

*Vermont Brewers Association*  
*Reforming Vermont's Beer Franchise Laws*

relationship, the manufacturer must file an action in superior court. In addition to court costs, filing usually includes the costs of hiring a lawyer. The superior court, after notice and hearing, will then decide whether good cause exists to allow termination or cancellation of the franchise relationship.

- A distributor can also sell a manufacturer's distribution rights to another distributor with 90 days notice to the manufacturer. If the manufacturer objects to the sale, the manufacturer must file an action in superior court to prevent the sale.

**Why do Vermont Craft Brewers Want Relief from the Burdens of the Franchise Law?**

- Giving Vermont's few large distributors special legal advantages over craft brewers is unfair and serves no public policy.
- One-sided termination protections, transfer protections, and dispute resolution protections afforded to distributors have become onerous and stifling to craft brewers.
- Brewers must often settle for status quo, even if the distributor is under-performing or non-performing.
- As a practical matter, only the largest brewers can afford to engage in expensive franchise law litigation.
- When deciding whether to litigate to terminate a franchise, a distributor's only downside is losing the craft brand, which is likely only a small percentage of their portfolio (1% - 5%), while the craft brewer risks a substantial expense, potentially bankrupting their small business, as well as the possibility of being forced to stay with the underperforming distributor during and after litigation.
- A distributor that is a great fit today, might not be a great fit tomorrow as a craft brewery business grows and changes.
- If a large distributor decided to change its focus from an existing craft brand to a new brand in their portfolio, the existing craft brand could be significantly impacted. The craft brewery should be able to negotiate a contract termination that allows them to seek out a new distributor that is compatible with their business' needs, model, and values.
- The restrictions of franchise law also acts as a disincentive for new distributor start-ups to enter the marketplace.
- Craft brewing is a thriving sector of the Vermont economy. Craft brewers are the quintessential small business and a significant source of jobs. Relief from the burdens of Vermont's franchise laws could allow craft brewers greater opportunity to get their product to market.
- **Without statutory protections for distributors, distributors and craft brewers would be free to negotiate contracts to govern their relationship, including the terms governing termination.**

**Other States**

To date, at least 10 states have adopted some form of relief from franchise laws for craft brewers, with bills pending in a handful of other states. Another five states have no franchise laws in place, or have a hybrid law that essentially acts to relieve craft brewers from franchise regulation. A number of states are actively debating these issues.

Questions? Contact:

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*"It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."*

Oliver Wendell Homes, Jr., The Path of the Law. 10 Harvard Law Review 457 (1897)

### **Goal**

Allow Vermont's craft brewers the freedom to contract with distributors without unnecessary government interference.

### **History of the Franchise Law**

When Prohibition was repealed in 1933, power was given to States to regulate the sale of alcohol within their boundaries. Over time, the industry was dominated by a few large beer brewers (e.g. Coors, Anheuser Busch). Without protection for small distributors, government worried that the biggest brewers would wield their financial clout to stifle competition. Laws giving distributors special legal protections ("franchise laws") were adopted in most states during the 1970's. When enacted, the public policy purpose of franchise law was to *equalize bargaining power* - giving the small distributors a level playing field with the large brewers.

Today, Vermont's beer marketplace is dramatically different from what it was in the 1970's when franchise laws were adopted. Vermont is host to a thriving craft brewing industry, with over 50 small craft breweries and only a handful of distributors. The largest distributors (Baker, Farrell and Calmont) are far larger than most craft brewers. Franchise law protections may have been useful when distributors were the David and large national brewers were the Goliath. But that is no longer the case, at least as it relates to craft brewers.

### **How does Vermont's Franchise Law Work?**

Most commercial relationships are governed by contract law. Under a contract, each party has the opportunity to negotiate the terms that will govern their commercial relationship, including termination of the relationship. In contrast, current franchise law, governed by statute, *severely restricts* the ability of the commercial parties to negotiate the terms of their relationship in several important respects including, and most importantly, termination of the relationship.

### **Vermont's Current Franchise Laws Contain the Following Provisions that Favor Distributors over Manufacturers:**

- If a manufacturer (brewer, vintner or cidemaker) and a distributor have a business relationship that lasts longer than one year, the distributor is automatically awarded an **exclusive right** to offer and sell the manufacturer's product within their geographic service area **for an indefinite period**. This right exists **without regard** to any contract provisions to the contrary.
- Manufacturers cannot cancel, terminate, or fail to deliver products without establishing "good cause." What constitutes "good cause" is not defined by statute and may or may not be defined in contract, if a written contract exists.
- If a manufacturer believes there is good cause to terminate a relationship with a distributor, they must provide written notice, stating the cause and reasons to support the cause, 120 days prior to when they intend to terminate the contract. The distributor then has 120 days to fix or cure the alleged good cause. The burden to show good cause is on the manufacturer.
- If after the required notice period and the time to cure period (up to 240 days), a manufacturer believes the distributor has not addressed the good cause and still wants to terminate the

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