

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 4.1-225, 4.1-226, 4.1-325, and 4.1-325.2 of the Code of Virginia,*
 3 *relating to alcoholic beverage control; mandatory revocation of mixed beverage licenses.*

4 [S 1349]

5 Approved

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

7 **1. That §§ 4.1-225, 4.1-226, 4.1-325, and 4.1-325.2 of the Code of Virginia are amended and**
 8 **reenacted as follows:**

9 **§ 4.1-225. Grounds for which Board may suspend or revoke licenses.**

10 The Board may suspend or revoke any license other than a brewery license, in which case the Board
 11 may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

12 1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an
 13 association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the
 14 licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital
 15 stock, or if the licensee is a limited liability company, any member-manager or any member owning 10
 16 percent or more of the membership interest of the limited liability company:

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

18 ~~b. Has defrauded or attempted to defraud the Board, or any federal, state or local government or~~
 19 ~~governmental agency or authority, by making or filing any report, document or tax return required by~~
 20 ~~statute or regulation which is fraudulent or contains a false representation of a material fact; or has~~
 21 ~~willfully deceived or attempted to deceive the Board, or any federal, state or local government, or~~
 22 ~~governmental agency or authority, by making or maintaining business records required by statute or~~
 23 ~~regulation which are false or fraudulent;~~

24 e. Within the five years immediately preceding the date of the hearing held in accordance with
 25 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the
 26 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,
 27 applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated
 28 any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act
 29 (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or
 30 refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply
 31 with any of the conditions or restrictions of the license granted by the Board;

32 ~~d. c.~~ Has been convicted in any court of a felony or of any crime or offense involving moral
 33 turpitude under the laws of any state, or of the United States;

34 ~~e. d.~~ Is not the legitimate owner of the business conducted under the license granted by the Board, or
 35 other persons have ownership interests in the business which have not been disclosed;

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

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

40 ~~h. g.~~ Has maintained the licensed premises in an unsanitary condition, or allowed such premises to
 41 become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1
 42 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

43 ~~i. h.~~ Knowingly employs in the business conducted under such license, as agent, servant, or
 44 employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any
 45 court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of
 46 the Commonwealth, of any other state, or of the United States, applicable to the manufacture,
 47 transportation, possession, use or sale of alcoholic beverages;

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

50 ~~k. j.~~ Has allowed the consumption of alcoholic beverages upon the licensed premises by any person
 51 whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii)
 52 intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter
 53 upon such licensed premises;

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

56 ~~m. l.~~ Is physically unable to carry on the business conducted under such license or has been

57 adjudicated incapacitated;

58 ~~n.~~ m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

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

60 ~~p.~~ o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has
61 knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or
62 use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled
63 paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title
64 18.2 and the Drug Control Act (§ 54.1-3400 et seq.) or synthetic cannabinoids as defined in
65 § 18.2-248.1:1; (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any
66 drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or
67 the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any
68 conduct related to the operation of the licensed business which facilitates the commission of any of the
69 offenses set forth herein; or

70 ~~q.~~ p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises
71 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any
72 portion of public property immediately adjacent to the licensed premises from becoming a place where
73 patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et
74 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
75 (§ 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
76 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.) of
77 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
78 Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to
79 reasonably be deemed a continuing threat to the public safety.

80 2. The place occupied by the licensee:

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

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

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

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

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

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

96 6. Any other cause authorized by this title.

97 **§ 4.1-226. Grounds for which Board shall suspend or revoke licenses.**

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

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

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

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

116 **§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

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

118 shall:

- 119 1. Sell or serve any alcoholic beverage other than as authorized by law;
- 120 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
- 121 3. Allow at the place described in his license the consumption of alcoholic beverages in violation of
- 122 this title;
- 123 4. Keep at the place described in his license any alcoholic beverage other than that which he is
- 124 licensed to sell;
- 125 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
- 126 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by
- 127 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink
- 128 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by
- 129 the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board
- 130 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee
- 131 from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
- 132 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper
- 133 with the contents of any bottle or container of alcoholic beverage, except as provided by Board
- 134 regulation adopted pursuant to § 4.1-111 B 11;
- 135 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the
- 136 purchaser without first advising such purchaser of the difference;
- 137 9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages
- 138 offered for sale;
- 139 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or
- 140 obliterated;
- 141 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the
- 142 licensed premises;
- 143 12. Allow any striptease act on the licensed premises;
- 144 13. Allow persons connected with the licensed business to appear nude or partially nude;
- 145 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty
- 146 and in a position that is involved in the selling or serving of alcoholic beverages to customers.
- 147 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee
- 148 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative
- 149 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of
- 150 the Board who represents a distiller, if such samples are provided in accordance with Board regulations
- 151 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 g f of
- 152 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for
- 153 quality control purposes;
- 154 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license
- 155 whether the closure is broken or unbroken except in accordance with § 4.1-210.
- 156 The provisions of this subdivision shall not apply to the delivery of:
- 157 a. "Soju." For the purposes of this clause, "soju" means a traditional Korean alcoholic beverage
- 158 distilled from rice, barley or sweet potatoes; or
- 159 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content
- 160 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and
- 161 perishable;
- 162 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;
- 163 17. Conceal any sale or consumption of any alcoholic beverages;
- 164 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or
- 165 obstruct special agents of the Board in the discharge of their duties;
- 166 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any
- 167 such alcoholic beverages from the premises;
- 168 20. Knowingly employ in the licensed business any person who has the general reputation as a
- 169 prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person
- 170 who drinks to excess or engages in illegal gambling;
- 171 21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device,
- 172 machine or apparatus;
- 173 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a
- 174 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the
- 175 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or
- 176 conduct on any conference, convention, trade show or event held or to be held on the premises of the
- 177 licensee, when such gift is made in the course of usual and customary business entertainment and is in
- 178 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection

179 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision
180 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall
181 keep complete and accurate records of gifts given in accordance with this subdivision; or

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

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

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

191 **§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.**

192 A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or
193 employee shall consume any alcoholic beverages while on duty and in a position that is involved in the
194 selling or serving of alcoholic beverages to customers.

195 The provisions of this subsection shall not prohibit any retail licensee or his designated employee
196 from (i) consuming product samples or sample servings of beer or wine provided by a representative of
197 a licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with
198 Board regulations and the retail licensee or his designated employee does not violate the provisions of
199 subdivision 1 *g f* of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to
200 a customer for quality control purposes.

201 B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its
202 employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not
203 be deemed to be agents of the retail wine or beer licensee.

204 C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic
205 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so
206 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to
207 a person responsible for the planning, preparation or conduct on any conference, convention, trade show
208 or event held or to be held on the premises of the licensee, when such gift is made in the course of
209 usual and customary business entertainment and is in no way a shift or device to evade the restriction
210 set forth in this subsection; (iii) pursuant to subsection C of § 4.1-209; or (iv) pursuant to subdivision A
211 12 of § 4.1-201. Any gift permitted by this subsection shall be subject to the taxes imposed by this title
212 on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in
213 accordance with this subsection.

214 D. Any person convicted of a violation of this section shall be subject to a civil penalty in an
215 amount not to exceed \$500.

216 **2. That the Virginia Alcoholic Beverage Control Board shall meet with interested parties,**
217 **including licensees and trade associations representing the same, to develop guidelines for**
218 **appropriate sanctions, including license revocation, for violations of alcoholic beverage control**
219 **laws and regulations governing (i) the food-to-beverage ration for mixed beverage licensees and (ii)**
220 **the submission of the annual MBAR report by such licensees, including instances where the**
221 **Alcoholic Beverage Control Board finds that a licensee has submitted a fraudulent report. On or**
222 **before September 1, 2013, the Alcoholic Beverage Control Board shall report to the Secretary of**
223 **Public Safety and the chairmen of the Senate Committee on Rehabilitation and Social Services and**
224 **the House Committee on General Laws on the aforementioned guidelines. The Alcoholic Beverage**
225 **Control Board's report shall also include the number of audits it has conducted of mixed beverage**
226 **licensees during the preceding two year period, the number of instances of substantiated violations**
227 **relating to either the food qualification requirement or the MBAR report, the penalties imposed**
228 **for such violations, and whether the Board has made findings of fraud in relation to such reports.**