

LD2041607

SENATE BILL NO. 1015

Senate Amendments in [] — January 31, 1995

A BILL to amend and reenact §§ 4.1-225 and 4.1-227 of the Code of Virginia, relating to alcoholic beverage control; imposition of monetary penalties.

Patrons—Barry, Bell, Holland, C.A., Lucas, Marsh, Martin, Saslaw and Woods

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-225 and 4.1-227 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-225. Grounds for which Board may suspend or revoke licenses.

The [~~Subject to the provisions of § 4.1-227, the~~ 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 or association, any partner or member thereof, or if the licensee is a corporation, any officer, director, or manager thereof or shareholder owning ten percent or more of its capital stock:

a. Has misrepresented a material fact in applying to the Board for such license;

b. 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 which is fraudulent or contains a 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 which are false or fraudulent;

c. 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.) of this title; (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;

d. 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;

e. 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;

f. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;

g. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;

h. Has allowed noisy, lewd or disorderly conduct upon the licensed premises, or has maintained such premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

i. Knowingly employs in the business conducted under such license, as agent, servant or employee, 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;

j. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

k. 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 twenty-one 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;

l. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

m. Is physically unable to carry on the business conducted under such license or has been adjudicated incompetent;

n. Has allowed any lewd, obscene or indecent literature, pictures or materials upon the licensed

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premises;

o. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises; or

p. 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 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 § 18.2-248.7; 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.

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

5. Any other cause authorized by this title.

§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties; limitation on use of prior violations.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 9-6.14:12 of the Administrative Process Act.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both.

C. Following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

[*D. Notwithstanding the provisions of subsection C, following notice to the licensee of a hearing which may result in the suspension or revocation of his license, the Board shall accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, in lieu of suspension or revocation, provided (i) there have been no prior violations of the same offense by the licensee within three years immediately preceding the date of the hearing and (ii) the violation does not involve the offenses specified in subdivision 1a, 1d, 1e, 1i, 1l, 1n, 1o, 1p, or subdivision 3 of § 4.1-225.]*

[~~D.~~ D.] In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

[~~F.~~ F. In imposing any penalty for a violation of this title or Board regulations, the Board shall not consider prior violations by the licensee if such violations occurred more than three years immediately

122 preceding the date of the hearing.

123 The provisions of this subsection shall not apply to violations of a, d, e, i, l, n, o, or p of subdivision
 124 3 of § 4.1-225. E. The Board shall by regulation designate the violations for which a waiver of hearing
 125 and payment of a civil charge in lieu of suspension may be accepted in the case of a first offense within
 126 three years immediately preceding the date of violation. The Board shall establish a schedule of
 127 penalties for such offenses, prescribing the appropriate suspension of license and acceptable civil charge
 128 in lieu of suspension. Any licensee receiving notice of a hearing on an alleged violation so designated
 129 shall be advised of the option of accepting the suspension authorized by the schedule, paying the civil
 130 charge authorized by the schedule in lieu of suspension, or proceeding to hearing.]

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