

FIRST REGULAR SESSION

HOUSE BILL NO. 505

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (47) (Sponsor) AND VILLA (Co-sponsor).

Read 1st time February 10, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1581L.01I

AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to Missouri wine.

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

Section A. Section 311.070, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 311.070, to read as follows:

311.070. 1. Distillers, wholesalers, winemakers, brewers or their employees, officers or agents, shall not, except as provided in this section, directly or indirectly, have any financial interest in the retail business for sale of intoxicating liquors, and shall not, except as provided in this section, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers. However, notwithstanding any other provision of this chapter to the contrary, for the purpose of the promotion of tourism, a distiller whose manufacturing establishment is located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises where sold; and provided further that the premises so licensed shall be in close proximity to the distillery and may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to the holder of a license issued under the provisions of this section in the same manner as they apply to establishments licensed under the provisions of section 311.085,

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.

17 311.090, or 311.095.

18 2. Any distiller, wholesaler, winemaker or brewer who shall violate the provisions of
19 subsection 1 of this section, or permit his employees, officers or agents to do so, shall be guilty
20 of a misdemeanor, and upon conviction thereof shall be punished as follows:

21 (1) For the first offense, by a fine of one thousand dollars;

22 (2) For a second offense, by a fine of five thousand dollars; and

23 (3) For a third or subsequent offense, by a fine of ten thousand dollars or the license of
24 such person shall be revoked.

25 3. As used in this section, the following terms mean:

26 (1) "Consumer advertising specialties", advertising items that are designed to be carried
27 away by the consumer, such items include, but are not limited to: trading stamps, nonalcoholic
28 mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches,
29 printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

30 (2) "Equipment and supplies", glassware (or similar containers made of other material),
31 dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice.
32 "Dispensing accessories" include standards, faucets, cold plates, rods, vents, taps, tap standards,
33 hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves;

34 (3) "Point of sale advertising materials", advertising items designed to be used within
35 a retail business establishment to attract consumer attention to the products of a distiller,
36 wholesaler, winemaker or brewer. Such materials include, but are not limited to: posters,
37 placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays,
38 coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats,
39 thermometers, clocks, calendars and alcoholic beverage lists or menus;

40 (4) "Product display", wine racks, bins, barrels, casks, shelving or similar items the
41 primary function of which is to hold and display consumer products;

42 (5) "Promotion", an advertising and publicity campaign to further the acceptance and sale
43 of the merchandise or products of a distiller, wholesaler, winemaker or brewer.

44 4. Notwithstanding other provisions contained herein, the distiller, wholesaler,
45 winemaker or brewer, or their employees, officers or agents may engage in the following
46 activities with a retail licensee licensed pursuant to this chapter or chapter 312, RSMo:

47 (1) The distiller, wholesaler, winemaker or brewer may give or sell product displays to
48 a retail business if all of the following requirements are met:

49 (a) The total value of all product displays given or sold to a retail business shall not
50 exceed three hundred dollars per brand at any one time in any one retail outlet. There shall be
51 no combining or pooling of the three hundred dollar limits to provide a retail business a product
52 display in excess of three hundred dollars per brand. The value of a product display is the actual

53 cost to the distiller, wholesaler, winemaker or brewer who initially purchased such product
54 display. Transportation and installation costs shall be excluded;

55 (b) All product displays shall bear in a conspicuous manner substantial advertising
56 matter on the product or the name of the distiller, wholesaler, winemaker or brewer. The name
57 and address of the retail business may appear on the product displays; and

58 (c) The giving or selling of product displays may be conditioned on the purchase of
59 intoxicating beverages advertised on the displays by the retail business in a quantity necessary
60 for the initial completion of the product display. No other condition shall be imposed by the
61 distiller, wholesaler, winemaker or brewer on the retail business in order for such retail business
62 to obtain the product display;

63 (2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler,
64 winemaker or brewer may give or sell any point-of-sale advertising materials and consumer
65 advertising specialties to a retail business if all the following requirements are met:

66 (a) The total value of all point-of-sale advertising materials and consumer advertising
67 specialties given or sold to a retail business shall not exceed five hundred dollars per year, per
68 brand, per retail outlet. The value of point-of-sale advertising materials and consumer
69 advertising specialties is the actual cost to the distiller, wholesaler, winemaker or brewer who
70 initially purchased such item. Transportation and installation costs shall be excluded;

71 (b) All point-of-sale advertising materials and consumer advertising specialties shall bear
72 in a conspicuous manner substantial advertising matter about the product or the name of the
73 distiller, wholesaler, winemaker or brewer. The name, address and logos of the retail business
74 may appear on the point-of-sale advertising materials or the consumer advertising specialties;
75 and

76 (c) The distiller, wholesaler, winemaker or brewer shall not directly or indirectly pay or
77 credit the retail business for using or distributing the point-of-sale advertising materials or
78 consumer advertising specialties or for any incidental expenses arising from their use or
79 distribution;

80 (3) A malt beverage wholesaler or brewer may give a gift not to exceed a value of one
81 thousand dollars per year, or sell something of value to a holder of a temporary permit as defined
82 in section 311.482;

83 (4) The distiller, wholesaler, winemaker or brewer may sell equipment or supplies to a
84 retail business if all the following requirements are met:

85 (a) The equipment and supplies shall be sold at a price not less than the cost to the
86 distiller, wholesaler, winemaker or brewer who initially purchased such equipment and supplies;
87 and

88 (b) The price charged for the equipment and supplies shall be collected in accordance

89 with credit regulations as established in the code of state regulations;

90 (5) The distiller, wholesaler, winemaker or brewer may install dispensing accessories at
91 the retail business establishment, which shall include for the purposes of intoxicating and
92 nonintoxicating beer equipment to properly preserve and serve draught beer only and to facilitate
93 the delivery to the retailer the brewers and wholesalers may lend, give, rent or sell and they may
94 install or repair any of the following items or render to retail licensees any of the following
95 services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer
96 faucets and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer
97 and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable
98 coil boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box
99 overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons,
100 ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear
101 and tear and a complete record of equipment furnished and installed and repairs and service
102 made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering
103 same for a period of not less than one year;

104 (6) The distiller, wholesaler, winemaker or brewer may furnish, give or sell coil cleaning
105 service to a retailer of distilled spirits, wine or malt beverages;

106 (7) A wholesaler of intoxicating liquor may furnish or give and a retailer may accept a
107 sample of distilled spirits or wine as long as the retailer has not previously purchased the brand
108 from that wholesaler, if all the following requirements are met:

109 (a) The wholesaler may furnish or give not more than seven hundred fifty milliliters of
110 any brand of distilled spirits and not more than seven hundred fifty milliliters of any brand of
111 wine; if a particular product is not available in a size within the quantity limitations of this
112 subsection, a wholesaler may furnish or give to a retailer the next larger size;

113 (b) The wholesaler shall keep a record of the name of the retailer and the quantity of each
114 brand furnished or given to such retailer;

115 (c) For the purposes of this subsection, no samples of intoxicating liquor provided to
116 retailers shall be consumed on the premises nor shall any sample of intoxicating liquor be opened
117 on the premises of the retailer except as provided by the retail license;

118 (d) For the purpose of this subsection, the word "brand" refers to differences in brand
119 name of product or differences in nature of product; examples of different brands would be
120 products having a difference in: brand name; class, type or kind designation; appellation of origin
121 (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof (distilled
122 spirits); differences in packaging such a different style, type, size of container, or differences in
123 color or design of a label are not considered different brands;

124 (8) The distiller, wholesaler, winemaker or brewer may package and distribute

125 intoxicating beverages in combination with other nonalcoholic items as originally packaged by
126 the supplier for sale ultimately to consumers; notwithstanding any provision of law to the
127 contrary, for the purpose of this subsection, intoxicating liquor and wine wholesalers are not
128 required to charge for nonalcoholic items any more than the actual cost of purchasing such
129 nonalcoholic items from the supplier;

130 (9) The distiller, wholesaler, winemaker or brewer may sell or give the retail business
131 newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business;

132 (10) The distiller, wholesaler, winemaker or brewer may in an advertisement list the
133 names and addresses of two or more unaffiliated retail businesses selling its product if all of the
134 following requirements are met:

135 (a) The advertisement shall not contain the retail price of the product;

136 (b) The listing of the retail businesses shall be the only reference to such retail businesses
137 in the advertisement;

138 (c) The listing of the retail businesses shall be relatively inconspicuous in relation to the
139 advertisement as a whole; and

140 (d) The advertisement shall not refer only to one retail business or only to a retail
141 business controlled directly or indirectly by the same retail business;

142 (11) Notwithstanding any other provision of law to the contrary, distillers, winemakers,
143 wholesalers, brewers or retailers may conduct a local or national sweepstakes/contest upon a
144 licensed retail premise. However, no money or something of value may be given to the retailer
145 for the privilege or opportunity of conducting the sweepstakes or contest;

146 (12) The distiller, wholesaler, winemaker or brewer may stock, rotate, rearrange or reset
147 the products sold by such distiller, wholesaler, winemaker or brewer at the establishment of the
148 retail business so long as the products of any other distiller, wholesaler, winemaker or brewer
149 are not altered or disturbed;

150 (13) The distiller, wholesaler, winemaker or brewer may provide a recommended shelf
151 plan or shelf schematic for distilled spirits, wine or malt beverages;

152 (14) The distiller, wholesaler, winemaker or brewer participating in the activities of a
153 retail business association may do any of the following:

154 (a) Display its products at a convention or trade show;

155 (b) Rent display booth space if the rental fee is the same paid by all others renting similar
156 space at the association activity;

157 (c) Provide its own hospitality which is independent from the association activity;

158 (d) Purchase tickets to functions and pay registration fees if such purchase or payment
159 is the same as that paid by all attendees, participants or exhibitors at the association activity; and

160 (e) Make payments for advertisements in programs or brochures issued by retail business

161 associations at a convention or trade show if the total payments made for all such advertisements
162 do not exceed three hundred dollars per year for any retail business association;

163 (15) The distiller, wholesaler, winemaker or brewer may sell its other merchandise which
164 does not consist of intoxicating beverages to a retail business if the following requirements are
165 met:

166 (a) The distiller, wholesaler, winemaker or brewer shall also be in business as a bona fide
167 producer or vendor of such merchandise;

168 (b) The merchandise shall be sold at its fair market value;

169 (c) The merchandise is not sold in combination with distilled spirits, wines or malt
170 beverages except as provided in this section;

171 (d) The acquisition or production costs of the merchandise shall appear on the purchase
172 invoices or records of the distiller, wholesaler, winemaker or brewer; and

173 (e) The individual selling prices of merchandise and intoxicating beverages sold to a
174 retail business in a single transaction shall be determined by commercial documents covering the
175 sales transaction;

176 (16) The distiller, wholesaler, winemaker or brewer may sell or give an outside sign to
177 a retail business if the following requirements are met:

178 (a) The sign shall bear in a conspicuous manner substantial advertising matter about the
179 product or the name of the distiller, wholesaler, winemaker or brewer;

180 (b) The retail business shall not be compensated, directly or indirectly, for displaying the
181 sign; and

182 (c) The cost of the sign shall not exceed four hundred dollars;

183 (17) A wholesaler may, but shall not be required to, exchange for an equal quantity of
184 identical product or allow credit against outstanding indebtedness for intoxicating liquor with
185 alcohol content of less than five percent by weight or nonintoxicating beer that was delivered in
186 a damaged condition or damaged while in the possession of the retailer;

187 (18) To assure and control product quality, wholesalers at the time of a regular delivery
188 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of
189 intoxicating liquor with alcohol content of less than five percent by weight or nonintoxicating
190 beer in its undamaged original carton from the retailer's stock, if the wholesaler replaces the
191 product with an equal quantity of identical product;

192 (19) In addition to withdrawals authorized pursuant to subdivision (18) of this
193 subsection, to assure and control product quality, wholesalers at the time of a regular delivery
194 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of
195 intoxicating liquor with alcohol content of less than five percent by weight and nonintoxicating
196 beer in its undamaged original carton from the retailer's stock and give the retailer credit against

197 outstanding indebtedness for the product if:

198 (a) The product is withdrawn at least thirty days after initial delivery and within
199 twenty-one days of the date considered by the manufacturer of the product to be the date the
200 product becomes inappropriate for sale to a consumer; and

201 (b) The quantity of product withdrawn does not exceed the equivalent of twenty-five
202 cases of twenty-four twelve-ounce containers; and

203 (c) To assure and control product quality, a wholesaler may, but not be required to, give
204 a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight
205 or nonintoxicating beer, in a container with a capacity of four gallons or more, delivered but not
206 used, if the wholesaler removes the product within seven days of the initial delivery; and

207 (20) Nothing in this section authorizes consignment sales.

208 5. All contracts entered into between distillers, brewers and winemakers, or their officers
209 or directors, in any way concerning any of their products, obligating such retail dealers to buy
210 or sell only the products of any such distillers, brewers or winemakers or obligating such retail
211 dealers to buy or sell the major part of such products required by such retail vendors from any
212 such distiller, brewer or winemaker, shall be void and unenforceable in any court in this state.

213 6. Notwithstanding any other provisions of this chapter to the contrary, a distiller or
214 wholesaler may install dispensing accessories at the retail business establishment, which shall
215 include for the purposes of distilled spirits, equipment to properly preserve and serve premixed
216 distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler
217 may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the
218 following items or render to retail licensees any of the following services: coils and coil
219 cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves
220 and other minor tapping equipment components, and damage caused by any delivery excluding
221 normal wear and tear. A complete record of equipment furnished and installed and repairs or
222 service made or rendered shall be kept by the distiller or wholesaler, furnishing, making or
223 rendering the same for a period of not less than one year.

224 7. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
225 contrary, distillers, winemakers, brewers or their employees, or officers shall be permitted to
226 make contributions of money or merchandise to a licensed retail liquor dealer that is a charitable
227 or religious organization as defined in section 313.005, RSMo, or an educational institution if
228 such contributions are unrelated to such organization's retail operations.

229 8. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
230 contrary, a brewer or manufacturer, its employees, officers or agents may have a financial interest
231 in the retail business for sale of intoxicating liquors and nonintoxicating beer at entertainment
232 facilities owned, in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates

233 including, but not limited to, arenas and stadiums used primarily for concerts, shows and sporting
234 events of all kinds.

235 9. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
236 contrary, for the purpose of the promotion of tourism, a wine manufacturer, its employees,
237 officers or agents located within this state may apply for and the supervisor of liquor control may
238 issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for
239 consumption on the premises where sold, if the premises so licensed is in close proximity to the
240 winery. Such premises [may remain open between the hours of 6:00 a.m. and midnight, Monday
241 through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday] **shall be closed**
242 **during the hours specified under section 311.290 and may remain open between the hours**
243 **of 9:00 a.m. and midnight on Sunday.**

244 10. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
245 contrary, for the purpose of the promotion of tourism, a person may apply for and the supervisor
246 of liquor control may issue a license to sell intoxicating liquor by the drink at retail for
247 consumption on the premises where sold, but [the person so licensed shall sell only
248 Missouri-produced wines received from manufacturers licensed pursuant to section 311.190]
249 **seventy-five percent or more of the intoxicating liquor sold by such licensed person shall**
250 **be Missouri-produced wines received from manufacturers licensed under section 311.190.**
251 Such premises may remain open between the hours of 6:00 a.m. and midnight, Monday through
252 Saturday, and between the hours of 11:00 a.m. and 9:00 p.m. on Sundays.