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## HOUSE BILL NO. 1171

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 4.1-225, 4.1-226, and 4.1-325 of the Code of Virginia, relating to alcoholic beverage control; prohibited acts; grounds for suspension or revocation of mixed beverage license; exceptions.

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 Patron—Cosgrove

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 Referred to Committee on General Laws

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

**1. That §§ 4.1-225, 4.1-226, and 4.1-325 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. 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, *as defined by Board regulations*, 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, 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;

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 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

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HB1171

59 upon such licensed premises;

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

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

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

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

67 p. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly  
68 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use  
69 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled  
70 paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title  
71 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3;  
72 or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7  
73 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this  
74 subdivision shall also apply to any conduct related to the operation of the licensed business which  
75 facilitates the commission of any of the offenses set forth herein.

76 2. The place occupied by the licensee:

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

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

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

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

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

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

92 6. Any other cause authorized by this title.

93 § 4.1-226. Grounds for which Board shall suspend or revoke licenses.

94 The Board shall suspend or revoke any license, other than a brewery license, in which case the  
95 Board may impose penalties as provided in § 4.1-227, if it finds that:

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

99 2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of a lewd,  
100 obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the  
101 like, or which has employees who are not clad both above and below the waist or who uncommonly  
102 expose the body or (ii) are employees who solicit the sale of alcoholic beverages. *The provisions of*  
103 *clause (i) shall not apply to persons operating theaters, concert halls, art centers, museums, or similar*  
104 *establishments that are devoted primarily to the arts or theatrical performances, when the performances*  
105 *that are presented are not obscene and are expressing matters of serious literary, artistic, scientific, or*  
106 *political value.*

107 § 4.1-325. Prohibited acts by mixed beverage licensees; penalty.

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

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

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

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

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

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

117 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by  
118 him except in a frozen drink dispenser of a type approved by the Board and in the case of wine, in  
119 containers of a type approved by the Board pending automatic dispensing and sale of such wine;

120 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper

121 with the contents of any bottle or container of alcoholic beverage;  
 122 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the  
 123 purchaser without first advising such purchaser of the difference;  
 124 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages  
 125 offered for sale;  
 126 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or  
 127 obliterated;  
 128 11. Allow any immoral, lewd, obscene, indecent or profane conduct, language, literature, pictures,  
 129 performance or materials on the licensed premises;  
 130 12. Allow any striptease act, or the like on the licensed premises;  
 131 13. Allow persons connected with the licensed business to appear nude or partially nude;  
 132 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty  
 133 and in a position that is involved in the selling or serving of alcoholic beverages to customers.  
 134 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
 135 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
 136 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
 137 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
 138 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g of  
 139 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for  
 140 quality control purposes;  
 141 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license  
 142 whether the closure is broken or unbroken except in accordance with § 4.1-210.  
 143 The provisions of this subdivision shall not apply to the delivery of "soju". For the purposes of the  
 144 previous sentence, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or  
 145 sweet potatoes;  
 146 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;  
 147 17. Conceal any sale or consumption of any alcoholic beverages;  
 148 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or  
 149 obstruct special agents of the Board in the discharge of their duties;  
 150 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any  
 151 such alcoholic beverages from the premises;  
 152 20. Knowingly employ in the licensed business any person who has the general reputation as a  
 153 prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person  
 154 who drinks to excess or engages in illegal gambling;  
 155 21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device,  
 156 machine or apparatus; or  
 157 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a  
 158 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the  
 159 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or  
 160 conduct on any conference, convention, trade show or event held or to be held on the premises of the  
 161 licensee, when such gift is made in the course of usual and customary business entertainment and is in  
 162 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection  
 163 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision  
 164 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall  
 165 keep complete and accurate records of gifts given in accordance with this subdivision.  
 166 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.  
 167 C. *The provisions of subdivisions A 11, A 12, and A 13 shall not apply to persons operating*  
 168 *theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the*  
 169 *arts or theatrical performances, when the performances that are presented are not obscene and are*  
 170 *expressing matters of serious literary, artistic, scientific, or political value.*