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SENATE BILL 825

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY SHANNON ROBINSON

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 825

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
1996

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AUTHORIZING THE ACQUISITION OF RIGHTS TO DISTRIBUTE ALCOHOLIC
BEVERAGES SET FORTH IN FRANCHISE AGREEMENTS; AMENDING SECTIONS
OF THE LIQUOR CONTROL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-8A-7 NMSA 1978 (being Laws 1981,
Chapter 39, Section 54, as amended) is amended to read:

"60-8A-7. FRANCHISES--DEFINITIONS.--As used in Sections
608A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either
expressed or implied, whether written or oral, between a
supplier and wholesaler, wherein:

(1) a commercial relationship of definite

duration or continuing indefinite duration is involved; and

1 (2) the wholesaler is granted the right to buy
2 and to offer, sell and distribute within this state or any
3 designated area thereof such of the supplier's brand of packaged
4 alcoholic beverages as may be agreed upon;

5 B. "good cause":

6 (1) includes failure by the wholesaler to
7 substantially comply with the essential and reasonable
8 provisions of a contract, agreement or understanding with a
9 supplier;

10 (2) includes use of bad faith on the part of
11 the wholesaler in carrying out the terms of the franchise; and

12 (3) does not include failure or refusal on the
13 part of the wholesaler to engage in any trade practice, conduct
14 or activity which may result in a violation of any federal law
15 or regulation or any law or regulation of this state;

16 C. "successor supplier" means a supplier who obtains
17 the right to distribute a particular brand of alcohol in this
18 state by acquiring that right as set forth in an existing
19 franchise agreement;

20 [~~C.~~] D. "supplier" means any person, partnership,
21 corporation or other form of business enterprise engaged in
22 business as a manufacturer, importer, broker or agent which
23 distributes any or all of its brands of alcoholic beverages
24 through licensed wholesalers in this state;

25 [~~D.~~] E. "termination" includes any substantial

1 alteration or modification of the provisions of the franchise;
2 and

3 [E-] E. "good faith" means honesty in fact in the
4 conduct or transaction concerned and the observance of
5 reasonable commercial standards of fair dealing in the trade as
6 evidenced by all surrounding circumstances. "

7 Section 2. Section 60-8A-8 NMSA 1978 (being Laws 1981,
8 Chapter 39, Section 55, as amended) is amended to read:

9 "60-8A-8. FRANCHISES- - VIOLATIONS. - -

10 A. The purpose of the provisions of Sections 60-8A-7
11 through 60-8A-11 NMSA 1978 is to provide an equal bargaining
12 position between the parties and to protect the health, safety
13 and welfare of the citizens by ensuring that there is an orderly
14 and fair distribution of alcoholic beverages in the state.

15 B. It is a violation of Sections 60-8A-7 through
16 60-8A-11 NMSA 1978 for the supplier, directly or through any
17 officer, agent or employee, to fail to act in good faith in
18 performing or complying with any terms, provisions or conditions
19 of the franchise, or in terminating, canceling or not renewing a
20 franchise with a wholesaler, unless such termination,
21 cancellation or failure to renew is done in good faith and for
22 good cause. Good cause shall not include supplier mergers or
23 acquisitions or consolidation of brands with one wholesaler.

24 C. If more than one franchise for the same brand [~~or~~
25 ~~brands~~] of alcoholic beverages is originally granted to

1 different wholesalers in this state, it is a violation of
 2 Sections 60-8A-7 through 60-8A-11 NMSA 1978 for any supplier to
 3 discriminate in any of the terms, provisions and conditions of
 4 the franchise between the wholesalers. It is not the purpose of
 5 this section to allow suppliers to unilaterally and without good
 6 cause or in violation of the contract change the terms of an
 7 existing franchise or exclusive distribution agreement by
 8 authorizing the transfer of brands to another wholesaler [~~in~~
 9 ~~violation of this act~~].

10 D. A successor supplier may acquire the right to
 11 distribute a particular brand of alcohol in this state by
 12 purchasing the brand name of the alcohol, purchasing the stock
 13 or assets of a supplier, executing a licensing agreement or
 14 being granted or assigned that right. A successor supplier
 15 shall be bound by the terms and conditions of the existing
 16 franchise agreement. It is a violation of Sections 60-8A-7
 17 through 60-8A-11 NMSA 1978 for a successor supplier to fail to
 18 comply with the terms and conditions of the existing franchise
 19 agreement. "

SJC/SB 91

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 3, 1996

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

SENATE BILL 825

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 825

DO PASS, and further recommends that it be referred
to the COMMITTEES' COMMITTEE.

Respectfully submitted,

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Shannon Robinson, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Garcia, E. Jennings

Absent: None

S0825PA1

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SJC/SB 91

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