



GOVERNOR OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
(573) 751-3222

July 12, 2012

TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Committee Substitute for Senate Bill No. 837 entitled:

AN ACT

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

I disapprove of Senate Committee Substitute for Senate Bill No. 837. My reasons for disapproval are as follows:

Two key components to a successful future for Missouri's agricultural economy are the wine and grape industry and our entrepreneurial soybean growers. The changes Senate Committee Substitute for Senate Bill No. 837 would make to Missouri's franchise law threaten to put at substantial risk the gains made by Missouri agriculture since Prohibition, could jeopardize the future growth of Missouri's wineries, and will make it harder for our soybean growers to develop a market for Missouri-made soy-based beer.

Wholesalers are an important component to Missouri's comprehensive three-tiered system of alcoholic beverage regulation. Effective wholesalers benefit suppliers by providing distribution opportunities that can enhance suppliers' market share, opportunities suppliers may not be able to identify independently. However, because wholesalers exercise the gate keeping role in our three-tiered system, suppliers – particularly small suppliers such as Missouri's wineries and microbrewers – often start with a bargaining power deficit in contract negotiations. Thereafter, when a wholesaler underperforms or non-performs on a contract, because the supplier is dependent on the wholesaler for market access, the supplier may never succeed in growing its sales and, as a result, never acquire sufficient bargaining power to negotiate better contract terms with the wholesaler.

Overlaying the effect of Missouri's three-tiered system on the comparative bargaining power of suppliers and wholesalers is the applicability of Missouri's franchise law to their relationships with one another. Senate Committee Substitute for Senate Bill No. 837 strikes two of three elements from the definition of a "franchise" when applied to the contractual relationships between liquor suppliers and wholesalers. As a result, if this bill were to become law, the only

element left to make a contract between a supplier and a wholesaler a “franchise” would be the existence of the contract itself – nothing more. All contracts between liquor suppliers and wholesalers – whether oral or written, whether of definite or indefinite duration – would be converted into franchise agreements. And only a showing of “good cause,” which applies in only a limited set of circumstances, would permit the valid termination of franchise contracts.

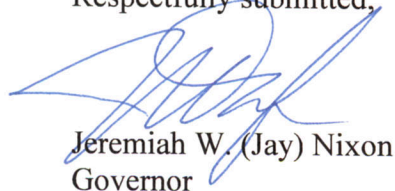
The law narrowly defines “good cause” for termination so that avenues to escape a franchise are curtailed and the parties who have invested substantial resources in the franchise – particularly the franchisee – are protected. But the combination of the definitional changes to a franchise wrought by Senate Committee Substitute for Senate Bill No. 837 and the existing law’s limitations on the termination of such contracts threatens to lock suppliers into contracts with wholesalers, with no effective means of relief. In this situation, competition is diminished, the consumer inevitably suffers and Missouri agriculture is harmed.

Senate Committee Substitute for Senate Bill No. 837 goes much further than a mere declaration or clarification of legislative intent. The bill changes the substantive definition of a franchise – a change that appears inconsistent with the legislative intent of the existing law as indicated by the clear meaning of its text. Protecting wholesalers from wrongful contract termination where they have expended substantial resources promoting and distributing a supplier’s product is an important policy objective. However, the wholesalers’ protection cannot come through the near-total vitiation of the suppliers’ flexibility and contractual bargaining power; such is too high a price to pay and this bill attempts to exact precisely that price.

The result of my action today will be to preserve suppliers’ contractual bargaining power, particularly for many of Missouri’s existing small wineries and microbrewers, as well as new market entrants such as our soybean growers, as they negotiate with wholesalers to distribute their products. This action will have no effect on the contractual relationships between any suppliers and wholesalers whose agreements already fit within the longstanding definition of a franchise under Missouri law.

In accordance with the above stated reasons for disapproval, I am returning Senate Committee Substitute for Senate Bill No. 837 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon
Governor