

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing, and Military Affairs to which was
3 referred House Bill No. 710 entitled “An act relating to beer and wine
4 franchises” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. REDESIGNATION; ADDITION OF SUBCHAPTER

8 7 V.S.A. chapter 23, subchapter 1, which shall include 7 V.S.A.

9 §§ 701-709, is added to read:

10 Subchapter 1. General Provisions

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

12 § 701. DEFINITIONS

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

15 * * *

16 (7) “Wholesale dealer” means a packager licensed pursuant to section
17 272 of this title or a wholesale dealer licensed pursuant to section 273 of this
18 title.

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

20 § 702. PROHIBITED ACTS BY MANUFACTURER

21 A manufacturer shall not:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

(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 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 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

1 indirectly, by or on behalf of the certificate of approval holder or manufacturer,
2 and any entity that controlled, was controlled by, or was under common
3 control with the certificate of approval holder or manufacturer during the year.

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

8 § 752. DEFINITIONS

9 As used in this subchapter:

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

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

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

1 the revenue earned by the wholesale dealer on the sale of products pursuant to
2 the franchise minus the cost of those products, including shipping and taxes.

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

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

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

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

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

19 (E) the certificate of approval holder or manufacturer has granted the
20 wholesale dealer a license to use a trade name, trade mark, service mark, or

1 related characteristic, and there is a community of interest in the marketing of
2 goods or services at wholesale, retail, by lease, or otherwise.

3 (5) “Manufacturer” means a manufacturer licensed pursuant to section
4 271 of this title that produces not more than 50,000 barrels of malt beverages
5 per year and whose products comprise three percent or less of a wholesale
6 dealer’s total annual sales of malt beverages by volume.

7 § 753. CANCELLATION OF FRANCHISE

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

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

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

1 § 754. CANCELLATION FOR GOOD CAUSE; NOTICE;

2 RECTIFICATION

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

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

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

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

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

1 § 755. CANCELLATION FOR NO CAUSE; NOTICE; COMPENSATION

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

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

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

11 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

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

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

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

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

12 (c)(1) Upon receipt of a petition pursuant to subdivision (b)(2) of this
13 section, the Superior Court shall hold a hearing on the proposed transfer or
14 sale. The court shall make a full inquiry into the qualifications of the proposed
15 transferee and shall determine whether or not the proposed transferee is in a
16 position to substantially continue the operations of the franchise, to assume the
17 obligations of the franchise holder, and to conduct the business in a manner
18 that will protect the legitimate interests of the certificate of approval holder or
19 manufacturer.

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

2 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

8 * * *

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

10 § 757. MERGER OF FRANCHISOR

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

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

17 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

1 Sec. 11. TRANSITION TO WRITTEN CONTRACTS

2 (a) A certificate of approval holder or manufacturer and a wholesale dealer
3 who are parties to a franchise agreement that was entered into before January
4 1, 2019 and is not in writing shall negotiate a written franchise agreement to
5 take effect on or before July 1, 2022.

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

14 (c) As used in this section,

15 (1) “certificate of approval holder” has the same meaning as in 7 V.S.A.
16 § 752;

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

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

19 Sec. 12. EFFECTIVE DATES

20 (a) This section and Secs. 1, 2, 3, 4, and 11 shall take effect on January 1,
21 2019.

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

2

3

4 (Committee vote: _____)

5

6

Representative _____

7

FOR THE COMMITTEE