

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 310

95TH GENERAL ASSEMBLY

1033L.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and 311.490, RSMo, and to enact in lieu thereof five new sections relating to liquor control, with a penalty provision.

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

Section A. Sections 311.332, 311.333, 311.334, 311.335, 311.336, 311.338, and
2 311.490, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as
3 sections 311.332, 311.333, 311.335, 311.338, and 311.490, to read as follows:

311.332. 1. [Except as provided in subsections 2 and 3 of this section,] It shall be
2 unlawful for any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in
3 excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and
4 wine at retail, to discriminate between retailers or in favor of or against any retailer or group of
5 retailers, directly or indirectly, in price, in discounts for time of payment, or in discounts on
6 quantity of merchandise sold, or to grant directly or indirectly any discount, rebate, free goods,
7 allowance or other inducement, excepting a discount not in excess of one percent for quantity
8 of liquor and wine, and a discount not in excess of one percent for payment on or before a certain
9 date. The delivery of manufacturer rebate coupons by wholesalers to retailers shall not be a
10 violation of this subsection.

11 2. [Except as provided in subsection 3 of this section, any wholesaler licensed to sell
12 intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons
13 duly licensed to sell such intoxicating liquor and wine at retail may offer a price reduction of not
14 more than four percent of the wholesaler's price schedule for any brand, age, proof, and size
15 bottle or package. Such price reduction shall apply for a thirty-day period, shall not be offered

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.

16 by any wholesaler more than three times in any calendar year, and shall not be offered during
17 successive months.

18 3. Any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in
19 excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and
20 wine at retail may offer a price reduction of more than four percent of the scheduled price on
21 close-out merchandise. "Close-out merchandise" is any item which has been in the wholesaler's
22 inventory for more than six months. The price of close-out merchandise may be decreased, but
23 shall not be increased, monthly for up to and including twelve consecutive months. A wholesaler
24 shall not purchase any item of intoxicating liquor or wine of the same year and vintage the
25 wholesaler has classified as close-out merchandise during the period of such classification. A
26 wholesaler shall not purchase, sell, or offer to sell any item of intoxicating liquor or wine of the
27 same year and vintage the wholesaler has classified as close-out merchandise until twenty-four
28 months have elapsed since the wholesaler's last offer to sell the item as close-out merchandise.

29 4.] Manufacturers or wholesalers shall be permitted to donate or deliver or cause to be
30 delivered beer, wine, brandy, or nonintoxicating beer for nonresale purposes to any unlicensed
31 person or any licensed retail dealer who is a charitable or religious organization as defined in
32 section 313.005, RSMo, or educational institution, at any location or licensed premises,
33 provided, such beer, wine, brandy, or nonintoxicating beer is unrelated to the organization's or
34 institution's licensed retail operation. A charge for admission to an event or activity at which
35 beer, wine, brandy, or nonintoxicating beer is available without separate charge shall not
36 constitute resale for the purposes of this subsection. Wine used in religious ceremonies may be
37 sold by wholesalers to a religious organization as defined in section 313.005, RSMo. Any
38 manufacturer or wholesaler providing nonresale items shall keep a record of any deliveries made
39 pursuant to this subsection.

40 [5.] 3. Manufacturers, wholesalers, retailers and unlicensed persons may donate wine in
41 the original package to a charitable or religious organization as defined in section 313.005,
42 RSMo, or educational institution for the sole purpose of being auctioned by the organization or
43 institution for fund-raising purposes, provided the auction takes place on a retail-licensed
44 premises and all proceeds from the sale go into a fund of an organization or institution that is
45 unrelated to any licensed retail operation.

311.333. Any wholesaler licensed under this chapter to sell intoxicating liquors and
2 wines may accept the return of any intoxicating liquor containing alcohol in excess of five
3 percent by weight and wines as provided by rules and regulations promulgated by the supervisor
4 of liquor control, pursuant to chapter 536, RSMo. **Such wholesaler licensed to sell intoxicating**
5 **liquor or wine containing alcohol in excess of five percent by weight to persons duly**
6 **licensed to sell such intoxicating liquor and wine at retail shall make available to all such**

7 **retailers, not later than five days prior to the first day of the month in which the pricing**
8 **is to be effective, information regarding all products which shall be available for sale in the**
9 **next month. Such information shall include the brand or trade name, capacity of**
10 **individual packages, nature of contents, age and proof, the per bottle and per case price**
11 **which shall be offered equally to all retailers, the number of bottles contained in each case,**
12 **and the size thereof. The price provided to retailers under this section shall become**
13 **effective on the first day of the next month and remain in effect until the last day that**
14 **month. Supplemental pricing information may be provided to retailers by wholesalers for**
15 **items that were unintentionally left off a regular monthly item information listing or for**
16 **new items after approval for sale in Missouri by the Missouri division of alcohol and**
17 **tobacco control. A wholesaler shall be allowed to sell such items to retailers immediately**
18 **upon production of such supplemental information.**

311.335. 1. Any wholesaler licensed to sell intoxicating liquor and wine containing
2 alcohol in excess of five percent by weight [pursuant to chapter 311] shall [ship and] deliver
3 **such** intoxicating liquor and wine to a retailer [in the amount for which the scheduled price set
4 forth on the invoice is in effect] **at the price in effect for that calendar month in which the**
5 **delivery occurs.**

6 2. Such wholesaler licensed to sell intoxicating liquor and wine containing alcohol in
7 excess of five percent by weight shall not take an order for delivery in a month subsequent to the
8 month in which the order is taken, provided that [on and after the date on which amended price
9 schedules are filed with the supervisor of liquor control] **during the last five business days of**
10 **each month**, orders may be taken for delivery in the following month at the price in effect for
11 that following month and provided, further, that for any order received within the last [three] **five**
12 business days of a month, the wholesaler may, with the consent of the retailer placing such order
13 [or upon the request of the retailer placing such order], deliver such order to the retailer within
14 the first [three] **five** business days of the month following the month in which the order was
15 received by such wholesaler at the price in effect for the month in which the order was placed.
16 Such order received within the last [three] **five** business days of a month and delivered within
17 the first [three] **five** business days of the subsequent month shall be known as a "delayed
18 shipment". A delayed shipment shall be deemed delivered on the last business day of the month
19 in which the order was received for purposes of implementing and enforcing rules and
20 regulations of the supervisor of [liquor] **alcohol and tobacco** control relating to invoicing,
21 discounts and ordinary commercial credit terms.

22 3. Any wholesaler licensed to sell intoxicating [liquor or wine] **liquors and wines**
23 containing alcohol in excess of five percent by weight [violating any provision of this section
24 shall be subject to, and punished pursuant to, the penalties and provisions of section 311.680]

25 shall be allowed to offer for sale intoxicating liquors or wines containing alcohol in excess
26 of five percent by weight to persons duly licensed to sell intoxicating liquors and wines at
27 retail at prices which are below the wholesaler's cost only if such intoxicating liquors and
28 wines are designated to be close-out merchandise. Wholesalers shall designate intoxicating
29 liquors and wines containing alcohol in excess of five percent by weight to be close-out
30 merchandise by identifying them as close-out items when providing monthly pricing
31 information to retailers as required in section 311.333. A wholesaler shall not purchase
32 any intoxicating liquor or wine containing alcohol in excess of five percent by weight while
33 such intoxicating liquor or wine is designated as close-out merchandise. Intoxicating
34 liquors or wines containing alcohol in excess of five percent by weight that are designated
35 as close-out merchandise shall be designated as close-out merchandise for not less than six
36 consecutive months. After such time, a wholesaler may remove items from close-out
37 designation by no longer identifying them as close-out items when providing monthly
38 pricing information to retailers as required in section 311.333.

311.338. Any person violating any provisions of sections 311.332 [to 311.336] ,
2 **311.333, and 311.335** shall be deemed guilty of a misdemeanor, and it shall be the duty of the
3 supervisor of liquor control to suspend or revoke the license of any wholesaler violating any of
4 the provisions of sections 311.332 [to 311.336] , **311.333, and 311.335**.

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 ingredients not in compliance with the following standards:

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

8 (2) Flavor and other nonbeverage ingredients containing alcohol may be used in
9 producing beer, but may contribute to no more than forty-nine percent of the overall alcohol
10 content of the finished beer. In the case of beer with an alcohol content of more than six percent
11 by volume, no more than one and one-half percent of the volume of the beer may consist of
12 alcohol derived from added flavors and other nonbeverage ingredients containing alcohol; and

13 (3) Beer, intoxicating malt liquor, and malt beverages, as defined in this section, shall
14 not be subject to the requirements of [subsections] **subsection 1[, 2, and 3]** of section 311.332
15 and sections [311.334 to] **311.335 and 311.338**.

[311.334. No intoxicating liquor and wine of any kind shall be sold by
2 a wholesaler to a retailer duly licensed to sell intoxicating liquor and wine at
3 retail, or purchased by a wholesaler for a retailer or by a retailer through a
4 wholesaler, unless a schedule as provided by this section shall be filed by the

5 wholesaler with the supervisor of liquor control and is then in effect. The
6 schedule shall be in writing, duly verified and filed in the number of copies and
7 in such form as required by the supervisor, and shall contain with respect to each
8 item thereon the exact brand or trade name, capacity of package, nature of
9 contents, age and proof, the per bottle and per case price to retailers, the number
10 of bottles contained in each case, and the size thereof, which prices shall be
11 individual for each item, and not in "combination" with any other item or items,
12 the discounts for quantity, if any, and the discounts for time of payment, if any.]
13

2 [311.336. Each such schedule shall be filed on or before the tenth day of
3 each month, and the prices and discounts therein set forth shall become effective
4 on the first day of the calendar month following the filing thereof, and shall be
5 in effect for and during such calendar month. Within ten days after the filing of
6 such schedule the supervisor shall make all of such schedules or a composite
7 thereof available for inspection by all wholesale licensees. Within three days,
8 excluding Sundays, after such inspection is provided for, a wholesaler may
9 amend his filed schedule for sales to a retailer, or purchase for a retailer or by a
10 retailer through a wholesaler in order to meet lower competing prices and
11 discounts for liquor or wine of the same brand and trade name and of like age and
12 quality, filed pursuant to this section or section 311.334 by any licensee selling
13 such brand; provided, however, such amended prices may not be lower and
14 discounts not greater than those to be met. Any amended schedule so filed shall
15 become effective on the first day of the calendar month following the filing
16 thereof, and shall be in effect for and during such calendar month. No brand of
17 liquor or wine shall be sold or purchased for a retailer by a wholesaler or by a
18 retailer through a wholesaler except at the price or prices then in effect according
19 to the wholesaler's filed schedule, and no discount shall be granted except as set
20 forth in the schedule then in effect. All schedules filed shall be subject to public
21 inspection from the time that they are required to be made available for
22 inspection by licensees and shall not be in any manner considered confidential.
23 Each wholesaler shall retain in his licensed premises for inspection by licensees
24 a copy of his filed schedules then in effect. The supervisor of liquor control may
25 make such rules and regulations as shall be appropriate to carry out the purpose
of this section and sections 311.332 and 311.334.]

✓