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SENATE BILL NO. 65

Offered January 12, 2022

Prefiled January 3, 2022

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; distiller licenses; Internet orders and shipments.

Patron—Ruff

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 January 1, 2022, 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 spirits, wine produced by farm wineries, low alcohol beverage coolers 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. 1. 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.

2. 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.

3. *The Authority may include in its agency agreement with a licensed distiller provisions that allow the distiller, subject to any conditions imposed by the Board, to sell spirits and low alcohol beverage coolers through Internet orders and ship such orders to consumers and licensees within the Commonwealth; however, no such distiller shall be permitted to sell more than six bottles of spirits or two cases of low alcohol beverage coolers to any one consumer or licensee per month. For the purposes of this subdivision, bottles of spirits shall have a maximum capacity of not more than 1.75 liters. The shipment of spirits or low alcohol beverage coolers pursuant to this subdivision shall be by approved common carriers only and in accordance with Board regulations. Such regulations shall (i) include a*

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process through which common carriers may apply for approval to provide common carriage of spirits or low alcohol beverage coolers shipped by distillers pursuant to this subdivision; (ii) require the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (iii) require the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iv) require the common carrier to submit to the Board such information as the Board may prescribe. Such common carriers shall refuse delivery when the proposed recipient appears to be under 21 years of age and fails to present valid identification. All distillers shipping spirits or low alcohol beverage coolers pursuant to this subdivision shall affix a conspicuous notice in 16-point type or larger to the outside of each package stating, "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the distiller licensee shall be liable only for their independent acts.

4. 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 A 6 of § 4.1-201 to be ~~(a)(1)~~ (i) (a) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages or ~~(2)~~ (b) used in a low alcohol beverage cooler and ~~(b)~~ (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 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 or off-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.

§ 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 spirits, wine produced by farm wineries, low alcohol beverage coolers 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. 1. 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.

2. 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.

3. *The Authority may include in its agency agreement with a licensed distiller provisions that allow the distiller, subject to any conditions imposed by the Board, to sell spirits and low alcohol beverage coolers through Internet orders and ship such orders to consumers and licensees within the Commonwealth; however, no such distiller shall be permitted to sell more than six bottles of spirits or two cases of low alcohol beverage coolers to any one consumer or licensee per month. For the purposes of this subdivision, bottles of spirits shall have a maximum capacity of not more than 1.75 liters. The shipment of spirits or low alcohol beverage coolers pursuant to this subdivision shall be by approved common carriers only and in accordance with Board regulations. Such regulations shall (i) include a process through which common carriers may apply for approval to provide common carriage of spirits or low alcohol beverage coolers shipped by distillers pursuant to this subdivision; (ii) require the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (iii) require the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iv) require the common carrier to submit to the Board such information as the Board may prescribe. Such common carriers shall refuse delivery when the proposed recipient appears to be under 21 years of age and fails to present valid identification. All distillers shipping spirits or low alcohol beverage coolers pursuant to this subdivision shall affix a conspicuous notice in 16-point type or larger to the*

182 outside of each package stating, "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON
183 AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a
184 minor by a common carrier shall constitute a violation by the common carrier. The common carrier and
185 the distiller licensee shall be liable only for their independent acts.

186 4. For the purposes of this subsection, "blended" means the receipt by a licensed distiller of
187 deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with
188 subdivision A 6 of § 4.1-201 to be ~~(a)(1)~~ (i) (a) additionally aged by the receiving distillery in order to
189 increase the quality and flavor of such alcoholic beverages or ~~(2)~~ (b) used in a low alcohol beverage
190 cooler and ~~(b)~~ (ii) bottled by the receiving distillery.

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

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

197 G. No alcoholic beverages shall be consumed in a government store by any person unless it is part
198 of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm
199 winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a
200 permit issued by the Board pursuant to subdivision A 14 of § 4.1-212, at which the samples of
201 alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in
202 subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic
203 beverages may not lawfully be sold pursuant to § 4.1-304.

204 Notwithstanding the provision of this subsection to the contrary, an agent of the Board appointed
205 pursuant to subsection D may give samples of spirits, beer, wine, or cider to persons to whom alcoholic
206 beverages may be lawfully sold for on-premises consumption, provided that (i) the spirits, beer, wine, or
207 cider samples are manufactured within the same licensed premises or on contiguous premises of such
208 agent licensed as a distillery, brewery, or winery; (ii) no single sample shall exceed four ounces of beer,
209 two ounces of wine or cider, or one-half ounce of spirits, unless served as a mixed beverage, in which
210 case a single sample of spirits may contain up to one and one-half ounces of spirits; (iii) no more than
211 12 ounces of beer, five ounces of wine, or three ounces of spirits shall be given or sold to any person
212 per day; and (iv) in the case of spirits samples, a method is used to track the consumption of each
213 consumer. Nothing in this paragraph shall prohibit such agent from serving samples of spirits as part of
214 a mixed beverage. Such mixed beverage samples may contain spirits or vermouth not manufactured on
215 the licensed premises or on contiguous premises of the licensed distillery, provided that at least 75
216 percent of the alcohol used in such samples is manufactured on the licensed premises or on contiguous
217 premises of the licensed distillery. An agent of the Board appointed pursuant to subsection D may keep
218 on the licensed premises no more than 10 varieties of spirits or vermouth not manufactured on the
219 licensed premises or on contiguous premises of the licensed distillery. Any spirits or vermouth used in
220 such samples that are not manufactured on the licensed premises or on contiguous premises of the
221 licensed distillery shall be purchased from the Board.

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

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

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

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

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