

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 114, Page 7, Section
2 316.150, Line 18, by inserting after all of said section and line, the following:

3
4 "407.400. As used in sections 407.400 to 407.420:

5 (1) "Franchise" means a written or oral arrangement for a definite or indefinite period, in
6 which a person grants to another person a license to use a trade name, trademark, service
7 mark, or related characteristic, and in which there is a
8 community of interest in the marketing of goods or services at
9 wholesale, retail, by lease, agreement, or otherwise[, including]; "franchise" specifically includes,
10 but is not limited to, a commercial relationship of definite duration or continuing indefinite duration,
11 between a "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant
12 to the provisions of chapter 311 to sell at wholesale, intoxicating liquor, as defined in section
13 311.020, to retailers, duly licensed in this state, and a "supplier", being a person engaged in the
14 business as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of intoxicating
15 liquor are distributed through duly licensed wholesalers in this state, and wherein a wholesaler is
16 granted the right to offer, sell, and distribute within this state or any designated area thereof such of
17 the supplier's brands of intoxicating liquor, or all of them, as may be specified, with or without the
18 grant of a license to use a trade name, trademark, service mark, or related characteristic, and whether
19 or not there is a community of interest in the marketing of goods or services; except that, the term
20 "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage,
21 other than 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. As
24 used herein "place of business" means a fixed, geographical location at which goods, products or
25 services are displayed or demonstrated for sale. It is the general assembly's intent to make clear that
26 this subdivision was correctly interpreted as set forth in the Missouri cases of High Life Sales
27 Company v. Brown-Forman Corporation, 823 S.W.2d 493(Mo. 1992) and Brown-Forman Distillers
28 Corp. v McHenry, 566 S.W.2d 194 (Mo. 1978), rather than in Missouri Beverage Company, Inc. v.
29 Shelton Brothers, Inc., 796 F. Supp. 2d 988 (W.D. Mo. 2011), aff'd. 11-2456 (8th Cir. February 28,
30 2012). Further, the general assembly declares that this subdivision was not correctly interpreted in
31 Missouri Beverage Company, Inc. v Shelton Brothers, Inc., 796 F. Supp 2d 988 (W.D. Mo. 2011),
32 aff'd 11-2456 (8th Cir. February 28, 2012);

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

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

37 (4) The term "person" includes an individual, corporation, trust, estate, partnership,

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1 unincorporated association, or any other legal or commercial entity;

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

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

10 407.413. 1. If more than one franchise for the same brand or brands of intoxicating liquor is
11 granted to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for any
12 supplier to discriminate between the wholesalers with respect to any of the terms, provisions, and
13 conditions of these franchises.

14 2. (1) Notwithstanding the terms, provisions and conditions of any franchise, no supplier
15 shall unilaterally terminate or refuse to continue or change substantially the condition of any
16 franchise with the wholesaler unless the supplier has first established good cause for such
17 termination, noncontinuance or change.

18 (2) This subsection does not apply to a "supplier", being a person engaged in the business as a
19 manufacturer, distiller, rectifier, or out-of-state solicitor whose brands of intoxicating liquor are
20 distributed through duly licensed wholesalers in this state who sells less than ten thousand cases of
21 distilled spirits in the state, or who sells less than ten thousand cases of wine in the state, the volume
22 thresholds being measured for the twelve months immediately preceding the date on which the
23 wholesaler receives notice of the termination, noncontinuance, or change, provided such supplier of
24 distilled spirits shall be obligated nevertheless, prior to the effective date of the termination,
25 noncontinuance, or change, to pay to the wholesaler an amount equal to the fair market value of the
26 distribution rights which will be lost or diminished by reason of the termination, noncontinuance, or
27 change, including without limitation the actual laid in cost of any inventory on hand, and provided
28 further that this exception shall only apply to a termination, noncontinuance, or change concerning
29 distilled spirits that is less than the volume threshold set forth in this sentence. The exception in the
30 preceding sentence shall not affect a supplier's obligation to satisfy the notice requirements set forth
31 in section 407.405. For purposes of this subsection, "fair market value" shall be determined in
32 accordance with the provisions of the written agreement, if any, between the supplier and wholesaler,
33 or if the written agreement between them does not specify how fair market value is determined, then
34 for a supplier of distilled spirits that sells less than ten thousand cases of distilled spirits in the state in
35 the twelve months immediately preceding the date on which the wholesaler receives notice of the
36 termination, noncompliance, or change, "fair market value" shall be determined by agreement of the
37 supplier and wholesaler, but if the parties cannot so determine within thirty days after the notice,
38 then the matter shall be submitted to mandatory arbitration before a panel of three neutral arbitrators
39 conducted pursuant to chapter 435 or the Federal Arbitration Act if the latter so applies, with the
40 parties to the arbitration each to bear their own attorneys' fees and costs of the arbitration.

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

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

48 5. As used in this section, "good faith" is the duty of each party to any franchise and all

1 officers, employees or agents thereof to act in a fair and equitable manner towards each other, and
2 "good cause" means the following:

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

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

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

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

16
17 Further amend said bill by amending the title, enacting clause, and intersectional references
18 accordingly.