

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1841

96TH GENERAL ASSEMBLY

6009L.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 407.400, RSMo, and to enact in lieu thereof one new section relating to pyramid sales schemes.

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

Section A. Section 407.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.400, to read as follows:

407.400. As used in sections 407.400 to 407.420:

(1) "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 goods or services at wholesale, retail, by lease, agreement, or otherwise[, including] ; **"franchise" specifically includes** but is not limited to a commercial relationship of definite duration or continuing indefinite duration, between a "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the provisions of chapter 311 to sell at wholesale, intoxicating liquor, as defined in section 311.020, to retailers, duly licensed in this state, and a "supplier", being a person 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 in this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within this state or any designated area thereof such of the supplier's brands of intoxicating liquor, or all of them, as may be specified, **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**; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, other than

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.

18 wholesalers as above described, leased departments of retail stores, places of original
19 manufacture, nor shall the term "franchise" apply to a commercial relationship that does not
20 contemplate the establishment or maintenance of a place of business within the state of Missouri.
21 As used herein "place of business" means a fixed, geographical location at which goods, products
22 or services are displayed or demonstrated for sale. **As amended, it is the legislature's**
23 **declaration that this subdivision shall be interpreted as set forth in *High Life Sales Co. v.***
24 ***Brown-Forman Corp.*, 823 S.W.2d 493 (Mo. banc 1992) and *Brown-Forman Distillers Corp.***
25 ***v. McHenry*, 566 S.W.2d 194 (Mo. banc 1978) rather than *Missouri Beverage Co., Inc. v.***
26 ***Shelton Brothers, Inc.*, 796 F. Supp. 2d 988 (W.D. Mo. 2011), aff'd, 11-2456 (8th Cir.**
27 **February 28, 2012). The legislature further declares that the federal court's interpretation**
28 **of this subdivision set forth in *Missouri Beverage Co., Inc. v. Shelton Brothers, Inc.*, 796 F.**
29 **Supp. 2d 988 (W.D. Mo. 2011), aff'd, 11-2456 (8th Cir. February 28, 2012) shall be abrogated**
30 **in favor of the preceding cases and any amendments to this subdivision is to clarify and**
31 **specify the law existing prior to August 28, 2012;**

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

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

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

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

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

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