

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred House Bill No. 710 entitled “An act relating to beer
4 franchises” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. REDESIGNATION; ADDITION OF SUBCHAPTER

9 7 V.S.A. chapter 23, subchapter 1, which shall include 7 V.S.A. §§ 701-
10 709, is added to read:

11 Subchapter 1. General Provisions

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

13 § 701. DEFINITIONS

14 As Except as otherwise provided pursuant to section 752 of this chapter, as
15 used in this chapter:

16 * * *

17 (2) “Franchise” or “agreement” shall mean one or more of the
18 following:

19 * * *

20 (E) a relationship that has been in existence for at least one year in
21 which the wholesale dealer’s business is substantially reliant on the certificate

1 of approval holder or manufacturer for the continued supply of malt beverages
2 or vinous beverages; **and or**

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

9 * * *

10 (7) “Wholesale dealer” means a packager licensed pursuant to section
11 272 of this title or a wholesale dealer licensed pursuant to section 273 of this
12 title.

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

14 § 702. PROHIBITED ACTS BY MANUFACTURER **OR CERTIFICATE OF**
15 **APPROVAL HOLDER**

16 A manufacturer **or certificate of approval holder** shall not **do any of the**
17 **following:**

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

1 sibling, parent, foster child, child-in-law, sibling-in-law, niece, or nephew of
2 the owner of the wholesale dealer.

3 Sec. 5. 7 V.S.A. chapter 23, subchapter 2 is added to read:

4 Subchapter 2. Small Manufacturers and Certificate of Approval Holders

5 § 751. APPLICATION

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

8 (1) a certificate of approval holder that produces or distributes a total
9 annual volume of not more than [50,000/25,000] barrels of malt beverages and
10 whose products comprise [three percent/one percent/eliminate provision]
11 or less of the wholesale dealer's total annual sales of malt beverages by
12 volume; or

13 (2) a manufacturer that produces a total annual volume of not more than
14 [50,000/25,000] barrels of malt beverages and whose products comprise [three
15 percent/one percent/eliminate provision] or less of the wholesale dealer's total
16 annual sales of malt beverages by volume.

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

19 § 752. DEFINITIONS

20 As used in this subchapter:

21 (1) "Barrel" means 31 gallons of malt beverages.

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

7 (3) “Compensation” means the cost of a wholesale dealer’s laid-in
8 inventory related to a franchise that has been or is about to be terminated plus
9 [five times/less than five times] the average annual gross profits earned by the
10 wholesale dealer on the sale of products pursuant to the franchise during the
11 last three calendar years or, if the franchise has not been in existence for three
12 years, the period of time during which the franchise has been in existence.

13 “Gross profits” shall equal the revenue earned by the wholesale dealer on the
14 sale of products pursuant to the franchise minus the cost of those products,
15 including shipping and taxes.

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

13 (E) the certificate of approval holder or manufacturer has granted the
14 wholesale dealer a license to use a trade name, trademark, 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 [50,000/25,000] barrels of malt beverages and whose products comprise [three
20 percent/one percent/eliminate provision] or less of a wholesale dealer’s total
21 annual sales of malt beverages by volume.

1 (6) “Total annual sales” means the total volume of all malt beverages
2 sold by a wholesale dealer in the prior 12-month period.

3 (7) “Total annual volume” means:

4 (A) the amount of malt beverages manufactured worldwide during
5 the prior 12-month period, directly or indirectly, by or on behalf of:

6 (i) the certificate of approval holder or manufacturer;

7 (ii) any employee, director, or officer of a certificate of approval
8 holder or manufacturer; or

9 (iii) an affiliate of the certificate of approval holder or
10 manufacturer, regardless of whether the affiliation is corporate, or is by
11 management, direction, or control; or

12 (B) the amount of malt beverages distributed worldwide during the
13 prior 12-month period directly or indirectly, by or on behalf of:

14 (i) the certificate of approval holder;

15 (ii) any employee, director, or officer of a certificate of approval
16 holder; or

17 (iii) an affiliate of the certificate of approval holder, regardless of
18 whether the affiliation is corporate, or is by management, direction, or control.

19 § 753. CANCELLATION OF FRANCHISE

20 (a) The terms of a written franchise between the certificate of approval
21 holder or manufacturer and the wholesale dealer shall govern the right to

1 cancel, terminate, refuse to continue, or to cause a wholesale dealer to
2 relinquish a franchise.

3 (b) In the absence of a provision in a written franchise agreement to the
4 contrary, or if the franchise between the parties is not in writing, the certificate
5 of approval holder or manufacturer may cancel, terminate, refuse to continue,
6 or cause the wholesale dealer to relinquish the franchise for good cause as
7 provided pursuant to section 754 of this subchapter.

8 (c) In the absence of a provision in a written franchise agreement to the
9 contrary, or if the franchise between the parties is not in writing, the certificate
10 of approval holder or manufacturer may cancel, terminate, refuse to continue,
11 or cause the wholesale dealer to relinquish the franchise for no cause as
12 provided pursuant to section 755 of this subchapter.

13 § 754. CANCELLATION FOR GOOD CAUSE; NOTICE;

14 RECTIFICATION

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

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

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

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

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

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

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

15 (1) Provide the franchisee with written notice of the intent to cancel or
16 terminate the franchise at least [30/60] days before the date on which the
17 franchise shall terminate.

18 (2) On or before the date the franchise shall be canceled or terminated,
19 pay, or have paid on its behalf by a designated wholesale dealer, compensation,
20 as defined pursuant to section 752 of this subchapter, for the franchisee's
21 interest in the franchise. The compensation shall be the wholesale dealer's sole

1 and exclusive remedy for any termination or cancellation pursuant to this
2 section. [Proposed by VBA]

3 § 756. SALE OR TRANSFER BY WHOLESALE DEALER

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

9 (2) The notice of intended sale or transfer shall give the full name and
10 address of the proposed transferee, along with full details outlining the
11 qualifications of the proposed transferee which, in the opinion of the wholesale
12 dealer, make the proposed transferee competent to operate the franchise.

13 (b) If the certificate of approval holder or manufacturer opposes the
14 proposed sale or transfer to the proposed transferee, the certificate of approval
15 holder or manufacturer may either:

16 (1) prevent the proposed sale or transfer from occurring by paying
17 compensation for the wholesale dealer's interest in the franchise in the same
18 manner as if the franchise were being terminated for no cause pursuant to
19 section 755 of this subchapter; or

20 (2) not less than 60 days before the date of the proposed sale or transfer,
21 file a petition with the Superior Court that clearly states the certificate of

1 approval holder's or manufacturer's reasons for resisting the proposed sale or
2 transfer.

3 (c)(1) Upon receipt of a petition pursuant to subdivision (b)(2) of this
4 section, the Superior Court shall hold a hearing on the proposed transfer or
5 sale. The court shall make a full inquiry into the qualifications of the proposed
6 transferee and shall determine whether or not the proposed transferee is in a
7 position to continue substantially the operations of the franchise, to assume the
8 obligations of the franchise holder, and to conduct the business in a manner
9 that will protect the legitimate interests of the certificate of approval holder or
10 manufacturer.

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

14 (e) The provisions of subsections (b) and (c) of this section shall not apply
15 to the sale or transfer of a franchise to the spouse, child, grandchild, sibling,
16 parent, foster child, child-in-law, sibling-in-law, niece, or nephew of the owner
17 of the wholesale dealer. [Proposed by VWBA]

18 § 757. MERGER OF FRANCHISOR

19 In the absence of a provision of the franchise to the contrary, or if the
20 franchise between the parties is not in writing, the merger of a certificate of
21 approval holder or manufacturer with a third party shall not void the franchise

1 unless good cause is shown pursuant to section 754 of this subchapter, or the
2 franchise is terminated pursuant to section 755 of this subchapter.

3 § 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

8 **Sec. 6.** 7 V.S.A. § 759 is added to read:

9 § 759. WRITTEN AGREEMENT

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

11 **Sec. 7.** 7 V.S.A. § 752 is amended to read:

12 § 752. DEFINITIONS

13 As used in this subchapter:

14 * * *

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

19 * * *

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

21 § 753. CANCELLATION OF FRANCHISE

1 (a) The terms of a written franchise between the certificate of approval
2 holder or manufacturer and the wholesale dealer shall govern the right to
3 cancel, terminate, refuse to continue, or to cause a wholesale dealer to
4 relinquish a franchise.

5 (b) In the absence of a provision in a written franchise agreement to the
6 contrary, or if the franchise between the parties is not in writing, the certificate
7 of approval holder or manufacturer may cancel, terminate, refuse to continue,
8 or cause the wholesale dealer to relinquish the franchise for good cause as
9 provided pursuant to section 754 of this subchapter.

10 (c) In the absence of a provision in a written franchise agreement to the
11 contrary, or if the franchise between the parties is not in writing, the certificate
12 of approval holder or manufacturer may cancel, terminate, refuse to continue,
13 or cause the wholesale dealer to relinquish the franchise for no cause as
14 provided pursuant to section 755 of this subchapter.

15 Sec. 9. 7 V.S.A. § 756 is amended to read:

16 § 756. SALE OR TRANSFER BY WHOLESale DEALER

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

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Sec. 10. 7 V.S.A. § 757 is amended to read:

§ 757. MERGER OF FRANCHISOR

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

Sec. 11. 7 V.S.A. § 758 is amended to read:

§ 758. HEIRS, SUCCESSORS, AND ASSIGNS

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

Sec. 12. TRANSITION TO WRITTEN CONTRACTS

(a) Franchise agreements that were entered into before January 1, 2019 and are not in writing shall transition to a written franchise agreement as provided pursuant to this subsection:

(1) A certificate of approval holder or manufacturer and a wholesale dealer who are parties to a franchise agreement that was entered into before

1 January 1, 2019 and is not in writing shall negotiate a written franchise
2 agreement to take effect on or before July 1, 2022.

3 (2) If the certificate of approval holder or manufacturer and the
4 wholesale dealer are unable to reach agreement on the terms of a written
5 franchise agreement on or before July 1, 2022 or if the parties mutually agree
6 that the franchise shall not continue beyond that date, the franchise shall be
7 deemed to terminate on July 1, 2022 and the certificate of approval holder or
8 manufacturer shall pay the wholesale dealer compensation for its interest in the
9 franchise in the same manner as if the franchise were terminated for no cause
10 pursuant to 7 V.S.A. § 755.

11 (b) As used in this section:

12 (1) “Certificate of approval holder” has the same meaning as in 7 V.S.A.
13 § 752.

14 (2) “Manufacturer” has the same meaning as in 7 V.S.A. § 752.

15 (3) “Wholesale dealer” has the same meaning as in 7 V.S.A. § 701.

16 **Sec. 13. APPLICATION OF ACT TO EXISTING AND PROSPECTIVE**

17 **FRANCHISE AGREEMENTS [Proposed by VWBA]**

18 (a) Definitions. As used in this section:

19 (1) “Certificate of approval holder” has the same meaning as in 7 V.S.A.
20 § 752.

21 (2) “Manufacturer” has the same meaning as in 7 V.S.A. § 752.

1 (3) “Wholesale dealer” has the same meaning as in 7 V.S.A. § 701.

2 (b) Existing Franchise Agreements.

3 (1) Until July 1, 2022, the provisions of 7 V.S.A. chapter 23, subchapter
4 1 (existing franchise law) shall apply to all franchise agreements that were
5 entered into before January 1, 2019.

6 (2) Between January 1, 2019 and July 1, 2022, certificate of approval
7 holders, manufacturers, and wholesale dealers who are parties to a franchise
8 agreement that was entered into before January 1, 2019 and is not in writing
9 shall negotiate a written franchise agreement to take effect on or before July 1,
10 2022 as provided pursuant to Sec. 12 of this act.

11 (3) Beginning on July 1, 2022, the provisions of 7 V.S.A. chapter 23,
12 subchapter 2 shall apply to franchise agreements between a certificate of
13 approval holder or manufacturer and a wholesale dealer.

14 (c) Prospective franchise agreements. The provisions of 7 V.S.A.
15 chapter 23, subchapter 2 shall apply to franchise agreements between a
16 certificate of approval holder or manufacturer and a wholesale dealer that are
17 entered into on or after January 1, 2019.

18 **Sec. 14.** EFFECTIVE DATES

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

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

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE