

An Overview of Beer and Wine Franchise Law

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February 8, 2018

Outline of Presentation

- ▶ Overview of Vermont's Franchise Law
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 - Under what circumstances can a franchise be terminated?
 - What are some of the other features of Vermont's law?
 - How would H.710 change Vermont's law?
- ▶ Relevant Examples from Other State's Laws
 - Examples of Exemption Provisions
 - Examples of Fair Market Value Termination Provisions

Who is Subject to Vermont's Beer and Wine Franchise Law?

- ▶ Wholesale dealers that are licensed to distribute beer and wine in Vermont.
- ▶ Licensed manufacturers of beer and wine.
- ▶ Certificate of approval holders
 - A manufacturer or distributor of beer or wine that is not licensed in Vermont who wishes to import beer or wine into Vermont for distribution by a licensed wholesale dealer or packager.

What is a “Franchise”?

- ▶ A “franchise” is defined in 7 V.S.A. § 701 as:
 - a commercial relationship between a wholesale dealer and a manufacturer or certificate of approval holder;
 - that has been in existence for at least one year;
 - and satisfies one or more of the following:
 - is of a definite or indefinite duration and is or is not in writing
 - the wholesale dealer is granted the right to offer and sell the brands of beer or wine offered by the certificate of approval holder or manufacturer
 - the wholesale dealer, as an independent business, constitutes a component of the certificate of approval holder’s or manufacturer’s distribution system
 - the wholesale dealer's business is substantially associated with the certificate of approval holder’s or manufacturer’s brand, advertising, or another commercial symbol designating the manufacturer
 - the wholesale dealer's business is substantially reliant on the certificate of approval holder or manufacturer for the continued supply of beer or wine
 - a written or oral arrangement for a definite or indefinite period in which a certificate of approval holder or manufacturer grants a wholesale dealer a license to use a trade name, trade mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, or otherwise

When and How Can a Franchise be Terminated?

- ▶ “Notwithstanding the terms, provisions, or conditions of any agreement or franchise, no certificate of approval holder or manufacturer shall cancel, terminate, or refuse to continue a franchise, or cause a wholesale dealer to relinquish a franchise, unless good cause is shown to exist.” 7 V.S.A. § 703.
- ▶ Good cause is not defined by statute but could be defined in a franchise agreement.

When and How Can a Franchise be Terminated?

- ▶ Certificate of approval holder or manufacturer must provide the wholesale dealer with 120 days' notice of intent to terminate or cancel a franchise agreement.
 - Notice requirements may be waived if the reason for termination or cancellation of the franchise agreement is:
 - Bankruptcy; or
 - The certificate of approval holder or manufacturer can prove to the court that providing the required notice would do irreparable harm to the marketing of its product.
 - ▶ Notice must state the reasons for the intended termination.
 - ▶ Wholesale dealer has 120 days to rectify any claimed deficiency.
 - ▶ A party may petition the Superior Court for a hearing to determine whether good cause exists to allow termination of a franchise agreement.
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Other Features of Vermont's Franchise Law

- ▶ Prohibits a manufacturer from:
 - Inducing or coercing a wholesale dealer to accept delivery of alcoholic beverages, advertisements, or other commodities that were not ordered by the wholesale dealer.
 - Inducing or coercing a wholesale dealer to do an illegal act by threatening to cancel or terminate the franchise agreement.
 - Failing or refusing to deliver promptly to a wholesale dealer any beer or wine that was ordered and is publicly advertised for immediate sale.
 - Entering into a second franchise agreement for a sales territory that was granted to a wholesale dealer in an existing franchise agreement.
- ▶ If a manufacturer or certificate of approval holder merges with a third-party, its pre-existing franchise agreements shall continue unless the wholesale dealer waives its rights or good cause for termination of the franchise agreement is shown.

Other Features of Vermont's Franchise Law

- ▶ Prohibits a wholesale dealer from selling products outside of the designated sales territory in the franchise agreement.
- ▶ Requires a wholesale dealer that wishes to sell its interest in a franchise agreement to a third-party to give 90 days' notice of the transfer to the manufacturer or certificate of approval holder.
 - If manufacturer or certificate of approval holder wishes to resist sale, it may petition the Superior Court for a hearing no later than 60 days prior to the sale.
 - Court will approve the sale if it finds that the proposed transferee is able to:
 - substantially continue the operations of the franchise;
 - assume the obligations of the franchise holder; and
 - conduct the business in a manner that will protect the interests of the certificate of approval holder or manufacturer.

How Would H.710 Change Vermont's Franchise Law?

- ▶ From July 1, 2018 until January 1, 2022, H.710 would permit a manufacturer or certificate of approval holder that produces or distributes not more than 300,000 barrels of beer or 100,000 gallons of wine to terminate a franchise agreement for no cause upon 30 days notice and payment of fair market value.
- ▶ Fair market value is equal to:
 - Cost of laid-in inventory + one year's gross profits.
 - Gross-profits are equal to the average annual gross profits during the last three years.

How Would H.710 Change Vermont's Franchise Law?

- ▶ Beginning January 1, 2022, H.710 would exempt a manufacturer or certificate of approval holder that produces or distributes not more than 300,000 barrels of beer or 100,000 gallons of wine from Vermont's Franchise Laws.

Examples of Exemption Provisions in Other States

State	Exemption for Beer	Exemption for Wine
Arkansas	15,000 barrels or less	N/A
Colorado	Less than 300,000 gallons (~9,677 barrels)	N/A
Nevada	Less than 2,000 barrels	Less than 2,000 cases (“case of wine” means 12–750 ml bottles of wine or an equal amount of wine.)
Utah	Less than 60,000 barrels (up to 4% a.b.v.)	N/A
Washington	Less than 200,000 barrels	N/A

Examples of Fair Market Value Termination in Other States

State	FMV Termination Provision	Definition of FMV
Delaware	Supplier may terminate a franchise agreement without good cause upon payment to the wholesaler of reasonable compensation for the value of the wholesaler's business related to the terminated or transferred brand or brands.	<p>"the inventory at laid-in cost of the terminated or transferred brand or brands and its associated good will."</p> <p>"Associated good will" equals the wholesaler's average annual gross profits on the terminated or transferred brands for the last three fiscal years or lesser period during which the brands have been distributed by the wholesaler.</p> <p>"Gross profits" means selling price less F.O.B., taxes, and freight.</p>
New York	A brewer with an annual volume of less than 300,000 barrels whose sales to the wholesaler are 3% or less of the wholesaler's total annual sales measured in sales of 24 12-ounce units may terminate an agreement without good cause provided that, prior to the effective date of the termination, the brewer pays the wholesaler the FMV of the distribution rights which will be lost or diminished by the termination.	"the amount a willing seller, under no compulsion to sell, would be willing to accept and a willing buyer, under no compulsion to purchase, would be willing to pay for the distribution rights"
North Carolina	In the absence of good cause, a small brewery that produces less than 25,000 barrels of beer may terminate a franchise agreement on 5 days' notice and payment of fair market value.	"the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction"

Any Questions?

