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SENATE BILL NO. 536

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 5, 2016)

(Patrons Prior to Substitute—Senators Deeds and Garrett [SB 714])

A *BILL to amend and reenact §§ 4.1-119, as it is currently effective and as it shall become effective, and 4.1-215 of the Code of Virginia, relating to alcoholic beverage control; spirits tastings by distiller licensee.*

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, and 4.1-215 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-119. (Effective until July 1, 2018) 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, and 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, 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 produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine 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.

D. Alcoholic beverages at government stores shall be sold by employees of the Board, 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 on the distiller's licensed premises.

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 Board and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. 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 15 of § 4.1-212, ~~and~~ *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 one-half ounce of spirits, *unless served as a mixed beverage, in which case a*

60 *single sample may contain up to one and one-half ounces of spirits; and (iii) no more than four total*
61 *samples of alcoholic beverage products or, in the case of spirits samples, no more than three ounces of*
62 *spirits shall be given or sold to any person per day; and (iv) in the case of spirits samples, a method is*
63 *used to track the consumption of each consumer.* Nothing in this paragraph shall prohibit such agent
64 from serving samples of spirits as *part of a mixed beverage.*

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

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

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

77 **§ 4.1-119. (Effective July 1, 2018) Operation of government stores.**

78 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and
79 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by
80 farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any
81 garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the
82 Board from time to time, in such counties, cities, and towns considered advisable by the Board. The
83 Board may discontinue any such store.

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

86 C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and
87 brands of alcoholic beverages and other Board-approved products that are sold in government stores.
88 Differences in the cost of operating stores, and market competition and conditions may be reflected in
89 the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages
90 to federal instrumentalities (i) authorized and operating under the laws of the United States and
91 regulations of the United States Department of Defense and (ii) located within the boundaries of federal
92 enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be
93 greater or less than the wholesale price charged other authorized purchasers. Nothing in this subsection
94 shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at
95 government stores, which retail price may include promotional, volume, or other discounts deemed
96 appropriate by the Board.

97 D. Alcoholic beverages at government stores shall be sold by employees of the Authority who shall
98 carry out the provisions of this title and Board regulations governing the operation of government stores
99 and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license
100 or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or
101 blended by such licensee on the licensed premises, at government stores established by the Board on the
102 distiller's licensed premises.

103 Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations,
104 and the terms of the agency agreement between the Authority and the licensed distiller.

105 For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries
106 and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 of
107 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor
108 of such alcoholic beverages and (ii) bottled by the receiving distillery.

109 E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without
110 distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101
111 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

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

115 G. No alcoholic beverages shall be consumed in a government store by any person unless it is part
116 of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm
117 winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a
118 permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, ~~and~~ *at which* the samples of
119 alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in
120 subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic
121 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 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*; ~~and~~ (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.

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.

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.

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

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

Notwithstanding any other provision of this title, a manufacturer of malt beverages or wine, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in § 4.1-209 upon application to the Board provided that such event is (a) at a place approved by the Board and (b) conducted for the purposes of featuring and educating the consuming public about malt beverage or wine products. Such manufacturer shall be limited to no more than four banquet licenses for such special events per year. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event.

Notwithstanding any other provision of this title, a manufacturer of distilled spirits, whether licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in subdivision A 4 of § 4.1-210 upon application to the Board, provided that such event is (1) at a place approved by the Board and (2) conducted for the purposes of featuring and educating the consuming public about the manufacturer's spirits products. Such manufacturer shall be limited to no more than four banquet licenses for such special events per year. Where the event occurs on no more than three consecutive days, a manufacturer need only obtain one such license for the event. Such banquet license shall authorize the manufacturer to give samples of spirits to any person to whom alcoholic beverages may be lawfully sold in designated areas at the special event, provided that (A) no single sample shall exceed one-half ounce per spirits product offered, *unless served as a mixed beverage, in which case a single sample may contain up to one and one-half ounces of spirits*, and (B) no more than ~~four~~ *spirits products three ounces of spirits* may be offered to any patron. Nothing in this paragraph shall prohibit

183 such manufacturer from serving such samples as *part of* a mixed beverage.

184 B. This section shall not apply to:

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

186 2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of
187 § 4.1-201;

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

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

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

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

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