BILL	DATE	PAGE(S)
S. 598	June 28, 1980	S8831-8832

ACTION

Soft Drink Products Labeling: Senate agreed to the House amendment to S. 598, preserving the manufacture, bottling, and distribution of trademarked soft drink products by local companies operating under territorial licenses.

Pages S8831-S8832

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SOFT DRINK INTERBRAND COMPETITION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 598.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 598) entitled "An Act to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided,* That such product is in substantial and effective competition with other products of the same general class in the relevant market or markets.

SEC. 3. Nothing in this Act shall be construed to legalize the enforcement of provisions described in section 2 of this Act in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

SEC. 4. In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act, that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act in any trademark licensing contract or agreement described in that section.

SEC. 5. As used in this Act, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

Mr. THURMOND. Mr. President, I rise in support of S. 598, the Soft Drink Interbrand Competition Act, as amended and passed by the House.

Mr. President, this is appropriate and much needed legislation that will be beneficial to the industry and to this Nation's consumers.

I was one of the original cosponsors of this bill and have maintained a long and continuing strong interest in this matter from the time that the legislation was proposed by Senator Eastland. It is my desire and hope that the full record regarding this important matter will be recognized and given due consideration. Briefly, the territorial franchise system for soft drinks has been in effect for over 78 years, with over 2,000 large and small bottlers making capital investments of billions of dollars in reliance on such territorial agreements.

Mr. President, in 1971, the Federal Trade Commission initiated a number of cases challenging the territorial provisions in bottlers' trademark licenses as unfair methods of competition in violation of section 5 of the Federal Trade Commission Act. A decision by the administrative law judge held that the franchise system was lawful. The Federal Trade Commission, however, overruled that decision. This created an issue of such importance to many Senators that they felt it imperative to introduce a bill to clarify the conflicting issues of contract obligations among the various interests affected by that FTC decision.

The territorial limitations have provided incentives to bottlers to make investments for production, distribution, and marketing, which have resulted in substantial and effective interbrand competition. At the same time, the territorial system has not prevented adaptation in the public interest to changing economic and demographic factors.

Mr. President, without territorial restrictions, without corrective legislation, there would be a tendency for the large bottlers with greater capital availability and flexibility to capture much of the smaller firms' business and, at the same time, we would see the remaining small independent bottlers pressed toward submarginal profits. With concentration achieved by the large bottlers, competition would truly be diminished in this field.

Mr. President, the proposed legislation, S. 598, as amended, directs the attention of the enforcement agencies in the proper direction and it would, in my opinion, be an appropriate and important addition to the antitrust laws.

I am pleased that we now have the opportunity to pass this legislation that many have worked so hard for over the years. I would particularly like to commend Senator COCHRAN on this side of the aisle for his diligent and highly effective work on this legislation.

I urge my colleagues to join with me in support of this important measure.

Mr. BAYH. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Indiana (Mr. BAYH).

The motion was agreed to.

Mr. BAYH. Mr. President, I wish to express my appreciation to the majority leader and minority leader and my distinguished colleague from Mississippi, Senator COCHRAN, who was one of the early cosponsors, as well as the other 70-odd cosponsors for making it possible to have accomplished what I think is a very important contribution to the continued financial solvency of several hundred, indeed, a couple of thousand of small businesses throughout the country.

Mr. President, I know this was a difficult measure for certain Members of the House, particularly the distinguished chairman of the Judiciary Committee, Chairman RODINO. But he was willing to work with the other supporters of this measure in the House. We now have a bill which I think will go a long way to making it possible for us to have a secure and financially solid softdrink bottling industry in this country.

I am glad that we are here tonight, after a long torturous trail, to finally pass this measure.

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