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**HOUSE BILL NO. 1187**

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 4.1-103, 4.1-103.03, 4.1-115, 4.1-116, 4.1-119, as it is currently effective and as it shall become effective, 4.1-227, 4.1-303, and 4.1-330 of the Code of Virginia, relating to alcoholic beverage control; online sales of spirits by the Virginia Alcoholic Beverage Control Authority.*

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Patrons—Wampler and Mugler

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Referred to Committee on General Laws

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

**1. That §§ 4.1-103, 4.1-103.03, 4.1-115, 4.1-116, 4.1-119, as it is currently effective and as it shall become effective, 4.1-227, 4.1-303, 4.1-330 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-103. General powers of Board.**

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;
4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;
5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and special agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;
6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;
7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. The Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. The Board shall remain responsible for the performance of any such duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;
8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;
9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;
10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title 2.2;
11. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;
12. Buy and sell any mixers;

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59 13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international  
60 trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass),  
61 and 25 (clothing);

62 14. Control the possession, sale, transportation and delivery of alcoholic beverages;

63 15. Determine, subject to § 4.1-121, the localities within which government stores shall be  
64 established or operated and the location of such stores;

65 16. *Establish an online sales platform for the sale and delivery of alcoholic beverages other than*  
66 *beer and wine not produced by farm wineries, mixers, and products enumerated in subdivision 13 to*  
67 *persons located within the Commonwealth;*

68 17. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic  
69 beverages to and from such warehouses;

70 ~~17.~~ 18. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or  
71 mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes  
72 of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any  
73 interest therein, at such annual rental and on such terms and conditions as may be determined by the  
74 Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any  
75 interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such  
76 annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or  
77 convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time  
78 acquired or held by the Authority on such terms and conditions as may be determined by the Board; and  
79 occupy and improve any land or building required for the purposes of this title;

80 ~~18.~~ 19. Purchase or otherwise acquire title to any land or building required for the purposes of this  
81 title and sell and convey the same by proper deed, with the consent of the Governor;

82 ~~19.~~ 20. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be  
83 considered necessary or useful in carrying into effect the purposes of this title, including rectifying,  
84 blending and processing plants. The Board may purchase, build, lease, and operate distilleries and  
85 manufacture alcoholic beverages;

86 ~~20.~~ 21. Determine the nature, form and capacity of all containers used for holding alcoholic  
87 beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to  
88 be placed thereon; however, no container sold in or shipped into the Commonwealth shall include  
89 powdered or crystalline alcohol;

90 ~~21.~~ 22. Appoint every agent and employee required for its operations; require any or all of them to  
91 give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage  
92 the services of experts and professionals;

93 ~~22.~~ 23. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the  
94 production of records, memoranda, papers and other documents before the Board or any agent of the  
95 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board  
96 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take  
97 testimony thereunder, and decide cases, subject to final decision by the Board, on application of any  
98 party aggrieved. The Board may enter into consent agreements and may request and accept from any  
99 applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a  
100 license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may  
101 include an admission or a finding of a violation. A consent agreement shall not be considered a case  
102 decision of the Board and shall not be subject to judicial review under the provisions of the  
103 Administrative Process Act (§ 2.2-4000 et seq.), but may be considered by the Board in future  
104 disciplinary proceedings;

105 ~~23.~~ 24. Make a reasonable charge for preparing and furnishing statistical information and  
106 compilations to persons other than (i) officials, including court and police officials, of the  
107 Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons  
108 who have a personal or legal interest in obtaining the information requested if such information is not to  
109 be used for commercial or trade purposes;

110 ~~24.~~ 25. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et  
111 seq.) and § 4.1-111;

112 ~~25.~~ 26. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation,  
113 and sale of alcoholic beverages;

114 ~~26.~~ 27. Assess and collect civil penalties and civil charges for violations of this title and Board  
115 regulations;

116 ~~27.~~ 28. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

117 ~~28.~~ 29. Establish minimum food sale requirements for all retail licensees;

118 ~~29.~~ 30. Review and approve any proposed legislative or regulatory changes suggested by the Chief  
119 Executive Officer as the Board deems appropriate;

120 ~~30.~~ 31. Report quarterly to the Secretary of Public Safety and Homeland Security on the

law-enforcement activities undertaken to enforce the provisions of this title; and

~~31. 32.~~ Do all acts necessary or advisable to carry out the purposes of this title.

**§ 4.1-103.03. Additional powers; mediation; alternative dispute resolution; confidentiality.**

A. As used in this section:

"Appropriate case" means any alleged license violation or objection to the application for a license in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest.

"Dispute resolution proceeding" means the same as that term is defined in § 8.01-576.4.

"Mediation" means the same as that term is defined in § 8.01-576.4.

"Neutral" means the same as that term is defined in § 8.01-576.4.

B. The Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve underlying issues or reach a consensus or compromise on contested issues. Mediation and other dispute resolution proceedings as authorized by this section shall be voluntary procedures that supplement, rather than limit, other dispute resolution techniques available to the Board. Mediation or a dispute resolution proceeding may be used for an objection to the issuance of a license only with the consent of, and participation by, the applicant for licensure and shall be terminated at the request of such applicant.

C. Any resolution of a contested issue accepted by the Board under this section shall be considered a consent agreement as provided in subdivision 22 23 of § 4.1-103. The decision to use mediation or a dispute resolution proceeding is in the Board's sole discretion and shall not be subject to judicial review.

D. The Board may adopt rules and regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of this section. Such rules and regulations may include (i) standards and procedures for the conduct of mediation and dispute resolution proceedings, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work products, or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Board uses or relies on information obtained in the course of such proceeding in granting a license, suspending or revoking a license, or accepting payment of a civil penalty or investigative costs. However, a consent agreement signed by the parties shall not be confidential.

**§ 4.1-115. Reports and accounting systems of Board; auditing books and records.**

A. The Board shall make reports to the Governor as he may require covering the administration and enforcement of this title. Additionally, the Board shall submit an annual report to the Governor and General Assembly on or before December 15 each year, which shall contain:

1. A statement of the nature and amount of the business transacted by each government store *and by the Board's online sales platform* during the year;

2. A statement of the assets and liabilities of the Board, including a statement of income and expenses and such other financial statements and matters as may be necessary to show the result of the operations of the Board for the year;

3. A statement showing the taxes collected under this title during the year;

4. General information and remarks about the working of the alcoholic beverage control laws within the Commonwealth; and

5. Any other information requested by the Governor.

B. The Board shall maintain an accounting system in compliance with generally accepted accounting principles and approved in accordance with § 2.2-803.

C. A regular postaudit shall be conducted of all accounts and transactions of the Board. An annual audit of a fiscal and compliance nature of the accounts and transactions of the Board shall be conducted by the Auditor of Public Accounts on or before October 1. The cost of the annual audit and postaudit examinations shall be borne by the Board. The Board may order such other audits as it deems necessary.

**§ 4.1-116. Disposition of moneys collected by Board; creation of Enterprise Fund; reserve fund.**

A. All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds, or claims of any description whatever, as required by § 2.2-1802.

All moneys so paid into the state treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in establishing and maintaining government stores *and the Board's online sales platform*, and in the administration of the provisions of this title, including the purchasing, building,

182 leasing, and operation of distilleries and the manufacture of alcoholic beverages.

183 B. The net profits derived under the provisions of this title shall be transferred by the Comptroller to  
184 the general fund of the state treasury quarterly, within fifty days after the close of each quarter or as  
185 otherwise provided in the appropriation act. As allowed by the Governor, the Board may deduct from  
186 the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million  
187 in connection with the administration of this title and to provide for the depreciation on the buildings,  
188 plants and equipment owned, held or operated by the Board.

189 C. The term "net profits" as used in this section means the total of all moneys collected by the Board  
190 less all costs, expenses and charges authorized by this section.

191 **§ 4.1-119. (Effective until July 1, 2020) Operation of government stores.**

192 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain, and  
193 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by  
194 farm wineries, low alcohol beverage coolers, vermouth, mixers, products used in connection with  
195 distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as  
196 may be approved by the Board from time to time, and products licensed by the Virginia Tourism  
197 Corporation as specified in § 4.1-103 in such counties, cities, and towns considered advisable by the  
198 Board. The Board may discontinue any such store. *The Board may also sell such alcoholic beverages*  
199 *and products through an online sales platform and deliver them directly to the consumer, provided that*  
200 *such sales are made and delivered only to consumers located within the Commonwealth.*

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

203 C. The Board shall fix the wholesale and retail prices at which the various classes, varieties, and  
204 brands of alcoholic beverages and other Board-approved products that are sold in government stores *and*  
205 *through the Board's online sales platform.* Differences in the cost of operating stores, and market  
206 competition and conditions may be reflected in the sale price of alcoholic beverages sold at government  
207 stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating  
208 under the laws of the United States and regulations of the United States Department of Defense and (ii)  
209 located within the boundaries of federal enclaves or reservations over which the United States has  
210 acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other  
211 authorized purchasers. Nothing in this subsection shall be construed to limit the authority of the Board  
212 to fix the retail price of alcoholic beverages sold at government stores *or through its online sales*  
213 *platform,* which retail price may include promotional, volume, or other discounts deemed appropriate by  
214 the Board.

215 D. Alcoholic beverages at government stores shall be sold by employees of the Authority who shall  
216 carry out the provisions of this title and Board regulations governing the operation of government stores  
217 and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license  
218 or its officers and employees as agents of the Board for the sale of spirits and low alcohol beverage  
219 coolers, manufactured by or for, or blended by such licensee on the licensed premises, at government  
220 stores established by the Board (i) on the distiller's licensed premises or (ii) at the site of an event  
221 licensed by the Board and conducted for the purpose of featuring and educating the consuming public  
222 about spirits products.

223 Such agents shall sell the spirits and low alcohol beverage coolers in accordance with the provisions  
224 of this title, Board regulations, and the terms of the agency agreement between the Authority and the  
225 licensed distiller. The Authority shall pay a licensed distiller making sales pursuant to an agreement  
226 authorized by this subsection a commission of not less than 20 percent of the retail price of the goods  
227 sold.

228 For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries  
229 and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of §  
230 4.1-201 to be (a)(1) additionally aged by the receiving distillery in order to increase the quality and  
231 flavor of such alcoholic beverages or (2) used in a low alcohol beverage cooler and (b) bottled by the  
232 receiving distillery.

233 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without  
234 distinctive character, aroma, taste, or color shall be sold in government stores *or on the Board's online*  
235 *sales platform* at a proof greater than 151 except upon permits issued by the Board for industrial,  
236 commercial, culinary, or medical use.

237 F. All alcoholic beverages sold in government stores *or through the Board's online sales platform,*  
238 except for tasting samples pursuant to subsection G sold in government stores established by the Board  
239 on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed  
240 by the Board.

241 G. No alcoholic beverages shall be consumed in a government store by any person unless it is part  
242 of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm  
243 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 cider, or one-half ounce of spirits, unless served as a mixed beverage, in which case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three 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. Such mixed beverage samples may contain spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the licensed distillery, provided that at least 75 percent of the alcohol used in such samples is manufactured on the licensed premises or on contiguous premises of the licensed distillery. An agent of the Board appointed pursuant to subsection D may keep on the licensed premises no more than 10 varieties of spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the licensed distillery. Any spirits or vermouth used in such samples that are not manufactured on the licensed premises or on contiguous premises of the licensed distillery shall be purchased from the Board.

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. *Licensees may make purchases through the Board's online sales platform.*

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~~ *that* 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.

**§ 4.1-119. (Effective July 1, 2020, until July 1, 2022) Operation of government stores.**

A. Subject to the provisions 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, low alcohol beverage coolers, 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. *The Board may also sell such alcoholic beverages and products through an online sales platform, provided that such online sales are only made and delivered to individuals located within the Commonwealth.*

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 *and through the Board's online sales platform*. 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

305 acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other  
306 authorized purchasers. Nothing in this subsection shall be construed to limit the authority of the Board  
307 to fix the retail price of alcoholic beverages sold at government stores *or through its online sales*  
308 *platform*, which retail price may include promotional, volume, or other discounts deemed appropriate by  
309 the Board.

310 D. Alcoholic beverages at government stores shall be sold by employees of the Authority who shall  
311 carry out the provisions of this title and Board regulations governing the operation of government stores  
312 and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license  
313 or its officers and employees as agents of the Board for the sale of spirits and low alcohol beverage  
314 coolers, manufactured by or for, or blended by such licensee on the licensed premises, at government  
315 stores established by the Board (i) on the distiller's licensed premises or (ii) at the site of an event  
316 licensed by the Board and conducted for the purpose of featuring and educating the consuming public  
317 about spirits products.

318 Such agents shall sell the spirits and low alcohol beverage coolers in accordance with the provisions  
319 of this title, Board regulations, and the terms of the agency agreement between the Authority and the  
320 licensed distiller. The Authority shall pay a licensed distiller making sales pursuant to an agreement  
321 authorized by this subsection a commission of not less than 20 percent of the retail price of the goods  
322 sold. Monthly revenue transfers from the licensed distiller to the Board (a) may be submitted  
323 electronically and through other methods approved by the Board and (b) notwithstanding the provisions  
324 of §§ 2.2-1802 and 4.1-116, shall be limited to the amount due to the Board in applicable taxes and  
325 markups.

326 For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries  
327 and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of §  
328 4.1-201 to be (a)(1) additionally aged by the receiving distillery in order to increase the quality and  
329 flavor of such alcoholic beverages or (2) used in a low alcohol beverage cooler and (b) bottled by the  
330 receiving distillery.

331 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without  
332 distinctive character, aroma, taste, or color shall be sold in government stores *or on the Board's online*  
333 *sales platform* at a proof greater than 151 except upon permits issued by the Board for industrial,  
334 commercial, culinary, or medical use.

335 F. All alcoholic beverages sold in government stores *or through the Board's online sales platform*,  
336 except for tasting samples pursuant to subsection G sold in government stores established by the Board  
337 on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed  
338 by the Board.

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

346 Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed  
347 pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic  
348 beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or  
349 cider samples are manufactured within the same licensed premises or on contiguous premises of such  
350 agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer,  
351 two ounces of wine or cider, or one-half ounce of spirits, unless served as a mixed beverage, in which  
352 case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than  
353 four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three  
354 ounces of spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a  
355 method is used to track the consumption of each consumer. Nothing in this paragraph shall prohibit such  
356 agent from serving samples of spirits as part of a mixed beverage. Such mixed beverage samples may  
357 contain spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the  
358 licensed distillery, provided that at least 75 percent of the alcohol used in such samples is manufactured  
359 on the licensed premises or on contiguous premises of the licensed distillery. An agent of the Board  
360 appointed pursuant to subsection D may keep on the licensed premises no more than 10 varieties of  
361 spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the licensed  
362 distillery. Any spirits or vermouth used in such samples that are not manufactured on the licensed  
363 premises or on contiguous premises of the licensed distillery shall be purchased from the Board.

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

365 Any case fee charged to a licensed distiller by the Board for moving spirits from the production and  
366 bailment area to the tasting area of a government store established by the Board on the distiller's

licensed premises shall be waived if such spirits are moved by employees of the licensed distiller.

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. *Licensees may make purchases through the Board's online sales platform.*

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~~ *that* 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.

**§ 4.1-119. (Effective July 1, 2022) Operation of government stores.**

A. Subject to the provisions 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, low alcohol beverage coolers, 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. *The Board may also sell such alcoholic beverages and products through an online sales platform, provided that such online sales are only made and delivered to individuals located within the Commonwealth.*

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 *and through the Board's online sales platform*. 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 *or through its online sales platform*, 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 and low alcohol beverage coolers, 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 and low alcohol beverage coolers 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 an agreement authorized by this subsection a commission of not less than 20 percent of the retail price of the goods 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) notwithstanding the provisions of §§ 2.2-1802 and 4.1-116, 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 (a)(1) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages or (2) used in a low alcohol beverage cooler and (b) 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 *or through the Board's online sales platform* 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 *or through the Board's online sales platform*, 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 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 cider, or one-half ounce of spirits, unless served as a mixed beverage, in which case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than four total samples of alcoholic beverage products or, in the case of spirits samples, no more than three 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. Such mixed beverage samples may contain spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the licensed distillery, provided that at least 75 percent of the alcohol used in such samples is manufactured on the licensed premises or on contiguous premises of the licensed distillery. An agent of the Board appointed pursuant to subsection D may keep on the licensed premises no more than 10 varieties of spirits or vermouth not manufactured on the licensed premises or on contiguous premises of the licensed distillery. Any spirits or vermouth used in such samples that are not manufactured on the licensed premises or on contiguous premises of the licensed distillery shall be purchased from the Board.

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

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

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. *Licensees may make purchases through the Board's online sales platform.*

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~~ *that* 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.

#### **§ 4.1-227. Suspension or revocation of licenses; notice and hearings; imposition of penalties.**

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery



licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-103 shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for the second violation occurring within five years immediately preceding the date of the second violation. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated, or interdicted persons, the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the violation and \$6,000 for a second violation occurring within five years immediately preceding the date of the second violation in lieu of such suspension or any portion thereof, or both. Upon making a finding that aggravating circumstances exist, the Board may also impose a requirement that the licensee pay for the cost incurred by the Board not exceeding \$10,000 in investigating the licensee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.

C. Following notice to (i) the licensee of a hearing that may result in the suspension or revocation of his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept a consent agreement as authorized in subdivision 22 23 of § 4.1-103. The notice shall advise the licensee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq.); and (c)(1) accept the proposed restrictions for operating under the license, (2) accept the period of suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. In case of an offense by the holder of a brewery license, the Board may (i) require that such holder pay the costs incurred by the Board in investigating the licensee, (ii) suspend or revoke the on-premises privileges of the brewery, and (iii) impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation or written order:

1. Designate those (i) objections to an application or (ii) alleged violations that will proceed to an initial hearing;

2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;

551 3. Provide for a reduction in the length of any suspension and a reduction in the amount of any civil  
552 penalty for any retail licensee where the licensee can demonstrate that it provided to its employees  
553 alcohol server or seller training certified in advance by the Board;

554 4. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a  
555 license and the civil charge acceptable in lieu of such suspension; and

556 5. Establish a schedule of offenses for which any penalty may be waived upon a showing that the  
557 licensee has had no prior violations within five years immediately preceding the date of the violation.  
558 No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this  
559 title or Board regulations.

560 **§ 4.1-303. Purchase of alcoholic beverages from person not authorized to sell; penalty.**

561 If any person buys alcoholic beverages from any person other than the Board, a government store,  
562 *the Board's online sales platform*, or a person authorized under this title to sell alcoholic beverages, he  
563 shall be guilty of a Class 1 misdemeanor.

564 **§ 4.1-330. Solicitation by persons interested in manufacture, etc., of alcoholic beverages;**  
565 **penalty.**

566 A. No person having any interest, direct or indirect, in the manufacture, distribution, or sale of spirits  
567 or other alcoholic beverages shall, without a permit granted by the Board and upon such conditions as  
568 the Board may prescribe, solicit either directly or indirectly (i) a mixed beverage licensee; (ii) any agent,  
569 servant, or employee of such licensee; or (iii) any person connected with the licensee in any capacity  
570 whatsoever in his licensed business, to sell or offer for sale the particular spirits or other alcoholic  
571 beverage in which such person may be so interested.

572 The Board, upon proof of any solicitation in violation of this subsection, may suspend or terminate  
573 the sale through government stores *or its online sales platform* or its purchase of the brand of spirits or  
574 other alcoholic beverage ~~which~~ *that* was the subject matter of the unlawful solicitation or promotion. In  
575 addition, the Board may suspend or terminate the sale through such stores *or platform* or its purchase of  
576 all brands of spirits or other alcoholic beverages manufactured or distributed by either the employer or  
577 principal of such solicitor, the broker, or by the owner of the brand of spirits unlawfully solicited or  
578 promoted. The Board may impose a civil penalty not to exceed \$250,000 in lieu of such suspension or  
579 termination of sales through government stores *or its online sales platform* or purchases by the Board or  
580 portion thereof, or both.

581 Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor.

582 B. No mixed beverage licensee or any agent, servant, or employee of such licensee, or any person  
583 connected with the licensee in any capacity whatsoever in his licensed business shall, either directly or  
584 indirectly, be a party to, consent to, solicit, or aid or abet another in a violation of subsection A.

585 The Board may suspend or revoke the license granted to such licensee, or may impose a civil penalty  
586 not to exceed \$25,000 in lieu of such suspension or any portion thereof, or both.

587 Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor.