

## SENATE BILL NO. 532

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services

on \_\_\_\_\_)

(Patron Prior to Substitute—Senator Stuart)

*A BILL to amend and reenact §§ 4.1-103 and 4.1-215 of the Code of Virginia, relating to alcoholic beverage control; banquet license; municipality or nonprofit organization.*

**Be it enacted by the General Assembly of Virginia:****1. That §§ 4.1-103 and 4.1-215 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-103. General powers of Board.**

The Board shall have the power to:

1. 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 subtitle, 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 subtitle;

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

19. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this subtitle, 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;

20. 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;

21. 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 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

90 the Board in future disciplinary proceedings;

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

96 23. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and  
97 § 4.1-111;

98 24. Grant, suspend, *deactivate*, and revoke licenses for the manufacture, bottling, distribution,  
99 importation, and sale of alcoholic beverages;

100 25. Assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations;

101 26. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

102 27. Establish minimum food sale requirements for all retail licensees;

103 28. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive  
104 Officer as the Board deems appropriate;

105 29. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement  
106 activities undertaken to enforce the provisions of this subtitle;

107 30. Establish and collect fees for all permits set forth in this subtitle, including fees associated with  
108 applications for such permits;

109 31. Impose a requirement that a mixed beverage casino licensee pursuant to subdivision A 14 of  
110 § 4.1-206.3 pay for any cost incurred by the Board to enforce such license in excess of the applicable state  
111 license fee; and

112 32. Do all acts necessary or advisable to carry out the purposes of this subtitle.

113 **§ 4.1-215. Limitation on manufacturers, bottlers, and wholesalers; exemptions.**

114 A. 1. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages shall  
115 be granted to any (i) manufacturer, bottler, or wholesaler of alcoholic beverages, whether licensed in the  
116 Commonwealth or not; (ii) officer or director of any such manufacturer, bottler, or wholesaler; (iii)  
117 partnership or corporation, where any partner or stockholder is an officer or director of any such  
118 manufacturer, bottler, or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns or  
119 has interest in another subsidiary corporation which is a manufacturer, bottler, or wholesaler of alcoholic

beverages; or (v) manufacturer, bottler, or wholesaler of alcoholic beverages who has a financial interest in a corporation which has a retail license as a result of a holding company, which owns or has an interest in such manufacturer, bottler, or wholesaler of alcoholic beverages. Nor shall such licenses be granted in any instances where such manufacturer, bottler, or wholesaler and such retailer are under common control, by stock ownership or otherwise.

2. Notwithstanding any other provision of this subtitle, a manufacturer of wine or malt beverages, or two or more of such manufacturers together, whether licensed in the Commonwealth or not, may obtain a banquet license as provided in § 4.1-206.3 upon application to the Board, provided that the event for which a banquet license is obtained is (i) at a place approved by the Board and (ii) conducted for the purposes of featuring and educating the consuming public about wine or malt beverage products. Such manufacturer shall be limited to eight banquet licenses, whether or not jointly obtained, for such events per year without regard to the number of wineries or breweries owned or operated by such manufacturer or by any parent, subsidiary, or company under common control with such manufacturer. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event.

3. Notwithstanding any other provision of this subtitle, a manufacturer of distilled spirits, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in subdivision D 1 b of § 4.1-206.3 upon application to the Board, provided that such event is (i) at a place approved by the Board and (ii) conducted for the purposes of featuring and educating the consuming public about the manufacturer's spirits products. Such manufacturer shall be limited to no more than eight banquet licenses for such special events per year. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event. Such banquet license shall authorize the manufacturer to sell or give samples of spirits to any person to whom alcoholic beverages may be lawfully sold in designated areas at the special event, provided that (a) no single sample shall exceed one-half ounce per spirits product offered, unless served as a mixed beverage, in which case a single sample may contain up to one and one-half ounces of spirits, and (b) no more than three ounces of spirits may be offered to any patron per day. Nothing in this paragraph shall prohibit such manufacturer from serving such samples as part of a mixed beverage.

4. *Notwithstanding any other provision of this subtitle, a manufacturer, bottler, broker, importer, or wholesaler may sponsor or provide support, including equipment, staff, financial, and other support, for a special event for which a municipality or nonprofit organization has been issued a banquet license when such special event is to be held on the grounds of a museum or a government-registered national, state, or local*

151 *historic site at which the municipality or nonprofit organization is licensed to operate a gift shop, provided*  
152 *that any retail license issued to the premises has been deactivated by the Authority for the duration of such*  
153 *special event. Such municipality or nonprofit organization shall be limited to no more than eight banquet*  
154 *licenses for such special events per year.*

155 B. This section shall not apply to:

156 1. Corporations operating dining cars, buffet cars, club cars, or boats;

157 2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of  
158 § 4.1-201;

159 3. Farm winery licensees engaging in conduct authorized by subdivision 6 of § 4.1-206.1;

160 4. Manufacturers, bottlers, or wholesalers of alcoholic beverages who do not sell or otherwise furnish,  
161 directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail license or banquet  
162 license as described in subsection A;

163 5. Wineries, farm wineries, or breweries engaging in conduct authorized by subsection F of § 4.1-206.3 or  
164 § 4.1-209.1 or 4.1-212.1; or

165 6. One out-of-state winery, not under common control or ownership with any other winery, that is under  
166 common ownership or control with one restaurant licensed to sell wine at retail in Virginia, so long as any  
167 wine produced by that winery is purchased from a Virginia wholesale wine licensee by the restaurant before  
168 it is offered for sale to consumers.

169 C. The General Assembly finds that it is necessary and proper to require a separation between  
170 manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic  
171 beverages in order to prevent suppliers from dominating local markets through vertical integration and to  
172 prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques. The  
173 exceptions established by this section to the general prohibition against tied interests shall be limited to their  
174 express terms so as not to undermine the general prohibition and shall therefore be construed accordingly.