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**HOUSE BILL NO. 914**

Offered January 8, 2014

Prefiled January 8, 2014

*A BILL to amend and reenact §§ 4.1-225, 15.2-1724, 18.2-67.5:2, 18.2-346, and 18.2-366 of the Code of Virginia and to repeal § 18.2-344 of the Code of Virginia, relating to fornication; repeal.*

Patron—Sickles

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-225, 15.2-1724, 18.2-67.5:2, 18.2-346, and 18.2-366 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. 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;

c. 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;

d. 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;

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

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

g. 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;

h. 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;

i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

j. 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;

k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

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

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

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

o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly

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59 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use  
60 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled  
61 paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title  
62 18.2 and the Drug Control Act (§ 54.1-3400 et seq.) or synthetic cannabinoids as defined in  
63 § 18.2-248.1:1; (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any  
64 drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or  
65 the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any  
66 conduct related to the operation of the licensed business which facilitates the commission of any of the  
67 offenses set forth herein; or

68 p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises  
69 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any  
70 portion of public property immediately adjacent to the licensed premises from becoming a place where  
71 patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et  
72 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  
73 (§ 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  
74 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ ~~18.2-344~~ 18.2-346 et seq.) or 5 (§ 18.2-372  
75 et seq.) 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  
76 seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to  
77 reasonably be deemed a continuing threat to the public safety.

78 2. The place occupied by the licensee:

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

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

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

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

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

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

94 6. Any other cause authorized by this title.

95 **§ 15.2-1724. Police and other officers may be sent beyond territorial limits.**

96 Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use  
97 or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-47 et seq.)  
98 of Chapter 4 or Article 3 (§ ~~18.2-344~~ 18.2-346 et seq.) of Chapter 8 of Title 18.2, (ii) in response to  
99 any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the  
100 execution of the provisions of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or § 16.1-340 or  
101 16.1-340.1 relating to orders for temporary detention or emergency custody for mental health evaluation  
102 or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire,  
103 flood, epidemic or other public disaster, the police officers and other officers, agents and employees of  
104 any locality, the police officers of the Division of Capitol Police, and the police of any state-supported  
105 institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment,  
106 lawfully go or be sent beyond the territorial limits of such locality, such agency, or such state-supported  
107 institution of higher learning to any point within or without the Commonwealth to assist in meeting such  
108 emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads  
109 outside the jurisdiction. However, the police of any state-supported institution of higher learning may be  
110 sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose  
111 boundaries are contiguous with the locality in which such institution is located. No member of a police  
112 force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the  
113 locality in which such institution is located unless such member has met the requirements established by  
114 the Department of Criminal Justice Services as provided in clause (i) of subdivision 2 of § 9.1-102.

115 In such event the acts performed for such purpose by such police officers or other officers, agents or  
116 employees and the expenditures made for such purpose by such locality, such agency, or a  
117 state-supported institution of higher learning shall be deemed conclusively to be for a public and  
118 governmental purpose, and all of the immunities from liability enjoyed by a locality, agency, or a  
119 state-supported institution of higher learning when acting through its police officers or other officers,  
120 agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by

it to the same extent when such locality, agency, or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The police officers and other officers, agents and employees of any locality, agency, or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such locality, agency, or such state-supported institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such locality, agency, or such state-supported institution of higher learning.

**§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.**

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between ~~thirteen~~ 13 and ~~fifteen~~ 15 years of age in violation of § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~ 18;

2. Carnal knowledge of certain minors in violation of § 18.2-64.1;

3. Aggravated sexual battery in violation of § 18.2-67.3;

4. Crimes against nature in violation of subsection B of § 18.2-361;

5. ~~Adultery or fornication~~ *Sexual intercourse* with one's own child or grandchild in violation of § 18.2-366;

6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or

7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than ~~twenty~~ 20 years before the second offense.

The Commonwealth shall notify the defendant in writing, at least ~~thirty~~ 30 days prior to trial, of its intention to seek punishment pursuant to this section.

**§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.**

A. Any person who, for money or its equivalent, (i) commits ~~adultery, fornication, or~~ any act in violation of § 18.2-361 *or has sexual intercourse with a person other than his spouse* or (ii) offers to commit ~~adultery, fornication, or~~ any act in violation of § 18.2-361 *or have sexual intercourse with a person other than his spouse* and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

**§ 18.2-366. Sexual intercourse by persons forbidden to marry; incest.**

A. Any person who ~~commits adultery or fornication~~ *has sexual intercourse* with any person whom he or she is forbidden by law to marry ~~shall be~~ *is* guilty of a Class 1 misdemeanor except as provided by subsection B.

B. Any person who ~~commits adultery or fornication~~ *has sexual intercourse* with his daughter or granddaughter, or with her son or grandson, or her father or his mother, shall be guilty of a Class 5 felony. However, if a parent or grandparent ~~commits adultery or fornication~~ *has sexual intercourse* with his or her child or grandchild, and such child or grandchild is at least ~~thirteen~~ 13 years of age but ~~less~~ *younger than eighteen* 18 years of age at the time of the offense, such parent or grandparent ~~shall be~~ *is* guilty of a Class 3 felony.

**2. That § 18.2-344 of the Code of Virginia is repealed.**

**3. That the provisions of this act may result in a net increase in periods of imprisonment or**

**182 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**  
**183 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment**  
**184 to the custody of the Department of Juvenile Justice.**