

Code of Virginia
Title 4.1 - ALCOHOLIC BEVERAGE CONTROL ACT.

Chapter 4 - Wine Franchise Act

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§ 4.1-400. Construction and purpose.

This chapter shall be liberally construed and applied to promote its underlying purposes and policies. The underlying purposes and policies of the chapter are:

1. To promote the interests of the parties and the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;
2. To preserve and protect the existing three-tier system for the distribution of wine, which system is deemed material to the proper regulation by the Board of the distribution of alcoholic beverages;
3. To prohibit unfair treatment of wine wholesalers by wineries, promote compliance with valid franchise agreements, and define certain rights and remedies of wineries in regard to cancellation of franchise agreements with wholesalers;
4. To establish conditions for creation and continuation of all wholesale wine distributorships, including original agreements and any renewals or amendments thereto, to the full extent consistent with the laws and Constitutions of the Commonwealth and the United States; and
5. To provide for a system of designation and registration of franchise agreements between wineries and wholesalers with the Board as an aid to Board regulation of the distribution of wine by wholesalers.

(Code 1950, § 4-118.22; 1985, c. 542, § 4-118.42; 1989, c. 10; 1993, c. 866.)

§ 4.1-401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a winery and wine wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the winery's brands of wine. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by a winery for any wine to a wine wholesaler within the Commonwealth.
2. The payment by a wine wholesaler and the acceptance of payment by any winery for the shipment of an order of wine intended for sale in the Commonwealth.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a winery to identify a specific wine product and to distinguish that product from other wine produced or marketed by that winery or other wineries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same winery and which relies to a significant extent on the good will associated with such preexisting brand.

"Dual distributorships" means the existence of agreements between a single winery and more than one wholesaler, each selling a different brand, in a given territory as the result of a purchase of another winery.

"Nonsurviving winery" means any winery which is purchased by another winery as provided in § 4.1-405 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. Person also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving winery" means the winery which purchases a nonsurviving winery as provided in § 4.1-405.

"Territory" or "sales territory" means the area of primary sales responsibility within the Commonwealth expressly or implicitly designated by any agreement between any wine wholesaler and winery for the brand or brands of any winery.

"Wine wholesaler" means any wholesale wine licensee offering wine for sale or resale to retailers or other wine wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed winery.

"Winery" means every person, including any authorized representative of such person pursuant to § 4.1-218, which enters into an agreement with any Virginia wholesale wine licensee and (i) is licensed as a winery or is licensed as a Virginia farm winery, (ii) is licensed as a wine importer and is not simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in the Commonwealth or not, or (iv) without regard to whether such person is licensed in the Commonwealth, has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

(Code 1950, §§ 4-118.21, 4-118.23; 1985, c. 542, § 4-118.43; 1986, c. 102; 1989, c. 10; 1991, c. 628; 1993, c. 866; 1997, c. 801.)

§ 4.1-402. Applicability.

This chapter shall apply to all agreements in effect on or after February 18, 1989, and any renewal or amendment of such agreements. For the purposes of this chapter, an agreement shall be deemed to be in effect or renewed or continued in effect when any of the following acts occur after February 18, 1989:

1. The shipment, preparation for shipment or acceptance of any order by a winery or its agents for any wine to a wine wholesaler within the Commonwealth; and
2. The payment by a wine wholesaler and the acceptance of payment by any winery or its agents for the shipment of an order of wine intended for sale in the Commonwealth.

(Code 1950, § 4-118.38; 1985, c. 542, § 4-118.58; 1989, c. 10; 1993, c. 866.)

§ 4.1-403. No inducement or coercion.

No winery shall:

1. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to accept delivery of any wine or any other commodity which has not been ordered by the wine wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a winery and wine wholesaler.
3. Require a wine wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other winery anywhere in the Commonwealth.

(Code 1950, § 4-118.24; 1985, c. 542, § 4-118.44; 1989, c. 10; 1993, c. 866.)

4.1-404. Primary area of responsibility.

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.

(Code 1950, § 4-118.25; 1985, c. 542, § 4-118.45; 1989, c. 10; 1993, c. 866.)

§ 4.1-405. Sale of winery.

A. Except for discontinuance of a brand or for good cause as provided in § 4.1-406, the purchaser of a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers in effect on the date of purchase. The purchaser of a brand from a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the winery selling the brand shall be a nonsurviving winery and the purchaser shall be a surviving winery.

B. For purposes of this section, when a purchase of a winery by or on behalf of another winery causes the selling winery to cease to exist as an independent legal entity, the selling winery shall be regarded as a nonsurviving winery, and the winery on whose behalf the purchase was made shall be regarded as a surviving winery. In any case in which such a purchase of a winery by or on behalf of another winery has created or will create a dual distributorship, the following rules shall apply in order to determine the allocation of any brands which are first marketed in the Commonwealth by the surviving winery after February 18, 1989:

1. If the surviving winery distributes in the Commonwealth brands of the nonsurviving winery which that winery marketed anywhere prior to the purchase, these brands shall be distributed through any wholesalers who were distributors in the Commonwealth for the nonsurviving winery. If the nonsurviving winery had no distributors in the Commonwealth, then the surviving winery's brands, as well as the brands of the surviving winery which were marketed anywhere prior to the purchase, shall be distributed through those wine wholesalers who were wholesalers of the surviving winery prior to the purchase.

2. If the surviving winery decides to market in the Commonwealth a new brand which was not marketed anywhere prior to the purchase, but which is clearly an extension of a brand which did exist prior to the purchase, the new brand shall be distributed through those wholesalers who distributed the brand of which the new brand is an extension.

3. If the surviving winery decides to introduce in the Commonwealth a new brand which was not marketed anywhere prior to the purchase and which is not a brand extension, the new brand may be distributed through any distributor.

(Code 1950, § 4-118.26; 1985, c. 542, § 4-118.46; 1989, c. 10; 1993, c. 866.)

§ 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 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.

(Code 1950, § 4-118.27; 1985, c. 542, § 4-118.47; 1987, c. 246; 1989, c. 10; 1993, c. 866; 1996, c. 3.)

§ 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.

(Code 1950, § 4-118.28; 1985, c. 542, § 4-118.48; 1989, c. 10; 1993, c. 866; 1997, c. 183.)

§ 4.1-408. Transfer of business.

A. No winery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more wineries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no winery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

(Code 1950, § 4-118.29; 1985, c. 542, § 4-118.49; 1989, c. 10; 1993, c. 866.)

§ 4.1-409. Remedies.

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a winery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § 4.1-406, the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the winery pay the wholesaler reasonable compensation for the value of this agreement as determined pursuant to subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the winery's products;
2. The cost of the wholesaler's inventory of the winery's products calculated as the sum of the net price paid by the wholesaler for the inventory;
3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;
4. The cost of transporting the inventory from the winery to the wholesaler's warehouse, plus any handling costs; and
5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

B. In the event the winery and the wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, a person qualified by experience to appraise the value of existing businesses shall be appointed arbitrator by the Secretary of the Board. The decision of the arbitrator shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the winery. By entering into an agreement, the parties are deemed to

have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a winery is found to have violated § 4.1-407, the Board may, upon request of the wholesaler involved, order the winery to compensate the wholesaler for any loss proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the winery to the date the winery initiates remedial action pursuant to Board order.

(Code 1950, § 4-118.30; 1985, c. 542, § 4-118.50; 1987, c. 246; 1989, c. 10; 1993, c. 866.)

§ 4.1-410. Board proceedings and appellate review.

A. The Board, upon petition by any interested party, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that the winery or wine wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter, the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing, or manufacturing practices or processes of the winery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the winery and wholesaler on condition that such information will not be disclosed by the Board, the winery or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

(Code 1950, § 4-118.31; 1985, c. 542, § 4-118.51; 1987, c. 139; 1989, c. 10; 1993, c. 866.)

4.1-411. Price of product.

No winery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any wine.

(Code 1950, § 4-118.32; 1985, c. 542, § 4-118.52; 1989, c. 10; 1993, c. 866.)

4.1-412. Increase of prices.

No winery or wine importer shall increase the prices charged any wholesale wine licensee for wine except by written notice to the wholesaler signed by an authorized officer or agent of the winery or wine importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a winery or wine importer so requests and demonstrates good cause therefor.

(Code 1950, § 4-118.33; 1985, c. 542, § 4-118.53; 1989, c. 10; 1993, c. 866.)

4.1-413. Retaliatory action prohibited.

A winery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the winery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of services or quality of products available to the wholesaler under the agreement.

(Code 1950, § 4-118.34; 1985, c. 542, § 4-118.54; 1989, c. 10; 1993, c. 866.)

§ 4.1-414. Management.

No winery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery for its wholesalers.

(Code 1950, § 4-118.35; 1985, c. 542, § 4-118.55; 1989, c. 10; 1993, c. 866.)

§ 4.1-415. Discrimination prohibited.

No winery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

(Code 1950, § 4-118.36; 1985, c. 542, § 4-118.56; 1989, c. 10; 1993, c. 866.)

§ 4.1-416. Waiver prohibited; conflicts of laws.

A. No winery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a winery and a wine wholesaler pursuant to which the wholesaler is to market the winery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance, notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

(Code 1950, § 4-118.37; 1985, c. 542, § 4-118.57; 1989, c. 10; 1993, c. 866.)

§ 4.1-417. Right of free association.

No winery or wholesaler shall restrict or inhibit the right of free association among wineries or wholesalers for any lawful purpose.

(Code 1950, § 4-118.39; 1985, c. 542, § 4-118.59; 1989, c. 10; 1993, c. 866.)

§ 4.1-418. Reasonableness and good faith.

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

(Code 1950, § 4-118.40; 1985, c. 542, § 4-118.60; 1989, c. 10; 1993, c. 866.)

Chapter 5 - Beer Franchise Act

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§ 4.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a brewery and beer wholesaler pursuant to which the wholesaler has been

authorized to distribute one or more of the brewery's brands of beer. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by any brewery for any beer to a beer wholesaler within the Commonwealth.
2. The payment by a beer wholesaler and the acceptance of payment by any brewery for the shipment of an order of beer intended for sale in the Commonwealth.

"Beer wholesaler," "wholesaler," "beer distributor," and "distributor" mean any wholesale beer licensee, including any successor-in-interest to such person, within the Commonwealth offering beer for sale or resale to retailers or other beer wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewery.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a brewery to identify a specific malt beverage product and to distinguish that product from other beers produced or marketed by that brewery or other breweries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand, which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with such preexisting brand.

"Brewery" means every person, including any authorized representative of such person pursuant to § 4.1-218 which (i) is licensed as a brewery located within the Commonwealth, (ii) holds a beer importer's license and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products excluding licensed Virginia wholesalers and retailers or has the contractual right to distribute under its own brand any malt beverage product whether licensed in the Commonwealth or not, who enters into an agreement with any beer wholesaler licensed to do business in the Commonwealth.

"Dual distributorships" means the existence of agreements between a single brewery and more than one wholesaler in a given territory as the result of a purchase of another brewery.

"Nonsurviving brewery" means any brewery which is purchased by another brewery as provided in § 4.1-504 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving brewery" means a brewery which purchases a nonsurviving brewery as provided in § 4.1-504.

"Territory" or "sales territory" means the area of sales responsibility within the Commonwealth expressly or impliedly designated by any agreement between any beer wholesaler and brewery for the brand or brands of any brewer.

(1978, c. 579, § 4-118.4; 1985, c. 549; 1987, c. 247; 1991, c. 628; 1993, c. 866; 1997, c. 801.)

§ 4.1-501. Applicability.

This chapter shall apply to all agreements in effect on or after January 1, 1978.

(1978, c. 579, § 4-118.18; 1993, c. 866.)

§ 4.1-502. No inducement or coercion.

No brewery shall:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any beer or any other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewery and beer wholesaler.
3. Require a beer wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other brewery anywhere in the Commonwealth.

(1978, c. 579, § 4-118.5; 1993, c. 866.)

§ 4.1-504. Sale of brewery.

A. Except for discontinuance of a brand or for good cause as provided in § 4.1-505, the purchaser of a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreements with distributors in effect on the date of purchase. The purchaser of a brand from a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreement with distributors concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the brewery selling such brand shall be a nonsurviving brewery and the purchaser shall be a surviving brewery.

B. For purposes of this section, when a purchase of a brewery by or on behalf of another brewery causes the selling brewery to cease to exist as an independent legal entity, the selling brewery shall be regarded as a nonsurviving brewery and the brewery on whose behalf the purchase was made shall be regarded as a surviving brewery. The following rules shall apply in order to determine (i) the distribution rights to any brands which are first marketed in the Commonwealth by the surviving brewery on or after July 1, 1985, with respect to a dual distributorship created prior to July 1, 1985, and (ii) the distribution rights to any brands, regardless of when they were first marketed in the Commonwealth, with respect to a dual distributorship created on or after July 1, 1985:

1. If the surviving brewery distributes in the Commonwealth any brand or brands of the nonsurviving brewery which that brewery marketed in the Commonwealth at any time during the one-year period ending on the day the purchase agreement was made, these brands shall be distributed through those beer wholesalers who were distributors in the Commonwealth for the nonsurviving brewery. Any brands which the surviving brewery had marketed in the Commonwealth prior to the purchase shall be distributed through those beer wholesalers who were wholesalers of the surviving brewery prior to the purchase.

2. If the surviving brewery decides to market in the Commonwealth a new brand which is clearly an extension of a brand already assigned to beer wholesalers in the Commonwealth, the new brand shall be distributed through those wholesalers who distribute the brand of which the new brand is an extension.

3. If the surviving brewery decides to introduce in the Commonwealth a new brand which was not marketed in the Commonwealth at any time during the one-year period ending on the date the purchase agreement was made and which is not a brand extension, the surviving brewery shall market the new brand either through a distributor of the nonsurviving brewery or through a distributor who was a distributor of the surviving brewery prior to the purchase, as the brewery may see fit in any territory.

C. Subsection B shall not apply to determine distributorship rights to any brands or brand extensions which were marketed in the Commonwealth prior to July 1, 1985, with respect to any dual distributorship created prior to July 1, 1985.

(1985, c. 549, § 4-118.6:1; 1993, c. 866.)

§ 4.1-505. Cancellation.

Notwithstanding the terms, provisions or conditions of any agreement, no brewery 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 brewery has first complied with § 4.1-506 and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. Good cause shall not include the sale or purchase of a brewery. 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 excuse or justification, with any reasonable and material requirement imposed upon him in writing by the brewery, including, but not limited to, a substantial failure by a beer wholesaler to (i) maintain a sales volume of his brewery's brand or brands, (ii) render services comparable in quality, quantity or volume to the sales volumes maintained and services rendered by other wholesalers of the same brand or brands within the Commonwealth, or (iii) failure to obtain the consent of the brewery to a transfer of a wholesaler's business unless a

determination has been made by the Board pursuant to § 4.1-507 that such consent was unreasonably withheld by the brewery. 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 brewery, 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.

Good cause 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.

(1978, c. 579, § 4-118.7; 1985, c. 549; 1987, c. 247; 1989, c. 272; 1993, c. 866; 1996, c. 3.)

§ 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 amendment, termination, cancellation or nonrenewal.

B. Where the reason relates to a condition or conditions which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and shall, within the sixty-day period, give written notice to the brewery 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 brewery contends that action on the part of the wholesaler has not rectified one or more of such conditions the brewery shall within fifteen days after the expiration of such 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 brewery 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 brewery shall have the burden of proving the existence of good cause. Where a petition is made to the Board in a timely manner 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 § 4.1-505, for the amendment, termination, cancellation, or nonrenewal, in which case the brewery may, unless otherwise ordered by a court of record, discontinue the agreement in question.

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.

(1978, c. 579, § 4-118.8; 1985, c. 549; 1993, c. 866; 1997, c. 183.)

§ 4.1-507. Transfer of business.

A. No brewery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business, or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more breweries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no brewery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all other respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

(1978, c. 579, § 4-118.9; 1985, c. 549; 1993, c. 866.)

§ 4.1-508. Remedies.

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a brewery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § 4.1-505, the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the brewery pay the wholesaler reasonable compensation for the value of the agreement, which shall be determined in the manner provided for in subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the brewery's products;

2. The cost of the wholesaler's inventory of the brewery's products calculated as the sum of the net price paid by the wholesaler for the inventory;
3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;
4. The cost of transporting the inventory from the brewery to the wholesaler's warehouse, plus any handling costs; and
5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

The compensation for such assets shall be subject to offset for (i) any sums recovered by the wholesaler in liquidation of the assets and (ii) the value which the assets have to the wholesaler independent of their value for use in distributing the brewery's products.

B. In the event the brewery and the beer wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a panel of three arbitrators. The brewery and the beer wholesaler shall each select one arbitrator and the two arbitrators selected shall appoint a third arbitrator who shall be a person qualified by experience to appraise the value of existing businesses. The decision of the arbitrators shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewery. By entering into an agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a brewery is found to have violated § 4.1-506, the Board may, upon request of the wholesaler involved, order the brewery to compensate the wholesaler for any losses proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the brewery to the date the brewery initiates remedial action pursuant to Board order.

(1978, c. 579, § 4-118.10; 1985, c. 549; 1987, c. 247; 1993, c. 866.)

§ 4.1-509. Board proceedings and appellate review.

A. The Board, upon petition by any beer wholesaler or brewery, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that a brewery or beer wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including

regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing or manufacturing practices or processes of the brewery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the brewery and wholesaler on condition that such information will not be disclosed by the Board, the brewery, or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

(1978, c. 579, § 4-118.11; 1980, c. 299; 1981, c. 536; 1985, c. 549; 1987, c. 139; 1993, c. 866.)

§ 4.1-509.1. Board proceedings; contemplated actions by brewery or wholesaler.

A. For purposes of this section, "contemplated action" means an action proposed by a brewery or wholesaler that (i) if carried out would violate any provision of this chapter or subdivision 1 c (v) of § 4.1-225 and (ii) is demonstrated by a specific written statement authored by a brewery or an employee of a wholesaler who is specifically authorized by virtue of job title and responsibility to make such statement and such other evidence as may be required by the Board pursuant to the facts of any given circumstance.

B. Subsequent to compliance with subsection D, any wholesaler may file a petition against a brewery, and any brewery may file a petition against a wholesaler, in which the petitioner alleges that the respondent named in the petition as a matter of past or present fact has contemplated action that if carried out would violate any provision of this chapter or subdivision 1 c (v) of § 4.1-225. Any such petition filed shall identify with specificity the alleged contemplated action, the document in which such contemplated action is described or authorized, and specify the provision of law or regulation that the contemplated action would violate if carried out. The petition shall include a statement that a controversy as to the lawfulness of the contemplated action exists. The statement shall be supported by evidence of the petitioner's good faith effort to resolve the controversy in accordance with subsection D. The petitioner shall have the burden of establishing that the contemplated actions identified in the petition, if carried out, would violate any provision of law or regulation enumerated in this subsection. The Board may, if it finds that a brewery or wholesaler has frivolously maintained a petition or defense to a proceeding pursuant to this chapter, award reasonable costs and attorney fees to the prevailing party.

C. Any petition filed by a brewery or wholesaler pursuant to this section shall be delivered to the Secretary of the Board. The Board shall promptly issue a written determination as to whether a violation or attempted violation as alleged in the petition has occurred. In addition, the Board shall promptly issue a written determination as to whether a violation alleged in the petition would occur if the contemplated action identified in the petition were to be carried out.

D. Prior to filing a petition, a party shall communicate with the party alleged to be considering a contemplated action and initiate a good faith attempt to resolve the issue in question. If within 21 days of initiating the communication required by this subsection, or such longer period of time if mutually

agreed upon, there is no resolution, either party may proceed to file a petition in accordance with subsection B.

(2013, c. 3.)

§ 4.1-510. Price of product.

No brewery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any beer.

(1978, c. 579, § 4-118.12; 1993, c. 866.)

§ 4.1-511. Increase of prices.

No brewery or beer importer shall increase the prices charged any wholesale beer licensee for beer except by written notice to the wholesaler signed by an authorized officer or agent of the brewery or beer importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a brewery or beer importer so requests and demonstrates good cause therefor.

(1982, c. 122, § 4-118.12:1; 1993, c. 866.)

§ 4.1-512. Retaliatory action prohibited.

A brewery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of service or quantity of products available to the wholesaler under the agreement.

(1978, c. 579, § 4-118.13; 1993, c. 866.)

§ 4.1-513. Management.

No brewery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the brewery for all its wholesalers.

(1978, c. 579, § 4-118.14; 1985, c. 549; 1993, c. 866.)

§ 4.1-514. Discrimination prohibited.

No brewery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

(1978, c. 579, § 4-118.15; 1993, c. 866.)

§ 4.1-515. Waiver prohibited; conflicts of laws.

A. No brewery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a brewery and a beer wholesaler pursuant to which the wholesaler is to market the brewery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

(1978, c. 579, § 4-118.16; 1989, c. 272; 1993, c. 866.)

4.1-516. Right of free association.

No brewery or wholesaler shall restrict or inhibit the right of free association among breweries or wholesalers for any lawful purpose.

(1978, c. 579, § 4-118.19; 1993, c. 866.)

§ 4.1-517. Reasonableness and good faith.

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

(1985, c. 549, § 4-118.20:1; 1993, c. 866.)