

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 728

An Act to amend and reenact §§ 4.1-111, 4.1-232, and 4.1-320 of the Code of Virginia, relating to alcoholic beverage control; regulations; refund of state license taxes for act of God.

[S 1457]

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-232, and 4.1-320 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

12. *Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.*

13. *Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:*

a. *Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and*

b. *Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title and provided that no outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private, or parochial school, college, or university; public or private playground or similar recreational facility; or residentially zoned property. Nothing in this subdivision b shall be construed to authorize outdoor alcoholic beverage advertising on property zoned agricultural or residential, or on any unzoned property. Nor shall this subdivision b be construed to authorize the erection of new outdoor advertising that would be prohibited under state law or local ordinance.*

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

§ 4.1-232. Refund of state license tax.

A. The Board may correct erroneous assessments made by it against any person and make refunds of any amounts collected pursuant to erroneous assessments, or collected as taxes on licenses, which are subsequently refused or application therefor withdrawn, and to allow credit for any license taxes paid by any licensee for any license which is subsequently merged or changed into another license during the same license year. No refund shall be made of any such amount, however, unless made within three years from the date of collection of the same.

B. In any case where a licensee has changed its name or form of organization during a license year without any change being made in its ownership, and because of such change is required to pay an additional license tax for such year, the Board shall refund to such licensee the amount of such tax so paid in excess of the required license tax for such year.

C. *The Board shall make refunds, prorated according to a schedule of its prescription, to licensees of state license taxes paid pursuant to subsection A of § 4.1-231 if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon.*

D. Any amount required to be refunded under this section shall be paid by the State Treasurer out of moneys appropriated to the Board; and in the manner prescribed in § 4.1-116.

§ 4.1-320. Illegal advertising; penalty; exception.

A. Except in accordance with Board regulations, no person shall advertise in or send any advertising matter into the Commonwealth about or concerning alcoholic beverages other than those which may legally be manufactured or sold without a license.

B. *For manufacturers and wholesalers, including wineries and farm wineries:*

1. *No more than one sign may be displayed upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;*

2. *No more than two signs may be displayed, which shall be directional in nature, not farther than one-half mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;*

3. *If the establishment is a winery and also holds a retail off-premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information may be displayed in accordance with state and local rules, regulations, and ordinances; and*

4. *Advertising on vehicles and uniforms shall be limited to persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether*

licensed in the Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

C. For retailers, including mixed beverage licensees, other than carriers and clubs:

1. No more than two signs at the establishment, or three signs in the case of establishments at intersections, may be displayed, the advertising on which, including symbols approved by the U.S. Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment;

2. Signs may not include any reference to or depiction of "Happy Hour," or references or depictions of similar import, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages, except that, notwithstanding the provisions of Board regulations to the contrary, a retail licensee may post one two-dimensional sign not exceeding 17 inches by 22 inches, attached to the exterior of the licensed premises, limited in content to the terms "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at the reduced prices; and

3. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

D. The Board may grant a permit authorizing a variance from the provisions of subsection B or C for good cause shown.

E. Manufacturers, wholesalers, and retailers may engage in the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs, except as follows:

1. No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages or use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors; and

2. No outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private, or parochial school, college, or university; public or private playground or similar recreational facility; or residentially zoned property.

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

G. Neither this section nor any Board regulation shall prohibit (i) the awarding of watches of a wholesale value of less than \$100 by a licensed distillery, winery or brewery, to participants in athletic contests; (ii) the exhibition or display of automobiles, boats, or aircraft regularly and normally used in racing or other competitive events and the sponsorship of an automobile, boat or aircraft racing team by a licensed distillery, winery or brewery and the display on the automobile, boat or aircraft and uniforms of the members of the racing team, the trademark or brand name of an alcoholic beverage manufactured by such distillery, winery or brewery; (iii) the sponsorship of a professional athletic event, including, but not limited to, golf, auto racing or tennis, by a licensed distillery, winery or brewery or the use of any trademark or brand name of any alcoholic beverage in connection with such sponsorship; (iv) the advertisement of beer by the display of such product's name on any airship, which advertising is paid for by the manufacturer of such product; (v) the advertisement of beer or any alcoholic beverage by the display of such product's name on any scale model, reproduction or replica of any motor vehicle, aircraft or watercraft offered for sale; or (vi) the placement of billboard advertising within stadia, coliseums, or racetracks that are used primarily for professional or semiprofessional athletic or sporting events; or (vii) the sponsorship of an entertainment or cultural event.

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of subsections B through E of § 4.1-320 of this act shall expire on January 1, 2013.

4. That the expiration of certain provisions of § 4.1-320 in accordance with the third enactment of this act shall not invalidate any regulations adopted pursuant thereto by the Alcoholic Beverage Control Board.

5. That the provisions of this act or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other provisions of this act or application of this act that can be given effect without the invalid provisions or applications.