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HOUSE BILL NO. 910

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 4.1-504, 4.1-506, and 4.1-508 of the Code of Virginia, relating to alcoholic beverage control; Beer Franchise Act.

Patron—Landes

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-504, 4.1-506, and 4.1-508 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-504. Sale of brewery.

A. Except for discontinuance of a brand or for good cause as provided in § 4.1-505, the purchaser of a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreements with distributors in effect on the date of purchase. The purchaser of a brand from a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreement with distributors concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions B 1 and 2 of ~~subsection B~~ will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the brewery selling such brand shall be a nonsurviving brewery and the purchaser shall be a surviving brewery.

B. For purposes of this section, when a purchase of a brewery by or on behalf of another brewery causes the selling brewery to cease to exist as an independent legal entity, the selling brewery shall be regarded as a nonsurviving brewery and the brewery on whose behalf the purchase was made shall be regarded as a surviving brewery. The following rules shall apply in order to determine (i) the distribution rights to any brands which are first marketed in the Commonwealth by the surviving brewery on or after July 1, 1985, with respect to a dual distributorship created prior to July 1, 1985, and (ii) the distribution rights to any brands, regardless of when they were first marketed in the Commonwealth, with respect to a dual distributorship created on or after July 1, 1985:

1. If the surviving brewery distributes in the Commonwealth any brand or brands of the nonsurviving brewery which that brewery marketed in the Commonwealth at any time during the one-year period ending on the day the purchase agreement was made, these brands shall be distributed through those beer wholesalers who were distributors in the Commonwealth for the nonsurviving brewery. Any brands which the surviving brewery had marketed in the Commonwealth prior to the purchase shall be distributed through those beer wholesalers who were wholesalers of the surviving brewery prior to the purchase.

2. If the surviving brewery decides to market in the Commonwealth a new brand which is clearly an extension of a brand already assigned to beer wholesalers in the Commonwealth, the new brand shall be distributed through those wholesalers who distribute the brand of which the new brand is an extension.

3. If the surviving brewery decides to introduce in the Commonwealth a new brand which was not marketed in the Commonwealth at any time during the one-year period ending on the date the purchase agreement was made and which is not a brand extension, the surviving brewery shall market the new brand either through a distributor of the nonsurviving brewery or through a distributor who was a distributor of the surviving brewery prior to the purchase, as the brewery may see fit in any territory.

C. Subsection B shall not apply to determine distributorship rights to any brands or brand extensions which were marketed in the Commonwealth prior to July 1, 1985, with respect to any dual distributorship created prior to July 1, 1985.

D. The provisions of this section shall not apply to the purchase of a brewery that manufactures less than 5,000 barrels of beer per year.

§ 4.1-506. Notice of intent to terminate.

A. Except as provided in subsection F, a brewery shall provide a wholesaler at least ~~ninety~~ 45 days' prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

B. Where the reason relates to a condition or conditions which may be rectified by action of the wholesaler, he shall have ~~sixty~~ 30 days in which to take such action and shall, within the ~~sixty-day~~ 30-day period, give written notice to the brewery if and when such action is taken. A copy of the notice

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59 shall be mailed at the same time to the Board. If such condition has been rectified by action of the
60 wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and
61 without legal effect. However, where the brewery contends that action on the part of the wholesaler has
62 not rectified one or more of such conditions the brewery shall within fifteen days after the expiration of
63 such ~~sixty-day~~ 30- day period request a hearing before the Board to determine if the condition has been
64 rectified by action of the wholesaler.

65 C. Where the reason relates to a condition which may not be rectified by the wholesaler within the
66 ~~sixty-day~~ 30-day period, the wholesaler may request a hearing before the Board to determine if there is
67 good cause for the amendment, termination, cancellation or nonrenewal of the agreement.

68 D. Upon request in writing within the ~~ninety-day~~ 45-day period provided in subsection A from such
69 brewery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of
70 the wholesaler has rectified the condition or, as the case may be, if good cause exists for the
71 amendment, termination, cancellation or nonrenewal of the agreement.

72 E. In any proceeding brought pursuant to this section in which the existence of good cause is an
73 issue, the brewery shall have the burden of proving the existence of good cause. Where a petition is
74 made to the Board in a timely manner for a determination, the agreement in question shall continue in
75 effect pending the Board's decision and any judicial review thereof, except in any case in which the
76 Board makes a finding that there is good cause, as defined in § 4.1-505, for the amendment, termination,
77 cancellation, or nonrenewal, in which case the brewery may, unless otherwise ordered by a court of
78 record, discontinue the agreement in question.

79 F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled
80 or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

81 1. The bankruptcy or receivership of the wholesaler;

82 2. An assignment for the benefit of creditors or similar disposition of the assets of the business other
83 than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing
84 in the ordinary course of business; or

85 3. Revocation of the wholesaler's license.

86 **§ 4.1-508. Remedies.**

87 A. In addition to any other sanctions which the Board is empowered by law to impose, it may order
88 that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective
89 measures implemented. In addition, in any case in which a brewery is found to have attempted or
90 accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement
91 without good cause as defined in § 4.1-505, the Board shall, upon the request of the wholesaler
92 involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the
93 brewery pay the wholesaler reasonable compensation for the value of the agreement, which shall be
94 determined in the manner provided for in subsection B. Reasonable compensation shall include, but is
95 not limited to, the following:

96 1. The fair market value of the assets used by the wholesaler specifically for the purpose of
97 distributing the brewery's products;

98 2. The cost of the wholesaler's inventory of the brewery's products calculated as the sum of the net
99 price paid by the wholesaler for the inventory;

100 3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;

101 4. The cost of transporting the inventory from the brewery to the wholesaler's warehouse, plus any
102 handling costs; and

103 5. The goodwill of the wholesaler's business representing a value over and above the fair market
104 value of the foregoing tangible assets.

105 The compensation for such assets shall be subject to offset for ~~(i)~~ (a) any sums recovered by the
106 wholesaler in liquidation of the assets and ~~(ii)~~ (b) the value which the assets have to the wholesaler
107 independent of their value for use in distributing the brewery's products.

108 B. In the event *that* the brewery and the beer wholesaler are unable to agree on the reasonable
109 compensation to be paid for the value of the agreement, the matter shall be submitted to a panel of three
110 arbitrators. The brewery and the beer wholesaler shall each select one arbitrator, and the two arbitrators
111 selected shall appoint a third arbitrator who shall be a person qualified by experience to appraise the
112 value of existing businesses. The decision of the arbitrators shall be rendered within ~~ninety~~ 45 days from
113 the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an
114 extension of time not to exceed ~~thirty~~ 30 days, or unless the parties agree to an extension of time. All of
115 the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewery,
116 *provided, however, that if the brewery manufactures less than 5,000 barrels of beer per year, the*
117 *percentage of the total arbitration costs to be paid by the brewery shall equal the ratio of the brewery's*
118 *annual sales to the wholesaler to the wholesaler's annual beer purchases.* By entering into an
119 agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and,
120 further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of

121 Title 8.01.

122 C. In addition to the foregoing remedies, in any case in which a brewery is found to have violated
123 § 4.1-506, the Board may, upon request of the wholesaler involved, order the brewery to compensate the
124 wholesaler for any losses proximately resulting from such violation, including but not limited to lost
125 profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated
126 from the date of the violation by the brewery to the date the brewery initiates remedial action pursuant
127 to Board order.

128 **2. That an emergency exists and this act is in force from its passage.**