

**Section by Section Summary of H.710 as Passed Second Reading in the House:
An Act Relating to Beer and Wine Franchises**

Sec. 1. Creates 7 V.S.A. chapter 23, subchapter 1

- A new subchapter that includes all existing franchise laws.

Sec. 2. Amends 7 V.S.A. § 701 - Definitions

- Definitions for the entire chapter.
- Adds a definition of wholesale dealer to clarify that the term includes both licensed wholesale dealers and packagers.

Sec. 3. Amends 7 V.S.A. § 702

- Amends the prohibited acts for a manufacturer to prohibit a manufacturer from failing or refusing to deliver beverages to a wholesale dealer when they are available for immediate sale, rather than when they are publicly advertised for immediate sale.

Sec. 4. Adds 7 V.S.A. chapter 23, subchapter 2

- New subchapter governing franchise agreements for small manufacturers and certificate of approval holders.

§ 751. Applicability

- Makes the subchapter applicable to certificate of approval holders and manufacturers that:
 - produce or distribute not more than 50,000 barrels of beer annually; and
 - whose products are 3% or less of a wholesale dealer's total annual beer sales by volume.
 - *Production amount includes all beer manufactured by or on behalf of the certificate of approval holder or manufacturer on a worldwide basis, including beer produced for a brand that is under common control with the manufacturer or certificate of approval holder.*
 - ***Until July 1, 2022, chapter will only apply to agreements that were entered into on or after January 1, 2019.***

§ 752. Definitions

- Applies to the subchapter.
 - Most importantly, it will initially define franchise to only include agreements that were entered into on or after January 1, 2019.
 - *This will change to include all franchise agreements meeting the gallonage and sales volume criteria beginning July 1, 2022.*

§ 753. Cancellation of franchise

- Termination of a franchise will be governed by the terms of the franchise agreement between the parties.
- In the absence of a written franchise agreement or if the agreement lacks provisions governing either termination for no cause or good cause, the section provides that:
 - Good cause termination is governed by § 754; and
 - No cause termination is governed by § 755.

§ 754. Cancellation for good cause

- In the absence of a provision in a written franchise agreement governing termination for good cause, termination for good cause will happen in the same manner as under the current law:
 - 120 days' notice of intent to terminate, with reasons for termination.
 - Wholesale dealer may rectify deficiency within 120 days.
 - If there is a dispute, the parties can petition the Superior Court to determine if good cause for termination exists.
 - The 120 days' notice may be waived if the reason for termination is related to bankruptcy or if the certificate of approval holder or manufacturer can prove that providing the required notice would do irreparable harm to the marketing of its product.

§ 755. Cancellation for no cause

- In the absence of a provision in a written franchise agreement governing termination for no cause a manufacturer must:
 - Provide at least 30 days' notice of the date the franchise will terminate; and
 - Pay compensation to the wholesale dealer by the termination date.
 - *Compensation is defined as the cost of a wholesale dealer's laid-in inventory related to the franchise plus 5 times the average annual gross profits earned by the wholesale dealer on the sale of products from the franchise during the last 3 fiscal years or the time period the franchise has existed, if less than 3 years.*

§ 756. Sale or transfer by wholesale dealer

- In the absence of a provision in a written franchise agreement, a wholesale dealer must give at least 90 days' notice of intent to sell or transfer franchise, including the name of the proposed transferee and its qualifications to operate the franchise.
- If manufacturer opposes the transfer or sale, it may either:
 - Pay compensation to the wholesale dealer for the franchise in the same manner as if it were terminating the franchise for no cause under § 755; or
 - At least 60 days before the transfer is scheduled to occur, file a petition in Superior Court challenging the proposed transfer.
 - Court will approve transfer if it finds that the transferee is qualified to operate the franchise.

§ 757. Merger of franchisor

- In the absence of a provision in a written franchise agreement, a merger with a third party will not void a franchise unless good cause is shown pursuant to § 754 or the franchise is terminated for no cause pursuant to § 755.

§ 758. Heirs, successors, and assigns

- In the absence of a provision in a written franchise agreement, franchise will apply to the heirs, successors, or assigns of any party to the franchise.

Sec. 5. Adds 7 V.S.A. § 759 – Written Agreement

- Beginning July 1, 2022, requires that all franchise agreements that are subject to the new subchapter must be in writing.

Sec. 6. Amends 7 V.S.A. § 752

- Beginning July 1, 2022, amends definition of franchise to reflect that all franchises must be in writing and to make franchise agreements entered into before January 1, 2019 subject to the subchapter.

Sec. 7-10. Amends 7 V.S.A. §§ 753, 756, 757, and 758

- Beginning July 1, 2022, changes to reflect that franchise agreements must be in writing.

Sec. 11. Transition to Written Agreements

- Requires manufacturers, certificate of approval holders, and wholesale dealers who will become subject to the new subchapter, and whose franchise agreements are not in writing, to negotiate a written franchise agreement that will take effect on or before July 1, 2022.
- If the parties are unable to reach agreement on the terms of a written franchise or mutually agree to end the franchise:
 - It shall be deemed to terminate on July 1, 2022; and
 - The certificate of approval holder or manufacturer must pay compensation to the wholesale dealer as if the franchise were terminated for no cause under § 755.

Sec.12. Effective Dates

- Sections 1-4 and 11 take effect on January 1, 2019.
- The remaining sections, which make the new subchapter applicable to all small brewers and certificate of approval holders, and require written franchise agreements, take effect on July 1, 2022.