

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. §§ 701-709
9 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. chapter 23, subchapter 2 is added to read:

20 Subchapter 2. Small Manufacturers and Certificate of Approval Holders

21 § 751. APPLICATION

1 (a) Except as otherwise provided pursuant to subsection (b) of this section,
2 the provisions of this subchapter shall apply to any franchise between a
3 wholesale dealer and either:

4 (1) a certificate of approval holder that produces or distributes not more
5 than 200,000 barrels of malt beverages or 50,000 gallons of vinous beverages
6 per year; or

7 (2) a manufacturer that produces not more than 200,000 barrels of malt
8 beverages or 50,000 gallons of vinous beverages per year.

9 (b) The provisions of sections 702, 705, and 706 of this title shall apply to
10 any franchise entered into by a certificate of approval holder that produces or
11 distributes not more than 200,000 barrels of malt beverages or 50,000 gallons
12 of vinous beverages per year or a manufacturer that produces not more than
13 200,000 barrels of malt beverages or 50,000 gallons of vinous beverages per
14 year.

15 § 752. DEFINITIONS

16 As used in this subchapter:

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

18 (2) “Certificate of approval holder” means a holder of a certificate of
19 approval issued by the Liquor Control Board pursuant to section 274 of this
20 title that that produces or distributes not more than 200,000 barrels of malt
21 beverages or 50,000 gallons of vinous beverages per year.

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

5 (4) “Manufacturer” means a manufacturer licensed pursuant to section
6 271 of this title that produces not more than 200,000 barrels of malt beverages
7 or 50,000 gallons of vinous beverages per year.

8 § 753. CANCELLATION OF FRANCHISE

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

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

20 (c) In the absence of a provision of the franchise or agreement governing
21 termination for good cause, or if the franchise or agreement between the parties

1 is not in writing, the certificate of approval holder or manufacturer may cancel,
2 terminate, refuse to continue, or cause the wholesale dealer to relinquish the
3 franchise or agreement for no cause as provided pursuant to section 755 of this
4 subchapter.

5 § 754. CANCELLATION FOR GOOD CAUSE; NOTICE;

6 RECTIFICATION

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

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

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

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

19 (d) The notice provisions of subsection (a) of this section may be waived if
20 the reason for termination or cancellation is insolvency, the occurrence of an
21 assignment for the benefit of creditors, bankruptcy, or if the certificate of

1 approval holder or manufacturer is able to prove to the court that providing the
2 required notice would do irreparable harm to the marketing of its product.

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

4 Except as otherwise provided pursuant to section 753 of this subchapter, a
5 certificate of approval holder or manufacturer that wishes to terminate or
6 cancel a franchise for no cause shall:

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

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

13 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

19 (2) The notice of intended sale or transfer shall give the full name and
20 address of the proposed transferee, along with full details outlining the

1 qualifications of the proposed transferee which, in the opinion of the wholesale
2 dealer, make the proposed transferee competent to operate the franchise.

3 (b) If the certificate of approval holder or manufacturer opposes the
4 proposed sale or transfer to the proposed transferee, the certificate of approval
5 holder or manufacturer, or a wholesale dealer designated by the certificate of
6 approval holder or manufacturer, may either:

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

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

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

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

4 § 757. MERGER OF FRANCHISOR

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

11 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

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

17 § 759. WRITTEN AGREEMENT

18 All franchises entered into pursuant to this subchapter shall be in writing.
19 Any term of a franchise that is not in writing shall be void and unenforceable.

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 a written agreement governing a relationship
6 between a wholesale dealer and a certificate of approval holder or
7 manufacturer that has existed for at least one year and has one or more of the
8 following characteristics:

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

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

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

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

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

5 (5) “Manufacturer” means a manufacturer licensed pursuant to section
6 271 of this title that produces not more than 200,000 barrels of malt beverages
7 or 50,000 gallons of vinous beverages per year.

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

9 § 753. CANCELLATION OF FRANCHISE

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

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

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

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

8 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

14 * * *

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

16 § 757. MERGER OF FRANCHISOR

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

1 subchapter, or the franchise is terminated pursuant to section 755 of this
2 subchapter.

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

4 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

9 Sec. 10. EFFECTIVE DATES

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

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

12

13

14 (Committee vote: _____)

15

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Representative _____

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FOR THE COMMITTEE