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**HOUSE BILL NO. 471**

Offered January 11, 2012

Prefiled January 10, 2012

*A BILL to amend and reenact §§ 4.1-111, 4.1-320, 33.1-355, 33.1-369, 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.*

Patron—Albo

Referred to Committee on General Laws

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

**1. That §§ 4.1-111, 4.1-320, 33.1-355, 33.1-369, 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 Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)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

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59 sell flavored distilled spirits.

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

62 13. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic  
63 beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage  
64 or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages  
65 may not be lawfully sold. Such regulations shall:

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

72 b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the  
73 display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under  
74 Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 where such signs are located on commercial real estate as  
75 defined in § 55-526, but only in accordance with this title *and Chapter 7 (§ 33.1-351 et seq.) of Title*  
76 *33.1* and provided that no outdoor alcoholic beverage advertising shall be placed within 500 feet of a  
77 church or synagogue; public, private, or parochial school, college, or university; public or private  
78 playground or similar recreational facility; or ~~residentially zoned property~~ *a dwelling used for residential*  
79 *use*. Nothing in this subdivision b shall be construed to authorize outdoor alcoholic beverage advertising  
80 on property zoned agricultural or residential, or on any unzoned property. Nor shall this subdivision b be  
81 construed to authorize the erection of new outdoor advertising that would be prohibited under state law  
82 or local ordinance.

83 C. The Board may promulgate regulations that:

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

90 2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the  
91 course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of  
92 § 4.1-325.2.

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

95 E. Courts shall take judicial notice of Board regulations.

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

97 § 4.1-112.2. *Outdoor advertising; compliance with Title 33.1; limitation; determinations of*  
98 *compliance.*

99 A. *All outdoor alcoholic beverage signs and advertising shall comply with the provisions of this title,*  
100 *Board regulations, and Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 and regulations adopted pursuant*  
101 *thereto by the Commonwealth Transportation Board.*

102 B. *The provisions of this title relating to outdoor advertising of alcoholic beverages, however, shall*  
103 *not apply to any sign that is included in the Integrated Directional Sign Program administered by the*  
104 *Virginia Department of Transportation or its agents.*

105 C. *Notwithstanding other provisions of this title relating to the authority of the Board, the Virginia*  
106 *Department of Transportation shall determine compliance with subdivision A 13 b of § 4.1-111 and*  
107 *§ 4.1-320.*

108 § 4.1-320. Illegal advertising; penalty; exception.

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

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

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

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

119 3. If the establishment is a winery and also holds a retail off-premises winery license or is a farm  
120 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~~ *dwelling used for residential use*.

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

G. 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.

§ 33.1-355. Excepted signs, advertisements and advertising structures.

The following signs and advertisements, if securely attached to real property or advertising structures, and the advertising structures, or parts thereof, upon which they are posted or displayed are excepted from all the provisions of this article save those enumerated in §§ 33.1-353, 33.1-356, and 33.1-360, subdivisions (2) 2 through (13) 14 of § 33.1-369 and §§ 33.1-370 and 33.1-375:

(1) Advertisements securely attached to a place of business or residence, and not to exceed 10 advertising structures with combined total area, exclusive of the area occupied by the name of the business, owner or lessee, of advertisements and advertising structures not to exceed 500 square feet, erected or maintained, or caused to be erected or maintained, by the owner or lessee of such place of business or residence, within 250 feet of such place of business or residence or located on the real

182 property of such place of business or residence and relating solely to merchandise, services or  
183 entertainment sold, produced, manufactured or furnished at such place of business or residence;

184 (2)2. Signs erected or maintained, or caused to be erected or maintained, on any farm by the owner  
185 or lessee of such farm and relating solely to farm produce, merchandise, services or entertainment sold,  
186 produced, manufactured or furnished on such farm;

187 (3)3. Signs upon real property posted or displayed by the owner, or by the authority of the owner,  
188 stating that the property, upon which the sign is located, or a part of such property, is for sale or rent or  
189 stating any data pertaining to such property and its appurtenances, and the name and address of the  
190 owner and the agent of such owner;

191 (4)4. Official notices or advertisements posted or displayed by or under the direction of any public or  
192 court officer in the performance of his official or directed duties, or by trustees under deeds of trust,  
193 deeds of assignment or other similar instruments;

194 (5)5. Danger or precautionary signs relating to the premises or signs warning of the condition of or  
195 dangers of travel on a highway, erected or authorized by the Commissioner of Highways; or forest fire  
196 warning signs erected under authority of the State Forester and signs, notices or symbols erected by the  
197 United States government under the direction of the United States Forestry Service;

198 (6)6. Notices of any telephone company, telegraph company, railroad, bridges, ferries or other  
199 transportation company necessary in the discretion of the Commissioner of Highways for the safety of  
200 the public or for the direction of the public to such utility or to any place to be reached by it;

201 (7)7. Signs, notices or symbols for the information of aviators as to location, direction and landings  
202 and conditions affecting safety in aviation erected or authorized by the Commissioner of Highways;

203 (8)8. Signs containing 16 square feet or less and bearing an announcement of any county, town,  
204 village or city, or historic place or shrine, situated in this Commonwealth, advertising itself or local  
205 industries, meetings, buildings or attractions, provided the same is maintained wholly at public expense,  
206 or at the expense of such historic place or shrine;

207 (9)9. Signs or notices containing two square feet or less, placed at a junction of two or more roads in  
208 the State Highway System denoting only the distance or direction of a church, residence or place of  
209 business, provided such signs or notices do not exceed a reasonable number in the discretion of the  
210 Commissioner of Highways;

211 (10)10. Signs or notices erected or maintained upon property giving the name of the owner, lessee or  
212 occupant of the premises;

213 (11)11. Advertisements and advertising structures within the corporate limits of cities and towns,  
214 except as specified in § 33.1-353;

215 (12)12. Historical markers erected by duly constituted and authorized public authorities;

216 (13)13. Highway markers and signs erected, or caused to be erected, by the Commissioner or the  
217 Commonwealth Transportation Board or other authorities in accordance with law;

218 (14)14. Signs erected upon property warning the public against hunting, fishing or trespassing  
219 thereon;

220 (15)15. Signs erected by Red Cross authorities relating to Red Cross Emergency Stations. And  
221 authority is hereby expressly given for the erection and maintenance of such signs upon the right-of-way  
222 of all highways in this Commonwealth at such locations as may be approved by the Commissioner of  
223 Highways;

224 (16)16. Signs advertising agricultural products and horticultural products, or either, when such  
225 products are produced by the person who erects and maintains the signs; provided, however, that the  
226 location and number of such signs shall be in the sole discretion of the Commissioner of Highways;

227 (17)17. Signs advertising only the name, time and place of bona fide agricultural, county, district or  
228 state fairs, together with announcements of special events in connection therewith which do not consume  
229 more than 50 percent of the display area of such signs, provided the person who posts the signs or  
230 causes them to be posted will post a cash bond as may be prescribed by the Commissioner of  
231 Highways, adequate to reimburse the Commonwealth for the actual cost of removing such signs as are  
232 not removed within 30 days after the last day of the fair so advertised;

233 (18)18. Signs of eight square feet or less, or one sign structure containing more than one sign of  
234 eight square feet or less, which denote only the name of a civic service club or church, location and  
235 directions for reaching same, and time of meeting of such organization, provided such signs or notices  
236 do not exceed a reasonable number as determined by the Commissioner of Highways;

237 (19)19. Notwithstanding the provisions of § 33.1-373, signs containing advertisements or notices that  
238 have been authorized by a county and that are securely affixed to a public transit passenger shelter that  
239 is owned by that county, provided, however, that no advertisement shall be placed within the  
240 right-of-way of the federal interstate system, National Highway System, or the federal-aid primary  
241 system of highways in violation of federal law. The prohibition in subdivision 8 of § 33.1-369 against  
242 placing signs within 15 feet of the nearest edge of the pavement of any highway shall not apply to such  
243 signs. The Commissioner of Highways may require the removal of any particular sign located on such a

shelter as provided in this subdivision if, in his ~~judgement~~ *judgment*, such sign constitutes a safety hazard.

§ 33.1-369. Certain advertisements or structures prohibited.

No advertisement or advertising structure shall be erected, maintained or operated:

(1)1. Within 660 feet of the nearest edge of the right-of-way of the Blue Ridge Parkway, the Colonial National Parkway, the Mount Vernon Boulevard, or any other parkway within this Commonwealth or within 660 feet of any public cemetery, public park reservation, public playground, national forest or state forest, outside the limits of any municipality; however, any advertisement or advertising structure which is lawfully in place on April 6, 1966, and which does not conform to the 660-foot distance requirement may be maintained for the life of such advertisement or advertising structure;

(2)2. Which involves motion or rotation of any part of the structure, moving reflective disks, running animation, or displays an intermittent light or lights visible from any highway. The prohibition of this subsection shall not apply to: (a) (i) an advertisement or advertisement structure with messages that change no more than once every four seconds and is consistent with agreements entered into between the Commissioner of Highways and the United States Department of Transportation or (b) (ii) an on-premises advertisement or advertising structure with messages displayed as scrolling words ~~and/or~~ or numbers;

(3)3. Which uses the words "stop" or "danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway, or which is a copy or imitation of official highway signs;

(4)4. [Reserved.]

(5)5. Which, within visible distance of any highway, advertises any county, city, town, village, historic place or shrine without the consent, in writing of such county, city, town or village or of the owner of such historic place or shrine;

(6)6. Which is mobile and is designed to and effectively does distract the attention of passing motorists on any highway by flashing lights, loud and blatant noises or movable objects;

(7)7. Which involve red, green or amber lights or reflectorized material and which resemble traffic signal lights or traffic control signs and are within visible distance of any highway;

(8)8. Within ~~fifteen~~ 15 feet of the nearest edge of the pavement of any highway; however, the Commissioner of Highways may waive this restriction whenever the advertisement or advertising structure is actually anchored outside of the right-of-way, and, within his discretion, does not constitute a safety hazard or conflict with any other restriction contained in this section;

(9)9. At any public road intersection in such manner as would obstruct the clear vision in either direction between a point on the center line of the side road 20 feet from the nearest edge of the pavement of the main road and points on the main road 400 feet distant, measured along the nearest edge of the pavement of the main road;

(10)10. At any grade intersection of a public road and a railroad in such manner as would obstruct the clear vision in either direction within triangular areas formed by (a) (i) a point at the center of the railroad-public road intersection, (b) (ii) a point on the public road 400 feet from the center of the railroad-public road intersection as measured along the center of the public road, and (c) (iii) a point on the railroad 500 feet from the center of the railroad-public road intersection as measured along the center of the railroad;

(11)11. At or near any curve in a road in such a manner as to obstruct the clear vision of traffic from any one point on such curve to any other point not more than 400 feet apart, as measured between each point from the nearest edge of the pavement;

(12)12. Which advertises activities ~~which~~ *that* are illegal under state or federal laws or regulations in effect at the location of such sign or advertisement or at the location of such activities;

(13)13. *Which advertises alcoholic beverages on a billboard sign face measured from the nearest edge of the billboard sign face upon which the advertisement is placed, 500 linear feet on the same side of the road, and parallel to such road, to the nearest edge of a building or structure located on the real property of (i) a church or synagogue; (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.*

14. Which is obsolete or inconsistent with this article or regulations adopted by the Commonwealth Transportation Board pursuant to this article; or

(14)15. After December 18, 1991, adjacent to any interstate, federal-aid primary, or national highway system highway in the Commonwealth which has been designated as a Virginia byway or scenic highway, except directional and official signs and notices defined in this article and regulations adopted under this article, on-premises signs, and signs advertising the sale or lease of property upon which they are located.

305 § 33.1-371.1. Selective pruning permits; fees; penalty.

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

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

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

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

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

328 2. The requirements of this section shall not apply to the owner or authorized agent of the owner of  
329 any sign, advertisement, or advertising structure exempted from the provisions of this article by  
330 § 33.1-355.

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

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

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

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

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

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

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

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

366 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 33.1-377.1, 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. Fines and penalties for violation.

A. Notwithstanding any other provision of law, any owner of any sign that violates any provision of this chapter or other applicable law or regulations and who fails to take corrective action after 30 days as specified in a written notice from the Commissioner shall be subject to any or all of the following penalties:

1. A fine of not more than \$250 per violation. If the violation involves a billboard sign regulated under this chapter, the fine shall be not more than \$500. In either case, 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. The Commissioner or his designee may recover all fines 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, (ii) the use of the Setoff Debt Collection Act (§ 58.1-520 et seq.), and (iii) collection through the Department of Motor Vehicles.

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