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HOUSE BILL NO. 618

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Earley
on February 28, 1996)

(Patron Prior to Substitute—Delegate Diamonstein)

*A BILL to amend and reenact §§ 4.1-404 and 4.1-406 of the Code of Virginia, relating to alcoholic beverage control; wine franchise act.***Be it enacted by the General Assembly of Virginia:****1. That §§ 4.1-404 and 4.1-406 of the Code of Virginia are amended and reenacted as follows:****§ 4.1-404. Sales territory.**

Each winery which enters into an agreement with a wine wholesaler shall designate a sales territory as the primary area of responsibility of that wholesaler which is applicable to the agreement. The term "primary area of responsibility" shall not be construed as restricting sales or sales efforts by a wine wholesaler exclusively to retailers located within the designated sales territory, and any agreement to the contrary shall be void. No winery shall enter into any agreement with more than one wholesaler for the purpose of establishing more than one agreement for its brands of wine in any territory. However, the existence of more than one such agreement as a result of a sale of a winery as contemplated by § 4.1-405 shall not be prohibited. Notwithstanding any other provision in this chapter, a winery may enter into agreements with more than one wholesaler in a sales territory for new brands which are not clearly extensions of existing brands. Territories served by a wine wholesaler on February 18, 1989, shall be deemed designated sales territories within the meaning of this section. Each winery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in the designated territory in regard to a particular brand. Redesignations shall be reported to the Board within thirty days.

§ 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 as used in this section shall not be construed to exist without a finding of a material deficiency for which the wholesaler is responsible in any case in which good cause is alleged to exist based on circumstances not specifically set forth in subdivisions 1 through 4 of this section.

2. That the provisions of § 4.1-406 of this act are declaratory of existing law.