

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.

1 Sec. 3. 7 V.S.A. chapter 23, subchapter 2 is added to read:

2 Subchapter 2. Small Manufacturers and Certificate of Approval Holders

3 § 751. APPLICATION

4 (a) The provisions of this subchapter shall apply to any franchise between a
5 wholesale dealer and either:

6 (1) a certificate of approval holder that produces or distributes not more
7 than 50,000 barrels of malt beverages or 25,000 gallons of vinous beverages
8 per year and whose products comprise three percent or less of the wholesale
9 dealer's total annual sales of malt beverages or vinous beverages by volume; or

10 (2) a manufacturer that produces not more than 50,000 barrels of malt
11 beverages or 25,000 gallons of vinous beverages per year and whose products
12 comprise three percent or less of the wholesale dealer's total annual sales of
13 malt beverages or vinous beverages by volume.

14 (b) The provisions of sections 702, 705, and 706 of this title shall apply to
15 any franchise that is subject to the provisions of this subchapter.

16 (c)(1) The amount of malt beverages or vinous beverages manufactured by
17 a certificate of approval holder or manufacturer shall include the worldwide,
18 aggregate amount of all brands of malt beverages or vinous beverages that are
19 manufactured directly or indirectly, by or on behalf of the certificate of
20 approval holder or manufacturer, and any entity that controlled, was controlled

1 by, or was under common control with the certificate of approval holder or
2 manufacturer during the year.

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

7 § 752. DEFINITIONS

8 As used in this subchapter:

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

10 (2) “Certificate of approval holder” means a holder of a certificate of
11 approval issued by the Liquor Control Board pursuant to section 274 of this
12 title that produces or distributes not more than 50,000 barrels of malt beverages
13 or 25,000 gallons of vinous beverages per year and whose products comprise
14 three percent or less of a wholesale dealer’s total annual sales of malt
15 beverages or vinous beverages by volume.

16 (3) “Fair market value” means the amount a willing seller, under no
17 compulsion to sell, would be willing to accept and a willing buyer, under no
18 compulsion to purchase, would be willing to pay for the seller’s interest in a
19 franchise.

20 (4) “Franchise” means an agreement governing a relationship between a
21 wholesale dealer and a certificate of approval holder or manufacturer that was

1 entered into after July 1, 2018 and has existed for at least one year and has one
2 or more of the following characteristics:

3 (A) the wholesale dealer is granted the right to offer and sell the
4 brands of malt beverages or vinous beverages offered by the certificate of
5 approval holder or manufacturer;

6 (B) the wholesale dealer, as an independent business, constitutes a
7 component of a certificate of approval holder's or manufacturer's distribution
8 system;

9 (C) the wholesale dealer's business is substantially associated with
10 the certificate of approval holder's or manufacturer's brand, advertising, or
11 other commercial symbol designating the manufacturer;

12 (D) the wholesale dealer's business is substantially reliant on the
13 certificate of approval holder or manufacturer for the continued supply of malt
14 beverages or vinous beverages; and

15 (E) the certificate of approval holder or manufacturer has granted the
16 wholesale dealer a license to use a trade name, trade mark, service mark, or
17 related characteristic, and there is a community of interest in the marketing of
18 goods or services at wholesale, retail, by lease, or otherwise.

19 (5) "Manufacturer" means a manufacturer licensed pursuant to section
20 271 of this title that produces not more than 50,000 barrels of malt beverages
21 or 25,000 gallons of vinous beverages per year and whose products comprise

1 three percent or less of a wholesale dealer's total annual sales of malt
2 beverages or vinous beverages by volume.

3 § 753. CANCELLATION OF FRANCHISE

4 (a) A certificate of approval holder or manufacturer may cancel, terminate,
5 refuse to continue, or cause a wholesale dealer to relinquish a franchise as
6 provided pursuant to the terms of a written franchise between the certificate of
7 approval holder or manufacturer and the wholesale dealer.

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

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

18 § 754. CANCELLATION FOR GOOD CAUSE; NOTICE;

19 RECTIFICATION

20 (a)(1) Except as otherwise provided pursuant to subsection 753(a) of this
21 subchapter and subsection (d) of this section, a certificate of approval holder or

1 manufacturer that wishes to terminate or cancel a franchise for good cause
2 shall provide the franchisee with at least 120 days' written notice of the intent
3 to terminate or cancel the franchise.

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

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

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

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

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

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

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

4 (2) on or before the date the franchise shall be canceled or terminated,
5 pay, or have paid on its behalf by a designated wholesale dealer, the fair
6 market value of the franchisee’s interest in the franchise.

7 (b)(1) If the certificate of approval holder or manufacturer and the
8 franchisee cannot agree on the fair market value of the franchisee’s interest in
9 the franchise, the certificate of approval holder or manufacturer shall pay the
10 franchisee a good faith estimate of the fair market value of the franchisee’s
11 interest in the franchise.

12 (2) If the franchisee believes the payment made by the certificate of
13 approval holder or manufacturer was less than the fair market value of the
14 franchisee’s interest in the franchise, it may, within 45 days after termination,
15 submit the question of the fair market value of its interest to binding arbitration
16 before a neutral arbitrator agreed to by the franchisee and the certificate of
17 approval holder or manufacturer. If the parties cannot agree on a neutral
18 arbitrator within five business days after the franchisee provides notice of its
19 decision to submit the issue to binding arbitration, they shall request that the
20 American Arbitration Association appoint a neutral arbitrator.

1 (3)(A) If the arbitrator rules that the payment made by the certificate of
2 approval holder or manufacturer to the franchisee upon termination was less
3 than the fair market value of the franchisee’s interest in the franchise, then the
4 certificate of approval holder or manufacturer must pay the franchisee the
5 difference between the payment made and the determined fair market value
6 plus interest.

7 (B) If the arbitrator rules that the payment made by the certificate of
8 approval holder or manufacturer to the franchisee upon termination was more
9 than the fair market value of the franchisee’s interest in the franchise, then the
10 franchisee must pay the certificate of approval holder or manufacturer the
11 difference between the payment made to the franchisee and the determined fair
12 market value plus interest.

13 (C) All costs of arbitration shall be shared equally between the
14 parties to the arbitration. However, if the arbitrator determines that the
15 certificate of approval holder’s or manufacturer’s payment was not a good faith
16 estimate of the fair market value, the arbitrator may require the certificate of
17 approval holder or manufacturer to pay up to 100 percent of the arbitration
18 costs.

19 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

20 (a)(1) In the absence of a provision of the franchise to the contrary, or if the
21 franchise between the parties is not in writing, a wholesale dealer wishing to

1 sell or otherwise transfer its interests in a franchise shall give at least 90 days'
2 written notice of the proposed sale or transfer to the certificate of approval
3 holder or manufacturer.

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

8 (b) If the certificate of approval holder or manufacturer opposes the
9 proposed sale or transfer to the proposed transferee, the certificate of approval
10 holder or manufacturer, or a wholesale dealer designated by the certificate of
11 approval holder or manufacturer, may either:

12 (1) prevent the proposed sale or transfer from occurring by purchasing
13 the wholesale dealer's interest in the franchise for fair market value; or

14 (2) no less than 60 days before the date of the proposed sale or transfer,
15 file a petition with the Superior Court that clearly states the certificate of
16 approval holder's or manufacturer's reasons for resisting the proposed sale or
17 transfer.

18 (c)(1) Upon receipt of a petition pursuant to subdivision (b)(2) of this
19 section, the Superior Court shall hold a hearing on the proposed transfer or
20 sale. The court shall make a full inquiry into the qualifications of the proposed
21 transferee and shall determine whether or not the proposed transferee is in a

1 position to substantially continue the operations of the franchise, to assume the
2 obligations of the franchise holder, and to conduct the business in a manner
3 that will protect the legitimate interests of the certificate of approval holder or
4 manufacturer.

5 (2) If the Superior Court finds the proposed transferee is qualified to
6 operate the franchise, it shall approve the transfer of the franchise to the
7 proposed transferee.

8 § 757. MERGER OF FRANCHISOR

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

14 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

19 Sec. 4. 7 V.S.A. § 759 is added to read:

20 § 759. WRITTEN AGREEMENT

21 All franchises entered into pursuant to this subchapter shall be in writing.

1 Sec. 5. 7 V.S.A. § 752 is amended to read:

2 § 752. DEFINITIONS

3 As used in this subchapter:

4 * * *

5 (4) “Franchise” means ~~an~~ a written agreement governing a relationship
6 between a wholesale dealer and a certificate of approval holder or
7 manufacturer that ~~was entered into after July 1, 2018 and~~ has existed for at
8 least one year and has one or more of the following characteristics:

9 * * *

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

11 § 753. CANCELLATION OF FRANCHISE

12 (a) A certificate of approval holder or manufacturer may cancel, terminate,
13 refuse to continue, or cause a wholesale dealer to relinquish a franchise as
14 provided pursuant to the terms of a ~~written~~ franchise between the certificate of
15 approval holder or manufacturer and the wholesale dealer.

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

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

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

7 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

13 * * *

14 Sec. 8. 7 V.S.A. § 757 is amended to read:

15 § 757. MERGER OF FRANCHISOR

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

1 Sec. 9. 7 V.S.A. § 758 is amended to read:

2 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

7 **Sec. 10. TRANSITION TO WRITTEN CONTRACTS**

8 If the parties to any franchise that is existence on January 1, 2019 and is not
9 set forth in writing are unable to reach agreement on the terms of a written
10 franchise agreement on or before July 1, 2022, the franchise shall be deemed to
11 terminate on that date and the certificate of approval holder or manufacturer
12 shall pay the franchisee the fair market value of the franchisee's interest in the
13 franchise in the same manner as if the franchise was terminated for no cause
14 pursuant to 7 V.S.A. § 755.

15 Sec. **11.** EFFECTIVE DATES

16 (a) This section and Secs. 1, 2, 3, and 10 shall take effect on January 1,
17 2019.

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

19

20

1 (Committee vote: _____)

2

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Representative _____

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FOR THE COMMITTEE