

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 4.1-215 and 4.1-216 of the Code of Virginia, relating to alcoholic beverage*
 3 *control; tied house exceptions.*

4 [H 1703]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 4.1-215 and 4.1-216 of the Code of Virginia are amended and reenacted as follows:**8 **§ 4.1-215. Limitation on manufacturers, bottlers, and wholesalers; exemptions.**

9 A. 1. Unless exempted pursuant to subsection B, no retail license for the sale of alcoholic beverages shall
 10 be granted to any (i) manufacturer, bottler, or wholesaler of alcoholic beverages, whether licensed in the
 11 Commonwealth or not; (ii) officer or director of any such manufacturer, bottler, or wholesaler; (iii)
 12 partnership or corporation, where any partner or stockholder is an officer or director of any such
 13 manufacturer, bottler, or wholesaler; (iv) corporation which is a subsidiary of a corporation which owns or
 14 has interest in another subsidiary corporation which is a manufacturer, bottler, or wholesaler of alcoholic
 15 beverages; or (v) manufacturer, bottler, or wholesaler of alcoholic beverages who has a financial interest in a
 16 corporation which has a retail license as a result of a holding company, which owns or has an interest in such
 17 manufacturer, bottler, or wholesaler of alcoholic beverages. Nor shall such licenses be granted in any
 18 instances where such manufacturer, bottler, or wholesaler and such retailer are under common control, by
 19 stock ownership or otherwise.

20 2. Notwithstanding any other provision of this subtitle, a manufacturer of wine or malt beverages, or two
 21 or more of such manufacturers together, whether licensed in the Commonwealth or not, may obtain a banquet
 22 license as provided in § 4.1-206.3 upon application to the Board, provided that the event for which a banquet
 23 license is obtained is (i) at a place approved by the Board and (ii) conducted for the purposes of featuring and
 24 educating the consuming public about wine or malt beverage products. Such manufacturer shall be limited to
 25 eight banquet licenses, whether or not jointly obtained, for such events per year without regard to the number
 26 of wineries or breweries owned or operated by such manufacturer or by any parent, subsidiary, or company
 27 under common control with such manufacturer. Where the event occurs on no more than three consecutive
 28 days, a manufacturer need only obtain one such license for the event.

29 3. Notwithstanding any other provision of this subtitle, a manufacturer of distilled spirits, whether
 30 licensed in the Commonwealth or not, may obtain a banquet license for a special event as provided in
 31 subdivision D 1 b of § 4.1-206.3 upon application to the Board, provided that such event is (i) at a place
 32 approved by the Board and (ii) conducted for the purposes of featuring and educating the consuming public
 33 about the manufacturer's spirits products. Such manufacturer shall be limited to no more than eight banquet
 34 licenses for such special events per year. Where the event occurs on no more than three consecutive days, a
 35 manufacturer need only obtain one such license for the event. Such banquet license shall authorize the
 36 manufacturer to sell or give samples of spirits to any person to whom alcoholic beverages may be lawfully
 37 sold in designated areas at the special event, provided that (a) no single sample shall exceed one-half ounce
 38 per spirits product offered, unless served as a mixed beverage, in which case a single sample may contain up
 39 to one and one-half ounces of spirits, and (b) no more than three ounces of spirits may be offered to any
 40 patron per day. Nothing in this paragraph shall prohibit such manufacturer from serving such samples as part
 41 of a mixed beverage.

42 B. This section shall not apply to:

43 1. Corporations operating dining cars, buffet cars, club cars, or boats;
 44 2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of §
 45 4.1-201;

46 3. Farm winery licensees engaging in conduct authorized by subdivision 6 of § 4.1-206.1;

47 4. Manufacturers, bottlers, or wholesalers of alcoholic beverages who do not ~~(i)~~ sell or otherwise furnish,
 48 directly or indirectly, alcoholic beverages or other merchandise to persons holding a retail license or banquet
 49 license as described in subsection A and ~~(ii) require, by agreement or otherwise, such person to exclude from~~
 50 ~~sale at his establishment alcoholic beverages of other manufacturers, bottlers, or wholesalers;~~

51 5. Wineries, farm wineries, or breweries engaging in conduct authorized by subsection F of § 4.1-206.3 or
 52 § 4.1-209.1 or 4.1-212.1; or

53 6. One out-of-state winery, not under common control or ownership with any other winery, that is under
 54 common ownership or control with one restaurant licensed to sell wine at retail in Virginia, so long as any
 55 wine produced by that winery is purchased from a Virginia wholesale wine licensee by the restaurant before
 56 it is offered for sale to consumers.

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57 C. The General Assembly finds that it is necessary and proper to require a separation between
 58 manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic
 59 beverages in order to prevent suppliers from dominating local markets through vertical integration and to
 60 prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques. The
 61 exceptions established by this section to the general prohibition against tied interests shall be limited to their
 62 express terms so as not to undermine the general prohibition and shall therefore be construed accordingly.

63 **§ 4.1-216. Further limitations on manufacturers, bottlers, importers, brokers or wholesalers;**
 64 **ownership interests prohibited; exceptions; prohibited trade practices.**

65 A. As used in this section:

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

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

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

77 1. Subdivision B (ii) shall not apply so long as such manufacturer, bottler, importer, broker or wholesaler
 78 does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to such
 79 retail licensee ~~and such retailer is not required by agreement or otherwise to exclude from sale at his~~
 80 ~~establishment alcoholic beverages of other manufacturers, bottlers, importers, brokers or wholesalers.~~

81 2. Service as a member of the board of directors of a corporation licensed as a retailer, the shares of stock
 82 of which are sold to the general public on any national or local stock exchange, shall not be deemed to be a
 83 financial interest, direct or indirect, in the business or the premises of the retail licensee.

84 3. A brewery, winery or subsidiary or affiliate thereof, hereinafter collectively referred to as a financing
 85 corporation, may participate in financing the business of a wholesale licensee in the Commonwealth by
 86 providing debt or equity capital or both but only if done in accordance with the provisions of this subsection.

87 a. In order to assist a proposed new owner of an existing wholesale licensee, a financing corporation may
 88 provide debt or equity capital, or both, if prior approval of the Board has been obtained pursuant to
 89 subdivision 3 b of subsection B. A financing corporation which proposes to provide equity capital shall cause
 90 the proposed new owner to form a Virginia limited partnership in which the new owner is the general partner
 91 and the financing corporation is a limited partner. If the general partner defaults on any financial obligation to
 92 the limited partner, which default has been specifically defined in the partnership agreement, or, if the new
 93 owner defaults on its obligation to pay principal and interest when due to the financing corporation as
 94 specifically defined in the loan documents, then, and only then, shall such financing corporation be allowed
 95 to take title to the business of the wholesale licensee. Notwithstanding any other law to the contrary and
 96 provided written notice has been given to the Board within two business days after taking title, the wholesale
 97 licensee may be managed and operated by such financing corporation pursuant to the existing wholesale
 98 license for a period of time not to exceed 180 days as if the license had been issued in the name of the
 99 financing corporation. On or before the expiration of such 180-day period, the financing corporation shall
 100 cause ownership of the wholesale licensee's business to be transferred to a new owner. Otherwise, on the
 101 181st day, the license shall be deemed terminated. The financing corporation may not participate in financing
 102 the transfer of ownership to the new owner or to any other subsequent owner for a period of twenty years
 103 following the effective date of the original financing transaction; except where a transfer takes place before
 104 the expiration of the eighth full year following the effective date of the original financing transaction in which
 105 case the financing corporation may finance such transfer as long as the new owner is required to return such
 106 debt or equity capital within the originally prescribed eight-year period. The financing corporation may
 107 exercise its right to take title to, manage and operate the business of, the wholesale licensee only once during
 108 such eight-year period.

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

112 The Board shall be provided with all documents that pertain to the transaction at the time of the license
 113 application and shall ensure that the application complies with all requirements of law pertaining to the
 114 issuance of wholesale licenses except that if the financing corporation proposes to provide equity capital and
 115 thereby take a limited partnership interest in the applicant entity, the financing corporation shall not be
 116 required to comply with any Virginia residency requirement applicable to the issuance of wholesale licenses.
 117 In addition to the foregoing, the applicant entity shall certify to the Board and provide supporting

118 documentation that the following requirements are met prior to issuance of the wholesale license: (i) the
119 terms and conditions of any debt financing which the financing corporation proposes to provide are
120 substantially the same as those available in the financial markets to other wholesale licensees who will be in
121 competition with the applicant, (ii) the terms of any proposed equity financing transaction are such that future
122 profits of the applicant's business shall be distributed annually to the financing corporation in direct
123 proportion to its percentage of ownership interest received in return for its investment of equity capital, (iii) if
124 the financing corporation proposes to provide equity capital, it shall hold an ownership interest in the
125 applicant entity through a limited partnership interest and no other arrangement and (iv) the applicant entity
126 shall be contractually obligated to return such debt or equity capital to the financing corporation not later than
127 the end of the eighth full year following the effective date of the transaction thereby terminating any
128 ownership interest or right thereto of the financing corporation.

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

133 c. If a financing corporation wishes to provide debt financing, including inventory financing, but not
134 equity financing, to an existing wholesale licensee or a proposed new owner of an existing wholesale
135 licensee, it may do so without regard to the provisions of subdivisions 3 a and 3 b of subsection B under the
136 following circumstances and subject to the following conditions: (i) in order to secure such debt financing, a
137 wholesale licensee or a proposed new owner thereof may grant a security interest in any of its assets,
138 including inventory, other than the wholesale license itself or corporate stock of the wholesale licensee; in the
139 event of default, the financing corporation may take title to any assets pledged to secure such debt but may
140 not take title to the business of the wholesale licensee and may not manage or operate such business; (ii) debt
141 capital may be supplied by such financing corporation to an existing wholesale licensee or a proposed new
142 owner of an existing wholesale licensee so long as debt capital is provided on terms and conditions which are
143 substantially the same as those available in the financial markets to other wholesale licensees in competition
144 with the wholesale licensee which is being so financed; and (iii) the licensee or proposed new owner shall
145 certify to the Board and provide supporting documentation that the requirements of (i) and (ii) of this
146 subdivision 3 c have been met.

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

150 4. Except for holders of retail licenses issued pursuant to subdivision A 5 of § 4.1-201, brewery licensees
151 may sell beer to retail licensees for resale only under the following conditions: If such brewery or an affiliate
152 or subsidiary thereof has taken title to the business of a wholesale licensee pursuant to the provisions of
153 subdivision 3 a of subsection B, direct sale to retail licensees may be made during the 180-day period of
154 operation allowed under that subdivision. Moreover, the holder of a brewery license may make sales of
155 alcoholic beverages directly to retail licensees for a period not to exceed thirty days in the event that such
156 retail licensees are normally serviced by a wholesale licensee representing that brewery which has been
157 forced to suspend wholesale operations as a result of a natural disaster or other act of God or which has been
158 terminated by the brewery for fraud, loss of license or assignment of assets for the benefit of creditors not in
159 the ordinary course of business.

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

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

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

178 C. Subject to such exceptions as may be provided by statute or Board regulations, no manufacturer,
179 bottler, importer, broker or wholesaler of alcoholic beverages, whether licensed in the Commonwealth or not,

180 shall sell, rent, lend, buy for or give to any retail licensee, or to the owner of the premises in which the
181 business of any retail licensee is conducted, any (i) money, equipment, furniture, fixtures, property, services
182 or anything of value with which the business of such retail licensee is or may be conducted, or for any other
183 purpose; (ii) advertising materials; and (iii) business entertainment, provided that no transaction permitted
184 under this section or by Board regulation shall be used to require the retail licensee to partially or totally
185 exclude from sale at its establishment alcoholic beverages of other manufacturers or wholesalers.

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

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