

SECOND REGULAR SESSION

# HOUSE BILL NO. 1726

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES JOHNSON (47) (Sponsor), VILLA AND DAUS (Co-sponsors).

Read 1st time February 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5050L.011

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### AN ACT

To repeal sections 311.490, 312.200, and 407.413, RSMo, and to enact in lieu thereof three new sections relating to beer and intoxicating liquor.

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

Section A. Sections 311.490, 312.200, and 407.413, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 311.490, 312.200, and 407.413, to read  
3 as follows:

311.490. No person, partnership or corporation engaged in the brewing, manufacture or  
2 sale of beer as defined, in this chapter, or other intoxicating malt liquor, shall use in the  
3 manufacture or brewing thereof, or shall sell any such beer or other intoxicating malt liquor  
4 which contains [any substance, material or chemical other than pure hops, or pure extract of  
5 hops, or pure barley malt, or other wholesome grains or cereals, or wholesome yeast and pure  
6 water] **ingredients not in compliance with the following standards:**

7       **(1) Beer shall be brewed from malt or a malt substitute, which only includes rice,**  
8 **grain of any kind, bean, glucose, sugar, and molasses. Honey, fruit, fruit juices, fruit**  
9 **concentrate, herbs, spices, and other food materials may be used as adjuncts in fermenting**  
10 **beer;**

11       **(2) Flavor and other nonbeverage ingredients containing alcohol may be used in**  
12 **producing beer, but may contribute to no more than forty-nine percent of the overall**  
13 **alcohol content of the finished beer. In the case of beer with an alcohol content of more**  
14 **than six percent by volume, no more than one and one-half percent of the volume of the**

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.

15 **beer may consist of alcohol derived from added flavors and other nonbeverage ingredients**  
16 **containing alcohol; and**

17 **(3) Beer, intoxicating malt liquor, and malt beverages, as defined in this section,**  
18 **shall not be subject to the requirements of subsections 1, 2, and 3 of section 311.332 and**  
19 **sections 311.334 to 311.338.**

312.200. It shall be unlawful for any person in this state, engaged in the brewing or  
2 manufacture of nonintoxicating beer, to use any [substance, material or chemical in the brewing  
3 or manufacture thereof, other than pure hops or pure extract of hops, and pure barley malt or  
4 other wholesome grains or cereals, and wholesome yeast and pure water] **ingredients not in**  
5 **compliance with the following standards:**

6 **(1) Nonintoxicating beer shall be brewed from malt or a malt substitute, which only**  
7 **includes rice, grain of any kind, bean, glucose, sugar, and molasses. Honey, fruit, fruit**  
8 **juice, fruit concentrate, herbs, spices, and other food materials may be used as adjuncts in**  
9 **fermenting nonintoxicating beer; and**

10 **(2) Flavors and nonbeverage ingredients containing alcohol may be used in**  
11 **producing nonintoxicating beer, but may contribute to no more than forty-nine percent of**  
12 **the overall alcohol content of the finished nonintoxicating beer.**

407.413. 1. If more than one franchise for the same brand or brands of intoxicating  
2 liquor is granted to different wholesalers in this state, it is a violation of sections 407.400 to  
3 407.420 for any supplier to discriminate between the wholesalers with respect to any of the  
4 terms, provisions, and conditions of these franchises.

5 2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier  
6 shall unilaterally terminate or refuse to continue or change substantially the condition of any  
7 franchise with the wholesaler unless the supplier has first established good cause for such  
8 termination, noncontinuance or change.

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

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

16 5. As used in this section, "good faith" is the duty of each party to any franchise and all  
17 officers, employees or agents thereof to act in a fair and equitable manner towards each other,  
18 and "good cause" means the following:

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

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

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

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

32 **7. For purposes of subsections 8 and 9 of this section, "brand" refers to any word,**  
33 **name, group of letters, symbols, or combination thereof, that is adopted and used by a**  
34 **brewer or importer to identify a specific beer product and to distinguish that beer product**  
35 **from another beer product, and "brand extension" is any brand that incorporates all or**  
36 **a substantial part of the unique features of a preexisting brand of the same brewer or**  
37 **importer and which relied to a significant extent on the goodwill associated with that**  
38 **preexisting brand.**

39 **8. A brewer or importer who assigns a brand extension to a wholesaler shall offer**  
40 **to assign the brand extension to the wholesaler to whom the brewer or importer granted**  
41 **the exclusive sales territory to the brand from which the brand extension resulted. This**  
42 **requirement does not apply to assignments of brand extensions to wholesalers that were**  
43 **made by a brewer or importer before August 28, 2006.**

44 **9. In the event that before August 28, 2006, a brewer or importer had assigned a**  
45 **brand extension to a wholesaler who was not the appointed wholesaler for the brand from**  
46 **which the brand extension was made, then additional brand extensions shall be offered to**  
47 **be assigned to the wholesaler who had the brand.**

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