, or has maintained such the licensed 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. Has been convicted five or more times during a one-year period of a violation of a local ordinance for noise occurring on or emanating from the licensed premises;

j. Has allowed upon the licensed premises conduct that violates the criminal laws of the Commonwealth or local ordinance relating to peace and good order;

k. Has allowed upon the licensed premises:

(1) The real or simulated display of any portion of the genitals, pubic hair or anus, or any portion of the areola of the breast of a female, by any employee or any other person;

(2) The real or simulated display of any portion of the buttocks, or any portion of the areola of the breast of a female, by any employee or any other person, except where such person is an entertainer on a platform or stage and no portion of the entertainer's body comes into contact with any portion of the body of a patron;

(3) Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

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60 (4) *The fondling or caressing by any person, whether an entertainer or not, of his own or another's*
 61 *breast, genitals or buttocks;*

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

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

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

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

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

77 ~~n.q.~~ Has allowed any ~~lewd, obscene or indecent literature, pictures or materials upon the licensed~~
 78 ~~premises obscene literature, pictures or materials upon the licensed premises or has allowed any~~
 79 ~~literature, pictures or materials upon the licensed premises that relate or depict conduct identified in~~
 80 ~~subdivision k;~~

81 ~~o.r.~~ Has possessed any illegal gambling apparatus, machine or device upon the licensed premises; or
 82 ~~p.s.~~ Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has
 83 knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or
 84 use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled
 85 paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title
 86 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3;
 87 or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7
 88 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this
 89 subdivision shall also apply to any conduct related to the operation of the licensed business which
 90 facilitates the commission of any of the offenses set forth herein.

91 2. The place occupied by the licensee:

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

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

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

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

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

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

107 6. Any other cause authorized by this title.

108 *B. The provisions of subdivisions A 1 k and A 1 q shall not apply to persons operating theaters,*
 109 *concert halls, performing and visual art centers, museums, or similar establishments that are primarily*
 110 *devoted to the arts or theatrical performances when the performances or materials presented are not*
 111 *obscene and are expressing matters of serious literary, artistic, scientific, or political value.*

112 § 4.1-226. Grounds for which Board shall suspend or revoke licenses.

113 The Board shall suspend or revoke any license, other than a brewery license, in which case the
 114 Board may impose penalties as provided in § 4.1-227, if it finds that:

115 1. A licensee has violated or permitted the violation of § 18.2-331, relating to the illegal possession
 116 of a gambling device, upon the premises for which the Board has granted a license for the sale of
 117 alcoholic beverages to the public.

118 2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of a ~~lewd, an~~
 119 ~~obscene or lustful nature including what is,~~ *entertainment* commonly called stripteasing, topless
 120 entertaining, ~~and the like, or which entertainment that~~ has employees who are not clad both above and
 121 below the waist ~~or who uncommonly expose the body~~ or (ii) are employees who solicit the sale of

alcoholic beverages. *The provisions of clause (i) 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 not obscene and are expressing matters of serious literary, artistic, scientific, or political value.*

§ 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 title;

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 in a frozen drink dispenser of a type approved by the Board and in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine;

7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage;

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

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

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

11. Allow any ~~immoral, lewd, obscene, indecent or profane~~ conduct, language, literature, pictures, performance or materials on the licensed premises, *or allow conduct, language, literature, pictures, performance, or materials on the licensed premises that relate or depict conduct set forth in subdivision A 1 k of § 4.1-225;*

12. Allow any striptease act, or the like on the licensed premises;

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

14. Consume or allow the consumption by an employee of 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 subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, 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 A 1 g of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § 4.1-210.

The provisions of this subdivision shall not apply to the delivery of "soju". For the purposes of the previous sentence, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes;

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

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

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

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

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

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus; or

22. 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 subdivision; (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

183 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection
184 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision
185 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall
186 keep complete and accurate records of gifts given in accordance with this subdivision.

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

188 C. *The provisions of subdivisions A 11, A 12, and A 13 shall not apply to persons operating*
189 *theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the*
190 *arts or theatrical performances, when the performances that are presented are not obscene and are*
191 *expressing matters of serious literary, artistic, scientific, or political value.*

192 § 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.

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

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

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

205 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic
206 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so
207 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to
208 a person responsible for the planning, preparation or conduct on any conference, convention, trade show
209 or event held or to be held on the premises of the licensee, when such gift is made in the course of
210 usual and customary business entertainment and is in no way a shift or device to evade the restriction
211 set forth in this subsection; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A
212 12 of § 4.1-201. Any gift permitted by this subsection shall be subject to the taxes imposed by this title
213 on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in
214 accordance with this subsection.

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