

2017 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

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SENATE BILL NO. 1589

Offered January 20, 2017

A *BILL to amend and reenact §§ 4.1-119, as it is currently effective and as it shall become effective, and 4.1-206 of the Code of Virginia, relating to alcoholic beverage control; distiller's license; tastings.*

Patron—Peake

Referred to Committee on Rehabilitation and Social Services

A BILL to amend and reenact §§ 4.1-119, as it is currently effective and as it shall become effective, and 4.1-215 of the Code of Virginia, relating to alcoholic beverage control; spirits tastings by distiller licensee.

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, and 4.1-215 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, at which 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

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59 pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic
60 beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or
61 cider samples are manufactured within the same licensed premises or on contiguous premises of such
62 agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer,
63 two ounces of wine, or ~~one-half~~ *one* ounce of spirits, unless served as a mixed beverage, in which case
64 a single sample may contain up to ~~one and one-half~~ *two ounces of spirits*; and (iii) no more than four
65 total samples of alcoholic beverage products or, in the case of spirits samples, no more than ~~three~~ *eight*
66 ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a
67 method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such
68 agent from serving samples of spirits as part of a mixed beverage.

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

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

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

81 **§ 4.1-119. (Effective July 1, 2018) Operation of government stores.**

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

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

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

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

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

109 For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries
110 and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of §
111 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor
112 of such alcoholic beverages and (ii) bottled by the receiving distillery.

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

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

119 G. No alcoholic beverages shall be consumed in a government store by any person unless it is part
120 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, at which 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 spirits, beer, wine, or cider to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of such agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer, two ounces of wine, or ~~one-half~~ *one* ounce of spirits, unless served as a mixed beverage, in which case a single sample may contain up to ~~one and one-half~~ *two ounces of spirits*; and (iii) no more than four total samples of alcoholic beverage products or, in the case of spirits samples, no more than ~~three~~ *eight* ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such agent from serving samples of spirits as part of 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.

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

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

Notwithstanding any other provision of this title, a manufacturer of malt beverages or wine, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in § 4.1-209 upon application to the Board provided that such event is (a) at a place approved by the Board and (b) conducted for the purposes of featuring and educating the consuming public about malt beverage or wine products. Such manufacturer shall be limited to no more than four 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.

Notwithstanding any other provision of this title, 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 A 4 of § 4.1-210 upon application to the Board, provided that such event is (1) at a place approved by the Board and (2) 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 four 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

182 shall authorize the manufacturer to give samples of spirits to any person to whom alcoholic beverages
183 may be lawfully sold in designated areas at the special event, provided that (A) no single sample shall
184 exceed ~~one-half~~ one ounce per spirits product offered, unless served as a mixed beverage, in which case
185 a single sample may contain up to ~~one and one-half~~ two ounces of spirits, and (B) no ~~more than three~~
186 ~~ounces of spirits may be offered to any patron~~ *no limit on spirits except at the bartender's discretion.*
187 Nothing in this paragraph shall prohibit such manufacturer from serving such samples as part of a mixed
188 beverage.

189 B. This section shall not apply to:

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

191 2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of
192 § 4.1-201;

193 3. Farm winery licensees engaging in conduct authorized by subdivision 5 of § 4.1-207;

194 4. Manufacturers, bottlers or wholesalers of alcoholic beverages who do not (i) sell or otherwise
195 furnish, directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail
196 license or banquet license as described in subsection A and (ii) require, by agreement or otherwise, such
197 person to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers or
198 wholesalers;

199 5. Wineries, farm wineries, or breweries engaging in conduct authorized by § 4.1-209.1 or 4.1-212.1;
200 or

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

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