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## HOUSE BILL NO. 1587

Offered January 9, 2013

Prefiled January 4, 2013

*A BILL to amend and reenact §§ 4.1-103 and 4.1-509 of the Code of Virginia, relating to alcoholic beverage control; powers of Alcoholic Beverage Control Board to issue certain case decisions.*

Patrons—Albo, Anderson, Gilbert, Greason, Kilgore, Knight, Rush and Watson; Senators: Barker, Carrico, Martin and Puller

Referred to Committee on General Laws

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

**1. That §§ 4.1-103 and 4.1-509 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-103. General powers of Board.**

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

6. Lease, occupy and improve any land or building required for the purposes of this title;

7. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;

10. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

12. *Render a determination in response to a petition from a private party or Board staff, filed pursuant to § 4.1-509, requesting the issuance of a case decision, as defined in § 2.2-4001, declaring whether contemplated action of a named party would be lawful or unlawful if carried out;*

13. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

~~13-14.~~ Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of this chapter;

~~14-15.~~ Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

~~15-16.~~ Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

~~16-17.~~ Maintain actions to enjoin common nuisances as defined in § 4.1-317;

~~17-18.~~ Establish minimum food sale requirements for all retail licensees; and

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18-19. Do all acts necessary or advisable to carry out the purposes of this title.

**§ 4.1-509. Board proceedings and appellate review.**

A. The Board, upon petition by any beer wholesaler or brewery, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred; *or that the contemplated action of a named party would violate any provision of this chapter if carried out*, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred *or would occur if the contemplated action of a named party were carried out*. The Board may, if it finds that a brewery or beer wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and ~~attorneys'~~ attorney fees to the prevailing party. *The Board may, if it finds that a brewery or beer wholesaler has frivolously maintained a petition or defense to a petition pursuant to this chapter, award reasonable costs and attorney fees to the prevailing party.*

B. *In addition to the petitions filed pursuant to subsection A, any beer wholesaler may file a petition against a brewery, and any brewery may file a petition against a beer wholesaler, in which the petitioner alleges that the respondent named in the petition as a matter of past or present fact has violated or attempted to violate, or has contemplated action that if carried out would violate any provision of this chapter, § 4.1-111, subdivision 1 or 3 of § 4.1-208, subdivision 2 of § 4.1-223, or any regulation adopted by the Board pursuant to such provisions. The Board shall have the responsibility to promptly issue a written determination as to whether such violations or attempted violations have occurred or whether such violations would occur if such contemplated action of a named party were to be carried out. Any document that describes or authorizes any act that could be undertaken by a beer wholesaler or brewery shall constitute conclusive evidence that such action is contemplated action within the scope of this section if that writing was created by or on behalf of such beer wholesaler or brewery.*

C. *Any petition filed pursuant to subsection B shall be delivered to the Secretary of the Board. The petitioner shall have the burden of proving allegations of law violations stated in the petition. Where applicable, the petitioner shall have the burden of proving facts that are necessary to establish alleged contemplated actions stated in the petition that, if carried out, would violate any provision of this chapter, § 4.1-111, subdivision 1 or 3 of § 4.1-208, subdivision 2 of § 4.1-223, or any regulation adopted by the Board pursuant to such provisions. Nothing in this section nor any act or omission of any private party to a proceeding conducted under this chapter shall preclude the Board from enforcing any provision of this title.*

D. *Recognized industry trade associations shall have the right to appear as amicus curiae in Board proceedings filed pursuant to this section in which a party is seeking a declaratory determination on one or more questions of law.*

B-E. All proceedings under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C-F. In all proceedings under this chapter the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing or manufacturing practices or processes of the brewery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the brewery and wholesaler on condition that such information will not be disclosed by the Board, the brewery, or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.