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SENATE BILL NO. 1287

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 4.1-101.01, 4.1-101.02, 4.1-101.05, 4.1-101.07, 4.1-101.010, 4.1-103, and 4.1-103.1, as they shall become effective, 4.1-225, and 4.1-227 of the Code of Virginia and to amend and reenact the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015, to amend the Code of Virginia by adding a section numbered 4.1-103.03, and to repeal the sixth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015, relating to the Virginia Alcoholic Beverage Control Authority.*

Patron—McDougle

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-101.01, 4.1-101.02, 4.1-101.05, 4.1-101.07, 4.1-101.010, 4.1-103, and 4.1-103.1, as they shall become effective, 4.1-225, and 4.1-227 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-103.03 as follows:

§ 4.1-101.01. (Effective July 1, 2018) Board of Directors; membership; terms; compensation.

A. ~~The~~ *Beginning January 15, 2018, until July 1, 2018, the Authority shall be governed by a Board of Directors, which shall initially consist of the members of the Alcoholic Beverage Control Board, in accordance with § 4.1-102, and two nonlegislative citizen members appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years immediately preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § 4.1-101.03. Notwithstanding the provisions of § 4.1-102, the provisions of subsection F shall to apply to such members. The terms of the members of the Board of Directors of the Authority shall be staggered as follows:*

1. For the three members who are members of the Alcoholic Beverage Control Board, their original terms shall continue and upon expiration of such terms, if reappointed, one member shall serve a term of five years, one member shall serve a term of four years, and one member shall serve a term of three years; and

2. For the two nonlegislative citizen members, one member shall serve a term of two years, and one member shall serve a term of one year.

B. *Beginning July 1, 2018, the Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § 4.1-101.03.*

~~B.~~ C. *After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

~~C.~~ D. *The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise*

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59 the rights and perform all duties of the Authority.

60 ~~D. E.~~ The Board shall meet at least every 60 days for the transaction of its business. Special
61 meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive
62 Officer or upon the written request of a majority of the Board members.

63 ~~E. F.~~ Members of the Board shall receive annually such salary, compensation, and reimbursement of
64 expenses for the performance of their official duties as set forth in the general appropriation act for
65 members of the House of Delegates when the General Assembly is not in session, except that the
66 chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses
67 for the performance of his official duties as set forth in the general appropriation act for a member of
68 the Senate of Virginia when the General Assembly is not in session.

69 ~~F. G.~~ The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et
70 seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the
71 employees of the Authority.

72 **§ 4.1-101.02. (Effective July 1, 2018) Appointment, salary, and powers of Chief Executive**
73 **Officer; appointment of confidential assistant to the Chief Executive Officer.**

74 A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed
75 by the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief
76 Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree
77 in business or a related field of study; and shall possess a minimum of seven years of demonstrated
78 experience or expertise in the direct management, supervision, or control of a business or legal affairs.
79 The Chief Executive Officer shall receive such compensation as determined by the Board and approved
80 by the Governor, including any performance bonuses or incentives as the Board deems advisable. The
81 Chief Executive Officer shall be subject to a background check in accordance with § 4.1-101.03. The
82 Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or
83 imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved
84 by the Governor. The Chief Executive Officer may be removed from office by the Governor for cause,
85 including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence,
86 misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or
87 targets as set by the Board and approved by the Governor, failure to carry out the policies of the
88 Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a
89 lawful directive of the Governor.

90 B. The Chief Executive Officer shall devote his full time to the performance of his official duties
91 and shall not be engaged in any other profession or occupation.

92 C. The Chief Executive Officer shall supervise and administer the operations of the Authority in
93 accordance with this title.

94 D. The Chief Executive Officer shall:

95 1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the
96 Authority and preserve at the Authority's general office all books, documents, and papers of the
97 Authority;

98 2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may
99 be conferred or imposed upon him by law;

100 3. ~~Appoint a chief financial officer and employ~~ Employ or retain such *special* agents or employees
101 subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority
102 conferred upon the Chief Executive Officer, subject to the Board's approval; and

103 4. Make recommendations to the Board for legislative and regulatory changes.

104 E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the
105 Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local
106 or state level or cause such a contribution to be made on his behalf.

107 F. To assist the Chief Executive Officer in the performance of his duties, the Governor shall also
108 appoint one confidential assistant for administration who shall be deemed to serve on an
109 employment-at-will basis.

110 **§ 4.1-101.05. (Effective July 1, 2018) Employees of the Authority.**

111 A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of
112 the Authority shall be eligible for membership in the Virginia Retirement System *or other retirement*
113 *plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1* and participation in all
114 health and related insurance and other benefits, including premium conversion and flexible benefits,
115 available to state employees as provided by law. Employees of the Authority shall be employed on such
116 terms and conditions as established by the Board. The Board shall develop and adopt policies and
117 procedures that afford its employees grievance rights, ensure that employment decisions shall be based
118 upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion,
119 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.
120 *Notwithstanding any other provision of law, the Board shall develop, implement, and administer a paid*

leave program, which may include annual, personal, and sick leave or any combination thereof. All other leave benefits shall be administered in accordance with Chapter 11 (§ 51.1-1100 et seq.) of Title 51.1, except as otherwise provided in this section.

B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to special agents and employees of the ~~former~~ Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the ~~former~~ Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." *In order to facilitate an orderly and efficient transition and ensure the continuation of operations during the transition from the Department of Alcoholic Beverage Control (the Department) to the Authority, the Authority shall have discretion, subject to the time limitations contained herein, to determine the date upon which any employee's employment with the Department will end or be transferred to the Authority. This date shall be stated in the written notice and shall be referred to herein as the "Transition Date." No Transition Date shall occur prior to July 1, 2018, without the mutual agreement of the employee and the Authority. No Transition Date shall be set beyond December 31, 2018.* Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the ~~former~~ Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act. *Any eligibility for such severance benefits shall be contingent on the continued employment through an employee's Transition Date.*

C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.

D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.

E. *Notwithstanding any other provision of law, any person whose employment is transferred to the Authority as a result of this section and who was subjected to a criminal history background check as a condition of employment with the Department of Alcoholic Beverage Control shall not be subject to the requirements of § 4.1-103.1, unless the Authority deems otherwise.*

§ 4.1-101.07. (Effective July 1, 2018) Forms of accounts and records; audit; annual report.

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before ~~November 4~~ *December 1* of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.

B. *Notwithstanding any other provision of law, in exercising any power conferred under this title, the Authority may implement and maintain independent payroll and nonpayroll disbursement systems. These systems and related procedures shall be subject to review and approval by the State Comptroller. Upon agreement with the State Comptroller, the Authority may report summary level detail on both payroll and nonpayroll transactions to the State Comptroller through the Department of Accounts' financial management system or its successor system. Such reports shall be made in accordance with policies, procedures, and directives as prescribed by the State Comptroller. A nonpayroll disbursement system shall include all disbursements and expenditures, other than payroll. Such disbursements and expenditures shall include travel reimbursements, revenue refunds, disbursements for vendor payments, petty cash, and interagency payments.*

§ 4.1-101.010. (Effective July 1, 2018) Exemption of Authority from personnel and procurement procedures; information systems; etc.

A. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 or Article 2 (§ 51.1-1104 et seq.) of Chapter 11 of Title 51.1 apply to the Authority in the exercise of any power conferred under this title.

B. To effect its implementation, the Authority's procurement of goods, services, insurance, and construction and the disposition of surplus materials shall be exempt from:

1. State agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials under §§ 2.2-1124 and 2.2-1125;

2. The requirement to purchase from the Department for the Blind and Vision Impaired under § 2.2-1117; and

3. Any other state statutes, rules, regulations, or requirements relating to the procurement of goods, services, insurance, and construction, including Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities, and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Department of General Services of contracts for the construction of the Authority's capital projects and construction-related professional services under § 2.2-1132.

C. The Authority (i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services; (ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system subject to the terms and conditions agreed upon between the Authority and the Department of General Services; and (iii) shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Authority's procurement opportunities on one website.

§ 4.1-103. (Effective July 1, 2018) General powers of Board.

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;

4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;

5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and *special* agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;

6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. *The Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. The Board shall remain responsible for the performance of any such duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;*

8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;

9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;

10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title 2.2;

11. 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;

12. Buy and sell any mixers;

13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass), and 25 (clothing);

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

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

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

17. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;

18. 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;

19. 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;

20. 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; however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline alcohol;

21. 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;

22. 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~~ *decide cases*, subject to final decision by the Board, on application of any party aggrieved. *The Board may enter into consent agreements and may request and accept from any applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may include an admission or a finding of a violation. A consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial review under the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), but may be considered by the Board in future disciplinary proceedings;*

23. 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;

24. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111;

25. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

26. Assess and collect civil penalties and civil charges for violations of this title and Board

305 regulations;

306 27. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

307 28. Establish minimum food sale requirements for all retail licensees;

308 29. Review and approve any proposed legislative or regulatory changes suggested by the Chief

309 Executive Officer as the Board deems appropriate;

310 30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement

311 activities undertaken to enforce the provisions of this title; and

312 31. Do all acts necessary or advisable to carry out the purposes of this title.

313 **§ 4.1-103.03. Additional powers; mediation; alternative dispute resolution; confidentiality.**

314 A. As used in this section:

315 "Appropriate case" means any alleged license violation or objection to the application for a license

316 in which it is apparent that there are significant issues of disagreement among interested persons and

317 for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public

318 interest.

319 "Dispute resolution proceeding" means the same as that term is defined in § 8.01-576.4.

320 "Mediation" means the same as that term is defined in § 8.01-576.4.

321 "Neutral" means the same as that term is defined in § 8.01-576.4.

322 B. The Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve

323 underlying issues or reach a consensus or compromise on contested issues. Mediation and other dispute

324 resolution proceedings as authorized by this section shall be voluntary procedures that supplement,

325 rather than limit, other dispute resolution techniques available to the Board. Mediation or a dispute

326 resolution proceeding may be used for an objection to the issuance of a license only with the consent of,

327 and participation by, the applicant for licensure and shall be terminated at the request of such

328 applicant.

329 C. Any resolution of a contested issue accepted by the Board under this section shall be considered

330 a consent agreement as provided in subdivision 22 of § 4.1-103. The decision to use mediation or a

331 dispute resolution proceeding is in the Board's sole discretion and shall not be subject to judicial

332 review.

333 D. The Board may adopt rules and regulations, in accordance with the Administrative Process Act

334 (§ 2.2-4000 et seq.), for the implementation of this section. Such rules and regulations may include (i)

335 standards and procedures for the conduct of mediation and dispute resolution proceedings, including an

336 opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the

337 appointment and function of a neutral to encourage and assist parties to voluntarily compromise or

338 settle contested issues; and (iii) procedures to protect the confidentiality of papers, work products, or

339 other materials.

340 E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution

341 proceeding shall govern all such proceedings held pursuant to this section except where the Board uses

342 or relies on information obtained in the course of such proceeding in granting a license, suspending or

343 revoking a license, or accepting payment of a civil penalty or investigative costs. However, a consent

344 agreement signed by the parties shall not be confidential.

345 **§ 4.1-103.1. (Effective July 1, 2018) Criminal history records check required on certain**

346 **employees; reimbursement of costs.**

347 All persons hired by the Authority whose job duties involve access to or handling of the Authority's

348 funds or merchandise shall be subject to a criminal history records check before, and as a condition of,

349 employment.

350 ~~No person who has~~ The Board shall develop policies regarding the employment of persons who have

351 been convicted of a felony or a crime involving moral turpitude ~~shall be employed or appointed by the~~

352 ~~Authority.~~

353 The Department of State Police shall be reimbursed by the Authority for the cost of investigations

354 conducted pursuant to this section.

355 **§ 4.1-225. Grounds for which Board may suspend or revoke licenses.**

356 The Board may suspend or revoke any license other than a brewery license, in which case the Board

357 may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

358 1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an

359 association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the

360 licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital

361 stock, or if the licensee is a limited liability company, any member-manager or any member owning 10

362 percent or more of the membership interest of the limited liability company:

363 a. Has misrepresented a material fact in applying to the Board for such license;

364 b. Within the five years immediately preceding the date of the hearing held in accordance with

365 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the

366 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,

applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;

c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;

d. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;

e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;

f. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;

g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

h. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;

k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

l. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;

m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;

o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein; or

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety; or

q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises.

2. The place occupied by the licensee:

a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

7. Any other cause authorized by this title.

§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension; ~~or it and also may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both and collect such civil penalties as it deems appropriate.~~

C. Following notice to (i) the licensee of a hearing ~~which that~~ may result in the suspension or revocation of his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation a consent agreement as authorized in subdivision 22 of § 4.1-103. The notice shall advise the licensee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq.); and (c) (1) accept the proposed restrictions for operating under the license, (2) accept the period of suspension of the licensed

privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation or written order:

1. Designate those (i) objections to an application or (ii) alleged violations that will proceed to an initial hearing;

2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;

3. Provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server or seller training certified in advance by the Board;

4. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and

5. Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation. No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this title or Board regulations.

F. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of subsection E shall be advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing.

2. That the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015 are amended and reenacted as follows:

4. That the provisions of this act shall become effective on July 1 January 15, 2018, except that the provisions of the (i) thirteenth, fourteenth, and fifteenth enactments of this act shall become effective on July 1, 2015; (ii) third enactment of this act shall become effective on July 1, 2018; and (iii) eleventh enactment of this act shall become effective on January 1, 2019.

5. That the Alcoholic Beverage Control Board or its successor in interest shall continue to receive IT infrastructure and security services pursuant to Chapter 20.1 (§ 2.2-2005et seq.) of Title 2.2 of the Code of Virginia until July 1, 2019, unless otherwise provided for as part of the Commonwealth's disentanglement plan pursuant to the Comprehensive Infrastructure Agreement with Northrop Grumman. However, in no event shall the Virginia Alcoholic Beverage Control Authority be disentangled prior to October 1, 2018 such time as the Alcoholic Beverage Control Board or its successor in interest elects to no longer receive such services. However, any such departure from services provided under Chapter 20.1 (§ 2.2-2005 et seq.) of the Code of Virginia shall not be made prior to October 1, 2018. The Alcoholic Beverage Control Board or its successor in interest may determine to continue to receive all or partial services pursuant to Chapter 20.1 (§ 2.2-2005 et seq.) of the Code of Virginia based on mutual agreement between it and the Virginia Information Technologies Agency.

12. That any accrued sick leave or annual leave of any employee of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee and that any accrued sick leave of any employee of the Department of Alcoholic Beverage Control participating in the Traditional Sick Leave Program who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall be paid out to the employee in accordance with applicable policies and procedures adopted by the Department of Human Resource Management.

3. That the sixth enactment of Chapters 38 and 730 of the Acts of Assembly of 2015 is repealed effective January 15, 2018.

4. That, beginning January 15, 2018, special agents and employees of the Alcoholic Beverage Control Board (the Board) shall be considered employees and special agents of the Department of Alcoholic Beverage Control (the Department) for the purpose of maintaining continued employment. The Department, including such special agents and employees, shall continue in existence through December 31, 2018. The Board shall continue in existence until July 1, 2018.

551 During the period of January 1, 2018, through December 31, 2018, (i) the Department and the
552 Virginia Alcoholic Beverage Control Authority (the Authority) shall exist simultaneously for the
553 purpose of transferring special agents and employees and transitioning operations of the
554 Department to the Authority in accordance with § 4.1-101.05 of the Code of Virginia, as amended
555 by this act, and (ii) the Board of Directors of the Authority shall carry out the duties and
556 responsibilities of the Board, notwithstanding elimination of the Board on July 1, 2018, for the
557 purpose of transferring special agents and employees and facilitating the transition of operations
558 from the Board and Department to the Authority.

559 5. That prior to July 1, 2018, the Alcoholic Beverage Control Authority (the Authority) and the
560 Department of Alcoholic Beverage Control (the Department) shall enter into an operating
561 agreement whereby employees and special agents of the Department are authorized to exercise the
562 powers and duties conferred by the Alcoholic Beverage Control Board that are incidental to their
563 employment or agency with the Department and conferred upon the Board of Directors of the
564 Authority in accordance with § 4.1-103 of the Code of Virginia, as amended by this act.

565 6. That any agent or employee of the Department of Alcoholic Beverage Control vested with any
566 powers or duties assigned or delegated by the Alcoholic Beverage Control Board shall be
567 authorized to continuously exercise the same powers and duties conferred upon him as if
568 designated the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

569 7. That the provisions of § 4.1-101.01 of the Code of Virginia, as amended by this act, shall expire
570 on July 1, 2018.

571 8. That a current member of the Alcoholic Beverage Control Board is eligible for reappointment
572 in accordance with the provisions of this act, provided that such member meets the qualifications
573 set forth in § 4.1-101.01 of the Code of Virginia, as amended by this act.