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## HOUSE BILL NO. 2338

Offered January 23, 2015

A *BILL to amend and reenact § 4.1-216 of the Code of Virginia, relating to alcoholic beverage control; prohibited trade practices.*

Patron—Mason

Referred to Committee on General Laws

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 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 exercise its right to take title to, manage and operate the business of, the wholesale licensee only once during such

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59 eight-year period.

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

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

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

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

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

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

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

118 6. *Nothing in this section shall prohibit a winery, brewery, or distillery licensee from paying a*  
119 *royalty to a historical preservation entity pursuant to a bona fide intellectual property agreement that (i)*  
120 *authorizes the winery, brewery, or distillery licensee to manufacture wine, beer, or spirits using*

121 *authentic historical recipes trademarked by the historical preservation entity; (ii) provides for royalties*  
122 *to be paid based solely on the volume of wine, beer, or spirits manufactured using the trademarked*  
123 *recipes, rather than on the sales revenues generated from such wine, beer, or spirits; and (iii) has been*  
124 *approved by the Board.*

125 *For purposes of this subdivision, "historical preservation entity" means an entity (a) that is exempt*  
126 *from income taxation under § 501(c)(3) of the Internal Revenue Code; (b) whose declared purposes*  
127 *include the preservation, restoration, and protection of a historic community in the Commonwealth that*  
128 *is the site of at least 50 historically significant houses, shops, and public buildings dating to the*  
129 *eighteenth century; and (c) that owns not more than 12 retail establishments in the Commonwealth for*  
130 *which retail licenses have been issued by the Board.*

131 C. Subject to such exceptions as may be provided by statute or Board regulations, no manufacturer,  
132 bottler, importer, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or  
133 not, shall sell, rent, lend, buy for or give to any retail licensee, or to the owner of the premises in which  
134 the business of any retail licensee is conducted, any (i) money, equipment, furniture, fixtures, property,  
135 services or anything of value with which the business of such retail licensee is or may be conducted, or  
136 for any other purpose; (ii) advertising materials; and (iii) business entertainment, provided that no  
137 transaction permitted under this section or by Board regulation shall be used to require the retail licensee  
138 to partially or totally exclude from sale at its establishment alcoholic beverages of other manufacturers  
139 or wholesalers.

140 The provisions of this subsection shall apply to manufacturers, bottlers, importers, brokers and  
141 wholesalers selling alcoholic beverages to any governmental instrumentality or employee thereof selling  
142 alcoholic beverages at retail within the exterior limits of the Commonwealth, including all territory  
143 within these limits owned by or ceded to the United States of America.