

VIRGINIA ACTS OF ASSEMBLY - 2025 SESSION

CHAPTER 130

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

[S 834]

Approved March 19, 2025

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-215 and 4.1-216 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-215. Limitation on manufacturers, bottlers, and wholesalers; exemptions.

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

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

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

B. This section shall not apply to:

1. Corporations operating dining cars, buffet cars, club cars, or boats;

2. Brewery, distillery, or winery licensees engaging in conduct authorized by subdivision A 5 of § 4.1-201;

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

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

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

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

C. The General Assembly finds that it is necessary and proper to require a separation between

manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages caused by overly aggressive marketing techniques. The exceptions established by this section to the general prohibition against tied interests shall be limited to their express terms so as not to undermine the general prohibition and shall therefore be construed accordingly.

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

A. As used in this section:

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

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

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

1. Subdivision B (ii) shall not apply so long as such manufacturer, bottler, importer, broker or 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 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 (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, brewery licensees may sell beer 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.