

VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

CHAPTER 818

An Act to amend and reenact §§ 4.1-111, 4.1-320, 33.1-371.1, and 33.1-375 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 4.1-112.2 and 33.1-377.1; and to repeal § 33.1-377 of the Code of Virginia, relating to alcoholic beverage control; outdoor advertising; penalty.

[S 398]

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-111, 4.1-320, 33.1-371.1, and 33.1-375 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 4.1-112.2 and 33.1-377.1 as follows:

§ 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

12. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic

beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title and provided that no outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private, or parochial school, college, or university; public or private playground or similar recreational facility; or residentially zoned property. Nothing in this subdivision b shall be construed to authorize outdoor alcoholic beverage advertising on property zoned agricultural or residential, or on any unzoned property. Nor shall this subdivision b be construed to authorize the erection of new outdoor advertising that would be prohibited under state law or local ordinance.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

§ 4.1-112.2. Outdoor advertising; limitations; variances; compliance with Title 33.1.

A. No outdoor alcoholic beverage advertising shall be placed within 500 linear feet on the same side of the road, and parallel to such road, measured from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a building or structure located on the real property of (i) a church, synagogue, mosque or other place of religious worship; (ii) a public, private, or parochial school, college, or university; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use.

B. However, (i) if there is no building or structure on a playground or similar recreational facility, the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to the property line of such playground or similar recreational facility and (ii) if a public or private school providing grade K through 12 education is located across the road from a sign, the measurement shall be from the nearest edge of the sign face upon which the advertisement is placed to the nearest edge of a building or structure located on such real property across the road.

C. If, at the time the advertisement was displayed, the advertisement was more than 500 feet from (i) a church, synagogue, mosque or other place of religious worship; (ii) a public, private, or parochial school, college, or university; (iii) a public or private playground or similar recreational facility; or (iv) a dwelling used for residential use, but the circumstances change such that the advertiser would otherwise be in violation of subsection A, the Board shall permit the advertisement to remain as displayed for the remainder of the term of any written advertising contract, but in no event more than one year from the date of the change in circumstances.

D. The Board may grant a permit authorizing a variance from the distance requirements of this section upon a finding that the placement of alcoholic beverage advertising on a sign will not unduly expose children to alcoholic beverage advertising.

E. Provided such signs are in compliance with local ordinances, the distance and zoning restrictions contained in this section shall not apply to:

1. Signs placed by licensees upon the property on which the licensed premises are located; or

2. Directional signs placed by manufacturers or wholesalers with advertising limited to trade names, brand names, the terms "distillery," "brewery," "farm winery," or "winery," and tour information.

F. The distance and zoning restrictions contained in this section shall not apply to any sign that is included in the Integrated Directional Sign Program administered by the Virginia Department of Transportation or its agents.

G. Nothing in this section shall be construed to authorize billboard signs containing outdoor alcoholic beverage advertising on property zoned agricultural or residential, or on any unzoned property. Nor shall this section be construed to authorize the erection of new billboard signs containing outdoor advertising that would be prohibited under state law or local ordinance.

H. All lawfully erected outdoor alcoholic beverage signs shall comply with the provisions of this title, Board regulations, and Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 and regulations adopted pursuant thereto by the Commonwealth Transportation Board. Further, any outdoor alcoholic beverage directional sign located or to be located on highway rights of way shall also be governed by and comply with the Integrated Directional Sign Program administered by the Virginia Department of Transportation or its agents.

§ 4.1-320. Illegal advertising; penalty; exception.

A. Except in accordance with *this title* and Board regulations, no person shall advertise in or send any advertising matter into the Commonwealth about or concerning alcoholic beverages other than those which may legally be manufactured or sold without a license.

B. (Expires January 1, 2013) For manufacturers and wholesalers, including wineries and farm wineries:

1. No more than one sign may be displayed upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;

2. No more than two signs may be displayed, which shall be directional in nature, not farther than one-half mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;

3. If the establishment is a winery and also holds a retail off-premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information may be displayed in accordance with state and local rules, regulations, and ordinances; and

4. Advertising on vehicles and uniforms shall be limited to persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in the Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

C. (Expires January 1, 2013) For retailers, including mixed beverage licensees, other than carriers and clubs:

1. No more than two signs at the establishment, or three signs in the case of establishments at intersections, may be displayed, the advertising on which, including symbols approved by the U.S. Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment;

2. Signs may not include any reference to or depiction of "Happy Hour," or references or depictions of similar import, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages, except that, notwithstanding the provisions of Board regulations to the contrary, a retail licensee may post one two-dimensional sign not exceeding 17 inches by 22 inches, attached to the exterior of the licensed premises, limited in content to the terms "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at the reduced prices; and

3. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

D. (Expires January 1, 2013) The Board may grant a permit authorizing a variance from the provisions of subsection B or C for good cause shown.

E. (Expires January 1, 2013) Manufacturers, wholesalers, and retailers may engage in the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs, except as follows:

1. No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages or use cartoon characters in any way or use persons who have not attained the minimum drinking age as models or actors; and

2. No outdoor alcoholic beverage advertising shall be placed within 500 feet of a church or synagogue; public, private, or parochial school, college, or university; public or private playground or similar recreational facility; or residentially zoned property.

F B. *Manufacturers, wholesalers, and retailers may engage in the display of outdoor alcoholic beverage advertising on lawfully erected signs provided such display is done in accordance with § 4.1-112.2 and Board regulations.*

~~Any~~ C. *Except as provided in subsection D, any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.*

D. *For violations of § 4.1-112.2 relating to distance and zoning restrictions on outdoor advertising,*

the Board shall give the advertiser written notice to take corrective action to either bring the advertisement into compliance with this title and Board regulations or to remove such advertisement. If corrective action is not taken within 30 days, the advertiser shall be guilty of a Class 4 misdemeanor.

§ E. Neither this section nor any Board regulation shall prohibit (i) the awarding of watches of a wholesale value of less than \$100 by a licensed distillery, winery or brewery, to participants in athletic contests; (ii) the exhibition or display of automobiles, boats, or aircraft regularly and normally used in racing or other competitive events and the sponsorship of an automobile, boat or aircraft racing team by a licensed distillery, winery or brewery and the display on the automobile, boat or aircraft and uniforms of the members of the racing team, the trademark or brand name of an alcoholic beverage manufactured by such distillery, winery or brewery; (iii) the sponsorship of a professional athletic event, including, but not limited to, golf, auto racing or tennis, by a licensed distillery, winery or brewery or the use of any trademark or brand name of any alcoholic beverage in connection with such sponsorship; (iv) the advertisement of beer by the display of such product's name on any airship, which advertising is paid for by the manufacturer of such product; (v) the advertisement of beer or any alcoholic beverage by the display of such product's name on any scale model, reproduction or replica of any motor vehicle, aircraft or watercraft offered for sale; (vi) the placement of billboard advertising within stadia, coliseums, or racetracks that are used primarily for professional or semiprofessional athletic or sporting events; or (vii) the sponsorship of an entertainment or cultural event.

§ 33.1-371.1. Selective pruning permits; fees; penalty.

Notwithstanding the provisions of § 33.1-353 or any other provision of law:

1. The Commissioner of Highways shall by permit authorize the selective pruning, within highway rights-of-way, as highways are defined in § 33.1-351, including within corporate limits of municipalities, of vegetation that obstructs motorists' view of signs displayed on outdoor advertising structures legally erected and properly maintained along the highways. Permits authorizing such pruning shall be issued in accordance with this section.

(a) All work performed under the permit shall be (i) subject to the direction of the Commissioner or his designee, (ii) supervised on-site by a certified arborist approved by the Commissioner, (iii) completed to the satisfaction of the Commissioner or his designee, and (iv) performed solely at the expense of the permittee.

(b) All pruning shall be performed in a manner that (i) creates a picture frame effect around the sign and (ii) beautifies the area surrounding the advertising structure. All cutting shall be limited to vegetation with trunk base diameters of less than six inches. Pruning cuts of limbs or branches or other vegetation with diameters greater than four inches and clear cutting shall not be authorized and shall be strictly prohibited. Pruning of vegetation in a highway median shall not be permitted where the locality within which the pruning is to be done has a local beautification project, as defined in this section, in the area within the scope of the selective pruning application; however, relocation or replanting of such vegetation shall be permitted in accordance with a landscaping plan as provided in this section.

(c) Any diseased or unsightly vegetation or any vegetation that endangers the health or retards the growth of desirable vegetation may be removed at the discretion of the certified arborist supervising the work. Any such removed vegetation shall be replaced at the permittee's expense with desirable vegetation.

2. The requirements of this section shall not apply to the owner or authorized agent of the owner of any sign, advertisement, or advertising structure exempted from the provisions of this article by § 33.1-355.

3. The Commissioner shall promulgate such regulations as he deems necessary or desirable to carry out the provisions of this section. Such regulations shall include but not necessarily be limited to the following requirements:

(a) Every application for a permit submitted under this section shall be accompanied by photographs of the affected site and a detailed description of work proposed to be performed.

(b) A fee of \$400 shall accompany every application made to the Commissioner, or if applicable, to the locality within which the pruning is to be performed. All such fees collected by the Commissioner shall be paid by the Commissioner into the state treasury, allocated to the Commonwealth Transportation Board.

(c) Every applicant shall post a bond payable to the Commonwealth, with surety approved by the Commissioner and in a form approved by the Attorney General, in the sum of \$2,500, conditioned on the permittee's fulfillment of all requirements of the permit.

(d) No permit shall be issued under this section in order to create a new site for an outdoor advertising structure.

4. Where the applicant is seeking a vegetation control permit in a locality where the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § 33.1-353 or on a highway or street in a county having the county manager form of government, the Commissioner shall delegate the administration of this section to that locality and, if so delegated, the locality shall apply the provisions of this section.

5. If there are plant materials in the public right-of-way that are part of a local beautification project,

the Commissioner or the locality, as the case may be, may include a requirement, in accordance with the provisions of subdivisions 4 through 7, that, as a condition of the issuance of a vegetation control permit for selective pruning, the applicant submit a landscaping plan, showing how the applicant will relocate or replant the vegetation obstructing the motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, in lieu of the selective pruning of such plant materials. For purposes of this section, "local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right-of-way within a city or town or on a highway or street in a county with the county manager form of government. In the absence of the existence of a local beautification project in the area within the scope of the selective pruning application, no landscaping plan requirement shall be imposed on the applicant.

6. If subdivision 5 is applicable, the applicant shall pay the reasonable costs of implementing the landscaping plan, which may include but not be limited to, relocating existing plant materials, purchasing new replacement plant materials, and planting vegetation that will not grow to a height or position in the future so as to obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, as otherwise set out in the landscaping plan.

7. The provisions of subdivisions 4 through 7 shall apply to any local beautification project installed prior to July 1, 2006. On and after July 1, 2006, the locality shall not plant materials that obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures.

8. Any application for vegetation control in compliance with this section submitted to the Commissioner shall be approved within 60 days of submission or shall be deemed approved. Any application for vegetation control in compliance with this section submitted to any city or town or on a highway or street in a county with the county manager form of government shall be approved within 60 days of submission or shall be deemed approved. The locality may impose conditions in approval of the landscaping plan consistent with this section and the regulations promulgated thereto. If the locality is not satisfied that the landscaping plan submitted by the applicant complies with this section, the locality may appeal to the Commissioner prior to the expiration of the 60-day period from the date of submission. If the applicant objects to the conditions imposed by the locality as part of the approval of the landscaping plan, the applicant may appeal to the Commissioner within 10 days after the final action by the locality. The appealing party shall submit a written appeal to the Commissioner, stating the reasons for such appeal, along with a fee of \$400. The Commissioner shall review the landscaping plan and the reasons for the appeal and shall issue a determination in accordance with this section within 30 days after filing of the appeal, which determination shall be binding upon the applicant and the locality.

9. Upon issuance of a vegetation control permit in accordance with this section, the applicant shall give written notice, at least seven days in advance of any site work, as authorized by the permit, of the date and time of the commencement of the site work as approved by the permit. Such written notice shall be given to the Commissioner unless the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § 33.1-353, in which case, the written notice shall be given to the local government official who approved the permit.

10. Any person found by a court of competent jurisdiction to have violated any provision of this section, any regulation adopted pursuant to this section, or any permit issued under this section, shall, in addition to the penalties provided in § 33.1-377, be prohibited by the court from applying for any other permit under this section for a period of not more than five years.

§ 33.1-375. Violation a nuisance; abatement.

Any sign, advertisement or advertising structure which is erected, used, maintained, operated, posted or displayed in violation of §§ 33.1-369, 33.1-370, or § 33.1-372 or for which no permit has been obtained where such is required, or after revocation or more than thirty 30 days after expiration of a permit, or which, whether or not excepted under the provisions of § 33.1-355, is not kept in a good general condition and in a reasonably good state of repair and is not, after thirty days' written notice to the person erecting, using, maintaining, posting or displaying the same, put into good general condition and in a reasonably good state of repair, is hereby declared to be a public and private nuisance and may be forthwith removed, obliterated or abated by the Commissioner or his representatives. The Commissioner may collect the cost of such removal, obliteration or abatement from the person erecting, using, maintaining, operating, posting or displaying such sign, advertisement or advertising structure.

§ 33.1-377.1. Penalties for violation.

A. Notwithstanding any other provision of law, any person, firm, or corporation that violates any provision of this article or applicable regulations that fails to take corrective action within 30 days as specified in a written notice from the Commissioner shall be subject to any or all of the following penalties:

1. A civil penalty of not more than \$250 per violation. Each day during which the violation continues after a final determination by the Commissioner of such violation shall be deemed a separate violation;

2. Revocation by the Commissioner of any permit for the sign; or

3. Removal of the sign by the Commissioner or his designee. The Commissioner may collect the costs

of the removal from the owner of the sign.

B. Any person aggrieved by the action of the Commissioner in enforcing the provisions of subsection A may appeal the decision of the Commissioner in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner may remove signs without giving a corrective action notice as provided in subsection A (i) for any violation of § 33.1-369 (3), (7), (8), (9), (10), or (11), or § 33.1-372; or (ii) if the Commissioner determines that the sign poses a risk to highway safety.

D. The Commissioner or his designee may recover all civil penalties authorized in subsection A in any manner permitted by law, including (i) the placement of a tax lien on the owner's real property upon which the sign is located and (ii) the use of the Setoff Debt Collection Act (§ 58.1-520 et seq.).

E. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund.

2. That § 33.1-377 of the Code of Virginia is repealed.

3. That an emergency exists and this act is in force from its passage.