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HOUSE BILL NO. 2486

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Delegate Kilgore)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 56, consisting of sections numbered 59.1-593 through 59.1-596, relating to soft drink companies and bottlers; transfer of business; remedies.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 56, consisting of sections numbered 59.1-593 through 59.1-596, as follows:

CHAPTER 56.

SOFT DRINK COMPANIES AND BOTTLERS.

§ 59.1-593. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship that is not required to be evidenced in writing between a soft drink company and a bottler pursuant to which the soft drink company authorizes the bottler to bottle, can, sell, manufacturer, or distribute one or more of the soft drink company's brands of soft drink products and in connection the use of a brand name, trade name, trademark, service mark, logo, typeface, or other advertising or commercial symbol.

"Bottler" means any person or entity that, pursuant to an agreement, receives, stores, bottles, manufacturers, distributes, or sells soft drink products at wholesale to institutional, commercial, or industrial users.

"Soft drink company" means a person that has, by virtue of ownership or control of recipes, formulas, brand names, trade names, trademarks, service marks, or other intellectual property, the authority to grant another person the right or license to manufacture, distribute, or sell soft drink products

27 and soft drink flavors employing the recipes or formulas of such soft drink company and bearing the brand
28 name, trade name, trademark, service mark, or other identifiers of the soft drink company.

29 "Soft drink flavor" means any type of flavor, beverage base, syrup, extract, concentrate, powder,
30 or other compound prepared for use as a flavoring for soft drink products.

31 "Soft drink product" means any nonalcoholic beverage subject to annual levy pursuant to the excise
32 tax imposed by the Virginia Soft Drink Excise Tax Act (§ 58.1-1700 et seq.).

33 **§ 59.1-594. Soft drink company; transfer of business.**

34 A. No soft drink company shall unreasonably withhold or delay consent to any transfer of a
35 bottler's business or transfer of the stock or other interest in the bottler's business to a proposed transferee,
36 including a family member, provided that the proposed transferee bottler meets the soft drink company's
37 material and reasonable qualification requirements. A soft drink company may request that the proposed
38 transferee bottler provide information as is reasonably necessary to determine whether the proposed
39 transferee bottler meets its qualification requirements. If a soft drink company determines that a proposed
40 transferee bottler does not meet such requirements, it shall give the proposed transferee bottler written
41 notice thereof, stating the reasons for the soft drink company's withholding its consent to the transfer. A
42 soft drink company shall render its decision to approve or reject a proposed transfer and provide notice to
43 the proposed transferee bottler within 45 days of receiving requested information from the proposed
44 transferee bottler. No proposed transferee bottler shall be disqualified from acting as a bottler for a soft
45 drink company solely because it is a publicly held corporation. As used in this subsection, "family
46 member" means a spouse, parent, sibling, child, stepchild, or lineal descendant, including those by
47 adoption, of a bottler or a principal owner of a bottler.

48 B. If a soft drink company makes an offer to purchase a soft drink bottler's business or the stock
49 or other interest in the bottler's business, such offer shall be, at a minimum, at fair market value as
50 determined by an independent valuation. For the purposes of this subsection, any offer made by or on
51 behalf of an affiliate or subsidiary of a soft drink company shall be considered an offer made by the soft
52 drink company.

53 C. Upon the transfer of a bottler's business, the transferee bottler shall assume all obligations
54 imposed on and succeed to all the rights held by the previous bottler by virtue of any agreement, consistent
55 with this chapter, between the previous bottler and any soft drink company entered into prior to the
56 transfer.

57 D. In any dispute as to whether a soft drink company has unreasonably withheld its consent to the
58 transfer of a bottler's business or the transfer of the stock or other interest in the bottler's business in
59 violation of this section, the soft drink company shall bear the burden of proving that the transferee bottler
60 failed to meet its material and reasonable qualifications as required for all of the soft drink company's
61 bottlers.

62 **§ 59.1-595. Notices.**

63 Notices required under this chapter shall be delivered by hand, by any form of United States mail
64 service, including regular, certified, registered, or overnight mail, or by commercial delivery service.

65 **§ 59.1-596. Waiver of chapter void.**

66 The provisions of this chapter shall be deemed to be incorporated in every agreement subject hereto
67 and shall supersede and control all other provisions of the agreement inconsistent with the provisions of
68 this chapter. No soft drink company shall require any bottler to waive compliance with any provision of
69 this chapter. Any contract or agreement purporting to waive compliance with any provision of this chapter
70 shall be void and unenforceable to the extent of the waiver. Nothing in this chapter shall be construed to
71 limit or prohibit good faith settlements of disputes voluntarily entered into between parties.

72 **2. That the provisions of this act shall apply to any agreement, as that term is defined in § 59.1-593**
73 **of the Code of Virginia, as created by this act, entered into, modified, extended, or renewed on or**
74 **after July 1, 2023.**

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