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HOUSE BILL NO. 2348

Offered January 20, 1997

A BILL to amend and reenact §§ 4.1-407 and 4.1-506 of the Code of Virginia, relating to alcoholic beverage control; wine and beer franchise acts.

Patrons—Croshaw, Abbitt, Albo, Armstrong, Barlow, Cantor, DeBoer, Diamonstein, Grayson, Lovelace, McClure, Moore, Phillips, Reid, Robinson, Van Yahres, Wagner, Wilkins and Woodrum; Senators: Bolling, Couric, Gartlan, Lucas, Marsh, Reynolds, Schrock, Trumbo, Waddell, Williams and Woods

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-407 and 4.1-506 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-407. Notice of intent to terminate.

A. Except as provided in subsection F, a winery shall provide a wholesaler at least ninety days' prior written notice of any intention 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. After providing such notice, a winery may immediately apply to the Board for a determination that it is likely to incur substantial hardship if required to comply with the ninety-day notice requirement. If the Board makes such a determination, the ninety-day notice requirement shall be reduced to thirty days. In this event, the thirty-day notice period shall be included in the sixty-day opportunity to cure period provided in subsection B.

B. Where the reason relates to a condition which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and, within the sixty-day period, shall give written notice to the winery if and when such action is taken. A copy of the notice shall be mailed at the same time to the Board. If such condition has been rectified by action of the wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the winery contends that action on the part of the wholesaler has not rectified one or more of such conditions, the winery must within fifteen days after the expiration of the sixty-day period request a hearing before the Board to determine if the condition has been rectified by action of the wholesaler.

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

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

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the winery shall have the burden of proving the existence of good cause. Where a petition is made to the Board for a determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof, *except in any case in which the Board makes a finding that there is good cause, as defined in § 4.1-406, for the amendment, termination, cancellation, or nonrenewal, in which case the winery may, unless otherwise ordered by a court of record, discontinue the agreement in question.* However, where a petition is made to the Board after the agreement has been terminated in accordance with the procedures set forth in this section, the filing of the petition shall not cause the terminated agreement to be reinstated unless the terminated wholesaler's failure to petition in a timely manner was based upon reasonable reliance on representation or other inducements made by the winery.

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

1. The bankruptcy or receivership of the wholesaler;
2. An assignment for the benefit of creditors or similar disposition of the assets of the business, 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

3. Revocation of the wholesaler's license.

§ 4.1-506. Notice of intent to terminate.

A. Except as provided in subsection F, a brewery shall provide a wholesaler at least ninety 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

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60 amendment, termination, cancellation or nonrenewal.

61 B. Where the reason relates to a condition or conditions which may be rectified by action of the
62 wholesaler, he shall have sixty days in which to take such action and shall, within the sixty-day period,
63 give written notice to the brewery if and when such action is taken. A copy of the notice shall be
64 mailed at the same time to the Board. If such condition has been rectified by action of the wholesaler,
65 then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal
66 effect. However, where the brewery contends that action on the part of the wholesaler has not rectified
67 one or more of such conditions the brewery shall within fifteen days after the expiration of such
68 sixty-day period request a hearing before the Board to determine if the condition has been rectified by
69 action of the wholesaler.

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

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

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

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

86 1. The bankruptcy or receivership of the wholesaler;

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

90 3. Revocation of the wholesaler's license.