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SENATE BILL NO. 1349

Offered January 18, 2013

A BILL to amend and reenact §§ 4.1-225 and 4.1-226 of the Code of Virginia, relating to alcoholic beverage control; mandatory revocation of mixed beverage licenses.

Patron—McEachin

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

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

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

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. *The provisions of this subdivision shall not apply to mixed beverage restaurant licensees, which shall be subject to the provisions of subdivision 3 of § 4.1-226;*

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.); (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 maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or 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;

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

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

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

63 p. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly
64 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use
65 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled
66 paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title
67 18.2 and the Drug Control Act (§ 54.1-3400 et seq.) or synthetic cannabinoids as defined in
68 § 18.2-248.1:1; (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any
69 drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or
70 the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any
71 conduct related to the operation of the licensed business which facilitates the commission of any of the
72 offenses set forth herein; or

73 q. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises
74 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any
75 portion of public property immediately adjacent to the licensed premises from becoming a place where
76 patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et
77 seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5
78 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2
79 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.)
80 of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of
81 Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to
82 reasonably be deemed a continuing threat to the public safety.

83 2. The place occupied by the licensee:

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

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

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

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

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

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

99 6. Any other cause authorized by this title.

100 **§ 4.1-226. Grounds for which Board shall suspend or revoke licenses.**

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

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

106 2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of an obscene
107 nature, entertainment commonly called stripteasing, topless entertaining, or entertainment that has
108 employees who are not clad both above and below the waist or (ii) are employees who solicit the sale
109 of alcoholic beverages. The provisions of clause (i) shall not apply to persons operating theaters, concert
110 halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical
111 performances, when the performances that are presented are expressing matters of serious literary,
112 artistic, scientific, or political value.

113 3. *A mixed beverage restaurant licensee has defrauded or attempted to defraud the Board, or any*
114 *federal, state, or local government or governmental agency or authority, by making or filing any report,*
115 *document, or tax return required by statute or regulation that is fraudulent or contains a false*
116 *representation of a material fact or has willfully deceived or attempted to deceive the Board, or any*
117 *federal, state, or local government or governmental agency or authority, by making or maintaining*
118 *business records required by statute or regulation that are false or fraudulent.*

119 4. *A mixed beverage restaurant licensee's gross receipts from the sale of food cooked or prepared*
120 *and consumed on the premises and nonalcoholic beverages served on the premises after issuance of the*

- 121** *license amount to less than 45 percent of the gross receipts from the sale of mixed beverages and food*
122 *more than two times in a 10-year period.*