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SENATE BILL NO. 386

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 4.1-216 of the Code of Virginia, relating to alcoholic beverage control; tied house; exceptions.

 Patron—McDougle

 Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That § 4.1-216 of the Code of Virginia is amended and reenacted as follows:**

§ 4.1-216. Further limitations on manufacturers, bottlers, importers, brokers or wholesalers; ownership interests prohibited; exceptions; prohibited trade practices.

A. As used in this section:

"Broker" means any person, other than a manufacturer or a licensed beer or wine importer, who regularly engages in the business of bringing together sellers and purchasers of alcoholic beverages for resale and arranges for or consummates such transactions with persons in the Commonwealth to whom such alcoholic beverages may lawfully be sold and shipped into the Commonwealth pursuant to the provisions of this title.

"Manufacturer, bottler, importer, broker or wholesaler of alcoholic beverages" includes any officers or directors of any such manufacturer, bottler, importer, broker or wholesaler.

B. Except as provided in this title, no manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not, shall acquire or hold any financial interest, direct or indirect, (i) in the business for which any retail license is issued or (ii) in the premises where the business of a retail licensee is conducted.

1. Subdivision B (ii) shall not apply so long as such manufacturer, bottler, importer, broker or wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to such retail licensee and such retailer is not required by agreement or otherwise to exclude from sale at his establishment alcoholic beverages of other manufacturers, bottlers, importers, brokers or wholesalers.

2. Service as a member of the board of directors of a corporation licensed as a retailer, the shares of stock of which are sold to the general public on any national or local stock exchange, shall not be deemed to be a financial interest, direct or indirect, in the business or the premises of the retail licensee.

3. A brewery, winery or subsidiary or affiliate thereof, hereinafter collectively referred to as a financing corporation, may participate in financing the business of a wholesale licensee in the Commonwealth by providing debt or equity capital or both but only if done in accordance with the provisions of this subsection.

a. In order to assist a proposed new owner of an existing wholesale licensee, a financing corporation may provide debt or equity capital, or both, if prior approval of the Board has been obtained pursuant to subdivision 3 b of subsection B. A financing corporation which proposes to provide equity capital shall cause the proposed new owner to form a Virginia limited partnership in which the new owner is the general partner and the financing corporation is a limited partner. If the general partner defaults on any financial obligation to the limited partner, which default has been specifically defined in the partnership agreement, or, if the new owner defaults on its obligation to pay principal and interest when due to the financing corporation as specifically defined in the loan documents, then, and only then, shall such financing corporation be allowed to take title to the business of the wholesale licensee. Notwithstanding any other law to the contrary and provided written notice has been given to the Board within two business days after taking title, the wholesale licensee may be managed and operated by such financing corporation pursuant to the existing wholesale license for a period of time not to exceed 180 days as if the license had been issued in the name of the financing corporation. On or before the expiration of such 180-day period, the financing corporation shall cause ownership of the wholesale licensee's business to be transferred to a new owner. Otherwise, on the 181st day, the license shall be deemed terminated. The financing corporation may not participate in financing the transfer of ownership to the new owner or to any other subsequent owner for a period of ~~twenty~~ 20 years following the effective date of the original financing transaction; except where a transfer takes place before the expiration of the eighth full year following the effective date of the original financing transaction in which case the financing corporation may finance such transfer as long as the new owner is required to return such debt or equity capital within the originally prescribed eight-year period. The financing corporation may

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59 exercise its right to take title to, manage and operate the business of, the wholesale licensee only once
60 during such eight-year period.

61 b. In any case in which a financing corporation proposes to provide debt or equity capital in order to
62 assist in a change of ownership of an existing wholesale licensee, the parties to the transaction shall first
63 submit an application for a wholesale license in the name of the proposed new owner to the Board.

64 The Board shall be provided with all documents that pertain to the transaction at the time of the
65 license application and shall ensure that the application complies with all requirements of law pertaining
66 to the issuance of wholesale licenses except that if the financing corporation proposes to provide equity
67 capital and thereby take a limited partnership interest in the applicant entity, the financing corporation
68 shall not be required to comply with any Virginia residency requirement applicable to the issuance of
69 wholesale licenses. In addition to the foregoing, the applicant entity shall certify to the Board and
70 provide supporting documentation that the following requirements are met prior to issuance of the
71 wholesale license: (i) the terms and conditions of any debt financing which the financing corporation
72 proposes to provide are substantially the same as those available in the financial markets to other
73 wholesale licensees who will be in competition with the applicant, (ii) the terms of any proposed equity
74 financing transaction are such that future profits of the applicant's business shall be distributed annually
75 to the financing corporation in direct proportion to its percentage of ownership interest received in return
76 for its investment of equity capital, (iii) if the financing corporation proposes to provide equity capital, it
77 shall hold an ownership interest in the applicant entity through a limited partnership interest and no
78 other arrangement and (iv) the applicant entity shall be contractually obligated to return such debt or
79 equity capital to the financing corporation not later than the end of the eighth full year following the
80 effective date of the transaction thereby terminating any ownership interest or right thereto of the
81 financing corporation.

82 Once the Board has issued a wholesale license pursuant to an application filed in accordance with
83 this subdivision 3 b, any subsequent change in the partnership agreement or the financing documents
84 shall be subject to the prior approval of the Board. In accordance with the previous paragraph, the Board
85 may require the licensee to resubmit certifications and documentation.

86 c. If a financing corporation wishes to provide debt financing, including inventory financing, but not
87 equity financing, to an existing wholesale licensee or a proposed new owner of an existing wholesale
88 licensee, it may do so without regard to the provisions of subdivisions 3 a and 3 b of subsection B
89 under the following circumstances and subject to the following conditions: (i) in order to secure such
90 debt financing, a wholesale licensee or a proposed new owner thereof may grant a security interest in
91 any of its assets, including inventory, other than the wholesale license itself or corporate stock of the
92 wholesale licensee; in the event of default, the financing corporation may take title to any assets pledged
93 to secure such debt but may not take title to the business of the wholesale licensee and may not manage
94 or operate such business; (ii) debt capital may be supplied by such financing corporation to an existing
95 wholesale licensee or a proposed new owner of an existing wholesale licensee so long as debt capital is
96 provided on terms and conditions which are substantially the same as those available in the financial
97 markets to other wholesale licensees in competition with the wholesale licensee which is being so
98 financed; and (iii) the licensee or proposed new owner shall certify to the Board and provide supporting
99 documentation that the requirements of (i) and (ii) of this subdivision 3 c have been met.

100 Nothing in this section shall eliminate, affect or in any way modify the requirements of law
101 pertaining to issuance and retention of a wholesale license as they may apply to existing wholesale
102 licensees or new owners thereof which have received debt financing prior to the enactment of this
103 subdivision 3 c.

104 4. Except for holders of retail licenses issued pursuant to subdivision A 5 of § 4.1-201, brewery
105 licensees may sell beer to retail licensees for resale only under the following conditions: If such brewery
106 or an affiliate or subsidiary thereof has taken title to the business of a wholesale licensee pursuant to the
107 provisions of subdivision 3 a of subsection B, direct sale to retail licensees may be made during the
108 180-day period of operation allowed under that subdivision. Moreover, the holder of a brewery license
109 may make sales of alcoholic beverages directly to retail licensees for a period not to exceed ~~thirty~~ 30
110 days in the event that such retail licensees are normally serviced by a wholesale licensee representing
111 that brewery which has been forced to suspend wholesale operations as a result of a natural disaster or
112 other act of God or which has been terminated by the brewery for fraud, loss of license or assignment
113 of assets for the benefit of creditors not in the ordinary course of business.

114 5. Notwithstanding any provision of this section, including but not limited to those provisions
115 whereby certain ownership or lease arrangements may be permissible, no manufacturer, bottler, importer,
116 broker or wholesaler of alcoholic beverages shall make an agreement, or attempt to make an agreement,
117 with a retail licensee pursuant to which any products sold by a competitor are excluded in whole or in
118 part from the premises on which the retail licensee's business is conducted.

119 C. Subject to such exceptions as may be provided by statute or Board regulations, no manufacturer,
120 bottler, importer, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or

121 not, shall sell, rent, lend, buy for or give to any retail licensee, or to the owner of the premises in which
122 the business of any retail licensee is conducted, *except for corporate sponsorship for car race events*
123 *held at a facility pursuant to subdivision 5 e of § 4.1-208 or subdivision A 1 f of § 4.1-209*, any (i)
124 money, equipment, furniture, fixtures, property, services or anything of value with which the business of
125 such retail licensee is or may be conducted, or for any other purpose; (ii) advertising materials; and (iii)
126 business entertainment, provided that no transaction permitted under this section or by Board regulation
127 shall be used to require the retail licensee to partially or totally exclude from sale at its establishment
128 alcoholic beverages of other manufacturers or wholesalers.
129 The provisions of this subsection shall apply to manufacturers, bottlers, importers, brokers and
130 wholesalers selling alcoholic beverages to any governmental instrumentality or employee thereof selling
131 alcoholic beverages at retail within the exterior limits of the Commonwealth, including all territory
132 within these limits owned by or ceded to the United States of America.