

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 4.1-225, 15.2-907, 15.2-1724, 17.1-275.13, 18.2-67.5:2, 18.2-67.9, 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.*

[H 245]

Approved

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

**1. That §§ 4.1-225, 15.2-907, 15.2-1724, 17.1-275.13, 18.2-67.5:2, 18.2-67.9, 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 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use

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marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein;

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

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

2. The place occupied by the licensee:

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

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

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

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

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

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

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

7. Any other cause authorized by this title.

**§ 15.2-907. Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use or other criminal activity.**

A. As used in this section:

"Affidavit" means the affidavit sworn to under oath prepared by a locality in accordance with subdivision B 1 a.

"Commercial sex acts" means any specific activities that would constitute a criminal act under Article 3 (§ 18.2-344 18.2-346 et seq.) of Chapter 8 of Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

"Controlled substance" means illegally obtained controlled substances or marijuana, as defined in § 54.1-3401.

"Corrective action" means (i) taking specific actions with respect to the buildings or structures on property that are reasonably expected to abate criminal blight on such real property, including the removal, repair, or securing of any building, wall, or other structure, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. A local law-enforcement official shall prepare an affidavit on behalf of the locality that states specific actions to be taken on the part of the property owner that the locality determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue

financial burden on the owner.

"Criminal blight" means a condition existing on real property that endangers the public health or safety of residents of a locality and is caused by (i) the regular presence on the property of persons under the influence of controlled substances; (ii) the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances; (iii) the regular use of the property for the purpose of engaging in commercial sex acts; or (iv) repeated acts of the malicious discharge of a firearm within any building or dwelling that would constitute a criminal act under § 18.2-279 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

"Law-enforcement official" means an official designated to enforce criminal laws within a locality, or an agent of such law-enforcement official. The law-enforcement official shall coordinate with the building or fire code official of the locality as otherwise provided under applicable laws and regulations.

"Owner" means the record owner of real property.

"Property" means real property.

B. Any locality may, by ordinance, provide that:

1. The locality may require the owner of real property to undertake corrective action, or the locality may undertake corrective action, with respect to such property in accordance with the procedures described herein:

a. The locality shall execute an affidavit, citing this section, to the effect that (i) criminal blight exists on the property and in the manner described therein; (ii) the locality has used diligence without effect to abate the criminal blight; and (iii) the criminal blight constitutes a present threat to the public's health, safety, or welfare.

b. The locality shall then send a notice to the owner of the property, to be sent by (i) certified mail, return receipt requested; (ii) hand delivery; or (iii) overnight delivery by a commercial service or the United States Postal Service, to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such affidavit, advising that (a) the owner has up to 30 days from the date thereof to undertake corrective action to abate the criminal blight described in such affidavit and (b) the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the criminal blight described in such affidavit. If the owner notifies the locality in writing within the 30-day period that additional time to complete the corrective action is needed, the locality shall allow such owner an extension for an additional 30-day period to take such corrective action.

c. If no corrective action is undertaken during such 30-day period, or during the extension if such extension is granted by the locality, the locality shall send by certified mail, return receipt requested, an additional notice to the owner of the property, at the address stated in subdivision b, stating (i) the date on which the locality may commence corrective action to abate the criminal blight on the property or (ii) the date on which the locality may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property, which date shall be no earlier than 15 days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the locality, to seek judicial relief, and the locality shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

2. If the locality undertakes corrective action with respect to the property after complying with the provisions of subdivision 1, the costs and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected.

3. Every charge authorized by this section with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local real estate taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1.

4. A criminal blight proceeding pursuant to this section shall be a civil proceeding in a court of competent jurisdiction in the Commonwealth.

C. If the owner of real property takes timely corrective action pursuant to the provisions of a local ordinance, the locality shall deem the criminal blight abated, shall close the proceeding without any charge or cost to the owner, and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent proceeding if the criminal blight recurs.

D. Nothing in this section shall be construed to abridge, diminish, limit, or waive any rights or remedies of an owner of property at law or any permits or nonconforming rights the owner may have under Chapter 22 (§ 15.2-2200 et seq.) or under a local ordinance. If an owner in good faith takes

corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the locality persists, such owner shall be deemed in compliance with this section. Further, if a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the owner in good faith initiates legal action and pursues the same by requesting a final order by a court of competent jurisdiction, as otherwise authorized by this Code, against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be deemed in compliance with this section.

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

Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-47 et seq.) 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 any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the execution of the provisions of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or § 16.1-340 or 16.1-340.1 relating to orders for temporary detention or emergency custody for mental health evaluation or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the police officers and other officers, agents and employees of any locality, the police officers of the Division of Capitol Police, and the police of any state-supported institution of higher learning appointed pursuant to subsection B of § 23.1-812 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such locality, such agency, or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while ~~enroute~~ *en route* to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the locality in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the locality in which such institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in clause (i) of subdivision 2 of § 9.1-102.

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

**§ 17.1-275.13. Additional fee for offenses related to sex trafficking.**

In addition to the fees provided for by §§ 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-275.10, and 17.1-275.12, any person convicted of a misdemeanor violation of subsection B of § 18.2-346 or of § 18.2-348 or 18.2-349 shall be ordered to pay a \$100 fee, and any person convicted of a violation of clause (ii), (iii), or (iv) of § 18.2-48, or of § 18.2-368, or any felony violation of the laws pertaining to commercial sex trafficking or prostitution offenses pursuant to Article 3 (§ ~~18.2-344~~ 18.2-346 et seq.) of Chapter 8, with the exception of § 18.2-361, shall be ordered to pay a \$500 fee. All fees collected pursuant to this section shall be deposited into the Virginia Prevention of Sex Trafficking Fund to be used in accordance with § 9.1-116.4.

**§ 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.

**§ 18.2-67.9. Testimony by child victims and witnesses using two-way closed-circuit television.**

A. The provisions of this section shall apply to an alleged victim who was 14 years of age or younger at the time of the alleged offense and is 16 years of age or younger at the time of the trial and to a witness who is 14 years of age or younger at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping pursuant to Article 3 (§ 18.2-47 et seq.) of Chapter 4, criminal sexual assault pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4, commercial sex trafficking or prostitution offenses pursuant to Article 3 (~~§ 18.2-344~~ 18.2-346 et seq.) of Chapter 8, or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge, and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

**§ 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, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in *sexual intercourse or* anal intercourse or (ii) offers to commit ~~adultery, fornication, or~~ any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in *sexual intercourse or* anal intercourse 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~~ *engages in 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~~ *engages in sexual intercourse* with his daughter or granddaughter, or with her son or grandson, or her father or his mother, ~~shall be~~ *is* guilty of a Class 5 felony. However, if a parent or grandparent ~~commits adultery or fornication~~ *engages in sexual intercourse* with his or her child or grandchild, and such child or grandchild is at least ~~thirteen~~ 13 years of age but less 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.

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

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