

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 135

An Act to amend and reenact § 4.1-227 of the Code of Virginia, relating to alcoholic beverage control; suspension and revocation; penalty waivers.

[H 2051]

Approved February 26, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-227 of the Code of Virginia is amended and reenacted as follows:

§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both.

C. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

D. In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation, ~~(i) designate:~~

1. *Designate* the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation ~~and (ii) provide;~~

2. *Provide* for a reduction in the length of any suspension and a reduction in the amount of any civil

penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server *or seller* training certified in advance by the Board. ~~The Board shall establish;~~

3. *Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and*

4. *Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation. No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this title or Board regulations.*

F. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of ~~this subsection~~ *subsection E*, shall be advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing.