

SECOND REGULAR SESSION

# SENATE BILL NO. 635

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Pre-filed January 2, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

L2793.011

## AN ACT

To repeal sections 407.400 and 407.413, RSMo 1994, relating to merchandising practices by certain distributors of intoxicating liquor for the sole purpose of enacting in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 407.400 and 407.413, RSMo 1994, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.400 and 407.413, to read as follows:

407.400. As used in sections 407.400 to 407.420:

(1) "Franchise" means a written or oral arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise, including but not limited to a commercial relationship of definite duration or continuing indefinite duration, between a "wholesaler", such wholesaler being a person as defined in this section, licensed **[under] pursuant to** the provisions of chapter 311, RSMo, to sell at wholesale, **[spirituous liquor and wine containing alcohol in excess of five percent by weight] intoxicating liquor, as defined in section 311.020, RSMo**, to retailers, duly licensed in this state, and a "supplier", being a person engaged in the business as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of **[spirituous liquor and wine] intoxicating liquor** are distributed through duly licensed wholesalers in this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within this state or any designated area thereof such of the supplier's brands of **[spirituous liquors and wines] intoxicating liquor**, or all of them, as may be specified; except that, the term "franchise" shall

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

not apply to persons engaged in sales from warehouses or like places of storage, other than wholesalers as above described, leased departments of retail stores, places of original manufacture, nor shall the term "franchise" apply to a commercial relationship that does not contemplate the establishment or maintenance of a place of business within the state of Missouri. As used herein "place of business" means a fixed, geographical location at which goods, products or services are displayed or demonstrated for sale;

(2) The term "goods" includes any personal property, real [property] **property**, or any combination thereof;

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

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

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

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

407.413. 1. If more than one franchise for the same brand or brands of [spirituous liquor and wines, or all of them] **intoxicating liquor**, is granted to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for any supplier to discriminate between the wholesalers with respect to any of the terms, provisions, and conditions of these franchises.

2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier shall unilaterally terminate or refuse to continue or change substantially the condition of any franchise with the wholesaler unless the supplier has first established good cause for such termination, noncontinuance or change.

3. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for violation of any of the provisions of this section and may recover damages sustained by [him] **such wholesaler** together with the costs of the action and reasonable attorney's fees.

4. In any action brought by a wholesaler against a supplier for termination, noncontinuance or substantial change in violation of the provisions of this section, it is a complete defense for the supplier to prove that the termination, noncontinuance or change was done in good faith and for good cause.

5. As used in this section, "good faith" is the duty of each party to any franchise and all officers, employees or agents thereof to act in a fair and equitable manner towards each other, and

"good cause" means [either of] the following:

(1) Failure by the wholesaler to comply substantially with the provisions of an agreement or understanding with the supplier, which provisions are both essential and reasonable; [or]

(2) Use of bad faith or failure to observe reasonable commercial standards of fair dealing in the trade; **or**

**(3) Revocation or suspension for more than thirty-one days of a beer wholesaler's federal basic permit or of any state or local license required of a beer wholesaler for the normal operation of its business.**

**6. As to brewers and beer wholesalers, the provisions of this section shall only apply to agreements entered into on or after the effective date of this section.**

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