

SECOND REGULAR SESSION

# HOUSE BILL NO. 2190

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NASHEED (Sponsor), TILLEY AND NORR (Co-sponsors).

Read 1st time February 18, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4339L.01I

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### AN ACT

To repeal sections 144.014, 311.520, 311.550, 311.553, 311.554, and 311.555, RSMo, and to enact in lieu thereof seven new sections relating to sales taxes on food, with penalty provisions.

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

Section A. Sections 144.014, 311.520, 311.550, 311.553, 311.554, and 311.555, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 144.014, 311.520, 311.550, 311.553, 311.554, 311.555, and 311.565, to read as follows:

144.014. 1. Notwithstanding other provisions of law to the contrary, beginning October 1, 1997, **and ending December 31, 2008**, the tax levied and imposed pursuant to sections 144.010 to 144.525 and sections 144.600 to 144.746 on all retail sales of food shall be at the rate of one percent. The revenue derived from the one percent rate pursuant to this section shall be deposited by the state treasurer in the school district trust fund and shall be distributed as provided in section 144.701. **Beginning January 1, 2009, through December 31, 2013, the tax levied and imposed under this chapter on all retail sales of food shall be reduced by an equal percentage annually until no tax is imposed on retail sales of food under this chapter. Beginning January 1, 2014, and for all following years, all retail sales of food shall be exempt from the sales and use tax levied and imposed under this chapter. Beginning January 1, 2014, for purposes of sections 43(a) and 47(a) of Article IV, Constitution of Missouri, retail sales of food shall not be construed to be a sale listed and set forth in 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.

13 **"Sales Tax Law", and such sales shall be exempt from the collection of taxes under sections**  
14 **43(a) and 47(a) of Article IV, Constitution of Missouri.**

15       2. For the purposes of this section, the term "food" shall include only those products and  
16 types of food for which food stamps may be redeemed pursuant to the provisions of the Federal  
17 Food Stamp Program as contained in 7 U.S.C. Section 2012, as that section now reads or as it  
18 may be amended hereafter, and shall include food dispensed by or through vending machines.  
19 For the purpose of this section, except for vending machine sales, the term "food" shall not  
20 include food or drink sold by any establishment where the gross receipts derived from the sale  
21 of food prepared by such establishment for immediate consumption on or off the premises of the  
22 establishment constitutes more than eighty percent of the total gross receipts of that  
23 establishment, regardless of whether such prepared food is consumed on the premises of that  
24 establishment, including, but not limited to, sales of food by any restaurant, fast food restaurant,  
25 delicatessen, eating house, or cafe.

      311.520. As a charge for the inspection and gauging of all malt liquors, containing  
2 alcohol in excess of three and two-tenths percent by weight, the [director of revenue] **supervisor**  
3 **of alcohol and tobacco control** shall collect the sum of one dollar and eighty-six cents per barrel  
4 **and shall transfer the funds to the director of revenue for deposit as provided by this**  
5 **chapter.**

      311.550. 1. In addition to all other licenses and charges, there shall be paid to and  
2 collected by the **supervisor of alcohol and tobacco control and transferred to the** director of  
3 revenue charges as follows:

4       (1) For the privilege of selling in the state of Missouri spirituous liquors, including  
5 brandy, rum, whiskey, and gin, and other spirituous liquors and alcohol for beverage purposes,  
6 there shall be paid, and the [director of revenue] **supervisor of alcohol and tobacco control**  
7 shall be entitled to receive, the sum of two dollars per gallon or fraction thereof;

8       (2) For the privilege of selling wines, the sum of thirty cents per gallon.

9       2. The person who shall first sell such liquor to any person in this state shall be liable for  
10 the payment, except that no refund of any tax collected and remitted to the director of revenue  
11 by a retail seller upon gross receipts from a sale of beer, liquor or wine subject to the charges  
12 contained in sections 311.520, 311.550 and 311.554 shall be claimed for refund under chapter  
13 144, RSMo, for any amount illegally or erroneously overcharged or overcollected as a result of  
14 imposition of sales tax by the retail seller upon amounts representing the charges imposed under  
15 this chapter.

16       3. Any person who sells to any person within this state any intoxicating liquors  
17 mentioned in subdivision (1) of subsection 1 **of this section**, unless the charge hereby imposed  
18 is paid, is guilty of a felony and shall be punished by imprisonment by the state department of

19 corrections for a term of not less than two years nor more than five years, or by imprisonment  
20 in the county jail for a term of not less than one month nor more than one year, or by a fine of  
21 not less than fifty dollars nor more than one thousand dollars, or by both such fine and  
22 imprisonment.

23 4. It shall be unlawful for any person to remove the contents of any container containing  
24 any of the intoxicating liquors mentioned in subdivision (1) of subsection 1 **of this section**  
25 without destroying such container, or to refill any such container, in whole or in part, with any  
26 of the liquors mentioned in subdivision (1) of subsection 1 **of this section**. Any person violating  
27 the provisions of this subsection shall be guilty of a misdemeanor.

28 5. Every manufacturer, out-state solicitor and wholesale dealer licensed under this  
29 chapter shall make a true duplicate invoice of the same, showing the date, amount and value of  
30 each class of such liquors shipped or delivered, and retain a duplicate thereof, subject to the use  
31 and inspection of the supervisor of [liquor] **alcohol and tobacco** control and his representatives  
32 for two years.

33 6. Any person who shall sell in this state any intoxicating liquor without first having  
34 procured a license from the supervisor of [liquor] **alcohol and tobacco** control authorizing [him]  
35 **the person** to sell such intoxicating liquor is guilty of a felony and upon conviction shall be  
36 punished by imprisonment by the state department of corrections for a term of not less than two  
37 years nor more than five years, or by imprisonment in the county jail for a term of not less than  
38 three months nor more than one year, or by a fine of not less than one hundred dollars nor more  
39 than one thousand dollars, or by both such fine and imprisonment.

311.553. 1. Payment of the charges provided by section 311.550 shall be made by the  
2 manufacturer, including one who blends or bottles intoxicating liquors, as to all intoxicating  
3 liquor produced or imported by the manufacturer for sale or use for beverage purposes within  
4 this state, by the out-state solicitor who imports into this state intoxicating liquor manufactured  
5 or produced outside of this state for sale or use for beverage purposes within this state and by the  
6 wholesale dealer who imports or receives intoxicating liquor manufactured or produced without  
7 the United States for sale or use for beverage purposes within this state. Each manufacturer,  
8 out-state solicitor and wholesale dealer on or before the fifteenth day of each calendar month  
9 shall file with the supervisor of liquor control, on forms prescribed and furnished by the  
10 supervisor, a written report in duplicate, under oath, in such form as is required by the supervisor  
11 to enable him to compute, and assure the accuracy of, the charges due on all sales and  
12 importations of intoxicating liquor occurring during the preceding month. Payment of the  
13 charges in the amount disclosed by the report by bank draft, money order, certified check or  
14 cashier's check payable to the department of revenue shall accompany the report to the supervisor  
15 of liquor control.

16           2. If the supervisor of liquor control deems it necessary in order to ensure the payment  
17 of the charges imposed by this law, he may require returns to be made more frequently than and  
18 covering periods of less than a month. The return shall contain such further information as the  
19 supervisor of liquor control may reasonably require. Each such manufacturer, out-state solicitor  
20 or wholesale dealer shall pay to the [director of revenue] **supervisor of alcohol and tobacco**  
21 **control**, with the filing of such return, the tax imposed by this law, as so reported during the  
22 period covered by such return.

23           3. In case of failure to pay any charges as required under sections 311.520 and 311.550  
24 on or before the date prescribed therefor, there shall be added to the amount of charge an amount  
25 equal to one percent per business day of the deficiency, not to exceed twenty-five percent of the  
26 deficiency, and in addition interest on the deficient charge and penalty at the rate of one percent  
27 a month or fraction of a month from the date the deficient charge became due until paid.

          311.554. 1. In addition to the charges imposed by section 311.550, there shall be paid  
2 to and collected by the [director of revenue] **supervisor of alcohol and tobacco control** for the  
3 privilege of selling wine, an additional charge of six cents per gallon or fraction thereof. The  
4 additional charge shall be paid and collected in the same manner and at the same time that the  
5 charges imposed by section 311.550 are paid and collected.

6           2. Until June 30, 2006, the revenue derived from the additional charge imposed by  
7 subsection 1 shall be deposited by the state treasurer to the credit of a separate account in the  
8 marketing development fund created by section 261.035, RSMo. Beginning July 1, 2006, the  
9 revenue derived from such additional charge shall be deposited by the state treasurer in the  
10 Missouri wine and grape fund created by this section. Moneys to the credit of both the marketing  
11 development fund and the Missouri wine and grape fund shall be used only for market  
12 development in developing programs for growing, selling, and marketing of grapes and grape  
13 products grown in Missouri, including all necessary funding for the employment of experts in  
14 the fields of viticulture and enology as deemed necessary, and programs aimed at improving  
15 marketing of all varieties of grapes grown in Missouri; and shall be appropriated and used for  
16 no other purpose.

17           3. There is hereby created in the state treasury the "Missouri Wine and Grape Fund",  
18 which shall consist of money collected under this section. The state treasurer shall be custodian  
19 of the fund and shall approve disbursements from the fund to the department of agriculture for  
20 use solely by the Missouri wine and grape board created under section 262.820, RSMo, in  
21 accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund  
22 shall be used solely for the administration of this section. Notwithstanding the provisions of  
23 section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the  
24 biennium shall not revert to the credit of the general revenue fund. The state treasurer shall

25 invest moneys in the fund in the same manner as other funds are invested. Any interest and  
26 moneys earned on such investments shall be credited to the fund.

27 4. In addition to the charges imposed by subsection 1 of this section and section 311.550,  
28 there shall be paid to and collected by the [director of revenue] **supervisor of alcohol and**  
29 **tobacco control** for the privilege of selling wine an additional charge of six cents per gallon or  
30 fraction thereof. Until June 30, 2006, this additional six cents per gallon shall be deposited by  
31 the state treasurer to the credit of a separate account in the marketing development fund created  
32 by section 261.035, RSMo. Beginning July 1, 2006, the revenue derived from such additional  
33 charge shall be deposited by the state treasurer in the Missouri wine and grape fund created in  
34 this section.

311.555. Every manufacturer, including one who blends or bottles intoxicating liquors,  
2 as to all intoxicating liquor produced or imported by the manufacturer for sale or use for  
3 beverage purposes within this state, and the out-state solicitor who imports into this state  
4 intoxicating liquor manufactured or produced outside of this state for sale or use for beverage  
5 purposes within this state, and the wholesale dealer who imports or receives intoxicating liquor  
6 manufactured or produced without the United States for sale or use for beverage purposes within  
7 this state and, therefore, shall be liable for payment for charges as provided by section 311.553,  
8 shall also file with the supervisor of liquor control a bond in an amount not less than one  
9 thousand dollars and not to exceed one hundred thousand dollars on a form to be approved by,  
10 and with a surety satisfactory to, the supervisor of liquor control. Such bond shall be conditioned  
11 upon the manufacturer, out-state solicitor or wholesale dealer paying to the [director of revenue]  
12 **supervisor of alcohol and tobacco** all moneys becoming due from such manufacturer, out-state  
13 solicitor or wholesale dealer under this law. The supervisor of [liquor] **alcohol and tobacco**  
14 control shall fix the penalty of the bond in each case, taking into consideration the amount of  
15 intoxicating liquor expected to be sold and used by such manufacturer, out-state solicitor or  
16 wholesale dealer, and the penalty fixed by the supervisor shall be sufficient in the supervisor's  
17 opinion, to protect the state of Missouri against failure to pay any amount due under this law, but  
18 the amount of the penalty fixed by the supervisor shall not exceed twice the amount of tax  
19 liability of a monthly return. In no event shall the amount of such penalty be less than one  
20 thousand dollars. Failure by any licensed manufacturer, out-state solicitor or wholesale dealer  
21 to keep a satisfactory bond in effect with the supervisor or to furnish additional bond to the  
22 supervisor when required hereunder by the supervisor to do so shall be grounds for the  
23 revocation or suspension of such manufacturer's, out-state solicitor's or wholesale dealer's license  
24 by the supervisor. If a manufacturer, out-state solicitor or wholesale dealer fails to pay any  
25 amount due under this law, his bond with the supervisor shall be deemed forfeited, and the  
26 department of revenue may institute a suit in its own name on such bond.

311.565. 1. In addition to the charges imposed in section 311.520 for the inspection and gauging of all malt liquors containing alcohol in excess of three and two-tenths percent by weight, a charge for the purpose of providing revenue for schools shall be collected by the supervisor of alcohol and tobacco control for the inspection and gauging of all malt liquors containing alcohol in excess of three and two-tenths percent by weight. The rate of the charge shall be the percentage of the purchase price paid or charged, adjusted annually, necessary to replace the amount of revenue lost each year as a result of the reduction in the percentage of tax imposed on food under section 144.014, RSMo. The revenue derived from the tax imposed in this subsection shall be deposited in the school district trust fund created in section 144.701, RSMo, and shall be distributed as provided in section 144.701, RSMo.

2. In addition to the charges imposed in section 311.550 for the privilege of selling spirituous liquors, including brandy, rum, whiskey, and gin, and other spirituous liquors and alcohol for beverage purposes, a charge for the purpose of providing revenue for schools shall be collected by the supervisor of alcohol and tobacco control for the privilege of selling spirituous liquors, including brandy, rum, whiskey, and gin, and other spirituous liquors and alcohol for beverage purposes. The rate of the charge shall be the percentage of the purchase price paid or charged, adjusted annually, necessary to replace the amount of revenue lost each year as a result of the reduction in the percentage of tax imposed on food under section 144.014, RSMo. The revenue derived from the tax imposed in this subsection shall be deposited in the school district trust fund created in section 144.701, RSMo, and shall be distributed as provided in section 144.701, RSMo.

3. In addition to the charges imposed in sections 311.550 and 311.554 for the privilege of selling wines, a charge for the purpose of providing revenue for schools shall be collected by the supervisor of alcohol and tobacco control for the privilege of selling wines. The rate of the charge shall be the percentage of the purchase price paid or charged, adjusted annually, necessary to replace the amount of revenue lost each year as a result of the reduction in the percentage of tax imposed on food under section 144.014, RSMo. The revenue derived from the tax imposed in this subsection shall be deposited in the school district trust fund created in section 144.701, RSMo, and shall be distributed as provided in section 144.701, RSMo.

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