

20105792D

SENATE BILL NO. 1095

Offered January 27, 2020

A *BILL to amend and reenact §§ 4.1-111, 4.1-113, 4.1-223, 4.1-226, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; prohibition on mixed beverages at strip clubs.*

Patron—Morrissey

Unanimous consent to introduce

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-113, 4.1-223, 4.1-226, and 4.1-325 of the Code of Virginia are 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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.

INTRODUCED

SB1095

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

61 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic
62 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage
63 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages
64 may not be lawfully sold. Such regulations shall:

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

71 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the
72 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under
73 Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate
74 as defined in § 55.1-1100, but only in accordance with this title.

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

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

86 16. Permit retail on-premises licensees to give a gift of one alcoholic beverage to a patron or one
87 bottle of wine to a group of two or more patrons, provided that (i) such gifts only are made to
88 individuals to whom such products may lawfully be sold and (ii) only one such gift is given during any
89 24-hour period and subject to any Board limitations on the frequency of such gifts.

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

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

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

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

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

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

117 23. Prescribe the terms and conditions under which the Board may suspend the privilege of a mixed
118 beverage licensee to purchase spirits from the Board upon such licensee's failure to submit any records
119 or other documents necessary to verify the licensee's compliance with applicable minimum food sale
120 requirements within 30 days of the date such records or documents are due.

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.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 20 of § 4.1-325 or subsection C of § 4.1-325.2.

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

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

E. Courts shall take judicial notice of Board regulations.

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

§ 4.1-113. Board not to regulate certain advertising in the interiors of retail establishments.

A. The Board shall not regulate the use of advertising materials or decorations within the premises of a retail on-premises licensee (i) where such advertising materials or decorations cannot be seen from the street or roadway outside of the licensed establishment and (ii) if the retail establishment is located within an enclosed area with no street or roadway, where such advertising or decorations cannot be seen more than fifteen feet from the nearest window.

B. This section shall not restrict the regulation of advertising materials or decorations containing references to an alcoholic beverage brand or manufacturer, except the Board shall not regulate such references contained in works of art.

C. This section shall not restrict or deny the Board its authority pursuant to §§ 4.1-216; and 4.1-317; and subdivisions A 11, 12, 13, 16, 14, and 21 19 of § 4.1-325, nor shall this section authorize any manufacturer, bottler, wholesaler, or importer of any alcoholic beverages to sell, rent, lend, buy for, or give to any retailer any advertising materials or decorations under any circumstances otherwise prohibited by law.

§ 4.1-223. Conditions under which Board shall refuse to grant licenses.

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision B 3 b of § 4.1-216 or (ii) the nonprofit, nonstock corporation established pursuant to subdivision B 2 of § 3.2-102 in exercising any privileges granted under § 4.1-207.1.

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a ~~lewd, an obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body~~ or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

5. Mixed beverage license to any member, agent or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § 4.1-231 is paid to the Board.

§ 4.1-226. Grounds for which Board shall suspend or revoke licenses.

The Board shall 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 finds that:

1. A licensee has violated or permitted the violation of § 18.2-331, relating to the illegal possession of a gambling device, upon the premises for which the Board has granted a license for the sale of alcoholic beverages to the public.

2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of an obscene nature; ~~entertainment commonly called stripteasing, topless entertaining, or entertainment that has employees who are not clad both above and below the waist~~ or (ii) are employees who solicit the sale of alcoholic beverages. ~~The provisions of clause (i) shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.~~

3. A licensee has defrauded or attempted to defraud the Board, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a willful or knowing false representation of a material fact or has willfully deceived or attempted to deceive the Board, or any federal, state, or local government or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent.

§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;

2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;

3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;

4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;

5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from premixing containers of sangria, to which spirits may be added, to be served and sold for consumption on the licensed premises;

7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to subdivision B 11 of § 4.1-111;

8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;

9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;

10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or obliterated;

11. Allow any obscene conduct, language, literature, pictures, performance or materials on the licensed premises;

~~12. Allow any striptease act on the licensed premises;~~

~~13. Allow persons connected with the licensed business to appear nude or partially nude;~~

~~14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.~~

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative

of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

~~15.~~ 13. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § 4.1-210.

The provisions of this subdivision shall not apply to the delivery of:

a. "Soju." For the purposes of this subdivision, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes; or

b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;

~~16.~~ 14. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

~~17.~~ 15. Conceal any sale or consumption of any alcoholic beverages;

~~18.~~ 16. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;

~~19.~~ 17. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

~~20.~~ 18. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

~~21.~~ 19. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus; or

~~22.~~ 20. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection D of § 4.1-209; (iv) pursuant to subdivision A 11 of § 4.1-201; or (v) pursuant to any Board regulation. Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

~~23.~~ 21. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.