



Barred

IF EVER THERE WAS A STATE THAT MAKES "NIGHTCLUB" OWNERS CRAVE A TALL, COLD ONE, VIRGINIA IS IT

Virginia Beach resident Billy Baldwin is all about the nightlife—the energy of people getting together, having fun, forgetting their worries.

Now, if only he could forget his worries.

Baldwin, who has been in the nightclub business for nearly 20 years and is now owner of The Edge in Virginia Beach and Norfolk, recently founded the Virginia Nightlife Association.

His goal: change some of Virginia's laws and put a positive face on the industry.

"You just hear about bars doing a poor job," Baldwin says.

It does seem like barely a month goes by without the local news reporting something negative:

In January, *The Virginian-Pilot* reported that Attorney Kevin Martingayle filed suit in federal court and Virginia Beach Circuit Court on behalf of Hammerheads, Chico's and Crazy Charlie's.

Martingayle declined to comment when contacted for this story, but previously said that he has documents, video evidence and testimonies showing that the City of Virginia Beach has singled out these establishments, which are frequented by minorities and 20-somethings, for

enforcement based on the race and age of their customers.

In March, Buddy Brown, owner of Headlights Gentleman's Club and J.B.'s Gallery of Girls in Chesapeake, lamented to the press that once again his dancers would have to cover up with pasties, after a year-long stint of freedom granted by a federal judge who labeled Virginia's anti-lewd conduct law unconstitutional and too broad. Delegate John Cosgrove presented a new bill to re-establish the Department of Alcoholic Beverage Control agents' power to suspend or revoke a liquor license if dancers weren't covered.

In May, *The Pilot* reported that Luxury Brown Sports Bar in Virginia Beach paid a \$5,500 fine for promoting a happy hour and giving an ABC agent two free mixed drinks. While happy hours are allowed at certain times, owners cannot promote them outside of their business. They are also forbidden from giving away mixed drinks.

In June, Norfolk's City Council revoked MoDean's Restaurant's liquor license. *The Pilot* noted that the Church Street business had been cited with more than 30 criminal charges since its opening in 2001. The Norfolk Bar Task Force, a special division not found in most

cities, said it had tried to work with MoDean's owner, Patrick Francis, but found him to be uncooperative.

BOTTOMS UP, UP, AND UP

The Edge Owner Billy Baldwin ran into problems himself a few years ago shortly after he purchased his Norfolk location. The business hadn't been doing well under the former owners, Baldwin says, and, as a result wasn't meeting the ABC-required alcohol-to-food ratio of 55 to 45 percent.

"I took over a failing business and was turning it around," Baldwin says. "I got the violation during the first three months and thought it was unfair."

Baldwin reports that he hasn't faced a violation since then, but he's finding it harder and harder to stay within ABC regulations.

He isn't actually selling more alcohol, but his sales numbers look like he is.

His problem: The skyrocketing price of the alcohol he buys.

By his calculation, prices have gone up 30 percent in the last few years. He doesn't want to pass along the extra cost to the customer.

Why not?

"It'll throw my alcohol-to-food ratio out of whack," he says.

Couldn't he simply increase his food prices at the same

time to balance out the alcohol price jump?

"No," Baldwin says, "because I have to keep my prices in line with chain restaurants or customers will notice."

The irony: ABC sells him the alcohol and knows about the price jump, but the ratio hasn't been adjusted.

"When the ratio first came out, a drink was about a half cent," Baldwin says, "and the food would cost you your whole paycheck. Today's ratio is not in synch with today's prices."

According to a report provided by WSET, a Roanoke TV station, Virginia's requirement of serving food is not unusual.

Approximately 40 states have such laws.

However, most states' laws are simpler, stating only that bars must have food available. Period.

That sort of regulation would certainly make Baldwin happy.

However, he knows he'll most likely have to take deregulation one step at a time.

"If I could get the food part down to 25 percent it would be a good start," he says.

EAT, DRINK AND BE LEERY

Baldwin has earned support not only from fellow bar owners, but also from the

most unlikely of people: a former Virginia ABC agent.

Neal Insley worked as an agent in Hampton Roads from 1996 to 2004. He reviewed licensing applications, served as a territorial agent and traveled the state conducting special investigations with surveillance.

He got the itch to practice law on a larger scale and earned a degree from Regent University.

Now he's an attorney with LeClairRyan. About 90 percent of his clients are small tavern owners and national chains looking for guidance on liquor license issues.

The food-to-alcohol ratio is a huge concern for his clients, and he hopes to lobby to get the law changed.

"Legally, we don't have bars in Virginia," says Insley. "But we *do* have them. You could have Emeril in the kitchen, and people won't eat. They come to socialize."

To clarify: State law only allows approval of "restaurants" with liquor licenses and does not specify a "bar" license. (Yet, some cities do have regulations and committees that focus on "bars." Go figure.)

Also of concern to Insley: happy hours.

As most readers know, a bar, no, strike that, a restaurant with a liquor license may hold a happy hour.

The ABC says they're fine as long as they do not take place from 9 p.m. to 2 a.m.

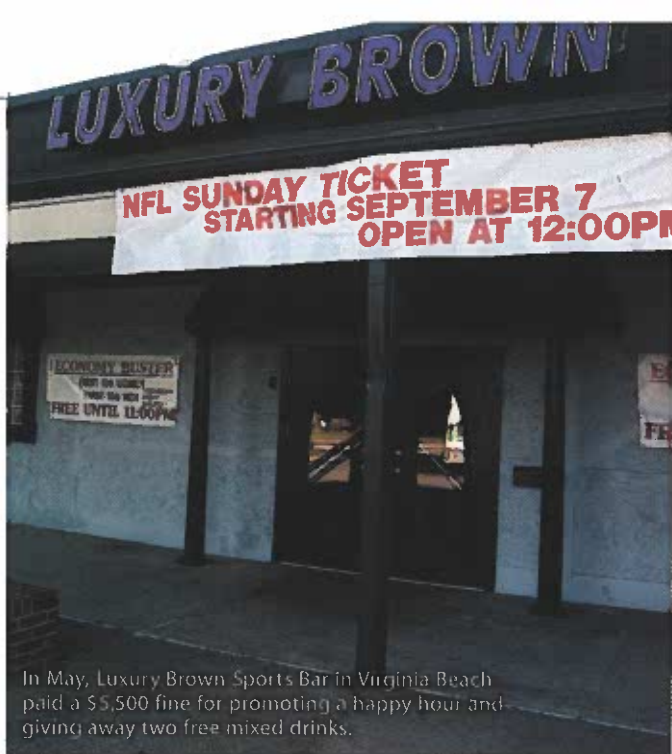
And the "restaurant" doesn't tell anyone about the event in any type of advertisement or flier that is circulated outside of its business.

According to the ABC website, even a mention of a happy hour in a news article could lead to a fine of \$500 and a seven-day license suspension.

Insley believes that the ABC equates lower-priced liquor with overdrinking—something the ABC, of course, wants to avoid.

"The state has other means to enforce drinking responsibly," Insley argues. "You can't assume that drink specials mean patrons will drink to intoxication. The ABC has other laws on the books to address those who abuse alcohol. They can use those laws."

The laws include "allowing an intoxicated person to loiter on the premises, punish-



In May, Luxury Brown Sports Bar in Virginia Beach paid a \$5,500 fine for promoting a happy hour and giving away two free mixed drinks.

able with a seven-day license suspension and a \$500 penalty; sale to an intoxicated person, punishable with a 25-day license suspension and a \$2,000 penalty; and allowing consumption by an intoxicated person, punishable with a 25-day license suspension and a \$2,000 penalty."

We don't want The Edge Owner Billy Baldwin to get stuck with a fine, so we won't mention anything specific about what he offers for happy hour.

Just know that it'll be served up with a touch of confusion.

"I have 60 beers," says Baldwin. "I reduce the price on some of them. I can't say that in an ad. I'm not even sure I can say I have 60 beers. One [ABC] agent may say that's OK, and the next says it's a violation. Why? I'm not saying 'drink every one of them!'"

Last March, a Richmond judge made a ruling that might open doors for businesses looking to advertise happy hours. But it's a mighty big "might."

The judge said college newspapers can accept ads for alcohol and include

mentions of happy hour.

A few months later, though, Curtis Coleburn, ABC chief operating officer, told *The Pilot* that the law still allows ABC agents to enforce happy hour regulations with licensees.

WHO PICKS UP THE TAB?

Confused?

Just imagine how the local bars/restaurants with liquor licenses feel. To start with, getting the license isn't a given. Last fiscal year, 2,700 businesses in Virginia applied. About 80 percent were approved, says Philip Bogenberger, an ABC public relations specialist.

The application includes questions about all partners who are involved and exactly where their money is coming from.

"We have to determine if the money is coming from appropriate funding," Bogenberger explains. "We need to know you're not just putting up a face. We determine if the money is from a legal source."

Your neighbors have to approve, too. Businesses must publish and post notices about the liquor license. If anyone objects, ABC holds



Billy Baldwin, owner of The Edge in Virginia Beach, says he finds it hard to stay within ABC regulations.

a hearing to vet the person's concerns. The ABC has the power to nix the business' plans if the neighbor's objection can't be worked out.

Depending on where the business is located, the owners might also have to apply for a conditional use permit. Virginia Beach added this requirement in January 2007. Virginia Beach Zoning Inspector William Miller created a Power Point presentation to explain the permit to employees. One of the first slides reads, "The Bars and Nightclubs ordinance is relatively new and extremely confusing."

Oh boy.

First of all, there's that word "bar," which supposedly doesn't exist in Virginia.

And then there's the fact that if a city employee admits

that a possibly required permit is extremely confusing to him, how is a new "bar" owner supposed to figure it out?

The ABC does appear to be concerned about how good of a job it's doing communicating with licensees. Since at least 2002, the department has worked with Virginia Commonwealth University to survey licensees.

Considering the 2006 results, who's to "blame" for confusion between the law enforcers and the licensees is hard to judge.

When asked what they thought of ABC's customer service, 49 percent said they were very satisfied or extremely satisfied, about the same number as in 2004, when the percentage was 51.

However, there seemed to be a drop in the perceived

clarity of ABC information. In 2006, 67 percent said it was extremely or very clear; 80 percent said the same in 2004. Asked about how clearly ABC agents guided licensees on their responsibilities, 70 percent of licensees said extremely or very clear, down from 82 two years earlier.

ABC Public Relations Specialist Bogenberger says the numbers haven't changed that much when you add in another option licensees could check: a simple "clear." Add in that category, and the clarity of ABC's information earned a nod from 93 percent of licensees in 2006 and 95 percent in 2004. ABC agents' guidance jumps to 93 percent in 2006 and 94 percent in 2004.

Yet, it would be interesting to see how licensees would respond to simpler questions:

Take out the "very clear" and "extremely clear" option, and ask that the ABC information be judged either "clear" or "unclear."

Ditto for the ABC agents' guidance.


While this might provide a better picture of ABC-licensees communication, there is also the possibility that licensees need to take more responsibility.

In the survey, 92 percent said free training classes on ABC laws were important, very important or extremely important.

Yet, only 32 percent of licensees have attended one.



Maybe Billy Baldwin's Virginia Nightlife Association can strike a deal: the state relaxes the alcohol-to-food ratio and happy hour restrictions, and 100 percent of licensees attend training. **HRM**

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