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HOUSE BILL NO. 1784

Offered January 9, 2019

Prefiled December 27, 2018

A BILL to amend and reenact §§ 4.1-119 and 4.1-215 of the Code of Virginia, relating to alcoholic beverage control; spirit samples.

Patrons—Fariss and Simon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-119 and 4.1-215 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.

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 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

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59 winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a
60 permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, at which the samples of
61 alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in
62 subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic
63 beverages may not lawfully be sold pursuant to § 4.1-304.

64 Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed
65 pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic
66 beverages may be lawfully sold for on-premises consumption, provided that ~~(i)~~ (a) the spirits, beer,
67 wine, or cider samples are manufactured within the same licensed premises or on contiguous premises of
68 such agent licensed as a distillery, brewery, or winery; ~~(ii)~~ and (b) no single sample shall exceed four
69 ounces of beer, two ounces of wine or cider, or ~~one-half~~ one ounce of spirits, unless served as a mixed
70 beverage, in which case a single sample of spirits may contain up to ~~one~~ and ~~one-half~~ two ounces of
71 spirits; ~~(iii) no more than four total samples of alcoholic beverage products or, in the case of spirits~~
72 ~~samples, no more than three ounces of spirits shall be given or sold to any person per day; and (iv) in~~
73 ~~the case of spirits samples, a method is used to track the consumption of each consumer.~~ Nothing in this
74 paragraph shall prohibit such agent from serving samples of spirits as part of a mixed beverage. Such
75 mixed beverage samples may contain spirits or vermouth not manufactured on the licensed premises or
76 on contiguous premises of the licensed distillery, provided that at least 75 percent of the alcohol used in
77 such samples is manufactured on the licensed premises or on contiguous premises of the licensed
78 distillery. An agent of the Board appointed pursuant to subsection D may keep on the licensed premises
79 no more than 10 varieties of spirits or vermouth not manufactured on the licensed premises or on
80 contiguous premises of the licensed distillery. Any spirits or vermouth used in such samples that are not
81 manufactured on the licensed premises or on contiguous premises of the licensed distillery shall be
82 purchased from the Board.

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

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

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

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

102 **§ 4.1-215. Limitation on manufacturers, bottlers and wholesalers; exemptions.**

103 A. 1. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages
104 shall be granted to any (i) manufacturer, bottler or wholesaler of alcoholic beverages, whether licensed
105 in the Commonwealth or not; (ii) officer or director of any such manufacturer, bottler or wholesaler; (iii)
106 partnership or corporation, where any partner or stockholder is an officer or director of any such
107 manufacturer, bottler or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns
108 or has interest in another subsidiary corporation which is a manufacturer, bottler or wholesaler of
109 alcoholic beverages; or (v) manufacturer, bottler or wholesaler of alcoholic beverages who has a
110 financial interest in a corporation which has a retail license as a result of a holding company, which
111 owns or has an interest in such manufacturer, bottler or wholesaler of alcoholic beverages. Nor shall
112 such licenses be granted in any instances where such manufacturer, bottler or wholesaler and such
113 retailer are under common control, by stock ownership or otherwise.

114 2. Notwithstanding any other provision of this title:

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

121 under common control with such manufacturer. Where the event occurs on no more than three
122 consecutive days, a manufacturer need only obtain one such license for the event; or

123 b. A manufacturer of wine, whether licensed in the Commonwealth or not, may obtain a banquet
124 license as provided in § 4.1-209 upon application to the Board, provided that the event for which a
125 banquet license is obtained is (i) at a place approved by the Board and (ii) conducted for the purposes
126 of featuring and educating the consuming public about wine products. Such manufacturer shall be
127 limited to eight banquet licenses for such events per year without regard to the number of wineries
128 owned or operated by such manufacturer or by any parent, subsidiary, or company under common
129 control with such manufacturer. Where the event occurs on no more than three consecutive days, a
130 manufacturer need only obtain one such license for the event.

131 3. Notwithstanding any other provision of this title, a manufacturer of distilled spirits, whether
132 licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in
133 subdivision A 4 of § 4.1-210 upon application to the Board, provided that such event is (i) at a place
134 approved by the Board and (ii) conducted for the purposes of featuring and educating the consuming
135 public about the manufacturer's spirits products. Such manufacturer shall be limited to no more than
136 eight banquet licenses for such special events per year. Where the event occurs on no more than three
137 consecutive days, a manufacturer need only obtain one such license for the event. Such banquet license
138 shall authorize the manufacturer to sell or give samples of spirits to any person to whom alcoholic
139 beverages may be lawfully sold in designated areas at the special event, provided that ~~(a)~~ no single
140 sample shall exceed ~~one-half~~ *one* ounce per spirits product offered, unless served as a mixed beverage,
141 in which case a single sample may contain up to ~~one~~ *and one-half* ~~two~~ ounces of spirits; ~~and (b) no~~
142 ~~more than three ounces of spirits may be offered to any patron per day.~~ Nothing in this paragraph shall
143 prohibit such manufacturer from serving such samples as part of a mixed beverage.

144 B. This section shall not apply to:

145 1. Corporations operating dining cars, buffet cars, club cars or boats;
146 2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of
147 § 4.1-201;

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

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

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

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

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