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HOUSE BILL NO. 359**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on General Laws
on February 7, 2012)

(Patron Prior to Substitute—Delegate McClellan)

A BILL to amend and reenact §§ 4.1-111 and 4.1-201 of the Code of Virginia, relating to alcoholic beverage control; conduct not prohibited; transfers between breweries.

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-111 and 4.1-201 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-111. Regulations of Board.

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. Prescribe the terms and conditions under which credit or debit cards may be accepted from licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

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

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

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

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

76 *14. Prescribe the terms and conditions under which a licensed brewery may manufacture beer*
77 *pursuant to an agreement with a brand owner not under common control with the manufacturing*
78 *brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall*
79 *require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler,*
80 *(ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the*
81 *Board are maintained by the parties.*

82 C. The Board may promulgate regulations that:

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

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

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

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

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

96 § 4.1-201. Conduct not prohibited by this title; limitation.

97 A. Nothing in this title or any Board regulation adopted pursuant thereto shall prohibit:

98 1. Any club licensed under this chapter from keeping for consumption by its members any alcoholic
99 beverages lawfully acquired by such members, provided the alcoholic beverages are not sold, dispensed
100 or given away in violation of this title.

101 2. Any person from having grain, fruit or fruit products and any other substance, when grown or
102 lawfully produced by him, distilled by any distillery licensee, and selling the distilled alcoholic
103 beverages to the Board or selling or shipping them to any person outside of the Commonwealth in
104 accordance with Board regulations. However, no alcoholic beverages so distilled shall be withdrawn
105 from the place where distilled except in accordance with Board regulations.

106 3. Any person licensed to manufacture and sell, or either, in the Commonwealth or elsewhere,
107 alcoholic beverages other than wine or beer, from soliciting and taking orders from the Board for such
108 alcoholic beverages.

109 4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed
110 containers ~~from other breweries owned by such person~~ or the sale, delivery or shipment of such beer, in
111 accordance with Board regulations to (i) persons licensed to sell beer at wholesale, (ii) persons licensed
112 to sell beer at retail for the purpose of resale only as provided in subdivision B 4 of § 4.1-216, (iii)
113 owners of boats registered under the laws of the United States sailing for ports of call of a foreign
114 country or another state, and (iv) persons outside the Commonwealth for resale outside the
115 Commonwealth.

116 5. The granting of any retail license to a brewery or winery licensee, or to an applicant for such
117 license, or to a lessee of such person, a wholly owned subsidiary of such person, or its lessee, provided
118 the places of business or establishments for which the retail licenses are desired are located upon the
119 premises occupied or to be occupied by such winery or brewery, or upon property of such person
120 contiguous to such premises, or in a development contiguous to such premises owned and operated by
121 such person or a wholly owned subsidiary.

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

7. The receipt by a farm winery or winery licensee of deliveries and shipments of wine in closed containers from other wineries or farm wineries located inside or outside the Commonwealth, or the receipt by a winery licensee or farm winery licensee of deliveries and shipments of spirits distilled from fruit or fruit juices in closed containers from distilleries located inside or outside the Commonwealth to be used only for the fortification of wine produced by the licensee in accordance with Board regulations, or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

8. The receipt by a fruit distillery licensee of deliveries and shipments of alcoholic beverages made from fruit or fruit juices in closed containers from other fruit distilleries owned by such licensee, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to persons outside of the Commonwealth for resale outside of the Commonwealth.

9. Any farm winery or winery licensee from shipping or delivering its wine in closed containers to another farm winery or winery licensee for the purpose of additional bottling in accordance with Board regulations and the return of the wine so bottled to the manufacturing farm winery or winery licensee.

10. Any farm winery or winery licensee from selling and shipping or delivering its wine in closed containers to another farm winery or winery licensee, the wine so sold and shipped or delivered to be used by the receiving licensee in the manufacture of wine. Any wine received under this subsection shall be deemed an agricultural product produced in the Commonwealth for the purposes of § 4.1-219, to the extent it is produced from fresh fruits or agricultural products grown or produced in the Commonwealth. The selling licensee shall provide to the receiving licensee, and both shall maintain complete and accurate records of, the source of the fresh fruits or agricultural products used to produce the wine so transferred.

11. Any distiller licensed under this title from serving as an agent of the Board for the sale of alcoholic beverages, other than beer and wine, at a government store established by the Board on the licensed premises of the distiller in accordance with subsection D of § 4.1-119.

12. Any retail on-premises beer licensee, his agent or employee, from giving a sample of beer to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or retail on-premises wine or beer licensee, his agent or employee, from giving a sample of wine or beer to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, or any mixed beverage licensee, his agent or employee, from giving a sample of wine, beer, or spirits to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption. Samples of wine shall not exceed two ounces, samples of beer shall not exceed four ounces, and samples of spirits shall not exceed one-half ounce. No more than two product samples shall be given to any person per visit.

13. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, from selling service items bearing alcoholic brand references to on-premises retail licensees or prohibit any such retail licensee from displaying the service items on the premises of his licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" mean articles of tangible personal property normally used by the employees of on-premises retail licensees to serve alcoholic beverages to customers including, but not limited to, glasses, napkins, buckets, and coasters.

14. Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in the Commonwealth, from distributing to retail licensees and their employees novelties and specialties, including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage advertising. Such items may be distributed to retail licensees in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises.

15. Any retail on-premises wine or beer licensee, his agent or employee from offering for sale or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of wines or beers consisting of samples of not more than five different wines or beers.

16. Any restaurant licensed under this chapter from permitting the consumption of lawfully acquired wine by bona fide customers on the premises in all areas and locations covered by the license. The licensee may charge a corkage fee to such customer for the wine so consumed; however, the licensee shall not charge any other fee to such customer.

B. No deliveries or shipments of alcoholic beverages to persons outside the Commonwealth for resale

183 outside the Commonwealth shall be made into any state the laws of which prohibit the consignee from
184 receiving or selling the same.