

H.710 STRIKE-ALL AMENDMENT
Proposed by Vermont Brewers Association

BOLD is new language. No bold is current law.

CHAPTER 24 CRAFT BEER FRANCHISES – Effective January 1, 2019

§800 Application of this Chapter

(1) This Chapter applies to a certificate of approval holder that produces or distributes not more than 300,000 barrels of malt beverages per year or a manufacturer of malt beverages that produces not more than 300,000 barrels of malt beverages per year.

(2) The amount of malt beverages manufactured by a certificate of approval holder or manufacturer shall include the aggregate amount of all brands of malt beverages that are manufactured by or on behalf of the certificate of approval holder or manufacturer whether inside and outside Vermont. The amount of malt beverages distributed by a certificate of approval holder shall include the aggregate amount of all brands of malt beverages distributed by the certificate of approval holder whether inside and outside Vermont.

§ 801. Definitions

As used in this section:

(1) "Certificate of approval" means an authorization by the Liquor Control Board pursuant to section 274 of this title to a manufacturer or distributor of malt beverages, not licensed under the provisions of this title, to sell those beverages to holders of a packager's or wholesale dealer's license issued by the Board pursuant to section 272 or 273 of this title.

(2) "Franchise" or "agreement" shall mean one or more of the following: **(As of July 1, 2022, a "franchise" or "agreement" shall mean a written agreement evidencing one or more of the following relationships):**

(A) a commercial relationship between a wholesale dealer and a certificate of approval holder or a manufacturer of a definite duration or indefinite duration that has been in existence for at least one year;

(B) a relationship that has been in existence for at least one year in which the wholesale dealer is granted the right to offer and sell the brands of malt beverages offered by the certificate of approval holder or manufacturer;

(C) a relationship that has been in existence for at least one year in which the wholesale dealer, as an independent business, constitutes a component of a certificate of approval holder's or manufacturer's distribution system;

(D) a relationship that has been in existence for at least one year in which the wholesale dealer's business is substantially associated with the certificate of approval holder's or manufacturer's brand, advertising, or other commercial symbol designating the manufacturer;

(E) a relationship that has been in existence for at least one year in which the wholesale dealer's business is substantially reliant on the certificate of approval holder or manufacturer for the continued supply of malt beverages or vinous beverages; and

(F) an arrangement for a definite or indefinite period that has been in existence for at least one year in which a certificate of approval holder or manufacturer grants to a wholesale dealer a license to use a trade name, trade mark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, or otherwise.

(3) "Franchisee" means any malt beverages wholesale dealer to whom a franchise or agreement as defined in this section is granted or offered, or any malt beverages certificate of approval holder or manufacturer who is a party to a franchise or agreement as defined in this section.

(4) "Franchisor" means any malt beverages certificate of approval holder or manufacturer who enters into any franchise or agreement with a malt beverages wholesale dealer, or any malt beverages certificate of approval holder or manufacturer who is a party to a franchise or agreement as defined in this section.

(5) "Territory" or "sales territory" means the area of sales responsibility designated by any agreement or franchise between any franchisee or franchisor for the brand or brands of any franchisor or manufacturer.

(6) "Brand" and "brands" are synonymous with label and labels.

§ 802. Prohibited acts by manufacturer

A manufacturer shall not:

(1) induce or coerce, or attempt to induce or coerce, any wholesale dealer to accept delivery of any alcoholic beverage, any form of advertisement, or any other commodity, that was not ordered by the wholesale dealer;

(2) induce or coerce, or attempt to induce or coerce, any wholesale dealer to do any illegal act or thing by threatening to cancel or terminate the wholesale dealer's malt beverages or vinous beverages franchise agreement; or

(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 for immediate sale.

§ 803. Cancellation of franchise

- (a) A certificate of approval holder or manufacturer may cancel, terminate or refuse to continue a franchise, or cause a wholesale dealer to relinquish a franchise pursuant to the terms, provisions or conditions contained in their written agreement or franchise.
- (b) If no written agreement or franchise exists between the parties, or if the written agreement or franchise does not include a term, provision or condition relating to termination or cancelation for good cause shown, a certificate of approval holder or manufacturer may cancel, terminate, or refuse to continue a franchise, or cause a wholesale dealer to relinquish a franchise, only if good cause is shown to exist and pursuant to §804. (This provision will sunset on July 1, 2022 when written contracts will control termination.)
- (c) If no written agreement or written franchise exists between the parties or if the written agreement or franchise does not include a term, provision or condition relating to termination or cancelation without good cause, a certificate of approval holder or manufacturer may cancel, terminate, or refuse to continue a franchise, or cause a wholesale dealer to relinquish a franchise, without good cause only if:
- 1) the certificate of approval holder or manufacturer provides the wholesale dealer with written notice of the intent to cancel, terminate, or refuse to continue the franchise at least 30 days before the date on which the franchise shall terminate; and
 - 2) on or before the date the franchise shall terminate, the certificate of approval holder, manufacturer, or a wholesale dealer designated by the certificate of approval holder or manufacturer pays the terminated wholesale dealer reasonable compensation for the termination of the franchise.
 - 3) As used in this section, “reasonable compensation” means the cost of the wholesale dealer’s laid-in inventory related to the terminated franchise and five times the average annual gross profits earned by the wholesale dealer on the terminated franchise during the last three fiscal years or, if the franchise has not been in existence for three years, the average annual gross profits earned during the period of time during which the franchise has been in existence. “Gross profits” shall equal the wholesale price of the inventory minus shipping costs and taxes.
- (This provision will sunset on July 1, 2022 when written contracts will control termination.)

§ 804. 120 days' notice for cancellation; rectification

(a)(1) Except as provided in subsection (c) of this section and absent any written agreement terms or provisions to the contrary, a certificate of approval holder or manufacturer who seeks to terminate a franchise agreement for good cause shown shall provide a franchisee or agreement holder at least 120 days' written notice of any intent to terminate or cancel any franchise or agreement.

(2) The notice shall state the causes and reasons for the intended termination or cancellation. The franchisee shall have 120 days in which to rectify any claimed deficiency.

(b) The Superior Court, upon petition and after due notice to both parties and the opportunity to be heard, shall decide whether good cause exists to allow termination or cancellation of the franchise or agreement.

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

(This provision will sunset on July 1, 2022 when written contracts will control termination.)

§ 805. Exclusive territories

No certificate of approval holder or manufacturer, who designates a sales territory for which a wholesale dealer shall be primarily responsible or in which a wholesale dealer is required to concentrate its efforts, shall enter into any franchise or agreement with any other wholesale dealer for the purpose of establishing an additional franchisee for its brand or brands of malt beverages in the territory being primarily served or concentrated upon by the first licensed wholesale dealer.

§ 806. Sale to retailers by franchisees

No franchisee that is granted a sales territory for which the franchisee shall be primarily responsible or in which the franchisee is required to concentrate its efforts shall make any sale or delivery of malt beverages to any retail licensee whose place of business is not within the sales territory granted to the franchisee.

§ 807. Sale or transfer; purchase by manufacturer

(a) **Absent any written agreement terms or provisions to the contrary,** a wholesale dealer wishing to sell or otherwise transfer its interests in a franchise shall give at least 90 days' written notice to the certificate of approval holder or manufacturer, prior to the sale or transfer. The notice of intended sale or transfer shall give the full name and address of the proposed transferee, along with full details outlining the qualifications of the proposed transferee which, in the opinion of the wholesale dealer, make the proposed transferee competent to operate the franchise.

(b) In the event the certificate of approval holder or manufacturer wishes to resist the proposed sale or transfer to the proposed transferee, the certificate of approval holder, **manufacturer, or a wholesale dealer designated by the certificate of approval holder or manufacturer shall pay the incumbent wholesale dealer reasonable compensation, as defined in 803(c)(3) for the termination of the franchise.**

~~or manufacturer shall petition the Superior Court for a hearing no later than 60 days prior to the date of the proposed sale or transfer. The petition shall clearly state the certificate of approval holder's or manufacturer's reasons for resisting the proposed sale or transfer.~~

~~(c) Upon receipt of a petition brought resisting a sale or transfer, the Superior Court shall hold a hearing on the proposed transfer or sale. The court shall make a full inquiry into the qualifications of the proposed transferee and shall determine whether or not the proposed transferee is in a position to substantially continue the operations of the franchise, to assume the obligations of the franchise holder, and to conduct the business in a manner that will protect the legitimate interests of the certificate of approval holder or manufacturer.~~

~~(d) If the Superior Court finds the proposed transferee to be qualified to operate the franchise, it shall approve the transfer of the franchise to the proposed transferee.~~

§ 808. Merger of franchisor

Absent any written agreement terms or provisions to the contrary, once a franchise has been in effect for a period of one year, the merger of the franchisor and a third party shall not void the franchise unless a waiver is received from the franchisee or unless good cause is shown pursuant to section 803 of this title and in accordance with the procedures established in section 804 of this title.

§ 809. Heirs, successors, and assigns

Absent any written agreement terms or provisions to the contrary, the provisions of this chapter shall apply to the heirs, successors, and assigns of any franchisor or franchisee.