

2021 SPECIAL SESSION I

INTRODUCED

21101639D

HOUSE BILL NO. 2131

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact §§ 4.1-230, as it is currently effective and as it shall become effective, and 15.2-907 of the Code of Virginia, relating to alcoholic beverage control; license application; locality input; corrective action.*

Patrons—Lopez, Hope, Kory and Levine

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-230, as it is currently effective and as it shall become effective, and 15.2-907 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-230. (Effective until July 1, 2021) Applications for licenses; publication; notice to localities; fees; permits.

A. Every person intending to apply for any license authorized by this chapter shall file with the Board an application on forms provided by the Board and a statement in writing by the applicant swearing and affirming that all of the information contained therein is true.

Applicants for retail licenses for establishments that serve food or are otherwise required to obtain a food establishment permit from the Department of Health or an inspection by the Department of Agriculture and Consumer Services shall provide a copy of such permit, proof of inspection, proof of a pending application for such permit, or proof of a pending request for such inspection. If the applicant provides a copy of such permit, proof of inspection, proof of a pending application for a permit, or proof of a pending request for an inspection, a license may be issued to the applicant. If a license is issued on the basis of a pending application or inspection, such license shall authorize the licensee to purchase alcoholic beverages in accordance with the provisions of this title; however, the licensee shall not sell or serve alcoholic beverages until a permit is issued or an inspection is completed.

B. In addition, each applicant for a license under the provisions of this chapter, except applicants for annual banquet, banquet, tasting, special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, delivery permit, annual arts venue, or museum licenses issued under the provisions of Chapter 2 (§ 4.1-200 et seq.), or beer or wine importer's licenses, shall post a notice of his application with the Board on the front door of the building, place or room where he proposes to engage in such business for no more than 30 days and not less than 10 days. Such notice shall be of a size and contain such information as required by the Board, including a statement that any objections shall be submitted to the Board not more than 30 days following initial publication of the notice required pursuant to this subsection.

The applicant shall also cause notice to be published at least once a week for two consecutive weeks in a newspaper published in or having a general circulation in the county, city or town wherein such applicant proposes to engage in such business. Such notice shall contain such information as required by the Board, including a statement that any objections to the issuance of the license be submitted to the Board not later than 30 days from the date of the initial newspaper publication. In the case of wine or beer shipper's licensees, wine and beer shipper's licensees, delivery permittees or operators of boats, dining cars, buffet cars, club cars, and airplanes, the posting and publishing of notice shall not be required.

Except for applicants for annual banquet, banquet, tasting, mixed beverage special events, club events, annual mixed beverage banquet, wine or beer shipper's, wine and beer shipper's, beer or wine importer's, annual arts venue, or museum licenses, the Board shall conduct a background investigation, to include a criminal history records search, which may include a fingerprint-based national criminal history records search, on each applicant for a license. However, the Board may waive, for good cause shown, the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership.

Except for applicants for wine shipper's, beer shipper's, wine and beer shipper's licenses, and delivery permits, the Board shall notify the local governing body of each license application through the county or city attorney or the chief law-enforcement or administrative officer of the locality. Local governing bodies shall submit objections to or conditional recommendations for the granting of a license within 30 days, or 45 days if the locality has requested an extension, of the filing of the application. The Board shall give reasonable consideration to any objection or recommendation submitted by the locality

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59 *pursuant to this paragraph.*

60 C. Each applicant shall pay the required application fee at the time the application is filed. Each
61 license application fee, including annual banquet and annual mixed beverage banquet, shall be \$195,
62 plus the actual cost charged to the Department of State Police by the Federal Bureau of Investigation or
63 the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of
64 Investigation or the Central Criminal Records Exchange for each criminal history records search required
65 by the Board, except for banquet, tasting, or mixed beverage club events licenses, in which case the
66 application fee shall be \$15. The application fee for banquet special event and mixed beverage special
67 event licenses shall be \$45. Application fees shall be in addition to the state license fee required
68 pursuant to § 4.1-231 and shall not be refunded.

69 D. Subsection A shall not apply to the continuance of licenses granted under this chapter; however,
70 all licensees shall file and maintain with the Board a current, accurate record of the information required
71 by the Board pursuant to subsection A and notify the Board of any changes to such information in
72 accordance with Board regulations.

73 E. Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the
74 Board. In the case of applications to solicit the sale of wine and beer or spirits, each application shall be
75 accompanied by a fee of \$165 and \$390, respectively. The fee for each such permit shall be subject to
76 proration to the following extent: If the permit is granted in the second quarter of any year, the fee shall
77 be decreased by one-fourth; if granted in the third quarter of any year, the fee shall be decreased by
78 one-half; and if granted in the fourth quarter of any year, the fee shall be decreased by three-fourths.
79 Each such permit shall expire on June 30 next succeeding the date of issuance, unless sooner suspended
80 or revoked by the Board. Such permits shall confer upon their holders no authority to make solicitations
81 in the Commonwealth as otherwise provided by law.

82 The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for
83 applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied
84 by the number of months for which the permit is granted.

85 The fee for a keg registration permit shall be \$65 annually.

86 The fee for a permit for the storage of lawfully acquired alcoholic beverages not under customs bond
87 or internal revenue bond in warehouses located in the Commonwealth shall be \$260 annually.

88 **§ 4.1-230. (Effective July 1, 2021) Applications for licenses; publication; notice to localities; fees;**
89 **permits.**

90 A. Every person intending to apply for any license authorized by this chapter shall file with the
91 Board an application on forms provided by the Board and a statement in writing by the applicant
92 swearing and affirming that all of the information contained therein is true.

93 Applicants for retail licenses for establishments that serve food or are otherwise required to obtain a
94 food establishment permit from the Department of Health or an inspection by the Department of
95 Agriculture and Consumer Services shall provide a copy of such permit, proof of inspection, proof of a
96 pending application for such permit, or proof of a pending request for such inspection. If the applicant
97 provides a copy of such permit, proof of inspection, proof of a pending application for a permit, or
98 proof of a pending request for an inspection, a license may be issued to the applicant. If a license is
99 issued on the basis of a pending application or inspection, such license shall authorize the licensee to
100 purchase alcoholic beverages in accordance with the provisions of this title; however, the licensee shall
101 not sell or serve alcoholic beverages until a permit is issued or an inspection is completed.

102 B. In addition, each applicant for a license under the provisions of this chapter, except applicants for
103 annual banquet, banquet, tasting, special events, club events, annual mixed beverage banquet, wine and
104 beer shipper's, delivery permit, annual arts venue, or museum licenses issued under the provisions of
105 Chapter 2 (§ 4.1-200 et seq.), or beer or wine importer's licenses, shall post a notice of his application
106 with the Board on the front door of the building, place or room where he proposes to engage in such
107 business for no more than 30 days and not less than 10 days. Such notice shall be of a size and contain
108 such information as required by the Board, including a statement that any objections shall be submitted
109 to the Board not more than 30 days following initial publication of the notice required pursuant to this
110 subsection.

111 The applicant shall also cause notice to be published at least once a week for two consecutive weeks
112 in a newspaper published in or having a general circulation in the county, city, or town wherein such
113 applicant proposes to engage in such business. Such notice shall contain such information as required by
114 the Board, including a statement that any objections to the issuance of the license be submitted to the
115 Board not later than 30 days from the date of the initial newspaper publication. In the case of wine and
116 beer shipper's licensees, delivery permittees or operators of boats, dining cars, buffet cars, club cars,
117 buses, and airplanes, the posting and publishing of notice shall not be required.

118 Except for applicants for annual banquet, banquet, tasting, mixed beverage special events, club
119 events, annual mixed beverage banquet, wine and beer shipper's, beer or wine importer's, annual arts
120 venue, or museum licenses, the Board shall conduct a background investigation, to include a criminal

history records search, which may include a fingerprint-based national criminal history records search, on each applicant for a license. However, the Board may waive, for good cause shown, the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership.

Except for applicants for wine and beer shipper's licenses and delivery permits, the Board shall notify the local governing body of each license application through the county or city attorney or the chief law-enforcement or administrative officer of the locality. Local governing bodies shall submit objections to or conditional recommendations for the granting of a license within 30 days, or 45 days if the locality has requested an extension, of the filing of the application. The Board shall give reasonable consideration to any objection or recommendation submitted by the locality pursuant to this paragraph.

C. Each applicant shall pay the required application fee at the time the application is filed. Each license application fee, including annual banquet and annual mixed beverage banquet, shall be \$195, plus the actual cost charged to the Department of State Police by the Federal Bureau of Investigation or the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of Investigation or the Central Criminal Records Exchange for each criminal history records search required by the Board, except for banquet, tasting, or mixed beverage club events licenses, in which case the application fee shall be \$15. The application fee for banquet special event and mixed beverage special event licenses shall be \$45. Application fees shall be in addition to the state license fee required pursuant to § 4.1-231.1 and shall not be refunded.

D. Subsection A shall not apply to the continuance of licenses granted under this chapter; however, all licensees shall file and maintain with the Board a current, accurate record of the information required by the Board pursuant to subsection A and notify the Board of any changes to such information in accordance with Board regulations.

E. Every application for a permit granted pursuant to § 4.1-212 shall be on a form provided by the Board. Such permits shall confer upon their holders no authority to make solicitations in the Commonwealth as otherwise provided by law.

The fee for a temporary permit shall be one-twelfth of the combined fees required by this section for applicable licenses to sell wine, beer, or mixed beverages computed to the nearest cent and multiplied by the number of months for which the permit is granted.

F. The Board shall have the authority to increase state license fees from the amounts set forth in § 4.1-231.1 as it was in effect on July 1, 2021. The Board shall set the amount of such increases on the basis of the consumer price index and shall not increase fees more than once every three years. Prior to implementing any state license fee increase, the Board shall provide notice to all licensees and the general public of (i) the Board's intent to impose a fee increase and (ii) the new fee that would be required for any license affected by the Board's proposed fee increases. Such notice shall be provided on or before November 1 in any year in which the Board has decided to increase state license fees, and such increases shall become effective July 1 of the following year.

§ 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 (§ 18.2-346 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 in possession or 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 Article 4 (§ 18.2-279 et seq.) of Chapter 7 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; or (v) repeated violations of state laws or local ordinances involving acts that pose a risk of danger to persons or private property.

"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,

244 against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be
245 deemed in compliance with this section.

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