

2016 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

16104681D

HOUSE BILL NO. 1375

Offered January 22, 2016

A BILL to amend and reenact §§ 4.1-119, as it is currently effective and as it shall become effective, 4.1-206, 4.1-234, and 4.1-235 of the Code of Virginia, relating to alcoholic beverage control; privileges of distillery licensees.

Patrons—Freitas, Fariss, Bell, Richard P., Cline, Head and Heretick

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-119, as it is currently effective and as it shall become effective, 4.1-206, 4.1-234, and 4.1-235, of the Code of Virginia are amended and reenacted as follows:

§ 4.1-119. (Effective until July 1, 2018) Operation of government stores.

A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

B. With respect to the sale of wine produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine per year.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers.

D. Alcoholic beverages at government stores shall be sold by employees of the Board, who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the Board and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § 4.1-304.

Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed pursuant to subsection D may give samples of beer, wine, or cider to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, provided that (i) the beer, wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of such agent

INTRODUCED

HB1375

59 licensed as a brewery or winery; (ii) no single sample shall exceed four ounces of beer, two ounces of
60 wine, or one-half ounce of spirits; and (iii) no more than four total samples of alcoholic beverage
61 products shall be given or sold to any person per day. Nothing in this paragraph shall prohibit such
62 agent from serving samples of spirits as a mixed beverage.

63 The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

64 H. With respect to purchases by licensees at government stores, the Board shall (i) accept in payment
65 for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check
66 payable to the Board, in the exact amount of any such purchase or series of purchases and (ii) provide
67 notice to licensees on Board policies relating to the assignment of government stores from which
68 licensees may purchase products and any procedure for the licensee to elect to make purchases from an
69 alternative government store.

70 I. With respect to purchases by consumers at government stores, the Board shall accept cash in
71 payment for any purchase or series of purchases. The Board may adopt regulations which provide for
72 accepting a credit card or debit card as payment. Such regulations may provide for the collection, where
73 appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by
74 any consumer.

75 **§ 4.1-119. (Effective July 1, 2018) Operation of government stores.**

76 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and
77 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by
78 farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any
79 garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the
80 Board from time to time, in such counties, cities, and towns considered advisable by the Board. The
81 Board may discontinue any such store.

82 B. With respect to the sale of wine produced by farm wineries, the Board may give preference to
83 farm wineries that produce 2,500 cases or less of wine per year.

84 C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and
85 brands of alcoholic beverages and other Board-approved products that are sold in government stores.
86 Differences in the cost of operating stores, and market competition and conditions may be reflected in
87 the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages
88 to federal instrumentalities (i) authorized and operating under the laws of the United States and
89 regulations of the United States Department of Defense and (ii) located within the boundaries of federal
90 enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be
91 greater or less than the wholesale price charged other authorized purchasers. Nothing in this subsection
92 shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at
93 government stores, which retail price may include promotional, volume, or other discounts deemed
94 appropriate by the Board.

95 D. Alcoholic beverages at government stores shall be sold by employees of the Authority who shall
96 carry out the provisions of this title and Board regulations governing the operation of government stores
97 and the sale of alcoholic beverages; ~~except that the Board may appoint the holder of a distiller's license~~
98 ~~or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or~~
99 ~~blended by such licensee on the licensed premises, at government stores established by the Board on the~~
100 ~~distiller's licensed premises.~~

101 Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations,
102 and the terms of the agency agreement between the Authority and the licensed distiller.

103 For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries
104 and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of
105 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor
106 of such alcoholic beverages and (ii) bottled by the receiving distillery.

107 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without
108 distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101
109 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

110 F. All alcoholic beverages sold in government stores; ~~except for tasting samples pursuant to~~
111 ~~subsection G sold in government stores established by the Board on a distiller's licensed premises,~~ shall
112 be in closed containers, sealed and affixed with labels prescribed by the Board.

113 G. No alcoholic beverages shall be consumed in a government store by any person unless it is part
114 of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm
115 winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a
116 permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic
117 beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision
118 A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may
119 not lawfully be sold pursuant to § 4.1-304.

120 Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed

pursuant to subsection D may give samples of beer, wine, or cider to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, provided that (i) the beer, wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of such agent licensed as a brewery or winery; (ii) no single sample shall exceed four ounces of beer, two ounces of wine, or one-half ounce of spirits; and (iii) no more than four total samples of alcoholic beverage products shall be given or sold to any person per day. Nothing in this paragraph shall prohibit such agent from serving samples of spirits as a mixed beverage.

The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H. With respect to purchases by licensees at government stores, the Authority shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the Authority, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the Authority shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

J. Before the Authority implements any increase in the markup on distilled spirits or any change to the markup formula for distilled spirits pursuant to § 4.1-235 that would result in an increase in the retail price of distilled spirits sold to the public, the Authority shall (i) provide at least 45 days' public notice before such a price increase takes effect; (ii) provide the opportunity for submission of written comments regarding the proposed price increase; (iii) conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and (iv) consider any written or verbal comments before implementing such a price increase.

§ 4.1-206. Alcoholic beverage licenses.

The Board may grant the following licenses relating to alcoholic beverages generally:

1. Distillers' licenses, which shall authorize the licensee to manufacture alcoholic beverages other than wine and beer, and to sell and deliver or ship the same, in accordance with Board regulations, in closed containers, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth. ~~When the Board has established a government store on the distiller's licensed premises pursuant to subsection D of § 4.1-119, such license shall also authorize the licensee to make a charge to consumers to participate in an organized tasting event conducted in accordance with subsection G of § 4.1-119 and Board regulations. Such license shall also authorize the licensee to (a) sell at retail the brands of alcoholic beverages that the licensee owns at premises described in the distillery license for on-premises consumption and in closed containers for off-premises consumption, and (b) offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the premises of such licensed premises and only to individuals to whom such products may be lawfully sold.~~

2. Limited distiller's licenses, to distilleries that manufacture not more than 36,000 gallons of alcoholic beverages other than wine or beer per calendar year, provided (i) the distillery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such distillery or its owner and (ii) agricultural products used by such distillery in the manufacture of its alcoholic beverages are grown on the farm. Limited distiller's licensees shall be treated as distillers for all purposes of this title except as otherwise provided in this subdivision.

3. Fruit distillers' licenses, which shall authorize the licensee to manufacture any alcoholic beverages made from fruit or fruit juices, and to sell and deliver or ship the same, in accordance with Board regulations, in closed containers, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

4. Banquet facility licenses to volunteer fire departments and volunteer emergency medical services agencies, which shall authorize the licensee to permit the consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any person, and bona fide members and guests thereof, otherwise eligible for a banquet license. However, lawfully acquired alcoholic beverages shall not be purchased or sold by the licensee or sold or charged for in any way by the person permitted to use the premises. Such premises shall be a volunteer fire or volunteer emergency medical services agency station or both, regularly occupied as such and recognized by the governing body of the county, city, or town in which it is located. Under conditions as specified by Board regulation, such premises may be other than a volunteer fire or volunteer emergency medical services agency station, provided such other premises are occupied and under the control of the volunteer fire department or volunteer emergency medical services agency while the privileges of its license are being exercised.

182 5. Bed and breakfast licenses, which shall authorize the licensee to (i) serve alcoholic beverages in
183 dining areas, private guest rooms and other designated areas to persons to whom overnight lodging is
184 being provided, with or without meals, for on-premises consumption only in such rooms and areas, and
185 without regard to the amount of gross receipts from the sale of food prepared and consumed on the
186 premises and (ii) permit the consumption of lawfully acquired alcoholic beverages by persons to whom
187 overnight lodging is being provided in (a) bedrooms or private guest rooms or (b) other designated areas
188 of the bed and breakfast establishment. For purposes of this subdivision, "other designated areas"
189 includes outdoor dining areas, whether or not contiguous to the licensed premises, which may have more
190 than one means of ingress and egress to an adjacent public thoroughfare, provided that such outdoor
191 dining areas are under the control of the licensee and approved by the Board. Such noncontiguous
192 designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of
193 § 4.1-201.

194 6. Tasting licenses, which shall authorize the licensee to sell or give samples of alcoholic beverages
195 of the type specified in the license in designated areas at events held by the licensee. A tasting license
196 shall be issued for the purpose of featuring and educating the consuming public about the alcoholic
197 beverages being tasted. A separate license shall be required for each day of each tasting event. No
198 tasting license shall be required for conduct authorized by § 4.1-201.1.

199 7. Museum licenses, which may be issued to nonprofit museums exempt from taxation under
200 § 501(c)(3) of the Internal Revenue Code, which shall authorize the licensee to (i) permit the
201 consumption of lawfully acquired alcoholic beverages on the premises of the licensee by any bona fide
202 member and guests thereof and (ii) serve alcoholic beverages on the premises of the licensee to any
203 bona fide member and guests thereof. However, alcoholic beverages shall not be sold or charged for in
204 any way by the licensee. The privileges of this license shall be limited to the premises of the museum,
205 regularly occupied and utilized as such.

206 8. Equine sporting event licenses, which may be issued to organizations holding equestrian, hunt and
207 steeplechase events, which shall authorize the licensee to permit the consumption of lawfully acquired
208 alcoholic beverages on the premises of the licensee by patrons thereof during such event. However,
209 alcoholic beverages shall not be sold or charged for in any way by the licensee. The privileges of this
210 license shall be (i) limited to the premises of the licensee, regularly occupied and utilized for equestrian,
211 hunt and steeplechase events and (ii) exercised on no more than four calendar days per year.

212 9. Day spa licenses, which shall authorize the licensee to (i) permit the consumption of lawfully
213 acquired wine or beer on the premises of the licensee by any bona fide customer of the day spa and (ii)
214 serve wine or beer on the premises of the licensee to any such bona fide customer; however, the
215 licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any
216 such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served
217 or consumed. The privileges of this license shall be limited to the premises of the day spa regularly
218 occupied and utilized as such.

219 10. Motor car sporting event facility licenses, which shall authorize the licensee to permit the
220 consumption of lawfully acquired alcoholic beverages on the premises of the licensee by patrons thereof
221 during such events. However, alcoholic beverages shall not be sold or charged for in any way, directly
222 or indirectly, by the licensee. The privileges of this license shall be limited to those areas of the
223 licensee's premises designated by the Board that are regularly occupied and utilized for motor car
224 sporting events.

225 11. Meal-assembly kitchen license, which shall authorize the licensee to serve wine or beer on the
226 premises of the licensee to any such bona fide customer attending either a private gathering or a special
227 event; however, the licensee shall not give more than two five-ounce glasses of wine or two 12-ounce
228 glasses of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the
229 wine or beer served or consumed. The privileges of this license shall be limited to the premises of the
230 meal-assembly kitchen regularly occupied and utilized as such.

231 12. Canal boat operator license, which shall authorize the licensee to permit the consumption of
232 lawfully acquired alcoholic beverages on the premises of the licensee by any bona fide customer
233 attending either a private gathering or a special event; however, the licensee shall not sell or otherwise
234 charge a fee to such customer for the alcoholic beverages so consumed. The privileges of this license
235 shall be limited to the premises of the licensee, including the canal, the canal boats while in operation,
236 and any pathways adjacent thereto. Upon authorization of the licensee, any person may keep and
237 consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations
238 covered by the license.

239 13. Annual arts venue event licenses, to persons operating an arts venue, which shall authorize the
240 licensee participating in a community art walk that is open to the public to serve lawfully acquired wine
241 or beer on the premises of the licensee to adult patrons thereof during such events. However, alcoholic
242 beverages shall not be sold or charged for in any way, directly or indirectly, by the licensee, and the
243 licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any

one adult patron. The privileges of this license shall be (i) limited to the premises of the arts venue regularly occupied and used as such and (ii) exercised on no more than 12 calendar days per year.

14. Art instruction studio licenses, which shall authorize the licensee to serve wine or beer on the premises of the licensee to any such bona fide customer; however, the licensee shall not give more than two five-ounce glasses of wine or one 12-ounce glass of beer to any such customer, nor shall it sell or otherwise charge a fee to such customer for the wine or beer served or consumed. The privileges of this license shall be limited to the premises of the art instruction studio regularly occupied and utilized as such.

§ 4.1-234. Tax on wine and other alcoholic beverages; exceptions.

A. In addition to the taxes imposed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, a tax of 40 cents is levied on each liter of wine sold in the Commonwealth. Additionally, on vermouth and on farm winery wines sold to consumers by the Board the state tax shall be four percent of the price charged.

B. There is levied on other alcoholic beverages sold by the Board a tax of 20 percent of the price charged. This subsection shall also apply to all alcoholic beverages purchased from the Board by any mixed beverage licensee.

C. *There is levied on alcoholic beverages sold by holders of distiller's licenses to consumers at the distillery a tax of 20 percent of the price charged for any bottle sold for off-premises consumption, and 20 percent of the retail price of any bottle used for drinks for on-premises consumption.*

D. The provisions of this section shall not apply to (i) beer, (ii) wine coolers, (iii) sales of wine by manufacturers to wholesale wine licensees for resale to retail licensees, (iv) sales, other than by or through government stores, of alcoholic beverages for manufacturing and industrial purposes, or either, (v) sales, other than by or through government stores, of alcohol for hospital and laboratory purposes, or either, (vi) alcoholic beverages shipped from the Commonwealth to points outside the Commonwealth, for resale outside the Commonwealth, (vii) alcoholic beverages shipped from the Commonwealth to consumers outside the Commonwealth for personal consumption and not for resale, and (viii) sales to any instrumentality of the federal government.

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

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

1. Collection shall be from the purchaser at the time of or prior to sale, except as to sales made to wholesale wine licensees *or sales made by holders of distiller's licenses*. Wholesale wine licensees shall collect the taxes at the time of or prior to sale to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be required by the Board, at the time and in the manner prescribed by the Board. *Holders of distiller's licenses shall collect the taxes at the time of or prior to sale to consumers and shall remit such taxes monthly to the Board, along with such reports as may be required by the Board, at the time and in the manner prescribed by the Board.*

2. In establishing the prices for items sold by it to persons other than wholesale licensees, the Board shall include a reasonable markup. The liter tax or 20 percent tax, as appropriate, shall then be added to the price of each container of alcoholic beverages. The four percent tax on vermouth and farm winery wines shall then be added for those products. In all cases the final price for each container may be established so as to be a multiple of five or rounded to end with a nine.

In accounting for the state tax on sales the Board shall divide the net sales for the quarter by 1.20 and multiply the result by 20 percent. As to the sale of vermouth and farm winery wine, the Board shall divide the net sales for the quarter by 1.04 and multiply the result by four percent.

B. The amount of tax collected under this section during each quarter shall, within 50 days after the close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not later than June 20 of every year, estimate the yield of the state tax on sales imposed by § 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller, whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such adjustment on account of an overestimate or underestimate as may be indicated within 50 days after the close of the quarter ending on June 30.

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

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

The portion of wine liter tax collected pursuant to § 4.1-234 that is attributable to the sale of wine

305 produced by a farm winery shall be deposited in the Virginia Wine Promotion Fund established pursuant
306 to § 3.2-3005.

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

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

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