

19105295D

SENATE BILL NO. 1726

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 18, 2019)

(Patrons Prior to Substitute—Senators McDougale and McPike [SB 1170])

A BILL to amend and reenact § 4.1-111 of the Code of Virginia, relating to alcoholic beverage control; happy hour advertising.

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-111 of the Code of Virginia is 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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, including a provision that limits infusion containers to a maximum of 20 liters.

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

60 may not be lawfully sold. Such regulations shall:

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

67 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the
68 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under
69 Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as
70 defined in § 55-526, but only in accordance with this title.

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

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

82 16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one
83 bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to
84 individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any
85 24-hour period and subject to any Board limitations on the frequency of such gifts.

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

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

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

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

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

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

113 C. The Board may promulgate regulations that:

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

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

122 § 4.1-325.2.

123 3. Provide incentives to licensees with a proven history of compliance with state and federal laws
124 and regulations to encourage licensees to conduct their business and related activities in a manner that is
125 beneficial to the Commonwealth.

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

128 E. Courts shall take judicial notice of Board regulations.

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