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HOUSE BILL NO. 2703

Offered January 15, 2019

A *BILL to amend and reenact §§ 4.1-119 and 4.1-235 of the Code of Virginia, relating to alcoholic beverage control; distiller licensees; commissions and fees.*

Patrons—Freitas and Wright

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-119 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 Board 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. Monthly revenue transfers from the licensed distiller to the Board (a) may be submitted electronically and through other methods approved by the Board and (b) shall be limited to the amount due to the Board in applicable taxes and markups.*

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

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59 be in closed containers, sealed and affixed with labels prescribed by the Board.

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

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

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

86 *Any case fee charged to a licensed distiller by the Board for moving spirits from the production and*
87 *bailment area to the tasting area of a government store established by the Board on the distiller's*
88 *licensed premises shall be waived if such spirits are moved by employees of the licensed distiller.*

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

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

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

107 **§ 4.1-235. Collection; computation, distribution of tax on wine and other alcoholic beverages;**
108 **refunds and adjustments.**

109 A. The Board shall collect the state taxes levied pursuant to §§ 4.1-213 and 4.1-234 as follows:

110 1. Collection shall be from the purchaser at the time of or prior to sale, except as to sales made to
111 wholesale wine licensees. Wholesale wine licensees shall collect the taxes at the time of or prior to sale
112 to retail licensees, and shall remit such taxes monthly to the Board, along with such reports as may be
113 required by the Board, at the time and in the manner prescribed by the Board.

114 2. In establishing the prices for items sold by it to persons other than wholesale licensees, the Board
115 shall include a reasonable markup; *however, the Board shall not impose a markup on items sold to*
116 *wholesale licensees or on spirits sold during an organized tasting event conducted pursuant to*
117 *subsection G of § 4.1-119 and subdivision A 1 of § 4.1-206, provided that such spirits are*
118 *manufactured on the licensed premises or on contiguous premises of the licensed distillery conducting*
119 *such tasting event.* The liter tax or 20 percent tax, as appropriate, shall then be added to the price of
120 each container of alcoholic beverages. The four percent tax on vermouth and farm winery wines and

121 ciders shall then be added for those products. In all cases the final price for each container may be
122 established so as to be a multiple of five or rounded to end with a nine.

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

126 B. The amount of tax collected under this section during each quarter shall, within 50 days after the
127 close of such quarter, be certified to the Comptroller by the Board and shall be transferred by him from
128 the special fund described in § 4.1-116 to the general fund of the state treasury. The Board shall, not
129 later than June 20 of every year, estimate the yield of the state tax on sales imposed by §§ 4.1-213 and
130 4.1-234 for the quarter ending June 30 and certify the amount of such estimate to the Comptroller,
131 whereupon the Comptroller shall, before the end of the month, transfer the amount of such estimate
132 from the special fund described in § 4.1-116 to the general fund of the state treasury, subject to such
133 adjustment on account of an overestimate or underestimate as may be indicated within 50 days after the
134 close of the quarter ending on June 30.

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

138 The counties, cities, and towns shall in no event receive from the taxes derived from the sale of
139 wines less revenue than was received by such counties, cities, and towns for the year ending June 30,
140 1976.

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

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

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

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