

HB 759 -- Pyramid Sales Schemes

Sponsor: Jones (050)

This bill 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. This definition of "franchise" in Section 407.400, RSMo, was correctly interpreted as set forth in *High Life Sales Co. v. Brown-Forman Corp.*, 823 S.W.2d 493 (Mo. 1992) and *Brown-Forman Distillers Corp. v. McHenry*, 566 S.W.2d 194 (Mo. 1978), and was not correctly interpreted 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).

Currently, a supplier of intoxicating liquor is prohibited from unilaterally terminating, refusing to continue, or substantially changing the condition of a franchise with a wholesaler unless the supplier has established good cause for the termination, noncontinuance, or change.

The bill specifies that this prohibition will not apply to a supplier engaged in the business as a manufacturer, distiller, rectifier, or out-of-state solicitor whose brands of intoxicating liquor are distributed through duly-licensed wholesalers that sell less than 2,500 cases of distilled spirits or 10,000 cases of wine in the state, where the volume thresholds are measured for the 12 months immediately preceding the date the wholesaler receives notice of the termination, noncontinuance, or change, and the termination, noncontinuance, or change concerns the category of intoxicating liquor (distilled spirits or wine) that is less than the volume thresholds. The supplier will still be obligated, prior to the effective date of the termination, noncontinuance, or change, to pay the wholesaler an amount equal to the fair market value of the distribution rights lost or diminished, including the actual laid in cost of any inventory on hand. Fair market value will be determined as specified by the written agreement between the supplier and wholesaler or as specified in the bill if the agreement does not contain a specification.