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**HOUSE BILL NO. 654**

Offered January 10, 2018

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*A BILL to amend and reenact §§ 4.1-119, 4.1-120, 4.1-215, and 4.1-235 of the Code of Virginia, relating to alcoholic beverage control; distiller licensee; commission from sales on licensed premises; samples; hours of operation; markup.*

Patron—Murphy

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-119, 4.1-120, 4.1-215, and 4.1-235 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-119. 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, 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, and products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 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 or cider produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine or cider 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. Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.

D. Alcoholic beverages at government stores shall be sold by employees of the Authority 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 (i) on the distiller's licensed premises or (ii) at the site of an event licensed by the Board and conducted for the purpose of featuring and educating the consuming public about spirits products.

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 Authority and the licensed distiller. *The Authority shall pay a licensed distiller making sales pursuant to this subsection a commission of not less than 25 percent of the retail price of the spirits sold.*

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. (Effective until July 1, 2022) 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 151 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

E. (Effective July 1, 2022) 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

59 subsection G sold in government stores established by the Board on a distiller's licensed premises, shall  
60 be in closed containers, sealed and affixed with labels prescribed by the Board.

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

68 Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed  
69 pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic  
70 beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or  
71 cider samples are manufactured within the same licensed premises or on contiguous premises of such  
72 agent licensed as a distillery, brewery, or winery or cider; (ii) no single sample shall exceed four ounces  
73 of beer, two ounces of wine, or one-half ounce of spirits, unless served as a mixed beverage, in which  
74 case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than  
75 four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three  
76 ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a  
77 method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such  
78 agent from serving samples of spirits as part of a mixed beverage. *Samples of mixed beverages*  
79 *containing spirits manufactured within the same licensed premises or on contiguous premises of the*  
80 *licensed distillery may also contain as mixers other alcoholic beverages not manufactured on the*  
81 *licensed premises or on contiguous premises.*

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

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

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

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

#### 101 § 4.1-120. When government stores closed.

102 A. Except as provided in ~~subsection~~ *subsections B and C*, no sale or delivery of alcoholic beverages  
103 shall be made at any government store, nor shall any such store be kept open for the sale of alcoholic  
104 beverages:

- 105 1. On Sunday;
- 106 2. On Thanksgiving Day, Christmas Day and New Year's Day; or
- 107 3. During such other periods and on such other days as the Board may direct.

108 B. Certain government stores, as determined by the Board, may be open on Sunday for the sale of  
109 alcoholic beverages after 1:00 p.m.

110 C. *Government stores operated on a distiller's licensed premises pursuant to subsection D of*  
111 *§ 4.1-119 may be open on Sunday for the sale of alcoholic beverages after 10:00 a.m.*

#### 112 § 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.

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

a. A manufacturer of malt beverages, whether licensed in the Commonwealth or not, may obtain a banquet license as provided in § 4.1-209 upon application to the Board, provided that the event for which a banquet license is obtained is ~~(a)~~ (i) at a place approved by the Board and ~~(b)~~ (ii) conducted for the purposes of featuring and educating the consuming public about malt beverage products. Such manufacturer shall be limited to eight banquet licenses for such events per year without regard to the number of 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; or

b. A manufacturer of wine, whether licensed in the Commonwealth or not, may obtain a banquet license as provided in § 4.1-209 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 products. Such manufacturer shall be limited to eight banquet licenses for such events per year without regard to the number of wineries 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 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)~~ (i) at a place approved by the Board and ~~(2)~~ (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 ~~four~~ 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)~~ (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)~~ (b) no more than three ounces of spirits may be offered to any patron. Nothing in this paragraph shall prohibit such manufacturer from serving such samples as part of a mixed beverage.

B. This section shall not apply to:

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

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

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

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

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

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

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

#### **§ 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 §§ 4.1-213 and 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. Wholesale wine licensees shall collect the taxes at the time of or prior to sale

182 to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be  
183 required by the Board, at the time and in the manner prescribed by the Board.

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

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

192 B. The amount of tax collected under this section during each quarter shall, within 50 days after the  
193 close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from  
194 the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not  
195 later than June 20 of every year, estimate the yield of the state tax on sales imposed by §§ 4.1-213 and  
196 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller,  
197 whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate  
198 from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such  
199 adjustment on account of an overestimate or underestimate as may be indicated within 50 days after the  
200 close of the quarter ending on June 30.

201 Forty-four percent of the amount derived from the liter tax levied pursuant to §§ 4.1-213 and 4.1-234  
202 shall be transferred to the general fund and paid to the several counties, cities, and towns of the  
203 Commonwealth in proportion to their respective populations, and is appropriated for such purpose.

204 The counties, cities, and towns shall in no event receive from the taxes derived from the sale of  
205 wines less revenue than was received by such counties, cities, and towns for the year ending June 30,  
206 1976.

207 The portion of wine liter tax and cider markup collected pursuant to §§ 4.1-213 and 4.1-234 that is  
208 attributable to the sale of wine and cider produced by a farm winery shall be deposited in the Virginia  
209 Wine Promotion Fund established pursuant to § 3.2-3005.

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

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

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