Vermont Wholesale Beverage Association
Proposed Amendments to the House-Passed Version of
H.710, Beer Franchise Bill
April 4, 2018

VWBA proposes that the Senate Economic Development, Housing and General Affairs Committee adopt the following amendments to H.710 as it passed the House. **These amendments and a few others are reflected in the attached redlined House-passed version of H.710.**

1. Reduce the "small brewer" threshold (Sec. 4)

VWBA requests that the Senate change Sec. 4, so that the threshold for a small brewer is 25,000 barrels and 1% or less of the distributor's total annual beer sales by volume. The House-passed bill exempts breweries that produce 50,000 barrels or less per year and are three percent or less of their wholesaler's annual sales by volume.

Why one percent or less? This standard is not about the size brewer but instead measures the level of impact on a particular distributor. **Under this standard, approximately 70 percent of all brewers that the four VWBA member distributors currently represent will be able to terminate a franchise with no cause in Vermont, assuming their contract doesn't say otherwise**. Losing a brewer that is in the three percent range of a distributor's portfolio will be very disruptive to a distributor and result in job loses. Please adopt the one percent standard as it better balances the needs of brewers and distributors.

Why 25,000 barrels or less? VWBA's proposal of 25,000 barrels covers *96 percent* of all breweries in the United States. (TTB data published in March 2016.) A brewery producing 25,000 barrels a year 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. Colorado has many craft brewers like Vermont and uses 300,000 gallons (not barrels) which is 9,677 barrels. North Carolina uses 25,000 barrels.

2. Prohibit a certificate of approval holder or manufacturer from limiting the distributor's right to sell the product of any other producer (Sec. 3 of H.710, add Sec. 702(4)).

One of the benefits of requiring "good cause" termination of a franchise is that the brewer cannot exert undue influence over its distributor's ability to sell a competing product from another brewer. This happens often with non-alcoholic beverages where, for example, an energy drink manufacturer might require the wholesaler to only carry its energy drink product. It is important to add a provision in Sec. 702, Prohibited Conduct, that a brewer cannot limits its distributor's ability to sell the product of another manufacturer to ensure distributors remain independent of brewer influence and all emerging breweries have the ability to get their beer to market by a distributor. Many other state franchise laws have similar provisions.

3. Interfamily transfers should be exempt from a manufacturer's consent when a wholesaler is transferred between family members (Sec. 3a add an amendment to Section 707 of existing law & Sec. 4 of H.710, add Sec. 756(b))

Section 707 of the existing franchise law and Section 756 of the new proposed Subchapter 2 require a wholesale dealer to give notice of and sets for a process for a proposed sale or transfer. VWBA requests that the consent or approval of a certificate of approval holder or manufacturer not be required if the transfer is to another family member. This is common in franchise statutes in other states.

4. Clarify that the effective dates and that Subchapter 1 applies to all existing franchises until 7/1/22 (adding a new Sec. 12 to H.710)

VWBA proposes to add a new Section 12, titled "Applicability to Existing and Prospective Franchise Agreements." The purpose of this section is to make clear when the old subchapter (Subchapter 1) applies and when the new (Subchapter 2) applies to existing franchise agreements in effect on the effective date of the act and prospective ones. This is not a substantive change but H.710 as passed the House does not explicitly state that Subchapter 1 applies to existing franchises until 7/1/22.

5. Defining how both the barrel limit and the percent of portfolio are calculated (Sec. 4, Sec. 751(c) ("total annual volume") and Sec. 4, Sec. 752(1) ("annual sales"))

The annual barrel limit and the annual percent of portfolio standards in the House-passed bill do not indicate when you'd count the 12-month annual period. New York and the few other states that have adopted similar provisions use the prior 12-month period. VWBA proposes Vermont do the same. We've added a definition of "total annual volume" and "annual sales" to better define the counting of barrels and the 12-month period.

6. Compensation – calendar rather than fiscal year (Sec. 752(3))

VWBA and the VBA agreed to the definition of "compensation" in the House. VWBA noticed after the bill passed one tweak that we'd like to make and that is to change "fiscal year" to "calendar year". Many companies have different fiscal years so calculating compensation based on a calendar year is clearer.

VWBA's attached redlined draft amendments contain additional miscellaneous technical amendments that VWBA urges the Senate to adopt.

Thank you for considering these amendments. We'd be happy to answer questions.

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