

SECOND REGULAR SESSION

HOUSE BILL NO. 1924

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROEBER.

5537H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to alcohol trade practices, with penalty provisions.

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Section A. Section 311.070, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 311.070, to read as follows: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, 311.090, or 311.095.

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.

18 2. Any distiller, wholesaler, winemaker, or brewer who shall violate the provisions of
19 subsection 1 of this section, or permit his **or her** employees, officers, or agents to do so, shall
20 be guilty 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 **nonrefrigeration items with a logo**, dispensing accessories, carbon dioxide (and other gasses
32 used in dispensing equipment), or ice. "Dispensing accessories" include, **but are not limited**
33 **to**, standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas
34 gauges, vent tongues, shanks, and check valves;

35 (3) "Permanent point-of-sale advertising materials", advertising items designed to be
36 used within a retail business establishment for an extended period of time to attract consumer
37 attention to the products of a distiller, wholesaler, winemaker, or brewer. Such materials shall
38 only include inside signs (electric, mechanical or otherwise), mirrors, and sweepstakes/contest
39 prizes displayed on the licensed premises;

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 (6) "Temporary point-of-sale advertising materials", advertising items designed to be
45 used for short periods of time. Such materials include, but are not limited to: banners,
46 decorations reflecting a particular season or a limited-time promotion, [~~or~~] paper napkins,
47 coasters, cups, **ice buckets, condiment caddies, napkin holders, bar rail mats, shakers, salt**
48 **rimmers**, or menus.

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

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

54 (a) The total value of all product displays given or sold to a retail business shall not
55 exceed ~~[three]~~ **five** hundred dollars per brand at any one time in any one retail outlet. There shall
56 be no combining or pooling of the ~~[three]~~ **five** hundred dollar limits to provide a retail business
57 a product display in excess of ~~[three]~~ **five** hundred dollars per brand. The value of a product
58 display is the actual cost to the distiller, wholesaler, winemaker, or brewer who initially
59 purchased such product display. Transportation and installation costs shall be excluded;

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

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

68 (2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler,
69 winemaker, or brewer may provide, give, or sell any permanent point-of-sale advertising
70 materials, temporary point-of-sale advertising materials, and consumer advertising specialties
71 to a retail business if all the following requirements are met:

72 (a) The total value of all permanent point-of-sale advertising materials provided to a
73 retail business by a distiller, wholesaler, winemaker, or brewer shall not exceed ~~[five]~~ **eight**
74 hundred dollars per calendar year, per brand, per retail outlet. **The replacement of similar in**
75 **appearance, type, and dollar value permanent point-of-sale advertising materials shall not**
76 **count towards the maximum of eight hundred dollars per calendar year, per brand, per**
77 **retail outlet.** The value of permanent point-of-sale advertising materials is the actual cost to the
78 distiller, wholesaler, winemaker, or brewer who initially purchased such item. Transportation
79 and installation costs shall be excluded. All permanent point-of-sale advertising materials
80 provided to a retailer shall be recorded, and records shall be maintained for a period of ~~[three]~~
81 **two** years;

82 (b) The provider of permanent point-of-sale advertising materials shall own and
83 otherwise control the use of permanent point-of-sale advertising materials that are provided by
84 any distiller, wholesaler, winemaker, or brewer;

85 (c) All permanent point-of-sale advertising materials, temporary point-of-sale advertising
86 materials, and consumer advertising specialties shall bear in a conspicuous manner substantial
87 advertising matter about the product or the name of the distiller, wholesaler, winemaker, or
88 brewer. The name, address and logos of the retail business may appear on the permanent

89 point-of-sale advertising materials, temporary point-of-sale advertising materials, or the
90 consumer advertising specialties; and

91 (d) The distiller, wholesaler, winemaker, or brewer shall not directly or indirectly pay
92 or credit the retail business for using or distributing the permanent point-of-sale advertising
93 materials, temporary point-of-sale advertising materials, or consumer advertising specialties or
94 for any incidental expenses arising from their use or distribution;

95 (3) A distiller, wholesaler, winemaker, or brewer may give a gift not to exceed a value
96 of one thousand dollars per year to a holder of a temporary permit as defined in section 311.482;

97 (4) The distiller, wholesaler, winemaker, or brewer may sell equipment ~~[or]~~ **and** supplies
98 to a retail business if all the following requirements are met:

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

102 (b) The price charged for the equipment and supplies shall be collected in accordance
103 with credit regulations as established in the code of state regulations;

104 (5) The ~~[distiller,]~~ wholesaler~~[- winemaker]~~ or brewer may install **nonrefrigeration**
105 **beer-** dispensing accessories at the retail business establishment, ~~[which shall include for the~~
106 ~~purposes of beer equipment to properly preserve and serve draught beer only]~~ and, to facilitate
107 the ~~[delivery to the retailer]~~ **dispensing of draft beer**, the brewers and wholesalers may lend,
108 give, rent, or sell and they may install or repair any of the following items or render to retail
109 licensees any of the following: ~~[services: beer coils and coil cleaning, sleeves and wrappings,~~
110 ~~box couplings and draft arms, beer faucets and tap markers, beer and air hose, taps, vents and~~
111 ~~washers, gauges and regulators, beer and air distributors, beer line insulation, coil flush hose,~~
112 ~~couplings and bucket pumps, portable coil boxes, air pumps, blankets or other coverings for~~
113 ~~temporary wrappings of barrels, coil box overflow pipes, tilting platforms, bumper boards, skids,~~
114 ~~cellar ladders and ramps, angle irons, ice box grates, floor runways, and damage caused by any~~
115 ~~beer delivery excluding normal wear and tear and a complete record of equipment furnished and~~
116 ~~installed and repairs and service made or rendered must be kept by the brewer or wholesalers~~
117 ~~furnishing, making or rendering same for a period of not less than one year]~~ **tap markers,**
118 **regulators, gauges, vents, nuts, clamps, splicers, keg stackers, washers, couplings, shanks,**
119 **faucets, non-insulated beer and air hoses, and wall brackets;**

120 (a) All other dispensing accessories as defined in this section that are installed by
121 a wholesaler or brewer to a retailer shall be sold in the same manner as other equipment
122 and supplies;

123 (b) Portable coil boxes, air pumps, tubs, blankets, coolers, rolling coolers, carbon
124 dioxide and nitrogen-driven cold plans or jockey boxes, tents not to exceed ten square feet

in size, or other coverings for temporary wrappings of barrels may be loaned by a wholesaler or brewer to a retailer only if a deposit is given by the retailer in an amount that covers the cost of such equipment, and the deposit shall not be refunded to the retailer until such loaned equipment is returned to the wholesaler or brewer. An actual deposit payment, other than a charge to a retailer's account, shall be received if an equipment item is loaned for more than ten days within a thirty-day period; and

(c) A complete record of equipment given, rented, sold, installed, and loaned, and repairs and services made to a retailer shall be retained for a period of not less than two years by the wholesaler or brewer;

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

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

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

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

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

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

(8) The distiller, wholesaler, winemaker, or brewer may package and distribute intoxicating beverages in combination with other nonalcoholic items as originally packaged by the supplier for sale ultimately to consumers; notwithstanding any provision of law to the contrary, for the purpose of this subsection, intoxicating liquor and wine wholesalers are not required to charge for nonalcoholic items any more than the actual cost of purchasing such nonalcoholic items from the supplier;

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

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

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

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

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

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

(11) Distillers, winemakers, wholesalers, brewers, or retailers may conduct a local or national sweepstakes/contest upon a licensed retail premise. The sweepstakes/contest prize dollar amount shall not be limited and can be displayed in a photo, banner, or other temporary point-of-sale advertising materials on a licensed premises, if the following requirements are met:

(a) No money or something of value is given to the retailer for the privilege or opportunity of conducting the sweepstakes or contest; and

(b) The actual sweepstakes/contest prize is not displayed on the licensed premises if the prize value exceeds the permanent point-of-sale advertising materials dollar limit provided in this section;

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

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

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

(a) Display, serve, or donate its products at or to a convention or trade show;

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

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

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

196 (e) Make payments for advertisements in programs or brochures issued by retail business
197 associations if the total payments made for all such advertisements are fair and reasonable;

198 (f) Pay dues to the retail business association if such dues or payments are fair and
199 reasonable;

200 (g) Make payments or donations for retail employee training on preventive sales to
201 minors and intoxicated persons, checking identifications, age verification devices, and the liquor
202 control laws;

203 (h) Make contributions not to exceed one thousand dollars per calendar year for
204 transportation services that shall be used to assist patrons from retail establishments to his or her
205 residence or overnight accommodations;

206 (i) Donate or serve up to five hundred dollars per event of alcoholic products at retail
207 business association activities; and

208 (j) Any retail business association that receives payments or donations shall, upon
209 written request, provide the division of alcohol and tobacco control with copies of relevant
210 financial records and documents to ensure compliance with this subsection;

211 (15) The distiller, wholesaler, winemaker, or brewer may sell or give a permanent
212 outside sign to a retail business if the following requirements are met:

213 (a) The sign, which shall be constructed of metal, glass, wood, plastic, or other durable,
214 rigid material, with or without illumination, or painted or otherwise printed onto a rigid material
215 or structure, shall bear in a conspicuous manner substantial advertising matter about the product
216 or the name of the distiller, wholesaler, winemaker, or brewer;

217 (b) The retail business shall not be compensated, directly or indirectly, for displaying the
218 permanent sign or a temporary banner;

219 (c) The cost of the permanent sign shall not exceed five hundred dollars; and

220 (d) Temporary banners of a seasonal nature or promoting a specific event shall not be
221 constructed to be permanent outdoor signs and may be provided to retailers. The total cost of
222 temporary outdoor banners provided to a retailer in use at any one time shall not exceed five
223 hundred dollars per brand;

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

228 (17) To assure and control product quality, wholesalers at the time of a regular delivery
229 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of
230 intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in

231 its undamaged original carton from the retailer's stock, if the wholesaler replaces the product
232 with an equal quantity of identical product;

233 (18) In addition to withdrawals authorized pursuant to subdivision (17) of this
234 subsection, to assure and control product quality, wholesalers at the time of a regular delivery
235 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of
236 intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in
237 its undamaged original carton from the retailer's stock and give the retailer credit against
238 outstanding indebtedness for the product if:

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

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

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

248 (19) Nothing in this section authorizes consignment sales.

249 5. (1) A distiller, wholesaler, winemaker, or brewer that is also in business as a bona
250 fide producer or vendor of nonalcoholic beverages shall not condition the sale of its alcoholic
251 beverages on the sale of its nonalcoholic beverages nor combine the sale of its alcoholic
252 beverages with the sale of its nonalcoholic beverages, except as provided in subdivision (8) of
253 subsection 4 of this section. The distiller, wholesaler, winemaker, or brewer that is also in
254 business as a bona fide producer or vendor of nonalcoholic beverages may sell, credit, market,
255 and promote nonalcoholic beverages in the same manner in which the nonalcoholic products are
256 sold, credited, marketed, or promoted by a manufacturer or wholesaler not licensed by the
257 supervisor of alcohol and tobacco control;

258 (2) Any fixtures, equipment, or furnishings provided by any distiller, wholesaler,
259 winemaker, or brewer in furtherance of the sale of nonalcoholic products shall not be used by
260 the retail licensee to store, service, display, advertise, furnish, or sell, or aid in the sale of
261 alcoholic products regulated by the supervisor of alcohol and tobacco control. All such fixtures,
262 equipment, or furnishings shall be identified by the retail licensee as being furnished by a
263 licensed distiller, wholesaler, winemaker, or brewer.

264 6. Distillers, wholesalers, brewers and winemakers, or their officers or directors shall not
265 require, by agreement or otherwise, that any retailer purchase any intoxicating liquor from such
266 distillers, wholesalers, brewers, or winemakers to the exclusion in whole or in part of

267 intoxicating liquor sold or offered for sale by other distillers, wholesalers, brewers, or
268 winemakers.

269 7. ~~[Notwithstanding any other provisions of this chapter to the contrary, a distiller or~~
270 ~~wholesaler may install dispensing accessories at the retail business establishment, which shall~~
271 ~~include for the purposes of distilled spirits equipment to properly preserve and serve premixed~~
272 ~~distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler~~
273 ~~may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the~~
274 ~~following items or render to retail licensees any of the following services: coils and coil~~
275 ~~cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves~~
276 ~~and other minor tapping equipment components, and damage caused by any delivery excluding~~
277 ~~normal wear and tear. A complete record of equipment furnished and installed and repairs or~~
278 ~~service made or rendered shall be kept by the distiller or wholesaler furnishing, making or~~
279 ~~rendering the same for a period of not less than one year]~~ **The distiller, wholesaler, or**
280 **winemaker may install nonrefrigeration distilled spirits and wine-dispensing accessories**
281 **at the retail business establishment and, to facilitate the dispensing of distilled spirits and**
282 **wine, the distiller, wholesaler, or winemaker may lend, give, rent, sell, install, or repair, or**
283 **render to retail licensees, any of the following items: tap markers, regulators, gauges,**
284 **vents, nuts, clamps, splicers, keg stackers, washers, couplings, shanks, faucets, non-**
285 **insulated spirits and wine hoses, air hoses, and wall brackets;**

286 **(1) All other dispensing accessories as defined in this section that are installed by**
287 **a distiller, wholesaler, or winemaker to a retailer shall be sold in the same manner as other**
288 **equipment and supplies;**

289 **(2) Portable coil boxes, air pumps, tubs, blankets, coolers, rolling coolers, portable**
290 **bars, agitating tanks, carbon dioxide and nitrogen-driven cold plates or jockey boxes, tents**
291 **not to exceed ten square feet, or other coverings for temporary wrappings of barrels may**
292 **be loaned by a distiller, wholesaler, or winemaker to a retailer only if a deposit is given by**
293 **the retailer in an amount that covers the cost of such equipment, and the deposit shall not**
294 **be refunded to the retailer until such loaned equipment is returned to the distiller,**
295 **wholesaler, or winemaker. An actual deposit payment, other than a charge to a retailer's**
296 **account, shall be received if an equipment item is loaned for more than ten days within a**
297 **thirty-day period; and**

298 **(3) A complete record of equipment given, rented, sold, installed, and loaned, and**
299 **repairs and services made to a retailer shall be retained for a period of not less than two**
300 **years by the distiller, wholesaler, or winemaker.**

301 8. Distillers, wholesalers, winemakers, brewers or their employees or officers shall be
302 permitted to make contributions of money or merchandise to a licensed retail liquor dealer that

303 is a charitable, fraternal, civic, service, veterans', or religious organization as defined in section
304 313.005, or an educational institution if such contributions are unrelated to such organization's
305 retail operations.

306 9. Distillers, brewers, wholesalers, and winemakers may make payments for
307 advertisements in programs or brochures of tax-exempt organizations licensed under section
308 311.090 if the total payments made for all such advertisements are the same as those paid by
309 other vendors.

310 10. A brewer or manufacturer, its employees, officers or agents may have a financial
311 interest in the retail business for sale of intoxicating liquors at entertainment facilities owned,
312 in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates including, but not
313 limited to, arenas and stadiums used primarily for concerts, shows and sporting events of all
314 kinds.

315 11. For the purpose of the promotion of tourism, a wine manufacturer, its employees,
316 officers or agents located within this state may apply for and the supervisor of liquor control may
317 issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for
318 consumption on the premises where sold, if the premises so licensed is in close proximity to the
319 winery. Such premises shall be closed during the hours specified under section 311.290 and may
320 remain open between the hours of 9:00 a.m. and midnight on Sunday.

321 12. For the purpose of the promotion of tourism, a person may apply for and the
322 supervisor of liquor control may issue a license to sell intoxicating liquor by the drink at retail
323 for consumption on the premises where sold, but seventy-five percent or more of the intoxicating
324 liquor sold by such licensed person shall be Missouri-produced wines received from
325 manufacturers licensed under section 311.190. Such premises may remain open between the
326 hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours of 11:00 a.m.
327 and 9:00 p.m. on Sundays.

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