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SENATE BILL NO. 1371

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 4.1-204 and 4.1-216 of the Code of Virginia, relating to alcoholic beverage control; brewery licensees; tied house exception.

Patron—Vogel

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-201 and 4.1-216 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-201. Conduct not prohibited by this subtitle; limitation.

A. Nothing in this subtitle or any Board regulation adopted pursuant thereto shall prohibit:

1. Any club licensed under this chapter from keeping for consumption by its members any alcoholic beverages lawfully acquired by such members, provided the alcoholic beverages are not sold, dispensed or given away in violation of this subtitle.

2. Any person from having grain, fruit or fruit products and any other substance, when grown or lawfully produced by him, distilled by any distillery licensee, and selling the distilled alcoholic beverages to the Board or selling or shipping them to any person outside of the Commonwealth in accordance with Board regulations. However, no alcoholic beverages so distilled shall be withdrawn from the place where distilled except in accordance with Board regulations.

3. Any person licensed to manufacture and sell, or either, in the Commonwealth or elsewhere, alcoholic beverages other than wine or beer, from soliciting and taking orders from the Board for such alcoholic beverages.

4. The receipt by a person operating a licensed brewery of deliveries and shipments of beer in closed containers or the sale, delivery or shipment of such beer, in accordance with Board regulations to (i) persons licensed to sell beer at wholesale, (ii) persons licensed to sell beer at retail for the purpose of resale ~~only as provided~~ in accordance with subdivision B 4 of § 4.1-216, (iii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iv) persons outside the Commonwealth for resale outside the Commonwealth.

5. The granting of any retail license to a brewery, distillery, or winery licensee, or to an applicant for such license, or to a lessee of such person, a wholly owned subsidiary of such person, or its lessee, provided the places of business or establishments for which the retail licenses are desired are located upon the premises occupied or to be occupied by such distillery, winery, or brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary.

6. The receipt by a distillery licensee of deliveries and shipments of alcoholic beverages, other than wine and beer, in closed containers from other distilleries, or the sale, delivery or shipment of such alcoholic beverages, in accordance with Board regulations, to the Board and to persons outside the Commonwealth for resale outside the Commonwealth.

7. The receipt by a farm winery or winery licensee of deliveries and shipments of wine in closed containers from other wineries or farm wineries located inside or outside the Commonwealth, or the receipt by a winery licensee or farm winery licensee of deliveries and shipments of spirits distilled from fruit or fruit juices in closed containers from distilleries located inside or outside the Commonwealth to be used only for the fortification of wine produced by the licensee in accordance with Board regulations, or the sale, delivery or shipment of such wine, in accordance with Board regulations, to persons licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

8. Any farm winery or winery licensee from shipping or delivering its wine in closed containers to another farm winery or winery licensee for the purpose of additional bottling in accordance with Board regulations and the return of the wine so bottled to the manufacturing farm winery or winery licensee.

9. Any farm winery or winery licensee from selling and shipping or delivering its wine in closed containers to another farm winery or winery licensee, the wine so sold and shipped or delivered to be used by the receiving licensee in the manufacture of wine. Any wine received under this subsection shall be deemed an agricultural product produced in the Commonwealth for the purposes of § 4.1-219, to the extent it is produced from fresh fruits or agricultural products grown or produced in the Commonwealth. The selling licensee shall provide to the receiving licensee, and both shall maintain complete and accurate records of, the source of the fresh fruits or agricultural products used to produce the wine so

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59 transferred.

60 10. Any retail on-and-off-premises wine and beer licensee, his agent or employee, from giving a
61 sample of wine or beer to persons to whom alcoholic beverages may be lawfully sold for on-premises
62 consumption, or any mixed beverage licensee, his agent or employee, from giving a sample of wine,
63 beer, or spirits to persons to whom alcoholic beverages may be lawfully sold for on-premises
64 consumption. Samples of wine shall not exceed two ounces, samples of beer shall not exceed four
65 ounces, and samples of spirits shall not exceed one-half ounce, unless served as a mixed beverage, in
66 which case a sample of spirits may contain up to one and one-half ounces of spirits. No more than 12
67 ounces of beer, five ounces of wine, or three ounces of spirits shall be given to any person per day.

68 11. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not
69 licensed in the Commonwealth, from selling service items bearing alcoholic brand references to
70 on-premises retail licensees or prohibit any such retail licensee from displaying the service items on the
71 premises of his licensed establishment. Each such retail licensee purchasing such service items shall
72 retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of
73 not less than two years from the date of each sale of the service items. As used in this subdivision,
74 "service items" mean articles of tangible personal property normally used by the employees of
75 on-premises retail licensees to serve alcoholic beverages to customers including, but not limited to,
76 glasses, napkins, buckets, and coasters.

77 12. Any employee of an alcoholic beverage wholesaler or manufacturer, whether or not licensed in
78 the Commonwealth, from distributing to retail licensees and their employees novelties and specialties,
79 including wearing apparel, having a wholesale value of \$10 or less and that bear alcoholic beverage
80 advertising. Such items may be distributed to retail licensees in quantities equal to the number of
81 employees of the retail establishment present at the time the items are delivered. Thereafter, such
82 employees may wear or display the items on the licensed premises.

83 13. Any (i) retail on-premises wine and beer licensee, his agent or employee from offering for sale
84 or selling for one price to any person to whom alcoholic beverages may be lawfully sold a flight of
85 wines or beers consisting of samples of not more than five different wines or beers and (ii) mixed
86 beverage licensee, his agent or employee from offering for sale or selling for one price to any person to
87 whom alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples of not
88 more than five different spirits products.

89 14. Any restaurant licensed under this chapter from permitting the consumption of lawfully acquired
90 wine, beer, or cider by bona fide customers on the premises in all areas and locations covered by the
91 license, provided that (i) all such wine, beer, or cider shall have been acquired by the customer from a
92 retailer licensed to sell such alcoholic beverages and (ii) no such wine, beer, or cider shall be brought
93 onto the licensed premises by the customer except in sealed, nonresealable bottles or cans. The licensee
94 may charge a corkage fee to such customer for the wine, beer, or cider so consumed; however, the
95 licensee shall not charge any other fee to such customer.

96 15. Any winery, farm winery, wine importer, wine wholesaler, brewery, limited brewery, beer
97 importer, beer wholesaler, or distiller licensee from providing to adult customers of licensed retail
98 establishments information about wine, beer, or spirits being consumed on such premises.

99 16. Any private swim club operated by a duly organized nonprofit corporation or association from
100 allowing members to bring lawfully acquired alcoholic beverages onto the premises of such club and
101 consume such alcoholic beverages on the premises of such club.

102 B. No deliveries or shipments of alcoholic beverages to persons outside the Commonwealth for resale
103 outside the Commonwealth shall be made into any state the laws of which prohibit the consignee from
104 receiving or selling the same.

105 **§ 4.1-216. Further limitations on manufacturers, bottlers, importers, brokers or wholesalers;**
106 **ownership interests prohibited; exceptions; prohibited trade practices.**

107 A. As used in this section:

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

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

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

119 1. Subdivision B (ii) shall not apply so long as such manufacturer, bottler, importer, broker or
120 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 exercise its right to take title to, manage and operate the business of, the wholesale licensee only once during such eight-year period.

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

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

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

c. If a financing corporation wishes to provide debt financing, including inventory financing, but not equity financing, to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee, it may do so without regard to the provisions of subdivisions 3 a and 3 b of subsection B

under the following circumstances and subject to the following conditions: (i) in order to secure such debt financing, a wholesale licensee or a proposed new owner thereof may grant a security interest in any of its assets, including inventory, other than the wholesale license itself or corporate stock of the wholesale licensee; in the event of default, the financing corporation may take title to any assets pledged to secure such debt but may not take title to the business of the wholesale licensee and may not manage or operate such business; (ii) debt capital may be supplied by such financing corporation to an existing wholesale licensee or a proposed new owner of an existing wholesale licensee so long as debt capital is provided on terms and conditions which are substantially the same as those available in the financial markets to other wholesale licensees in competition with the wholesale licensee which is being so financed; and (iii) the licensee or proposed new owner shall certify to the Board and provide supporting documentation that the requirements of *clauses* (i) and (ii) of this subdivision 3 c have been met.

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

4. Except for holders of retail licenses issued pursuant to subdivision A 5 of § 4.1-201, *Notwithstanding any other provision of this subtitle*, brewery licensees may sell *no more than 5,000 barrels of beer per year* to retail licensees for resale *only under the following conditions*: If such brewery or an affiliate or subsidiary thereof has taken title to the business of a wholesale licensee pursuant to the provisions of subdivision 3 a of subsection B, direct sale to retail licensees may be made during the 180-day period of operation allowed under that subdivision. Moreover, the holder of a brewery license may make sales of alcoholic beverages directly to retail licensees for a period not to exceed thirty days in the event that such retail licensees are normally serviced by a wholesale licensee representing that brewery which has been forced to suspend wholesale operations as a result of a natural disaster or other act of God or which has been terminated by the brewery for fraud, loss of license or assignment of assets for the benefit of creditors not in the ordinary course of business.

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

6. Nothing in this section shall prohibit a winery, brewery, or distillery licensee from paying a royalty to a historical preservation entity pursuant to a bona fide intellectual property agreement that (i) authorizes the winery, brewery, or distillery licensee to manufacture wine, beer, or spirits based on authentic historical recipes and identified with brand names owned and trademarked by the historical preservation entity; (ii) provides for royalties to be paid based solely on the volume of wine, beer, or spirits manufactured using such recipes and trademarks, rather than on the sales revenues generated from such wine, beer, or spirits; and (iii) has been approved by the Board.

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

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

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

The provisions of this subsection shall not apply to any commercial lifestyle center licensee.