

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 4.1-111 of the Code of Virginia, relating to alcoholic beverage control;*
3 *happy hour advertising.*

4 [H 2073]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 4.1-111 of the Code of Virginia is amended and reenacted as follows:**8 **§ 4.1-111. Regulations of Board.**

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13 repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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

15 B. The Board shall promulgate regulations that:

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

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

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

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

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

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

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

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

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

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

50 11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and
51 sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20
52 liters.

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

55 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
56 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 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title.

14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board are maintained by the parties.

15. Prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour ~~but prohibit the advertising of~~ and any pricing related to such happy hour. *Such regulations shall not prohibit on-premises licensees from using creative marketing techniques in such advertisements, provided that such techniques do not tend to induce overconsumption or consumption by minors.*

16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any 24-hour period and subject to any Board limitations on the frequency of such gifts.

17. Permit the sale of beer and cider for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 128 fluid ounces or, for metric-sized containers, four liters.

18. Permit the sale of wine for off-premises consumption in resealable growlers made of glass, ceramic, metal, or other materials approved by the Board, or other resealable containers approved by the Board, with a maximum capacity of 64 fluid ounces or, for metric-sized containers, two liters. Wine growlers may be used only by persons licensed to sell wine for both on-premises and off-premises consumption or by gourmet shop licensees. Growlers sold by gourmet shop licensees shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces, and (iv) the name and address of the retailer.

19. Permit the sale of wine, cider, and beer by retailers licensed to sell beer and wine for both on-premises and off-premises consumption, or by gourmet shop licensees for off-premises consumption in sealed containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or, for metric-sized containers, one liter, provided that the alcoholic beverage is placed in the container following an order from the consumer.

20. Permit mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the Board.

21. Establish and make available to all licensees and permittees for which on-premises consumption of alcoholic beverages is allowed and employees of such licensees and permittees who serve as a bartender or otherwise sell, serve, or dispense alcoholic beverages for on-premises consumption a bar bystander training module, which shall include (i) information that enables licensees, permittees, and their employees to recognize situations that may lead to sexual assault and (ii) intervention strategies to prevent such situations from culminating in sexual assault.

22. Require mixed beverage licensees to have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served.

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.

- 118 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the
119 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of
120 § 4.1-325.2.
- 121 3. Provide incentives to licensees with a proven history of compliance with state and federal laws
122 and regulations to encourage licensees to conduct their business and related activities in a manner that is
123 beneficial to the Commonwealth.
- 124 D. Board regulations shall be uniform in their application, except those relating to hours of sale for
125 licensees.
- 126 E. Courts shall take judicial notice of Board regulations.
- 127 F. The Board's power to regulate shall be broadly construed.