

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:

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

5 \* \* \*

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

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 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.

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4           (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE