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SENATE BILL NO. 1428

Senate Amendments in [] - February 4, 2021

A *BILL to amend and reenact § 4.1-119, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to alcoholic beverage control; operation of government stores; sale of low alcohol beverage coolers.*

Patron Prior to Engrossment—Senator Locke

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 4.1-119, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 4.1-119. (Effective until July 1, 2021) 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 spirits,~~] wine [~~not~~] produced by farm wineries [~~; and~~ ,] low alcohol beverage coolers [~~not~~] *produced by licensed distillers*, 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 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. If the licensed distiller makes application and meets certain requirements established by the Board, such agreement shall allow monthly revenue transfers from the licensed distiller to the Board to be submitted electronically and, notwithstanding the provisions of §§ 2.2-1802 and 4.1-116, to 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 at a proof greater than 151 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

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

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

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

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

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

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

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

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

109 **§ 4.1-119. (Effective July 1, 2021, until July 1, 2022) Operation of government stores.**

110 A. Subject to the provisions of §§ 4.1-121 and 4.1-122, the Board may establish, maintain, and
111 operate government stores for the sale of [~~alcoholic beverages, other than beer and spirits,~~] wine [~~not~~
112] produced by farm wineries [~~; and~~ ,] low alcohol beverage coolers [~~not~~] *produced by licensed*
113 *distillers*, vermouth, mixers, products used in connection with distilled spirits, including any garnish or
114 garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from
115 time to time, and products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 in
116 such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such
117 store.

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

120 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 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. If the licensed distiller makes application and meets certain requirements established by the Board, such agreement shall allow monthly revenue transfers from the licensed distiller to the Board to be submitted electronically and, notwithstanding the provisions of §§ 2.2-1802 and 4.1-116, to 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 at a proof greater than 151 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

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

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 14 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 12 ounces of beer, five ounces of wine, or 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

182 licensed distillery shall be purchased from the Board.

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

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

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

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

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

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207 operate government stores for the sale of [~~alcoholic beverages, other than beer and spirits,~~] wine [~~not~~
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209 *distillers*, vermouth, mixers, products used in connection with distilled spirits, including any garnish or
210 garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from
211 time to time, and products licensed by the Virginia Tourism Corporation as specified in § 4.1-103 in
212 such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such
213 store.

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

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217 brands of alcoholic beverages and other Board-approved products that are sold in government stores.
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220 to federal instrumentalities (i) authorized and operating under the laws of the United States and
221 regulations of the United States Department of Defense and (ii) located within the boundaries of federal
222 enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be
223 greater or less than the wholesale price charged other authorized purchasers. Nothing in this subsection
224 shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at
225 government stores, which retail price may include promotional, volume, or other discounts deemed
226 appropriate by the Board.

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

235 Such agents shall sell the spirits and low alcohol beverage coolers in accordance with the provisions
236 of this title, Board regulations, and the terms of the agency agreement between the Authority and the
237 licensed distiller. The Authority shall pay a licensed distiller making sales pursuant to an agreement
238 authorized by this subsection a commission of not less than 20 percent of the retail price of the goods
239 sold. If the licensed distiller makes application and meets certain requirements established by the Board,
240 such agreement shall allow monthly revenue transfers from the licensed distiller to the Board to be
241 submitted electronically and, notwithstanding the provisions of §§ 2.2-1802 and 4.1-116, to be limited to
242 the amount due to the Board in applicable taxes and markups.

243 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 at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

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

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 14 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 12 ounces of beer, five ounces of wine, or 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.

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

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

2. That the provisions of this act shall become effective on January 1, 2022.