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HOUSE BILL NO. 509

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 2.2-118, 4.1-116, 4.1-235, 9.1-166, 15.2-3209, 38.2-401, and 58.1-3259 of the Code of Virginia and to repeal § 4.1-117 of the Code of Virginia, relating to alcoholic beverage control; disposition of net profits.*

Patron—Brink

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-118, 4.1-116, 4.1-235, 9.1-166, 15.2-3209, 38.2-401, and 58.1-3259 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-118. Governor to administer substance abuse prevention program; special fund created.

A. It shall be the responsibility of the Governor to administer the substance abuse prevention program within the Commonwealth and to authorize, direct, and coordinate activities of agencies of the Commonwealth in such program. The Governor is hereby empowered to establish an office of substance abuse prevention within the office of the Governor to assist in the coordination of the substance abuse prevention activities of the Commonwealth, review substance abuse prevention program expenditures by agencies of the Commonwealth, and determine the direction and appropriateness of such expenditures. The Governor shall cooperate with federal, state and local agencies, private and public agencies, interested organizations, and individuals in order to prevent substance abuse within the Commonwealth. The Governor shall report annually by December 1 of each year to the General Assembly on the activities of the office.

B. *There is hereby created in the state treasury a special nonreverting fund to be known as the Alcohol Abuse Treatment and Prevention Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Net profits as specified by § 4.1-116 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of expenses incurred by the Department of Behavioral Health and Development Services for the care, treatment, study, and rehabilitation of alcoholics. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of the Department of Behavioral Health and Development Services.*

§ 4.1-116. Disposition of moneys collected by Board; creation of Enterprise Fund; reserve fund.

A. All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description whatever, as required by § 2.2-1802.

All moneys so paid into the state treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in establishing and maintaining government stores and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of distilleries and the manufacture of alcoholic beverages.

B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to the general fund of the state treasury as follows: (i) two-thirds shall be transferred to the Alcohol Abuse Treatment and Prevention Fund created pursuant to § 2.2-118 and (ii) one-third shall be transferred to the Law-Enforcement Expenditure Fund created pursuant to § 9.1-166. The Comptroller shall transfer such amounts quarterly, within fifty 50 days after the close of each quarter or as otherwise provided in the appropriation act. As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration of this title and to provide for the depreciation on the buildings, plants and equipment owned, held or operated by the Board.

C. The term "net profits" as used in this section means the total of all moneys collected by the Board less all costs, expenses and charges authorized by this section.

§ 4.1-235. Collection; computation, distribution of tax on wine and other alcoholic beverages; refunds

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HB509

59 and adjustments.

60 A. The Board shall collect the state taxes levied pursuant to § 4.1-234 as follows:

61 1. Collection shall be from the purchaser at the time of or prior to sale, except as to sales made to
62 wholesale wine licensees. Wholesale wine licensees shall collect the taxes at the time of or prior to sale
63 to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be
64 required by the Board, at the time and in the manner prescribed by the Board.

65 2. In establishing the prices for items sold by it to persons other than wholesale licensees, the Board
66 shall include a reasonable markup. The liter tax or twenty percent tax, as appropriate, shall then be
67 added to the price of each container of alcoholic beverages. The four percent tax on vermouth and farm
68 winery wines shall then be added for those products. In all cases the final price for each container may
69 be established so as to be a multiple of five.

70 In accounting for the state tax on sales the Board shall divide the net sales for the quarter by 1.20
71 and multiply the result by twenty percent. As to the sale of vermouth and farm winery wine, the Board
72 shall divide the net sales for the quarter by 1.04 and multiply the result by four percent.

73 B. The amount of tax collected under this section during each quarter shall, within fifty days after
74 the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him
75 from the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall,
76 not later than June 20 of every year, estimate the yield of the state tax on sales imposed by § 4.1-234
77 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon
78 the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special
79 fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on
80 account of an overestimate or underestimate as may be indicated within fifty days after the close of the
81 quarter ending on June 30.

82 Forty-four percent of the amount derived from the liter tax levied pursuant to § 4.1-234 shall be
83 transferred to the general fund and paid to the several counties, cities, and towns of the Commonwealth
84 in proportion to their respective populations, and is appropriated for such purpose.

85 The counties, cities, and towns shall in no event receive from the taxes derived from the sale of
86 wines less revenue than was received by such counties, cities, and towns for the year ending June 30,
87 1976.

88 Twelve percent of the amount derived from the liter tax levied shall be retained by the Board as
89 operating revenue and distributed as provided in § 4.1-117.

90 C. As used in this section, the term "net sales" means gross sales less refunds to customers.

91 D. The Board may make a refund or adjustment of any tax paid to it under this section when (i) the
92 wine upon which such tax has been paid has been condemned and is not permitted to be sold in the
93 Commonwealth, or (ii) wine is returned by a retail licensee to a wholesale wine licensee for refund in
94 accordance with Board regulations or approval. Any claim for such refund or adjustment shall be made
95 to the Board in the report filed with the Board by the wholesale wine licensee for the period in which
96 such return and refund occurs.

97 § 9.1-166. Local governments to receive state funds for law enforcement; special fund created.

98 A. The Department of the Treasury shall disburse funds to cities, towns and counties, to aid in the
99 law-enforcement expenditures of those local governments, pursuant to the terms of this article.

100 B. *There is hereby created in the state treasury a special nonreverting fund to be known as the*
101 *Law-Enforcement Expenditure Fund, hereafter referred to as "the Fund." The Fund shall be established*
102 *on the books of the Comptroller. Net profits as specified by § 4.1-116 shall be paid into the state*
103 *treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and*
104 *be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each*
105 *fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall*
106 *be used solely for the law-enforcement expenditures of local governments pursuant to the terms of this*
107 *article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on*
108 *warrants issued by the Comptroller upon written request signed by the Director of the Department or*
109 *his designee.*

110 § 15.2-3209. Hearing and decision.

111 The special court shall hear the case upon the evidence introduced as evidence is introduced in civil
112 cases.

113 The court shall determine the necessity for and expediency of annexation, considering the best
114 interests of the people of the county and the city or town, services to be rendered and needs of the
115 people of the area proposed to be annexed, the best interests of the people in the remaining portion of
116 the county and the best interests of the Commonwealth in promoting strong and viable units of
117 government.

118 Related to the best interests of the people of the county and city or town, the court shall consider to
119 the extent relevant:

120 1. The need for urban services in the area proposed for annexation, the level of services provided in

the county, city or town, and the ability of such county, city or town to provide services in the area sought to be annexed, including, but not limited to: sewage treatment, water, solid waste collection and disposal, public planning, subdivision regulation and zoning, crime prevention and detection, fire prevention and protection, public recreational facilities, library facilities, curbs, gutters, sidewalks, storm drains, street lighting, snow removal, and street maintenance;

2. The current relative level of services provided by the county and the city or town;

3. The efforts by the county and the city or town to comply with applicable state policies with respect to environmental protection, public planning, education, public transportation, housing, or other state service policies promulgated by the General Assembly;

4. The community of interest which may exist between the petitioner, the territory sought to be annexed and its citizens as well as the community of interest that exists between such area and its citizens and the county. The term "community of interest" may include, but not be limited to, the consideration of natural neighborhoods, natural and man-made boundaries, and the similarity of needs of the people of the annexing area and the area sought to be annexed;

5. Any arbitrary prior refusal by the governing body of the petitioner or the county whose territory is sought to be annexed to enter into cooperative agreements providing for joint activities which would have benefited citizens of both localities; however, the court shall draw no adverse inference from joint activities undertaken and implemented pursuant to cooperative agreements of the parties. It is the purpose of this subdivision to encourage adjoining localities to enter into such cooperative agreements voluntarily, and without apprehension of prejudice;

6. The need for the city or town seeking to annex to expand its tax resources, including its real estate and personal property tax base;

7. The need for the city or town seeking to annex to obtain land for industrial or commercial use, together with the adverse effect on a county of the loss of areas suitable and developable for industrial or commercial uses;

8. The adverse effect of the loss of tax resources and public facilities on the ability of the county to provide service to the people in the remaining portion of the county; and

9. The adverse impact on agricultural operations in the area proposed for annexation.

If a majority of the court is of the opinion that annexation is not necessary or expedient, the petition for annexation shall be dismissed. If a majority of the court is satisfied of the necessity for and expediency of annexation, it shall determine the terms and conditions upon which annexation is to be had, and shall enter an order granting the petition. The court may in the order awarding annexation of any area, fix terms and conditions, including but not limited to the rights provided in Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to protect agricultural operations in the area annexed. In all cases, the court shall render a written opinion.

The order granting the petition shall set forth in detail all such terms and conditions upon which the petition is granted. Every annexation order shall be effective on January 1 following the year in which issued or, in the discretion of the court, on the second January 1 following the year in which issued; however, the court, upon joint petition of the parties, may order an annexation effective on any other date. Unless the parties otherwise agree, all taxes assessed in the territory annexed for the year at the end of which annexation becomes effective and for all prior years shall be paid to the county.

In any proceedings instituted by a city or town, no annexation shall be decreed unless the court is satisfied that the city or town has substantially complied with the conditions of the last preceding annexation by such city or town, or that compliance therewith was impossible, or that sufficient time for compliance has not elapsed.

In the event that the court enters an order granting the petition, a copy of the order shall be certified to the Secretary of the Commonwealth. ~~The Secretary shall immediately transmit a copy of such order to the State Comptroller for his use in complying with § 4.1-117.~~

§ 38.2-401. Fire Programs Fund.

A. 1. There is hereby established in the state treasury a special nonreverting fund to be known as the Fire Programs Fund, hereinafter referred to as "the Fund." The Fund shall be administered by the Department of Fire Programs under policies and definitions established by the Virginia Fire Services Board. All moneys collected pursuant to the assessment made by the Commission pursuant to subdivision 2 of this subsection shall be paid into the state treasury and credited to the Fund. The Fund shall also consist of any moneys appropriated thereto by the General Assembly and any grants or other moneys received by the Virginia Fire Services Board or Department of Fire Programs for the purposes set forth in this section. Any moneys deposited to or remaining in such Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Interest earned on all moneys in the Fund and interest earned on moneys held by the Commission pursuant to subdivision 2 of this subsection prior to the deposit of such moneys into the Fund, including interest earned on such moneys during any period when the Commission is reconciling

182 payments from insurers, shall remain in or be deposited into the Fund, as the case may be, and be
183 credited to it. Such interest shall be set aside for fire service purposes in accordance with policies
184 developed by the Virginia Fire Services Board. Notwithstanding any other provision of law to the
185 contrary, policies established by the Virginia Fire Services Board for the administration of the Fund, and
186 any grants provided from the Fund, that are not inconsistent with the purposes set out in this section
187 shall be binding upon any locality that accepts such funds or related grants. The Commission shall be
188 reimbursed from the Fund for all expenses necessary for the administration of this section. The balance
189 of moneys in the Fund shall be allocated periodically as provided in this section. Expenditures and
190 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
191 Comptroller upon written request signed by the Executive Director of the Department of Fire Programs
192 (Director) or his designee.

193 2. The Commission shall annually assess against all licensed insurance companies doing business in
194 the Commonwealth by writing any type of insurance as defined in §§ 38.2-110, 38.2-111, 38.2-126,
195 38.2-130 and 38.2-131 and those combination policies as defined in § 38.2-1921 that contain insurance
196 as defined in §§ 38.2-110, 38.2-111 and 38.2-126, an assessment in the amount of one percent of the
197 total direct gross premium income for such insurance. Such assessment shall be apportioned, assessed
198 and paid as prescribed by § 38.2-403. In any year in which a company has no direct gross premium
199 income or in which its direct gross premium income is insufficient to produce at the rate of assessment
200 prescribed by law an amount equal to or in excess of \$100, there shall be so apportioned and assessed
201 against such company a contribution of \$100.

202 B. After reserving funds for the Fire Services Grant Program and Dry Fire Hydrant Grant Program
203 pursuant to subsection D, 75 percent of the remaining moneys available for allocation from the Fund
204 shall be allocated to the several counties, cities and towns of the Commonwealth providing fire service
205 operations to be used for the improvement of volunteer and career fire services in each of the receiving
206 localities. Funds allocated to the counties, cities and towns pursuant to this subsection shall not be used
207 directly or indirectly to supplant or replace any other funds appropriated by the counties, cities and
208 towns for fire service operations. Such funds shall be used solely for the purposes of training volunteer
209 or career firefighting personnel in each of the receiving localities; funding fire prevention and public
210 safety education programs; constructing, improving and expanding regional or local fire service training
211 facilities; purchasing emergency medical care and equipment for fire personnel; payment of personnel
212 costs related to fire and medical training for fire personnel; or for purchasing personal protective
213 equipment, vehicles, equipment and supplies for use in the receiving locality specifically for fire service
214 purposes. Notwithstanding any other provision of the Code, when localities use such funds to construct,
215 improve or expand fire service training facilities, fire-related training provided at such training facilities
216 shall be by instructors certified or approved according to policies developed by the Virginia Fire
217 Services Board. Distribution of this 75 percent of the Fund shall be made on the basis of population as
218 provided for in §§ 4.1-116 and 4.1-117; however, no county or city eligible for such funds shall receive
219 less than \$10,000, nor eligible town less than \$4,000. The Virginia Fire Services Board shall be
220 authorized to exceed allocations of \$10,000 for eligible counties and cities and \$4,000 for eligible towns,
221 respectively. Allocations to counties, cities, and towns receiving such allocations shall be fair and
222 equitable as set forth in Board policy. Any increases or decreases in such allocations shall be uniform
223 for all localities. In order to remain eligible for such funds, each receiving locality shall report annually
224 to the Department on the use of the funds allocated to it for the previous year and shall provide a
225 completed Fire Programs Fund Disbursement Agreement form. Each receiving locality shall be
226 responsible for certifying the proper use of the funds. If, at the end of any annual reporting period, a
227 satisfactory report and a completed agreement form have not been submitted by a receiving locality, any
228 funds due to that locality for the next year shall not be retained. Such funds shall be added to the 75
229 percent of the Fund allocated to the counties, cities, and towns of the Commonwealth for improvement
230 of fire services in localities.

231 C. The remainder of the moneys available for allocation from the Fund shall be used for (i) the
232 purposes of carrying out the powers and duties assigned to the Department of Fire Programs under
233 Chapter 2 (§ 9.1-200) of Title 9.1, which shall include providing funded training and administrative
234 support services for nonfunded training to localities and (ii) the payment of the compensation and costs
235 of expenses of the members of the Fire Services Board in performing their official duties; however, the
236 Fund shall not be used for salaries or operating expenses associated with the Office of the State Fire
237 Marshal.

238 D. The Fire Services Grant Program is hereby established and will be used as grants to provide
239 regional fire services training facilities, to finance the Virginia Fire Incident Reporting System and to
240 build or repair burn buildings as determined by the Virginia Fire Services Board. Beginning January 1,
241 1996, \$1 million from the assessments made pursuant to this section shall be distributed each year for
242 the Fire Services Grant Program to be used as herein provided, and \$100,000 shall be distributed
243 annually for continuing the statewide Dry Fire Hydrant Grant Program. Moneys allocated pursuant to

244 this subsection shall be used for the purposes stated in this subsection, and for no other purpose. All
245 grants provided from these programs shall be administered by the Department according to the policies
246 established by the Virginia Fire Services Board.

247 E. Moneys in the Fund shall not be diverted or expended for any purpose not authorized by this
248 section.

249 F. The Director shall establish written standards for determining the extent to which clients outside
250 the Commonwealth shall be financially responsible for the cost of fire and emergency services training
251 provided by the Department of Fire Programs. Revenues generated by such training shall be retained in
252 the Fire Programs Fund and may be used solely for providing additional funded direct training to
253 members of Virginia's fire and emergency services.

254 § 58.1-3259. Failure of county or city to comply with law on general reassessment of real estate.

255 If any county or city fails to comply with the provisions of this article requiring a general
256 reassessment of real estate periodically in such county or city by omitting such general reassessment in
257 the year required by this article, or by failing to comply with the provisions of § 58.1-3201 requiring
258 assessment at 100 percent fair market value, the Department, on receiving proof of such delinquency,
259 shall so notify the Comptroller, whereupon the Comptroller shall withhold from such county or city the
260 payment of its share of the net profits of the operation of the alcoholic beverage control system as
261 provided for by ~~§ 4.1-117~~ § 4.1-116 until such time as the provisions of § 58.1-3201 have been complied
262 with in such county or city. Results of the Tax Department's official assessment sales ratio study
263 showing such county or city to have a sales assessment ratio lower than 70 percent for the year a
264 general reassessment or annual assessment is effective shall be prima facie proof that such locality has
265 failed to assess at 100 percent.

266 The Department shall notify the Comptroller to pay over the accumulated profits, less a penalty
267 charge of eight percent annually on receipt of the results of an official assessment sales ratio study
268 showing such county or city to have a sales assessment ratio higher than seventy percent.

269 **2. That § 4.1-117 of the Code of Virginia is repealed.**