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**HOUSE BILL NO. 1230**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 2.2-4343, 3.1-6.1, and 4.1-235 of the Code of Virginia, to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 42.1, consisting of sections numbered 3.1-1064.1 through 3.1-1064.8, and to repeal Chapter 42 (§§ 3.1-1057 through 3.1-1064) of Title 3.1 of the Code of Virginia, relating to establishment of the Virginia Wine Board and the Virginia Wine Promotion Fund.*

Patrons—Landes, Albo, Barlow, Bell, Dillard, Hull, Lewis, Phillips and Saxman; Senators: Hanger and Potts

Referred to Committee on General Laws

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

**1. That §§ 2.2-4343, 3.1-6.1, and 4.1-235 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 42.1, consisting of sections numbered 3.1-1064.1 through 3.1-1064.8, as follows:**

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, including but not limited to actuarial services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of Items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.

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58 Such policies and standards may provide for incentive contracting which offers a contractor whose bid is  
59 accepted the opportunity to share in any cost savings realized by the locality when project costs are  
60 reduced by such contractor, without affecting project quality, during construction of the project. The fee,  
61 if any, charged by the project engineer or architect for determining such cost savings shall be paid as a  
62 separate cost and shall not be calculated as part of any cost savings.

63 11. Any school division whose school board has adopted, by policy or regulation, alternative policies  
64 and procedures which are (i) based on competitive principles and (ii) generally applicable to  
65 procurement of goods and services by the school board, except as stipulated in subdivision 12.

66 This exemption shall be applicable only so long as such policies and procedures, or other policies or  
67 procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This  
68 provision shall not exempt any school division from any centralized purchasing ordinance duly adopted  
69 by a local governing body.

70 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
71 subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330,  
72 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities  
73 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

74 The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the  
75 definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to  
76 all towns having a population greater than 3,500, where the cost of the professional service is expected  
77 to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board  
78 that makes purchases through its public school foundation or purchases educational technology through  
79 its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be  
80 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall  
81 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

82 13. A public body which is also a utility operator may purchase services through or participate in  
83 contracts awarded by one or more utility operators which are not public bodies for utility marking  
84 services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A  
85 purchase of services under this subdivision may deviate from the procurement procedures set forth in  
86 this chapter upon a determination made in advance by the public body and set forth in writing that  
87 competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the  
88 contract is awarded based on competitive principles.

89 14. Procurement of any construction or planning and design services for construction by a Virginia  
90 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design  
91 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit  
92 corporation or organization is obligated to conform to procurement procedures that are established by  
93 federal statutes or regulations, whether those federal procedures are in conformance with the provisions  
94 of this chapter.

95 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and  
96 Interpreting the Executive Mansion.

97 16. The Eastern Virginia Medical School in the selection of services related to the management and  
98 investment of its endowment and other institutional funds. The selection of these services shall, however,  
99 be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.).

100 17. The Department of Corrections in the selection of pre-release and post-incarceration services.

101 18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with  
102 persons for the construction, operation, and maintenance of projects consistent with the Chippokes  
103 Plantation State Park Master Plan approved by the Director of the Department of Conservation and  
104 Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural  
105 living and the contributions of the agricultural, forestry, and natural resource based industries of the  
106 Commonwealth, provided such projects are supported solely by private or nonstate funding.

107 19. *The Virginia Wine Board in the exercise of any of its powers and duties in accordance with*  
108 *Chapter 42.1 (§ 3.1-1064.1 et seq.) of Title 3.1.*

109 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
110 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
111 regulations not in conformance with the provisions of this chapter, a public body may comply with such  
112 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination  
113 of the Governor, in the case of state agencies, or the governing body, in the case of political  
114 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the  
115 public interest. Such determination shall state the specific provision of this chapter in conflict with the  
116 conditions of the grant or contract.

117 § 3.1-6.1. Diversion of dedicated revenues.

118 Notwithstanding any provisions of the general appropriations act, the unexpended balances of the  
119 following special funds shall not be diverted or expended for any purpose other than each fund's

intended purpose unless authorized by a specific act of Assembly. The special funds are:

1. Virginia Dark-Fired Tobacco Promotion Fund (§ 3.1-315);
2. Virginia Bright Flue-Cured Tobacco Promotion Fund (§ 3.1-332);
3. Apple Merchandising Fund (§ 3.1-626);
4. Peanut Fund (§ 3.1-662);
5. Sweet Potato Fund (§ 3.1-682);
6. Virginia Soy Bean Fund (§ 3.1-684.17);
7. Virginia Pork Industry Fund (§ 3.1-763.11);
8. Virginia Egg Fund (§ 3.1-796.11:8);
9. Virginia Cattle Industry Fund (§ 3.1-796.26);
10. Virginia Corn Fund (§ 3.1-1047);
11. ~~Winegrowers Productivity Fund (§ 3.1-1063);~~
12. Virginia Marine Products Fund (§ 3.1-684.63);
13. Virginia Agricultural Foundation Fund (§ 3.1-22.5); and
14. Virginia Milk Commission (§ 3.1-426).

#### CHAPTER 42.1 VIRGINIA WINE BOARD.

##### § 3.1-1064.1. Definitions.

*As used in this chapter, unless the context requires a different meaning:*

*"Board" means the Virginia Wine Board.*

*"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

*"Enology" means those practices and that body of knowledge involved in the production, aging, storing and packaging of wine.*

*"Farm winery" or "winery" means an "establishment" as defined in § 4.1-100.*

*"Grape grower" means a commercial grower who (i) sells at least \$10,000 worth of grapes annually or (ii) has planted and maintains at least three acres of vines of a type used for the production of wine.*

*"Viticulture" means the cultivation and study of grapes and grapevines.*

*"Wine" means an alcoholic beverage as defined in § 4.1-100.*

*"Winegrower" means any person or entity producing wine from approved products grown by that individual.*

##### § 3.1-1064.2. The Virginia Wine Board; purpose.

*The Virginia Wine Board is established as a supervisory board in the executive branch of state government. The purpose of the Virginia Wine Board is to allocate funds to projects that expand viticultural and enological research, education, and promotion of the growing of grapes and the production of wine in Virginia.*

##### § 3.1-1064.3. Membership; terms; vacancies; chairman and vice chairman; quorum; meetings.

*The Virginia Wine Board shall consist of 10 members, nine of whom shall be voting nonlegislative citizen members, to be appointed by the Governor, and the Commissioner of Agriculture and Consumer Services, who shall serve as a nonvoting ex officio member. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia and shall be either grape growers or owners or operators of a winery or farm winery in Virginia. The Governor shall make his appointments upon consideration of the recommendations made by the following agricultural organizations or their successor organizations: the Virginia Wineries Association, Inc., the Virginia Vineyards Association, Inc., the Virginia Farm Bureau, and the Virginia Agribusiness Council.*

*The Commissioner of Agriculture and Consumer Services shall serve a term coincident with his term of office. Initial appointments of nonlegislative citizen members shall be staggered as follows: six nonlegislative citizen members shall be owners or operators of wineries or farm wineries in Virginia, two of whom shall serve for terms of three years, two shall serve for terms of two years, and two shall serve a term of one year; and three nonlegislative citizen members shall be grape growers with no controlling financial interest in a winery or farm winery, one of whom shall serve a term of three years, one shall serve a term of two years, and one shall serve a term of one year. Thereafter, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.*

*The Board shall elect a chairman and vice chairman from among its membership. A majority of the members shall constitute a quorum. The Board shall meet at least four times each year. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.*

##### § 3.1-1064.4. Compensation; expenses.

181 *Members shall receive no compensation for the discharge of their duties but the nonlegislative citizen*  
182 *members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their*  
183 *duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for expenses of the nonlegislative citizen*  
184 *members shall be provided from the Fund.*

185 *§ 3.1-1064.5. Powers and duties of the Board.*

186 *The Virginia Wine Board shall have the following powers and duties:*

187 *1. To receive and dispense funds or donations from the Virginia Wine Promotional Fund;*

188 *2. To enter into contracts for the purpose of developing new or improved markets or marketing*  
189 *methods for wine and grape products;*

190 *3. To contract for research services to improve viticultural and enological practices in Virginia;*

191 *4. To enter into agreements with any local, state or national organization or agency engaged in*  
192 *education for the purpose of disseminating information on wine or other viticultural projects;*

193 *5. To enter into contracts with private or public entities for the purpose of developing marketing,*  
194 *advertising and other promotional programs designed to promote the orderly growth of Virginia's wine*  
195 *industry;*

196 *6. To rent or purchase office and laboratory space, land, equipment, and supplies as necessary to*  
197 *carry out its duties;*

198 *7. To employ such personnel as may be required to carry out those duties conferred by law;*

199 *8. To acquire any licenses or permits necessary for the performance of the powers and duties of the*  
200 *Board;*

201 *9. To cooperate with other state, regional, national, and international organizations in research,*  
202 *education, and promotion of the growing of grapes and the production of wine in Virginia and to*  
203 *expend moneys from the Fund for such purposes; and*

204 *10. To adopt a general statement of policy and procedures.*

205 *§ 3.1-1064.6. Chairman's executive summary of activity and work of the Board.*

206 *A. The chairman shall submit to the Governor and the General Assembly an annual executive*  
207 *summary of the interim activity and work of the Board no later than the first day of each regular*  
208 *session of the General Assembly. The executive summary shall be submitted as provided in the*  
209 *procedures of the Division of Legislative Automated Systems for the processing of legislative documents*  
210 *and reports and shall be posted on the General Assembly's website.*

211 *B. The chairman shall report at least once annually to the Secretary of Commerce and Trade in the*  
212 *manner prescribed by the Secretary regarding the receipt and expenditure of funds as well as the*  
213 *Board's policies, programs and activities. The Secretary shall ensure that funds made available to the*  
214 *Board from the Fund are expended only for the purposes of this chapter.*

215 *§ 3.1-1064.7. Virginia Wine Promotion Fund established.*

216 *A. There is hereby created in the state treasury a special, nonreverting fund to be known as the*  
217 *Virginia Wine Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on*  
218 *the books of the Comptroller. The Fund shall consist of all moneys appropriated to it by the General*  
219 *Assembly, sums allocated from the wine liter tax pursuant to § 4.1-235, grants of private or government*  
220 *funds designated for specified activities authorized pursuant to this chapter, fees for services rendered*  
221 *pursuant to this chapter, payments for products, equipment, or material or other goods supplied. All*  
222 *moneys shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the*  
223 *Fund shall remain in the Fund and be credited to it. Any moneys remaining the Fund, including interest*  
224 *thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.*  
225 *Moneys in the Fund shall be used solely for the purposes of carrying out the provisions of this chapter.*  
226 *Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued*  
227 *by the Comptroller upon written request signed by the duly authorized officer of the Board.*

228 *B. The Board shall meet and evaluate proposals from applicants for funding from the Fund. The*  
229 *Board's final recommendations shall be made by recorded vote. Not less than one-third of the funding*  
230 *allocated by the Board annually, excluding revenue-producing activities engaged in pursuant to*  
231 *§ 3.1-1064.8, shall be expended for projects that advance viticultural and enological research*  
232 *concerning the growing of grapes and the production of wine in Virginia.*

233 *C. The Auditor of Public Accounts shall audit all accounts as provided in § 30-133.*

234 *§ 3.1-1064.8. Revenue-producing activities of the Board.*

235 *To help defray the costs of its program, the Board may (i) publish materials with printed*  
236 *advertisements, (ii) sell printed materials, (iii) rent exhibit space at meetings or other events, (iv) charge*  
237 *entrance or participation fees, and (v) engage in other revenue-producing activities related to research,*  
238 *education and promotion of the growing of grapes and the production of wine in Virginia. The Board*  
239 *shall promptly deposit the proceeds of any revenue-producing activities into the Fund.*

240 *§ 4.1-235. Collection; computation, distribution of tax on wine and other alcoholic beverages; refunds*  
241 *and adjustments.*

242 *A. The Board shall collect the state taxes levied pursuant to § 4.1-234 as follows:*

1. Collection shall be from the purchaser at the time of or prior to sale, except as to sales made to wholesale wine licensees. Wholesale wine licensees shall collect the taxes at the time of or prior to sale to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be required by the Board, at the time and in the manner prescribed by the Board.

2. In establishing the prices for items sold by it to persons other than wholesale licensees, the Board shall include a reasonable markup. The liter tax or twenty percent tax, as appropriate, shall then be added to the price of each container of alcoholic beverages. The four percent tax on vermouth and farm winery wines shall then be added for those products. In all cases the final price for each container may be established so as to be a multiple of five.

In accounting for the state tax on sales the Board shall divide the net sales for the quarter by 1.20 and multiply the result by twenty percent. As to the sale of vermouth and farm winery wine, the Board shall divide the net sales for the quarter by 1.04 and multiply the result by four percent.

B. The amount of tax collected under this section during each quarter shall, within fifty days after the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not later than June 20 of every year, estimate the yield of the state tax on sales imposed by § 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on account of an overestimate or underestimate as may be indicated within fifty days after the close of the quarter ending on June 30.

Forty-four percent of the amount derived from the liter tax levied pursuant to § 4.1-234 shall be transferred to the general fund and paid to the several counties, cities, and towns of the Commonwealth in proportion to their respective populations, and is appropriated for such purpose.

The counties, cities, and towns shall in no event receive from the taxes derived from the sale of wines less revenue than was received by such counties, cities, and towns for the year ending June 30, 1976.

Twelve percent of the amount derived from the liter tax levied shall be retained by the Board as operating revenue and distributed as provided in § 4.1-117. *Six percent of the amount derived from the liter tax shall be transferred to the Virginia Wine Promotion Fund established pursuant to § 3.1-1064.7.*

C. As used in this section, the term "net sales" means gross sales less refunds to customers.

D. The Board may make a refund or adjustment of any tax paid to it under this section when (i) the wine upon which such tax has been paid has been condemned and is not permitted to be sold in the Commonwealth, or (ii) wine is returned by a retail licensee to a wholesale wine licensee for refund in accordance with Board regulations or approval. Any claim for such refund or adjustment shall be made to the Board in the report filed with the Board by the wholesale wine licensee for the period in which such return and refund occurs.

**2. That, upon the effective date of this act, any moneys remaining in the Winegrowers Productivity Fund shall be transferred to the Virginia Wine Promotion Fund established pursuant to § 3.1-1064.7.**

**3. That Chapter 42 (§§ 3.1-1057 through 3.1-1064) of Title 3.1 of the Code of Virginia is repealed.**