

## SCS SB 837 -- LIQUOR WHOLESALER FRANCHISES

SPONSOR: Dempsey (Jones, 117)

COMMITTEE ACTION: Voted "do pass" by the Committee on Small Business by a vote of 15 to 5 with 1 present.

This substitute revises the definition of "franchise" as it applies to pyramid sales schemes to include a commercial arrangement between a wholesaler and a supplier with or without the grant of a license to use a trade name, trademark, service mark, or related characteristic, and whether or not there is a community of interest in the marketing of goods or services.

The substitute specifies that Section 407.400, RSMo, as amended, must be interpreted as set forth by the court in *High Life Sales Co. v. Brown-Forman Corporation*, 823 S.W.2d 493 (Mo. 1992) and *Brown-Forman Distillers Corp. v. McHenry*, 566 S.W.2d 194 (Mo. 1978) rather than in *Missouri Beverage Co., Inc. v. Shelton Brothers, Inc.* 796 F. Supp. 2d 988 (W.D. Mo. 2011), *aff'd*, 11-2456 (8th Cir. February 28, 2012) and the legislature declares that the federal court's interpretation of the subdivision as set forth in the Missouri Beverage case must be abrogated in favor of the preceding cases.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that recently the wholesale liquor laws have been combined with general franchise laws. In 1975, the law changed with pyramid sales schemes. It provides certain franchise protection for wine, liquor, and beer wholesalers. As long as a wholesaler meets sales quotas, etc., it cannot be terminated by a brand supplier. If a supplier terminates a wholesaler, the wholesaler has cause for a lawsuit since the supplier can't terminate without good cause or without sufficient notice. Wholesalers have franchise law protection. The new federal law changes that protection unless the wholesaler has an interest in the trademark and the merchandise brand. No wholesaler is tied to one brand, and there is no community interest in the brand family. The bill will clarify that Missouri law is different than federal law and will ensure that our law is like it was six months ago.

Testifying for the bill were Senator Dempsey; Missouri Beer Wholesalers Association; Major Brands Premium Beverage Distributors; and Glazer's Family of Companies.

OPPOSERS: Those who oppose the bill say that suppliers need flexibility to change wholesalers as the wine industry grows.

Also suppliers are concerned with prices and want competition. The bill will inhibit the market and reduce the number of wholesalers available to suppliers in this state.

Testifying against the bill were Richard Livingston, Baltimore Bend Vineyard; Brandon Fahemeier, Fahemeier Family Vineyards; Sarah Schmidt, Missouri Grape Growers Association; Peter Hoffer, St. James Winery; and Terry Schlemeier, California Wine and Distilled Liquor Wholesaler.