

FIRST REGULAR SESSION

HOUSE BILL NO. 702

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TILLEY.

Read 1st time February 1, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1907L.011

AN ACT

To repeal section 407.400, RSMo, and to enact in lieu thereof two new sections relating to brand extensions for beer products.

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

Section A. Section 407.400, RSMo, is repealed and two new section enacted in lieu thereof, to be known as sections 407.400 and 407.412, to read as follows:

407.400. As used in sections 407.400 to 407.420:

(1) **"Appointed wholesaler", wholesaler to whom a brewer or importer granted the exclusive sales territory to a brand from which a brand extension results;**

(2) **"Brand", any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product;**

(3) **"Brand extension", any brand that:**

(a) **Incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or importer; and**

(b) **Relies to a significant extent on the goodwill associated with that preexisting brand;**

(4) **"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**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 goods or services at wholesale, retail, by lease, agreement, or otherwise, including but not limited
16 to a commercial relationship of definite duration or continuing indefinite duration, between a
17 "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the
18 provisions of chapter 311, RSMo, to sell at wholesale, intoxicating liquor, as defined in section
19 311.020, RSMo, to retailers, duly licensed in this state, and a "supplier", being a person engaged
20 in the business as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of
21 intoxicating liquor are distributed through duly licensed wholesalers in this state, and wherein
22 a wholesaler is granted the right to offer, sell, and distribute within this state or any designated
23 area thereof such of the supplier's brands of intoxicating liquor, or all of them, as may be
24 specified; except that, the term "franchise" shall not apply to persons engaged in sales from
25 warehouses or like places of storage, other than wholesalers as above described, leased
26 departments of retail stores, places of original manufacture, nor shall the term "franchise" apply
27 to a commercial relationship that does not contemplate the establishment or maintenance of a
28 place of business within the state of Missouri. As used herein "place of business" means a fixed,
29 geographical location at which goods, products or services are displayed or demonstrated for
30 sale;

31 [(2)] (5) The term "goods" includes any personal property, real property, or any
32 combination thereof;

33 [(3)] (6) The term "other property" includes a franchise, license distributorship, or other
34 similar right, privilege, or interest;

35 [(4)] (7) The term "person" includes an individual, corporation, trust, estate, partnership,
36 unincorporated association, or any other legal or commercial entity;

37 [(5)] (8) The term "pyramid sales scheme" includes any plan or operation for the sale or
38 distribution of goods, services or other property wherein a person for a consideration acquires
39 the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume
40 or quantity of goods, services, or other property sold or distributed or to be sold or distributed
41 to persons for purposes of resale to consumers, and is based upon the inducement of additional
42 persons, by himself or herself or others, regardless of number, to participate in the same plan or
43 operation; and

44 [(6)] (9) The term "sale or distribution" includes the acts of leasing, renting or
45 consigning.

**407.412. A brewer or importer, who assigns a brand extension to a wholesaler, shall
2 offer to assign such brand extension to the appointed wholesaler. This requirement shall
3 not apply to brand extensions assigned to wholesalers by a brewer or importer prior to
4 August 28, 2007. If, prior to August 28, 2007, a brewer or importer assigned a brand**

- 5 extension to a wholesaler, who was not an appointed wholesaler, any additional brand
6 extension shall be assigned to the wholesaler who first had the brand.

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