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HOUSE BILL NO. 138

Offered January 10, 2018

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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.

Patrons—Levine, Lindsey, Murphy, Plum and Simon

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.); (ii) laundered money in violation of § 18.2-246.3;
63 or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7
64 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this
65 subdivision shall also apply to any conduct related to the operation of the licensed business which
66 facilitates the commission of any of the offenses set forth herein;

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

77 q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious
78 bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises
79 immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any
80 portion of public property immediately adjacent to the licensed premises.

81 2. The place occupied by the licensee:

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

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

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

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

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

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

97 6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any
98 penalties or interest related thereto, lawfully imposed by the locality where the licensed business is
99 located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality,
100 unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for
101 correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into
102 a payment plan approved by the same locality to settle the outstanding liability.

103 7. Any other cause authorized by this title.

104 **§ 15.2-1724. Police and other officers may be sent beyond territorial limits.**

105 Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use
106 or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-47 et seq.)
107 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
108 any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the
109 execution of the provisions of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or § 16.1-340 or
110 16.1-340.1 relating to orders for temporary detention or emergency custody for mental health evaluation
111 or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire,
112 flood, epidemic or other public disaster, the police officers and other officers, agents and employees of
113 any locality, the police officers of the Division of Capitol Police, and the police of any state-supported
114 institution of higher learning appointed pursuant to subsection B of § 23.1-812 may, together with all
115 necessary equipment, lawfully go or be sent beyond the territorial limits of such locality, such agency,
116 or such state-supported institution of higher learning to any point within or without the Commonwealth
117 to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only
118 accessible by roads outside the jurisdiction. However, the police of any state-supported institution of
119 higher learning may be sent only to a locality within the Commonwealth, or locality outside the
120 Commonwealth, whose boundaries are contiguous with the locality in which such institution is located.

121 No member of a police force of any state-supported institution of higher learning shall be sent beyond
122 the territorial limits of the locality in which such institution is located unless such member has met the
123 requirements established by the Department of Criminal Justice Services as provided in clause (i) of
124 subdivision 2 of § 9.1-102.

125 In such event the acts performed for such purpose by such police officers or other officers, agents or
126 employees and the expenditures made for such purpose by such locality, such agency, or a
127 state-supported institution of higher learning shall be deemed conclusively to be for a public and
128 governmental purpose, and all of the immunities from liability enjoyed by a locality, agency, or a
129 state-supported institution of higher learning when acting through its police officers or other officers,
130 agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by
131 it to the same extent when such locality, agency, or a state-supported institution of higher learning
132 within the Commonwealth is so acting, under this section or under other lawful authority, beyond its
133 territorial limits.

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

141 **§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.**

142 A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the
143 offenses specified in subsection B of this section and one of the offenses specified in subsection B of
144 § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has
145 been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or
146 subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and
147 shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury
148 or judge before whom the person is tried, that he has been previously convicted of at least one of the
149 specified offenses.

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

- 151 1. Carnal knowledge of a child between ~~thirteen~~ 13 and ~~fifteen~~ 15 years of age in violation of
- 152 § 18.2-63 when the offense is committed by a person over the age of ~~eighteen~~ 18;
- 153 2. Carnal knowledge of certain minors in violation of § 18.2-64.1;
- 154 3. Aggravated sexual battery in violation of § 18.2-67.3;
- 155 4. Crimes against nature in violation of subsection B of § 18.2-361;
- 156 5. ~~Adultery or fornication~~ *Sexual intercourse* with one's own child or grandchild in violation of
- 157 § 18.2-366;
- 158 6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
- 159 7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

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

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

168 **§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor;**
169 **penalties.**

170 A. Any person who, for money or its equivalent, (i) commits ~~adultery, fornication, or~~ any act in
171 violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or
172 engages in *sexual intercourse or* anal intercourse or (ii) offers to commit ~~adultery, fornication, or~~ any
173 act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or
174 engage in *sexual intercourse or* anal intercourse and thereafter does any substantial act in furtherance
175 thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

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

181 **§ 18.2-366. Sexual intercourse by persons forbidden to marry; incest.**

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

185 B. Any person who ~~commits adultery or fornication~~ *engages in sexual intercourse* with his daughter
186 or granddaughter, or with her son or grandson, or her father or his mother, ~~shall be~~ *is* guilty of a Class
187 5 felony. However, if a parent or grandparent ~~commits adultery or fornication~~ *engages in sexual*
188 *intercourse* with his or her child or grandchild, and such child or grandchild is at least ~~thirteen~~ 13 years
189 of age but less than ~~eighteen~~ 18 years of age at the time of the offense, such parent or grandparent ~~shall~~
190 *be* *is* guilty of a Class 3 felony.

191 C. For the purposes of this section, parent includes step-parent, grandparent includes
192 step-grandparent, child includes a step-child, and grandchild includes a step-grandchild.

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