

SECOND REGULAR SESSION

SENATE BILL NO. 837

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time February 27, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

6000S.011

AN ACT

To repeal section 407.400, RSMo, and to enact in lieu thereof one new section relating to franchises.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 407.400, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 407.400, to read as follows:

407.400. As used in sections 407.400 to 407.420:

2 (1) "Franchise" means a written or oral arrangement for a definite or
3 indefinite period, in which a person grants to another person a license to use a
4 trade name, trademark, service mark, or related characteristic, and in which
5 there is a community of interest in the marketing of goods or services at
6 wholesale, retail, by lease, agreement, or otherwise[, including]; **"franchise"**
7 **specifically includes**, but is not limited to, a commercial relationship of
8 definite duration or continuing indefinite duration, between a "wholesaler", such
9 wholesaler being a person as defined in this section, licensed pursuant to the
10 provisions of chapter 311 to sell at wholesale, intoxicating liquor, as defined in
11 section 311.020, to retailers, duly licensed in this state, and a "supplier", being
12 a person engaged in the business as a manufacturer, distiller, rectifier or
13 out-of-state solicitor whose brands of intoxicating liquor are distributed through
14 duly licensed wholesalers in this state, and wherein a wholesaler is granted the
15 right to offer, sell, and distribute within this state or any designated area thereof
16 such of the supplier's brands of intoxicating liquor, or all of them, as may be
17 specified, **with or without the grant of a license to use a trade name,**
18 **trademark, service mark, or related characteristic, and whether or not**
19 **there is a community of interest in the marketing of goods or services;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 except that, the term "franchise" shall not apply to persons engaged in sales from
21 warehouses or like places of storage, other than wholesalers as above described,
22 leased departments of retail stores, places of original manufacture, nor shall the
23 term "franchise" apply to a commercial relationship that does not contemplate the
24 establishment or maintenance of a place of business within the state of Missouri.
25 As used herein "place of business" means a fixed, geographical location at which
26 goods, products or services are displayed or demonstrated for sale. **It is the**
27 **general assembly's intent that this subdivision be interpreted as set**
28 **forth in the Missouri cases of High Life Sales Company v. Brown-**
29 **Forman Corporation, 823 S.W.2d 493 (Mo. 1992) and Brown-Forman**
30 **Distillers Corp. v. McHenry, 566 S.W.2d 194 (Mo. 1978), rather than in**
31 **Missouri Beverage Company, Inc. v. Shelton Brothers, Inc., 796 F. Supp.**
32 **2d 988 (W.D. Mo. 2011). Further, the general assembly declares that the**
33 **federal court's interpretation of this subdivision set forth in Missouri**
34 **Beverage Company, Inc. v. Shelton Brothers, Inc., 796 F. Supp. 2d 988**
35 **(W.D. Mo. 2011) should be abrogated in favor of the preceding cases;**

36 (2) The term "goods" includes any personal property, real property, or any
37 combination thereof;

38 (3) The term "other property" includes a franchise, license distributorship,
39 or other similar right, privilege, or interest;

40 (4) The term "person" includes an individual, corporation, trust, estate,
41 partnership, unincorporated association, or any other legal or commercial entity;

42 (5) The term "pyramid sales scheme" includes any plan or operation for
43 the sale or distribution of goods, services or other property wherein a person for
44 a consideration acquires the opportunity to receive a pecuniary benefit, which is
45 not primarily contingent on the volume or quantity of goods, services, or other
46 property sold or distributed or to be sold or distributed to persons for purposes
47 of resale to consumers, and is based upon the inducement of additional persons,
48 by himself or herself or others, regardless of number, to participate in the same
49 plan or operation; and

50 (6) The term "sale or distribution" includes the acts of leasing, renting or
51 consigning.

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