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SENATE BILL NO. 264

Offered January 19, 1996

A BILL to amend and reenact §§ 4.1-406 and 4.1-505 of the Code of Virginia, relating to alcoholic beverage control; wine and beer franchise acts.

Patrons—Earley, Barry, Couric, Gartlan, Hanger, Hawkins, Houck, Howell, Lucas, Marsh, Maxwell, Newman, Reasor, Saslaw, Schrock, Ticer, Trumbo, Williams and Woods; Delegates: Abbitt, Albo, Almand, Armstrong, Barlow, Brickley, Bryant, Cantor, Cranwell, Croshaw, Davies, Diamonstein, Fisher, Grayson, Hamilton, Harris, Jones, J.C., McClure, Mims, Moore, Moss, O'Brien, Phillips, Reid, Robinson, Wagner, Watts, Wilkins and Woodrum

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-406 and 4.1-505 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-406. Cancellation.

Notwithstanding the terms, provisions or conditions of any agreement, no winery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the winery has first complied with § 4.1-407 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. Good cause shall not include the sale or purchase of a winery. Good cause shall include, but is not limited to the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;

2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the winery including, but not limited to, a substantial failure by a wine wholesaler to (i) maintain a sales volume or trend of his winery's brand or brands comparable to that of other distributors of that brand in the Commonwealth similarly situated or (ii) render services comparable in quality, quantity or volume to the services rendered by other wholesalers of the same brand or brands within the Commonwealth similarly situated. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Nothing in this section shall be construed to prohibit a winery from proposing or effecting an amendment to a contract with a wine wholesaler in the Commonwealth provided that such amendment is not inconsistent with this chapter.

Good cause shall not be construed to exist without a finding of a deficiency for which the wholesaler is responsible.

§ 4.1-505. Cancellation.

Notwithstanding the terms, provisions or conditions of any agreement, no brewery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the brewery has first complied with § 4.1-506 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. Good cause shall not include the sale or purchase of a brewery. Good cause shall include, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;

2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him in writing by the brewery, including, but not limited to, a substantial failure by a beer wholesaler to (i) maintain a sales volume of his brewery's brand or brands, (ii) render services comparable in quality, quantity or volume to the sales volumes

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60 maintained and services rendered by other wholesalers of the same brand or brands within the
61 Commonwealth, or (iii) failure to obtain the consent of the brewery to a transfer of a wholesaler's
62 business unless a determination has been made by the Board pursuant to § 4.1-507 that such consent
63 was unreasonably withheld by the brewery. In any determination as to whether a wholesaler has failed
64 to substantially comply, without reasonable excuse or justification, with any reasonable and material
65 requirement imposed upon him by the brewery, consideration shall be given to the relative size,
66 population, geographical location, number of retail outlets and demand for the products applicable to the
67 territory of the wholesaler in question and to comparable territories.

68 *Good cause shall not be construed to exist without a finding of a deficiency for which the wholesaler*
69 *is responsible.*

70 **2. That the provisions of this act are declaratory of existing law.**