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HOUSE BILL NO. 815

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 4.1-103, 4.1-103.03, and 4.1-227 of the Code of Virginia, relating to alcoholic beverage control; general powers of the Board of Directors of the Virginia Alcoholic Beverage Control Authority; prohibition against engaging in any advertising that is calculated to induce sales of alcoholic beverages sold by the Board.

Patron—Head

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-103, 4.1-103.03, and 4.1-227 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-103. General powers of Board.

A. 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

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59 trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass),
60 and 25 (clothing);

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

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

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

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

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

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

82 20. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to
83 be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed
84 thereon; however, no container sold in or shipped into the Commonwealth shall include powdered or
85 crystalline alcohol;

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

89 22. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
90 production of records, memoranda, papers and other documents before the Board or any agent of the
91 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
92 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take
93 testimony thereunder, and decide cases, subject to final decision by the Board, on application of any
94 party aggrieved. The Board may enter into consent agreements and may request and accept from any
95 applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a
96 license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may
97 include an admission or a finding of a violation. A consent agreement shall not be considered a case
98 decision of the Board and shall not be subject to judicial review under the provisions of the
99 Administrative Process Act (§ 2.2-4000 et seq.), but may be considered by the Board in future
100 disciplinary proceedings;

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

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

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

110 26. Assess and collect civil penalties and civil charges for violations of this title and Board
111 regulations;

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

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

114 29. Review and approve any proposed legislative or regulatory changes suggested by the Chief
115 Executive Officer as the Board deems appropriate;

116 30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement
117 activities undertaken to enforce the provisions of this title; and

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

119 *B. The Board shall be prohibited from engaging in any advertising that is calculated to induce sales*
120 *of alcoholic beverages sold by the Board. As used in this subsection, "advertising" means any written or*

verbal statement, illustration, or depiction, including any written, printed, graphic, or other material; billboard, sign, or other outdoor display; publication; or radio or television broadcast.

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

A. As used in this section:

"Appropriate case" means any alleged license violation or objection to the application for a license in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest.

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

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

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

B. The Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve underlying issues or reach a consensus or compromise on contested issues. Mediation and other dispute resolution proceedings as authorized by this section shall be voluntary procedures that supplement, rather than limit, other dispute resolution techniques available to the Board. Mediation or a dispute resolution proceeding may be used for an objection to the issuance of a license only with the consent of, and participation by, the applicant for licensure and shall be terminated at the request of such applicant.

C. Any resolution of a contested issue accepted by the Board under this section shall be considered a consent agreement as provided in subdivision A 22 of § 4.1-103. The decision to use mediation or a dispute resolution proceeding is in the Board's sole discretion and shall not be subject to judicial review.

D. The Board may adopt rules and regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of this section. Such rules and regulations may include (i) standards and procedures for the conduct of mediation and dispute resolution proceedings, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work products, or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Board uses or relies on information obtained in the course of such proceeding in granting a license, suspending or revoking a license, or accepting payment of a civil penalty or investigative costs. However, a consent agreement signed by the parties shall not be confidential.

§ 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 may impose

182 and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil
183 penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the
184 date of the violation or \$5,000 for the second violation occurring within five years immediately
185 preceding the date of the second violation. However, if the violation involved selling alcoholic beverages
186 to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic
187 beverages by underage, intoxicated, or interdicted persons, the Board may impose a civil penalty not to
188 exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the
189 violation and \$6,000 for a second violation occurring within five years immediately preceding the date
190 of the second violation in lieu of such suspension or any portion thereof, or both. Upon making a
191 finding that aggravating circumstances exist, the Board may also impose a requirement that the licensee
192 pay for the cost incurred by the Board not exceeding \$10,000 in investigating the licensee and in
193 holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.

194 C. Following notice to (i) the licensee of a hearing that may result in the suspension or revocation of
195 his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept a
196 consent agreement as authorized in subdivision A 22 of § 4.1-103. The notice shall advise the licensee
197 or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive
198 any right to a hearing or an appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq.);
199 and (c)(1) accept the proposed restrictions for operating under the license, (2) accept the period of
200 suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the
201 period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

202 D. In case of an offense by the holder of a brewery license, the Board may (i) require that such
203 holder pay the costs incurred by the Board in investigating the licensee, (ii) suspend or revoke the
204 on-premises privileges of the brewery, and (iii) impose a civil penalty not to exceed \$25,000 for the first
205 violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or
206 revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed
207 \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling
208 beer manufactured by it to the owners of boats registered under the laws of the United States sailing for
209 ports of call of a foreign country or another state, and to persons outside the Commonwealth.

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

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

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

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

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

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