

**H.710, An Act Relating to Beer and Wine Franchises
Testimony of Clare Buckley, Executive Director,
Vermont Wholesale Beverage Association
Senate Economic Development, Housing and General Affairs Committee
April 5, 2018**

Good morning Chairman Sirotkin and members of the committee.

Background on VWBA Members

My name is Clare Buckley of Leonine Public Affairs and I also serve as the Executive Director of the Vermont Wholesale Beverage Association, the trade association advocating on behalf of family-owned businesses, including some that are third or fourth generation businesses in Vermont. VWBA's members are the four main beer wholesalers in the state, Baker Distributing Corporation (with warehouses in North Clarendon and Colchester), Calmont Beverage Corporation (with a warehouse in Berlin), Craft Beer Guild Distributing of Vermont (with a warehouse in Colchester) and Farrell Distributing Corporation (with warehouses in Rutland Town and South Burlington).

According to a study done by the University of Delaware in 2015 for the National Beer Wholesalers Association, Vermont distributors contribute more than \$300 million to the Vermont economy. (See handout.) Vermont distributors employ over 700 Vermonters. The average annual wages and benefits for an employee in Vermont at the four VWBA member distributors is \$50,830 in salary, \$10,920 in benefits for a total of \$61,750 per employee per year. Vermont distributors are longstanding Vermont-based, family owned businesses that are important for Vermont's economy.

Vermont's Beer Franchise Law Serves Significant Public Policy Interests

Approximately 47 states have beer franchise laws. Only a few states allow "small brewers" to terminate without cause. "Good cause" termination in franchise laws is common not only for beer, but also in franchise laws for auto dealers, equipment dealers, and others. These laws recognize that when a distributor makes a substantial investment in the distribution infrastructure on behalf a manufacturer, it wouldn't be fair if the manufacturer could walk away at any time.

In Vermont, brewers have a choice. They can either make the investment in distribution infrastructure themselves or they can get distributors to make that investment on their behalf. Typically, craft brewers do not have the resources to make that investment. Accordingly, they get distributors to make that substantial investment. This investment ordinarily entails hundreds of thousands, if not millions, of dollars for the construction or acquisition of refrigerated warehouses, the acquisition or lease of a fleet of trucks or other vehicles, the acquisition of racking systems, the acquisition of a sophisticated computer software system and

hardware, employing a sales force, employing a delivery force, and paying for the promotion, advertising, and marketing of the products. Distributors are only willing to make that substantial investment, however, if they have assurance that a brewer cannot inequitably usurp that investment by terminating without notice, without an opportunity to cure and without good cause. The Vermont beer franchise law provides that assurance.

Some say that because the beer market has changed significantly over the past decade, with distributors consolidating and an explosion of new brewers entering the market, that there is no longer a policy rationale for the beer franchise law. This is false. Even with these changes in the marketplace, which are less pronounced in Vermont, Vermont's beer franchise law serves a number of important public policy interests including:

- The franchise law preserves the *independence* of beer distributors by prohibiting arbitrary terminations by breweries. This ensures that no brewer – whether a large, multinational brewer or a Vermont craft brewer - can penalize distributors from taking on new brands. This allows emerging small brewers with no capital of their own to do so, to tap into the significant investment and statewide distribution infrastructure.
- The franchise law stimulates competition, value and variety. Consumers enjoy a wide variety of small, growing beer brands in Vermont.
- The service territories in the franchise law provide a traceable chain of custody of product that protects consumers from tainted alcohol that is commonly found in other countries. Or if the beer is contaminated in some other way, such as broken glass in bottles, product can be removed from store shelves quickly.
- Vermont's 2,000 licensed stores, bars and restaurants benefit from the high level of service required by the existing beer franchise system. Distributors are given service territories and must serve all retailers in that service area. Many beer distributors break even or lose money on 30 percent of deliveries. Every retailer gets the same price and service regardless of how small the store or remote the location. Distributors pick up beer that is beyond its expiration date and credit the retailer and pick up empty beer bottles and pay retailers a handling fee.

Key Provisions in H.710 to VWBA

VWBA has serious concerns about H.710 and its impact on Vermont's incredibly successful beer markets. However, we have listened and heard that truly small brewers want to be able to terminate a contract without cause. We offered a

compromise proposal in the House. The House incorporated many elements of VWBA's compromise proposal into H.710 including:

- Compensation for no cause terminations. It is only fair that brewers compensate distributors for use of the distributor's infrastructure if they choose to leave for no cause. This compensation potentially makes the bill less susceptible to a successful Contract Clause constitutional challenge.
- A transition period for existing franchise agreements that are in writing or are not in writing, to enable those to be renegotiated, if necessary. This also potentially lessens the chance of a successful Contract Clause challenge.
- Lowering the number of barrels and adding a percent of portfolio standard to the "small" brewer threshold
- Removing wine from the bill

While we greatly appreciate many of the changes the House made, VWBA is opposed to the House-passed bill because of one critical issue, namely the size of brewer that is considered "small" and can terminate without cause. We respectfully ask this committee to lower the threshold of a "small brewer" as well as make other substantive and technical amendments.

Lower the Threshold for a "Small Brewer"

VWBA urges the committee to look at available data to determine what is a "small" brewer. The House considered a "small brewer" to be one that brews less than 50,000 barrels of beer in a year and is three percent or less of a distributor's total annual beer sales by volume.

A brewer producing 50,000 barrels of beer a year is in no way small. Different measures of "small" include:

- The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) recognized in a rulemaking in 2012, "[t]here is no specific statutory or regulatory definition as to who is a 'small' brewer." As a result, they undertook a comprehensive review of the size of breweries and settled on 7,142 barrels as the threshold for small brewer tax and paperwork reduction.
- According to data the TTB published in 2016:
 - 74% of all reporting US breweries make less than 1,000 barrels.
 - 95% of all reporting US brewers make less than 15,000 barrels.
- VWBA's proposal of 25,000 barrels covers *96 percent* of all breweries in the United States. (TTB data published in March 2016) VWBA's proposal of 25,000 barrels is sizeable. At 31 gallons per barrel that is 775,000 gallons of beer. At 2.25 gallons per case that is 344,444 cases of beer.

To better understand who these breweries are, attached is a document from the Brewers Association listing their craft brewery members by state and the volume of beer each brewery produced in 2016. I also include a separate sheet with the Vermont brewery data pulled from this Brewers Association list. I note that Harpoon is listed under Massachusetts in the larger document and produces over 25,000 barrels annually. Plus, Magic Hat is considered a “regional brewer” and is not on this list but also produces over 25,000 barrels annually.

Colorado has many craft brewers like Vermont and uses 300,000 gallons (not barrels) which is 9,677 barrels. North Carolina has 25,000 barrels.

VWBA also requests that the committee amend the bill to allow a brewery whose sales to a distributor are one percent or less of a distributor’s total annual sales of malt beverages may terminate without cause. This standard is not about the size brewer but instead measures the level of impact on a particular distributor. This one percent standard will allow an average of 70 percent of all brewers in the existing portfolios of Vermont distributors to be considered “small” and terminate their franchise agreements with no cause.

We believe this 25,000 barrel and one percent or less of total annual beer sales standard will provide additional flexibility to Vermont’s emerging, small brewers while protecting the healthy and competitive beer market that we have in Vermont today. Our proposal strikes a balance between the competing interests of the breweries and the distributors.

VWBA Proposed Amendments

VWBA requests that this committee consider other amendments to H.710 as it passed the House. A number of these are technical and due to the House being pressed for time, we did not have an opportunity to offer them in the House. Attached is a summary of VWBA’s proposed amendments, along with a separate document containing a redlined version of H.710 as it passed the House with VWBA’s proposed amendments.

I’d be happy to walk the committee through these amendments now or at a later date.

Thank you for the opportunity to testify.



Beer Distributors Delivering Economic Value in **VERMONT**



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Distributor Facilities

772

Employees

\$50.3 Million

Wages & Salaries

\$396,000

Economic Impacts in Communities

Support of Charities, Local Events & Economic Development

\$65.6 Million

Federal, State & Local Taxes

\$300.8 Million

Total Economic Impact

Source of data: William Latham & Kenneth Lewis, Center for Applied Business & Economic Research, Alfred Lerner College of Business & Economics, University of Delaware, 2015



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2016 Brewers Association – Craft Brewer Data

Backacre Beermakers	VT		Do Not Publish
Lawson's Finest Liquids	VT		Do Not Publish
Switchback Brewing Co	VT		Do Not Publish
Long Trail Brewing Co	VT		131,000
Alchemist Cannery	VT		13,500
Fiddlehead Brewing	VT		10,000
Von Trapp Brewing	VT		8,944
14th Star Brewing	VT		6,000
Hill Farmstead Brewery	VT	Y	5,500
Rock Art Brewery	VT	Y	4,000
Zero Gravity Craft Brewery	VT	Y	4,000
Lost Nation Brewing	VT	Y	3,500
Queen City Brewery, LLC	VT	Y	1,300
GoodWater Brewery	VT		1,005
Burlington Beer Company	VT	Y	1,000
Hermit Thrush Brewery, LLC	VT	Y	1,000
Vermont Pub and Brewery	VT	Y	1,000
Foley Brothers Brewing Co	VT		930
Drop In Brewing	VT	Y	900
Northshire Brewery, Inc	VT	Y	900
McNeills Brewery	VT	Y	800
Stone Corral Brewery	VT		762
Kingdom Brewing	VT	Y	750
Four Quarters Brewing Co	VT	Y	650
Frost Beer Works	VT		600
Idletyme Brewing Company	VT	Y	600
Prohibition Pig	VT	Y	550
Hop N' Moose Brewing Co	VT	Y	400
Foam Brewers	VT		380
Whetstone Station Restaurant and Brewery	VT		321
Bobcat Brewery & Cafe	VT	Y	275
Bent Hill Brewery	VT	Y	260
The Norwich Inn - Jasper Murdock's Alehouse	VT		207
1st Republic Brewing Co	VT	Y	150
Brocklebank Craft Brewing	VT	Y	150
Madison Brewing Co, Pub and Restaurant	VT	Y	150
Simple Roots Brewing Co	VT		117
J'ville Brewery	VT	Y	100
Red Barn Brewing	VT	Y	90

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River Roost Brewery	VT	Y	90
Saint J Brewery	VT		75
Good Measure Brewing Co	VT	Y	55
Hogback Mountain Brewery	VT		50
Ten Bends Beer	VT	Y	40
Brewster River Pub & Brewery	VT	Y	30