

Senate proposal of amendment

H. 710

An act relating to beer franchises

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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:

* * *

(2) “Franchise” or “agreement” shall mean one or more of the following:

* * *

(E) a relationship that has been in existence for at least one year in which the wholesale dealer’s business is substantially reliant on the certificate of approval holder or manufacturer for the continued supply of malt beverages or vinous beverages; ~~and~~ or

(F) a written or oral arrangement for a definite or indefinite period that has been in existence for at least one year in which a certificate of approval holder or manufacturer grants to a wholesale dealer a license to use a trade name, ~~trade mark~~ trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, or otherwise.

* * *

(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 OR CERTIFICATE OF APPROVAL HOLDER

A manufacturer or certificate of approval holder shall not do any of the

following:

(1) ~~induce~~ Induce or coerce, or attempt to induce or coerce, any wholesale dealer to accept delivery of any alcoholic beverage, any form of advertisement, or any other commodity, that was not ordered by the wholesale dealer;

(2) ~~induce~~ Induce or coerce, or attempt to induce or coerce, any wholesale dealer to do any illegal act or thing by threatening to cancel or terminate the wholesale dealer's malt beverages or vinous beverages franchise agreement; ~~or.~~

(3) ~~fail~~ 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. If a manufacturer or certificate of approval holder believes in good faith that it does not have a sufficient amount of a product available for immediate sale to satisfy the demand of a wholesale dealer and its other customers, it shall allocate the available product between the wholesale dealer and its other customers in a fair and equitable manner.

(4) Require a wholesale dealer to agree to any condition, stipulation, or provision limiting the wholesale dealer's rights to sell the product of another manufacturer or certificate of approval holder.

Sec. 4. 7 V.S.A. § 707 is amended to read:

§ 707. SALE OR TRANSFER; PURCHASE BY MANUFACTURER

* * *

(e) The provisions of subsections (b) through (d) of this section shall not apply to the sale or transfer of a franchise to the spouse, child, grandchild, sibling, parent, foster child, child-in-law, sibling-in-law, niece, or nephew of the owner of the wholesale dealer.

Sec. 5. 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 a total annual volume of not more than 50,000 barrels of malt beverages 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 a total annual volume of not more than

50,000 barrels of malt beverages 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.

§ 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 a total annual volume of not more than 50,000 barrels of malt beverages 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 calendar 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; or

(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 a total annual volume of not more than 50,000 barrels of malt beverages and whose products comprise three percent or less of a wholesale dealer’s total annual sales of malt beverages by volume.

(6) “Total annual sales” means the total volume of all malt beverages sold by a wholesale dealer in the last four completed calendar quarters. A wholesale dealer’s total annual sales of malt beverages shall include the worldwide, aggregate amount of all brands of malt beverages that were sold, directly or indirectly, during the last four completed calendar quarters by the wholesale dealer and any entity that controlled, was controlled by, or was under common control with the wholesale dealer.

(7) “Total annual volume” means:

(A) the amount of malt beverages manufactured worldwide during the last four completed calendar quarters, directly or indirectly, by or on behalf of:

(i) the certificate of approval holder or manufacturer;

(ii) any employee, director, or officer of a certificate of approval holder or manufacturer; or

(iii) an affiliate of the certificate of approval holder or manufacturer, regardless of whether the affiliation is corporate, or is by management, direction, or control; or

(B) the amount of malt beverages distributed worldwide during the last four completed calendar quarters directly or indirectly, by or on behalf of:

(i) the certificate of approval holder;

(ii) any employee, director, or officer of a certificate of approval holder; or

(iii) an affiliate of the certificate of approval holder, regardless of whether the affiliation is corporate, or is by management, direction, or control.

§ 753. CANCELLATION OF FRANCHISE

(a) The terms of a written franchise between the certificate of approval holder or manufacturer and the wholesale dealer shall govern the right to cancel, terminate, refuse to continue, or to cause a wholesale dealer to relinquish a franchise.

(b) In the absence of a provision in a written franchise agreement to the

contrary, 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 in a written franchise agreement to the contrary, 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 section 753 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 section 753 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.

(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, as defined pursuant to section 752 of this subchapter, for the franchisee's interest in the franchise. The compensation shall be the wholesale dealer's

sole and exclusive remedy for any termination or cancellation pursuant to this section.

§ 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 continue substantially 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.

(d) The provisions of subsections (b) and (c) of this section shall not apply to the sale or transfer of a franchise to the spouse, child, grandchild, sibling, parent, foster child, child-in-law, sibling-in-law, niece, or nephew of the owner of the wholesale dealer.

§ 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. 6. 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. 7. 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. 8. 7 V.S.A. § 753 is amended to read:

§ 753. CANCELLATION OF FRANCHISE

(a) The terms of a ~~written~~ franchise between the certificate of approval holder or manufacturer and the wholesale dealer shall govern the right to cancel, terminate, refuse to continue, or to cause a wholesale dealer to relinquish a franchise.

(b) In the absence of a provision in a written franchise agreement to the contrary, ~~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 in a written franchise agreement to the contrary, ~~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. 9. 7 V.S.A. § 756 is amended to read:

§ 756. SALE OR TRANSFER BY WHOLESAL 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.

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Sec. 10. 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. 11. 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. 12. TRANSITION TO WRITTEN CONTRACTS

(a) Franchise agreements that were entered into before January 1, 2019 and are not in writing shall transition to a written franchise agreement as provided pursuant to this subsection:

(1) 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.

(2) 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.

(b) 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.

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

Sec. 13. APPLICATION OF ACT TO EXISTING AND PROSPECTIVE FRANCHISE AGREEMENTS

(a) Definitions. 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.

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

(b) Existing franchise agreements.

(1) Until July 1, 2022, the provisions of 7 V.S.A. chapter 23, subchapter 1 (existing franchise law) shall apply to all franchise agreements that were entered into before January 1, 2019.

(2) Between January 1, 2019 and July 1, 2022, certificate of approval holders, manufacturers, and wholesale dealers 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 as provided pursuant to Sec. 12 of this act.

(3) Beginning on July 1, 2022, the provisions of 7 V.S.A. chapter 23, subchapter 2 shall apply to franchise agreements between a certificate of approval holder or manufacturer and a wholesale dealer.

(c) Prospective franchise agreements. The provisions of 7 V.S.A. chapter 23, subchapter 2 shall apply to franchise agreements between a certificate of approval holder or manufacturer and a wholesale dealer that are entered into on or after January 1, 2019.

Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 3, 4, 5, 12, and 13 shall take effect on January 1, 2019.

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