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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
provides a growing source of revenue to the State. Initiatives to help

1 strengthen and grow Vermont's craft beer industry and to ensure free and fair
2 competition are in the best interests of the State.

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

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

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

1 correcting an imbalance in economic and bargaining power between large
2 national brewers and wineries and smaller local wholesale distributors in order
3 to promote fair business relations.

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

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

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

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

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

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

20 (b) It is the intent of the General Assembly that this act be liberally
21 construed to achieve its purposes.

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

2 § 703. CANCELLATION OF FRANCHISE

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

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

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

1 ~~(b)(1) Notwithstanding the terms, provisions, or conditions of any~~
2 ~~agreement or franchise, a certificate of approval holder that produces or~~
3 ~~distributes not more than 300,000 barrels of malt beverages or 100,000 gallons~~
4 ~~of vinous beverages per year or manufacturer that produces not more than~~
5 ~~300,000 barrels of malt beverages or 100,000 gallons of vinous beverages per~~
6 ~~year may cancel, terminate, or refuse to continue a franchise, or cause a~~
7 ~~wholesale dealer to relinquish a franchise if:~~

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

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

16 ~~(c) As used in this section, “reasonable compensation” means cost of the~~
17 ~~wholesale dealer’s laid-in inventory related to the terminated franchise and the~~
18 ~~average annual gross profits earned by the wholesale dealer on the terminated~~
19 ~~franchise during the last three fiscal years or, if the franchise has not been in~~
20 ~~existence for three years, the period of time during which the franchise has~~

1 ~~been in existence. "Gross profits" shall equal the wholesale price of the~~
2 ~~inventory minus shipping costs and taxes.~~

3 Sec. 4. 7 V.S.A. § 711 is added to read:

4 § 711. EXEMPTION

5 (a)(1) This chapter shall not apply to a certificate of approval holder that
6 produces or distributes not more than 300,000 barrels of malt beverages or
7 100,000 gallons of vinous beverages per year or a manufacturer that produces
8 not more than 300,000 barrels of malt beverages or 100,000 gallons of vinous
9 beverages per year.

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

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

1 Sec. 5. EFFECTIVE DATES

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

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