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H.710

Introduced by Representatives Donovan of Burlington, Sullivan of Burlington,  
Parent of St. Albans Town, and Scheuermann of Stowe

Referred to Committee on

Date:

Subject: Alcoholic beverages; beer and wine franchises; exemption

Statement of purpose of bill as introduced: This bill proposes to create an  
exception to the beer and wine franchise law for certificate of approval holders  
and manufacturers of malt beverages that manufacture or distribute not more  
than 300,000 barrels of malt beverages or 100,000 gallons of vinous beverages  
per year.

An act relating to beer ~~and wine~~ franchises

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. FINDINGS~~

~~(a) The General Assembly finds:~~

~~(1) In recent years, local and regional alcoholic beverages have become  
a growing and increasingly important part of Vermont's economy.~~

~~(2) Vermont has become one of the world's most respected destinations  
for beer tourists. Vermont's craft beer industry supports nearly 1,900 jobs and~~

1 provides a growing source of revenue to the State. Initiatives to help  
2 strengthen and grow Vermont's craft beer industry and to ensure free and fair  
3 competition are in the best interests of the State.

4 (3) Vermont's vinous beverages industry includes 27 wineries and  
5 23 meaderies, cideries, and fruit wine producers. Together, they employ the  
6 equivalent of more than 200 full-time employees and serve over 100,000  
7 visitors annually in their tasting rooms and at events. These manufacturers  
8 bolster Vermont's agricultural economy and working landscape by cultivating  
9 hundreds of acres of grapes, apples, fruit trees, and honey. Initiatives to  
10 strengthen Vermont's vinous beverages industry and to ensure free and fair  
11 competition are in the best interests of the State.

12 (4) Like Vermont, New York state, and the other states in New England  
13 are home to some of the finest local and regional craft breweries and wineries  
14 in the country. Ensuring free and fair access for their products in Vermont's  
15 market will increase consumer choice and is in the best interests of the State  
16 and its citizens.

17 (5) Vermont's franchise laws were enacted in 1976 when there were 103  
18 breweries nationally, with five dominant national brewers, compared to  
19 roughly 5,000 wholesale distributors throughout the United States. Likewise,  
20 at that time, there were a few large producers of vinous beverages who could  
21 control the flow of products into most markets across the United States. When

1 ~~Vermont's franchise laws were enacted, they protected the public welfare by~~  
2 correcting an imbalance in economic and bargaining power between large  
3 national brewers and wineries and smaller local wholesale distributors in order  
4 to promote fair business relations.

5 (6) In the decades since then, the numbers of breweries and wineries  
6 compared with wholesale distributors have nearly reversed. Today, more than  
7 5,000 breweries operate across the United States compared with only about  
8 1,000 full-service beer wholesalers. Each of the three largest Vermont beer  
9 wholesalers serves the entire State and represents hundreds of beer brands.  
10 Similarly, in the wine industry, many small producers have entered the market  
11 while the number of wholesale distributors has decreased due to consolidation.

12 (7) The significant imbalance in economic and bargaining power that  
13 the franchise laws were adopted to address is absent from the dynamics  
14 between wholesale distributors and the many small and regional craft brewers  
15 and vinous beverage producers that have entered the marketplace. Therefore,  
16 the policy reasons that supported adoption of the franchise laws do not apply  
17 to a growing segment of smaller brewers and vinous beverage producers that  
18 wish to sell their products in Vermont.

19 (8) Vermont's wholesale distributors provide crucial infrastructure and  
20 services that enable brewers and vinous beverage producers to fully access  
21 Vermont's retail market. However, the franchise laws limit the ability of small

1 ~~and regional craft brewers and vinous beverage producers to gain access to~~  
2 Vermont's marketplace. Expanding the ability of small and regional producers  
3 to access Vermont's marketplace will expand the choices available to  
4 Vermont's consumers and allow the small and regional producers to grow their  
5 businesses and compete effectively in Vermont.

6 (9) Because the considerations that make the franchise laws necessary to  
7 equalize the bargaining power between wholesale distributors and large  
8 national breweries and wineries do not apply to the relationship between small  
9 and regional craft breweries and vinous beverage producers and wholesale  
10 distributors, it is necessary to amend the franchise laws to recognize the  
11 current realities of the market in Vermont.

12 (10) Therefore, the General Assembly finds that it is in the public  
13 interest to enact legislation to provide an interim process, for a period of five  
14 years, for breweries that produce not more than 300,000 barrels of beer per  
15 year and wineries that produce not more than 100,000 gallons of wine per year  
16 to terminate their franchise agreements without cause before ultimately  
17 providing an exemption for them from Vermont's franchise laws. This will  
18 strengthen the ability of local and regional producers to compete in Vermont  
19 and increase the variety and quality of products available to Vermont  
20 consumers.

21 ~~(b) It is the intent of the General Assembly that this act be liberally~~

1 ~~construed to achieve its purposes.~~

2 Sec. 2. 7 V.S.A. § 703 is amended to read:

3 § 703. CANCELLATION OF FRANCHISE

4 (a) Notwithstanding the terms, provisions, or conditions of any agreement  
5 or franchise, no certificate of approval holder that produces or distributes more  
6 than 300,000 barrels of malt beverages or 100,000 gallons of vinous beverages  
7 per year or manufacturer that produces more than 300,000 barrels of malt  
8 beverages or 100,000 gallons of vinous beverages per year shall cancel,  
9 terminate, or refuse to continue a franchise, or cause a wholesale dealer to  
10 relinquish a franchise, unless good cause is shown to exist.

11 (b) Notwithstanding the terms, provisions, or conditions of any agreement  
12 or franchise, a certificate of approval holder that produces or distributes not  
13 more than 300,000 barrels of malt beverages or 100,000 gallons of vinous  
14 beverages per year or manufacturer that produces not more than 300,000  
15 barrels of malt beverages or 100,000 gallons of vinous beverages per year may  
16 cancel, terminate, or refuse to continue a franchise, or cause a wholesale dealer  
17 to relinquish a franchise if:

18 (1) the certificate of approval holder or manufacturer provides the  
19 wholesale dealer with written notice of the intent to cancel, terminate, or  
20 refuse to continue the franchise at least 30 days before the date on which the  
21 franchise shall terminate, and

1 ~~(2) on or before the date on which the franchise shall terminate, the~~  
2 certificate of approval holder, manufacturer, or a wholesale dealer designated  
3 by the certificate of approval holder or manufacturer pays the terminated  
4 wholesale dealer reasonable compensation for the termination of the franchise.

5 (c) As used in this section, “reasonable compensation” means cost of the  
6 wholesale dealer’s laid-in inventory related to the terminated franchise and the  
7 average annual gross profits earned by the wholesale dealer on the terminated  
8 franchise during the last three fiscal years or, if the franchise has not been in  
9 existence for three years, the period of time during which the franchise has  
10 been in existence. “Gross profits” shall equal the wholesale price of the  
11 inventory minus shipping costs and taxes.

12 Sec. 3. 7 V.S.A. § 703 is amended to read:

13 § 703. CANCELLATION OF FRANCHISE

14 (a) Notwithstanding the terms, provisions, or conditions of any agreement  
15 or franchise, no certificate of approval holder that produces or distributes more  
16 than 300,000 barrels of malt beverages or 100,000 gallons of vinous beverages  
17 per year or manufacturer that produces more than 300,000 barrels of malt  
18 beverages or 100,000 gallons of vinous beverages per year shall cancel,  
19 terminate, or refuse to continue a franchise, or cause a wholesale dealer to  
20 relinquish a franchise, unless good cause is shown to exist.

21 (b)(1) ~~Notwithstanding the terms, provisions, or conditions of any~~  
22 ~~agreement or franchise, a certificate of approval holder that produces or~~

1 ~~distributes not more than 300,000 barrels of malt beverages or 100,000 gallons~~  
2 ~~of vinous beverages per year or manufacturer that produces not more than~~  
3 ~~300,000 barrels of malt beverages or 100,000 gallons of vinous beverages per~~  
4 ~~year may cancel, terminate, or refuse to continue a franchise, or cause a~~  
5 ~~wholesale dealer to relinquish a franchise if:~~

6 ~~(A) the certificate of approval holder or manufacturer provides the~~  
7 ~~wholesale dealer with written notice of the intent to cancel, terminate, or~~  
8 ~~refuse to continue the franchise at least 30 days before the date on which the~~  
9 ~~franchise shall terminate; and~~

10 ~~(B) on or before the date on which the franchise shall terminate, the~~  
11 ~~certificate of approval holder, manufacturer, or a wholesale dealer designated~~  
12 ~~by the certificate of approval holder or manufacturer pays the terminated~~  
13 ~~wholesale dealer reasonable compensation for the termination of the franchise.~~

14 ~~(c) As used in this section, "reasonable compensation" means cost of the~~  
15 ~~wholesale dealer's laid-in inventory related to the terminated franchise and the~~  
16 ~~average annual gross profits earned by the wholesale dealer on the terminated~~  
17 ~~franchise during the last three fiscal years or, if the franchise has not been in~~  
18 ~~existence for three years, the period of time during which the franchise has~~  
19 ~~been in existence. "Gross profits" shall equal the wholesale price of the~~  
20 ~~inventory minus shipping costs and taxes.~~

21 ~~Sec. 4. 7 V.S.A. § 711 is added to read.~~

1 § 711. EXEMPTION

2 (a)(1) This chapter shall not apply to a certificate of approval holder that  
3 produces or distributes not more than 300,000 barrels of malt beverages or  
4 100,000 gallons of vinous beverages per year or a manufacturer that produces  
5 not more than 300,000 barrels of malt beverages or 100,000 gallons of vinous  
6 beverages per year.

7 (2) The amount of malt beverages or vinous beverages manufactured by  
8 a certificate of approval holder or manufacturer shall include the aggregate  
9 amount of all brands of malt beverages or vinous beverages that are  
10 manufactured by or on behalf of the certificate of approval holder or  
11 manufacturer. The amount of beverages distributed by a certificate of  
12 approval holder shall include the aggregate amount of all brands of malt  
13 beverages or vinous beverages distributed by the certificate of approval holder  
14 both inside and outside Vermont.

15 (b) As used in this section, a barrel of malt beverages is equal to 31 gallons  
16 of malt beverages.

17 Sec. 5. EFFECTIVE DATES

18 (a) This section and Secs. 1 and 2 shall take effect on July 1, 2018.

19 ~~(b) Secs. 3 and 4 shall take effect on January 1, 2022.~~

*Sec. 1. REDESIGNATION; ADDITION OF SUBCHAPTER*

*7 V.S.A. chapter 23, subchapter 1, which shall include 7 V.S.A. §§ 701-709,*



is added to read:

Subchapter 1. General Provisions

Sec. 2. 7 V.S.A. § 701 is amended to read:

§ 701. DEFINITIONS

As Except as otherwise provided pursuant to section 752 of this chapter, as used in this chapter:

\* \* \*

(7) “Wholesale dealer” means a packager licensed pursuant to section 272 of this title or a wholesale dealer licensed pursuant to section 273 of this title.

Sec. 3. 7 V.S.A. § 702 is amended to read:

§ 702. PROHIBITED ACTS BY MANUFACTURER

A manufacturer shall not:

\* \* \*

(3) fail or refuse to deliver promptly to a wholesale dealer after the receipt of its order any malt beverages or vinous beverages when the product is publicly advertised available for immediate sale.

Sec. 4. 7 V.S.A. chapter 23, subchapter 2 is added to read:

Subchapter 2. Small Manufacturers and Certificate of Approval Holders

§ 751. APPLICATION

(a) The provisions of this subchapter shall apply to any franchise between

a wholesale dealer and either:

(1) a certificate of approval holder that produces or distributes not more than 50,000 barrels of malt beverages per year and whose products comprise three percent or less of the wholesale dealer's total annual sales of malt beverages by volume; or

(2) a manufacturer that produces not more than 50,000 barrels of malt beverages per year and whose products comprise three percent or less of the wholesale dealer's total annual sales of malt beverages by volume.

(b) The provisions of sections 702, 705, and 706 of this title shall apply to any franchise that is subject to the provisions of this subchapter.

(c)(1) The amount of malt beverages manufactured by a certificate of approval holder or manufacturer shall include the worldwide, aggregate amount of all brands of malt beverages that are manufactured directly or indirectly, by or on behalf of the certificate of approval holder or manufacturer, and any entity that controlled, was controlled by, or was under common control with the certificate of approval holder or manufacturer during the year.

(2) The amount of malt beverages distributed by a certificate of approval holder shall include the aggregate amount of all brands of malt beverages distributed by or on behalf of the certificate of approval holder both inside and outside Vermont during the year.

§ 752. DEFINITIONS

As used in this subchapter:

(1) “Barrel” means 31 gallons of malt beverages.

(2) “Certificate of approval holder” means a holder of a certificate of approval issued by the Liquor Control Board pursuant to section 274 of this title that produces or distributes not more than 50,000 barrels of malt beverages per year and whose products comprise three percent or less of a wholesale dealer’s total annual sales of malt beverages by volume.

(3) “Compensation” means the cost of a wholesale dealer’s laid-in inventory related to a franchise that has been or is about to be terminated plus five times the average annual gross profits earned by the wholesale dealer on the sale of products pursuant to the franchise during the last three fiscal years or, if the franchise has not been in existence for three years, the period of time during which the franchise has been in existence. “Gross profits” shall equal the revenue earned by the wholesale dealer on the sale of products pursuant to the franchise minus the cost of those products, including shipping and taxes.

(4) “Franchise” means an agreement governing a relationship between a wholesale dealer and a certificate of approval holder or manufacturer that was entered into on or after January 1, 2019 and has existed for at least one year and has one or more of the following characteristics:

(A) the wholesale dealer is granted the right to offer and sell the brands of malt beverages offered by the certificate of approval holder or

manufacturer;

(B) the wholesale dealer, as an independent business, constitutes a component of a certificate of approval holder's or manufacturer's distribution system;

(C) the wholesale dealer's business is substantially associated with the certificate of approval holder's or manufacturer's brand, advertising, or other commercial symbol designating the manufacturer;

(D) the wholesale dealer's business is substantially reliant on the certificate of approval holder or manufacturer for the continued supply of malt beverages; and

(E) the certificate of approval holder or manufacturer has granted the wholesale dealer a license to use a trade name, trademark, service mark, or related characteristic, and there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, or otherwise.

(5) "Manufacturer" means a manufacturer licensed pursuant to section 271 of this title that produces not more than 50,000 barrels of malt beverages per year and whose products comprise three percent or less of a wholesale dealer's total annual sales of malt beverages by volume.

#### § 753. CANCELLATION OF FRANCHISE

(a) A certificate of approval holder or manufacturer may cancel, terminate, refuse to continue, or cause a wholesale dealer to relinquish a franchise as

provided pursuant to the terms of a written franchise between the certificate of approval holder or manufacturer and the wholesale dealer.

(b) In the absence of a provision of a franchise governing termination for good cause, or if the franchise between the parties is not in writing, the certificate of approval holder or manufacturer may cancel, terminate, refuse to continue, or cause the wholesale dealer to relinquish the franchise for good cause as provided pursuant to section 754 of this subchapter.

(c) In the absence of a provision of a franchise governing termination for no cause, or if the franchise between the parties is not in writing, the certificate of approval holder or manufacturer may cancel, terminate, refuse to continue, or cause the wholesale dealer to relinquish the franchise for no cause as provided pursuant to section 755 of this subchapter.

§ 754. CANCELLATION FOR GOOD CAUSE; NOTICE;

RECTIFICATION

(a)(1) Except as otherwise provided pursuant to subsection 753(a) of this subchapter and subsection (d) of this section, a certificate of approval holder or manufacturer that wishes to terminate or cancel a franchise for good cause shall provide the franchisee with at least 120 days' written notice of the intent to terminate or cancel the franchise.

(2) The notice shall state the causes and reasons for the intended termination or cancellation.

(b) A franchisee shall have 120 days in which to rectify any claimed deficiency.

(c) The Superior Court, upon petition and after providing both parties with notice and opportunity for a hearing, shall determine whether good cause exists to allow termination or cancellation of the franchise.

(d) The notice provisions of subsection (a) of this section may be waived if the reason for termination or cancellation is insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or if the certificate of approval holder or manufacturer is able to prove to the court that providing the required notice would do irreparable harm to the marketing of its product.

§ 755. CANCELLATION FOR NO CAUSE; NOTICE; COMPENSATION

Except as otherwise provided pursuant to subsection 753(a) of this subchapter, a certificate of approval holder or manufacturer that wishes to terminate or cancel a franchise for no cause shall:

(1) provide the franchisee with written notice of the intent to cancel or terminate the franchise at least 30 days before the date on which the franchise shall terminate; and

(2) on or before the date the franchise shall be canceled or terminated, pay, or have paid on its behalf by a designated wholesale dealer, compensation for the franchisee's interest in the franchise.

§ 756. SALE OR TRANSFER BY WHOLESALE DEALER

(a)(1) In the absence of a provision of the franchise to the contrary, or if the franchise between the parties is not in writing, a wholesale dealer wishing to sell or otherwise transfer its interests in a franchise shall give at least 90 days' written notice of the proposed sale or transfer to the certificate of approval holder or manufacturer.

(2) The notice of intended sale or transfer shall give the full name and address of the proposed transferee, along with full details outlining the qualifications of the proposed transferee which, in the opinion of the wholesale dealer, make the proposed transferee competent to operate the franchise.

(b) If the certificate of approval holder or manufacturer opposes the proposed sale or transfer to the proposed transferee, the certificate of approval holder or manufacturer may either:

(1) prevent the proposed sale or transfer from occurring by paying compensation for the wholesale dealer's interest in the franchise in the same manner as if the franchise were being terminated for no cause pursuant to section 755 of this subchapter; or

(2) not less than 60 days before the date of the proposed sale or transfer, file a petition with the Superior Court that clearly states the certificate of approval holder's or manufacturer's reasons for resisting the proposed sale or transfer.

(c)(1) Upon receipt of a petition pursuant to subdivision (b)(2) of this

section, the Superior Court shall hold a hearing on the proposed transfer or sale. The court shall make a full inquiry into the qualifications of the proposed transferee and shall determine whether or not the proposed transferee is in a position to substantially continue the operations of the franchise, to assume the obligations of the franchise holder, and to conduct the business in a manner that will protect the legitimate interests of the certificate of approval holder or manufacturer.

(2) If the Superior Court finds the proposed transferee is qualified to operate the franchise, it shall approve the transfer of the franchise to the proposed transferee.

§ 757. MERGER OF FRANCHISOR

In the absence of a provision of the franchise to the contrary, or if the franchise between the parties is not in writing, the merger of a certificate of approval holder or manufacturer with a third party shall not void the franchise unless good cause is shown pursuant to section 754 of this subchapter, or the franchise is terminated pursuant to section 755 of this subchapter.

§ 758. HEIRS, SUCCESSORS, AND ASSIGNS

In the absence of a provision of the franchise to the contrary, or if the franchise between the parties is not in writing, the provisions of this subchapter shall apply to the heirs, successors, and assigns of any party to a franchise that is subject to this subchapter.



*Sec. 5. 7 V.S.A. § 759 is added to read:*

§ 759. WRITTEN AGREEMENT

*All franchises entered into pursuant to this subchapter shall be in writing.*

*Sec. 6. 7 V.S.A. § 752 is amended to read:*

§ 752. DEFINITIONS

*As used in this subchapter:*

\* \* \*

*(4) “Franchise” means ~~an~~ a written agreement governing a relationship between a wholesale dealer and a certificate of approval holder or manufacturer that ~~was entered into after January 1, 2019 and has existed for at least one year and has one or more of the following characteristics:~~*

\* \* \*

*Sec. 7. 7 V.S.A. § 753 is amended to read:*

§ 753. CANCELLATION OF FRANCHISE

*(a) A certificate of approval holder or manufacturer may cancel, terminate, refuse to continue, or cause a wholesale dealer to relinquish a franchise as provided pursuant to the terms of a ~~written~~ franchise between the certificate of approval holder or manufacturer and the wholesale dealer.*

*(b) In the absence of a provision of a franchise governing termination for good cause, ~~or if the franchise between the parties is not in writing,~~ the certificate of approval holder or manufacturer may cancel, terminate, refuse to*

*continue, or cause the wholesale dealer to relinquish the franchise for good cause as provided pursuant to section 754 of this subchapter:*

*(c) In the absence of a provision of a franchise governing termination for no cause, ~~or if the franchise between the parties is not in writing,~~ the certificate of approval holder or manufacturer may cancel, terminate, refuse to continue, or cause the wholesale dealer to relinquish the franchise for no cause as provided pursuant to section 755 of this subchapter:*

*Sec. 8. 7 V.S.A. § 756 is amended to read:*

*§ 756. SALE OR TRANSFER BY WHOLESALER DEALER*

*(a)(1) In the absence of a provision of the franchise to the contrary, ~~or if the franchise between the parties is not in writing,~~ a wholesaler wishing to sell or otherwise transfer its interests in a franchise shall give at least 90 days' written notice of the proposed sale or transfer to the certificate of approval holder or manufacturer:*

*\* \* \**

*Sec. 9. 7 V.S.A. § 757 is amended to read:*

*§ 757. MERGER OF FRANCHISOR*

*In the absence of a provision of the franchise to the contrary, ~~or if the franchise between the parties is not in writing,~~ the merger of a certificate of approval holder or manufacturer with a third party shall not void the franchise unless good cause is shown pursuant to section 754 of this subchapter, or the*

*franchise is terminated pursuant to section 755 of this subchapter.*

*Sec. 10. 7 V.S.A. § 758 is amended to read:*

*§ 758. HEIRS, SUCCESSORS, AND ASSIGNS*

*In the absence of a provision of the franchise to the contrary, ~~or if the franchise between the parties is not in writing,~~ the provisions of this subchapter shall apply to the heirs, successors, and assigns of any party to a franchise that is subject to this subchapter.*

*Sec. 11. TRANSITION TO WRITTEN CONTRACTS*

*(a) A certificate of approval holder or manufacturer and a wholesale dealer who are parties to a franchise agreement that was entered into before January 1, 2019 and is not in writing shall negotiate a written franchise agreement to take effect on or before July 1, 2022.*

*(b) If the certificate of approval holder or manufacturer and the wholesale dealer are unable to reach agreement on the terms of a written franchise agreement on or before July 1, 2022 or if the parties mutually agree that the franchise shall not continue beyond that date, the franchise shall be deemed to terminate on July 1, 2022 and the certificate of approval holder or manufacturer shall pay the wholesale dealer compensation for its interest in the franchise in the same manner as if the franchise were terminated for no cause pursuant to 7 V.S.A. § 755.*

*(c) As used in this section,*

(1) “certificate of approval holder” has the same meaning as in 7 V.S.A.

§ 752;

(2) “manufacturer” has the same meaning as in 7 V.S.A. § 752; and

(3) “wholesale dealer” has the same meaning as in 7 V.S.A. § 701.

*Sec. 12. EFFECTIVE DATES*

(a) This section and Secs. 1, 2, 3, 4, and 11 shall take effect on January 1, 2019.

(b) The remaining sections shall take effect on July 1, 2022.