

FIRST REGULAR SESSION

HOUSE BILL NO. 1127

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BEARDEN (Sponsor),
DEMPSEY AND RICHARD (Co-sponsors).

Read 1st time March 14, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2441L.01I

AN ACT

To repeal sections 407.400 and 407.413, RSMo, and to enact in lieu thereof two new sections relating to merchandising practices.

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

Section A. Sections 407.400 and 407.413, RSMo, are repealed and two new sections
2 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:

2 (1) "Franchise" means a written or oral arrangement for a definite or indefinite period,
3 in which a person grants to another person a license to use a trade name, trademark, service
4 mark, or related characteristic, and in which there is a community of interest in the marketing of
5 goods or services at wholesale, retail, by lease, agreement, or otherwise, including but not limited
6 to a commercial relationship of definite duration or continuing indefinite duration, between a
7 "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the
8 provisions of chapter 311, RSMo, to sell at wholesale, intoxicating [liquor, as defined] **beer, as**
9 **included in the definition of intoxicating liquor** in section 311.020, RSMo, **and specifically**
10 **excluding nonintoxicating beer as defined in section 312.010, RSMo**, to retailers, duly
11 licensed in this state, and a "supplier", being a person engaged in the business as a manufacturer[,
12 distiller, rectifier or out-of-state solicitor] **or brewer** whose brands of intoxicating [liquor] **beer,**
13 **as included in the definition of intoxicating liquor in section 311.020, RSMo, and**
14 **specifically excluding nonintoxicating beer as defined in section 312.010, RSMo**, are

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 distributed through duly licensed wholesalers in this state, and wherein a wholesaler is granted
16 the right to offer, sell, and distribute within this state or any designated area thereof such of the
17 supplier's brands of intoxicating [liquor] **beer, as included in the definition of intoxicating**
18 **liquor in section 311.020, RSMo, and specifically excluding nonintoxicating beer as defined**
19 **in section 312.010, RSMo**, or all of them, as may be specified; except that, the term "franchise"
20 shall not apply to persons engaged in sales from warehouses or like places of storage, other than
21 wholesalers as above described, leased departments of retail stores, places of original
22 manufacture, nor shall the term "franchise" apply to a commercial relationship that does not
23 contemplate the establishment or maintenance of a place of business within the state of Missouri.
24 As used herein "place of business" means a fixed, geographical location at which goods, products
25 or services are displayed or demonstrated for sale;

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

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

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

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

39 (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 intoxicating
2 [liquor] **beer, as included in the definition of intoxicating liquor in section 311.020, RSMo,**
3 **and specifically excluding nonintoxicating beer as defined in section 312.010, RSMo**, is
4 granted to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for
5 any supplier to discriminate between the wholesalers with respect to any of the terms, provisions,
6 and conditions of these franchises.

7 2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier
8 shall unilaterally terminate or refuse to continue or change substantially the condition of any
9 franchise **for the sale of intoxicating beer as included in the definition of intoxicating liquor**
10 **in section 311.020, RSMo, and specifically excluding nonintoxicating beer as defined in**

11 **section 312.010, RSMo**, with the wholesaler unless the supplier has first established good cause
12 for such termination, noncontinuance or change.

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

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

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

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

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

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

30 6. As to brewers and beer wholesalers, the provisions of this section shall only apply to
31 agreements entered into on or after August 28, 1998, and to agreements which are renewed or
32 substantially amended on or after August 28, 1998. As used in the preceding sentence,
33 "substantially amended" means a written amendment that materially alters the fundamental
34 business relationship between brewer and wholesaler. "Substantially amended" does not include
35 changes or amendments that are contemplated in writing by the parties to an agreement.

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