

1 **Proposed Amendments to House-Passed Version of H.710**

2 **Vermont Wholesale Beverage Association**

3 **April 4, 2018**

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4 7 V.S.A. chapter 23, subchapter 1, which shall include 7 V.S.A.

5 §§ 701-709, is added to read:

6 Subchapter 1. General Provisions

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

8 § 701. DEFINITIONS

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

11 * * *

12 (2) "Franchise" or "agreement" shall mean one or more of the
13 following:

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14 * * *

15 (E) a relationship that has been in existence for at least one year in which the
16 wholesale dealer's business is substantially reliant on the certificate of
17 approval holder or manufacturer for the continued supply of malt beverages or
18 vinous beverages; ~~and or~~ (Note: This change to definition of franchise is
19 added by VWBA to House-passed bill).

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1 (7) “Wholesale dealer” means a packager licensed pursuant to section
2 272 of this title or a wholesale dealer licensed pursuant to section 273 of this
3 title.

4
5 Sec. 3. 7 V.S.A. § 702 is amended to read:

6 § 702. PROHIBITED ACTS BY MANUFACTURER OR CERTIFICATE OF
7 APPROVAL HOLDER

8 A manufacturer or a certificate of approval holder shall not:

9 * * *

10 (3) fail or refuse to deliver promptly to a wholesale dealer after the
11 receipt of its order any malt beverages or vinous beverages when the product is
12 ~~publicly advertised~~ available for immediate sale;

13 (4) Require a wholesale dealer to assent to any condition, stipulation or
14 provision limiting the wholesale dealer’s right to sell the product of any other
15 manufacturer or certificate of approval holder anywhere in Vermont.

1
2 Sec. 3a. 7 VSA § 707, Sale or transfer; purchase by manufacturer, is amended
3 by adding at the end of section (a) the following two sentences immediately
4 after the words “competent to operate the franchise.”

5
6 The consent or approval of a certificate of approval holder or manufacturer is
7 not required for an intended sale or transfer to a family member. “Family
8 member” for purposes of this section shall mean spouse, brother, sister, son,
9 daughter, parent, grandchild, son or daughter in law, brother or sister in law, or
10 niece or nephew.

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11 Sec. 4. 7 V.S.A. chapter 23, subchapter 2 is added to read:

12 Subchapter 2. Small Manufacturers and Certificate of Approval Holders

13 § 751. APPLICATION

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

16 (1) a certificate of approval holder that produces or distributes a total
17 annual volume of not more than ~~25,000~~50,000 barrels of malt beverages ~~per~~
18 ~~year~~ and whose products comprise ~~three-one~~ percent or less of the wholesale
19 dealer's total annual sales of malt beverages by volume; or

20 (2) a manufacturer that produces a total annual volume of not more than
21 ~~25,000~~50,000 barrels of malt beverages ~~per year~~ and whose products comprise

1 one ~~three~~ percent or less of the wholesale dealer's total annual sales of malt
2 beverages by volume.

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

5 (c) "Total annual volume" shall include: (1) The amount of malt beverages
6 manufactured worldwide, directly or indirectly or by an officer, director, agent,
7 employee or affiliate by a certificate of approval holder or manufacturer shall
8 include the worldwide, aggregate amount of all brands of malt beverages that
9 are manufactured directly or indirectly, by or on behalf of the certificate of
10 approval holder or manufacturer, and any entity that controlled, was controlled
11 by, or was under common control with of the certificate of approval holder or
12 manufacturer during the prior-12-month period the year; and;

13 (2) The amount of malt beverages distributed by a certificate of approval
14 holder shall include the aggregate amount of all brands of malt beverages
15 distributed by or on behalf of the certificate of approval holder both inside and
16 outside Vermont.

17 § 752. DEFINITIONS

18 As used in this subchapter:

19 (1) "Annual sales" means the total volume of malt beverages sold by the
20 wholesale dealer of all malt beverage products supplied by all manufacturers
21 and certificate of approval holders in the prior 12-month period.

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

2 (2) “Certificate of approval holder” means a holder of a certificate of
3 approval issued by the Liquor Control Board pursuant to section 274 of this
4 title that produces or distributes a total annual volume of not more than
5 25,000~~50,000~~ barrels of malt beverages per year and whose products comprise
6 one ~~three~~ percent or less of a wholesale dealer’s total annual sales of malt
7 beverages by volume.

8 (3) “Compensation” means the cost of a wholesale dealer’s laid-in
9 inventory related to a franchise that has been or is about to be terminated plus
10 five times the average annual calendar year gross profits earned by the
11 wholesale dealer on the sale of products pursuant to the franchise during the
12 last three ~~calendar~~ fiscal years or, if the franchise has not been in existence for
13 three years, the period of time during which the franchise has been in
14 existence. “Gross profits” shall equal the revenue earned by the wholesale
15 dealer on the sale of products pursuant to the franchise minus the cost of those
16 products, including shipping and taxes.

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

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

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

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

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

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

17 (5) "Manufacturer" means a manufacturer licensed pursuant to section
18 271 of this title that produces ~~a total annual volume of~~ not more than
19 ~~25,00050,000~~ barrels of malt beverages per year and whose products comprise
20 ~~three- one~~ percent or less of a wholesale dealer's total annual sales of malt
21 beverages by volume.

1
2 § 753. CANCELLATION OF FRANCHISE

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

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

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

21 § 754. CANCELLATION FOR GOOD CAUSE; NOTICE:

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1 RECTIFICATION

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

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

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

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

14 (d) The notice provisions of subsection (a) of this section may be waived if
15 the reason for termination or cancellation is insolvency, the occurrence of an
16 assignment for the benefit of creditors, bankruptcy, or if the certificate of
17 approval holder or manufacturer is able to prove to the court that providing the
18 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 ~~60~~30 days before the date on which the
7 franchise 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 days²
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) The consent or approval of a certificate of approval holder or
2 manufacturer is not required for an intended sale or transfer to a family
3 member. “Family member” for purposes of this section shall mean spouse,
4 brother, sister, son, daughter, parent, grandchild, son or daughter in law,
5 brother or sister in law, or niece or nephew.

6 (b-c) If the certificate of approval holder or manufacturer opposes the
7 proposed sale or transfer to the proposed transferee, the certificate of approval
8 holder or manufacturer may either:

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

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

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

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

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

7 § 757. MERGER OF FRANCHISOR

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

13 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

18 Sec. 5. 7 V.S.A. § 759 is added to read:

19 § 759. WRITTEN AGREEMENT

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

1 Sec. 6. 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 January 1, 2019 and~~ has existed for at
8 least one year and has one or more of the following characteristics:

9 * * *

10 Sec. 7. 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 requiring good cause to
17 terminate governing termination for good cause, ~~or if the franchise between the~~
18 ~~parties is not in writing~~, the certificate of approval holder or manufacturer may
19 cancel, terminate, refuse to continue, or cause the wholesale dealer to
20 relinquish the franchise for good cause as provided pursuant to section 754 of
21 this subchapter.

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

7 Sec. 8. 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 between the parties is not in writing~~, a wholesale dealer wishing to
11 sell or otherwise transfer its interests in a franchise shall give at least 90 days²
12 written notice of the proposed sale or transfer to the certificate of approval
13 holder or manufacturer.

14 * * *

15 Sec. 9. 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 between the parties is not in writing~~, the merger of a certificate of
19 approval holder or manufacturer with a third party shall not void the franchise
20 unless good cause is shown pursuant to section 754 of this subchapter, or the
21 franchise is terminated pursuant to section 755 of this subchapter.

1 Sec. 10. 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.

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7 Sec. 11. TRANSITION TO WRITTEN CONTRACTS

8 (a) A certificate of approval holder or manufacturer and a wholesale dealer
9 who are parties to a franchise agreement that was entered into before January
10 1, 2019 and is not in writing shall:

11 (1) negotiate a written franchise agreement to take effect on or before July
12 1, 2022.

13 (2b) If the certificate of approval holder or manufacturer and the wholesale
14 dealer are unable to reach agreement on the terms of a written franchise
15 agreement on or before July 1, 2022 or if the parties mutually agree that the
16 franchise shall not continue beyond that date, the franchise shall be deemed to
17 terminate on July 1, 2022 and the certificate of approval holder or
18 manufacturer shall pay the wholesale dealer compensation for its interest in the
19 franchise in the same manner as if the franchise were terminated for no cause
20 pursuant to 7 V.S.A. § 755.

21 (be) As used in this section,

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

2 § 752;

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

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

5 Sec. 12. APPLICABILITY TO EXISTING AND PROSPECTIVE

6 FRANCHISE AGREEMENTS

7 (a) Existing Franchise Agreements: The provisions of Title 7, Chapter 23,
8 Subchapter 2 shall not apply until July 1, 2022 to any written franchise
9 agreement between a certificate of approval holder or a manufacturer and a
10 wholesale dealer entered into before January 1, 2019. Until July 1, 2022, Title
11 7, Chapter 23, Subchapter 1 shall continue to apply to these existing franchise
12 agreements.

13 (b) Franchises Entered Into After the Effect Date of the Act: The provisions
14 of Title 7, Chapter 23, Subchapter 2 shall apply on or after January 1, 2019, to
15 a written or unwritten franchise agreement that is entered into on or after
16 January 1, 2019 between a manufacturer or certificate of approval holder as
17 defined in § 751 and a wholesale dealer.

18 Sec. 132. EFFECTIVE DATES

19 (a) This section and Secs. 1, 2, 3, 4, 11 and 12 ~~11~~ shall take effect on
20 January 1, 2019.

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

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