

FIRST REGULAR SESSION

SENATE BILL NO. 412

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1896S.011

AN ACT

To repeal section 311.180, RSMo, and to enact in lieu thereof two new sections relating to beer wholesalers.

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

Section A. Section 311.180, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 311.180 and 311.183, to read as
3 follows:

311.180. 1. No person, partnership, association of persons or corporation
2 shall manufacture, distill, blend, sell or offer for sale intoxicating liquor within
3 this state at wholesale or retail, or solicit orders for the sale of intoxicating liquor
4 within this state without procuring a license from the supervisor of alcohol and
5 tobacco control authorizing them so to do. For such license there shall be paid
6 to and collected by the director of revenue annual charges as follows:

7 (1) For the privilege of manufacturing and brewing in this state malt
8 liquor containing not in excess of five percent of alcohol by weight and the
9 privilege of selling to duly licensed wholesalers and soliciting orders for the sale
10 of malt liquors containing not in excess of five percent of alcohol by weight, to, by
11 or through a duly licensed wholesaler within this state, the sum of two hundred
12 fifty dollars;

13 (2) For the privilege of manufacturing in this state intoxicating liquor
14 containing not in excess of twenty-two percent of alcohol by weight and the
15 privilege of selling to duly licensed wholesalers and soliciting orders for the sale
16 of intoxicating liquor containing not in excess of twenty-two percent of alcohol by
17 weight, to, by or through a duly licensed wholesaler within this state, the sum of
18 two hundred dollars;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (3) For the privilege of manufacturing, distilling or blending intoxicating
20 liquor of all kinds within this state and the privilege of selling to duly licensed
21 wholesalers and soliciting orders for the sale of intoxicating liquor of all kinds,
22 to, by or through a duly licensed wholesaler within this state, the sum of four
23 hundred and fifty dollars;

24 (4) For the privilege of selling to duly licensed wholesalers and soliciting
25 orders for the sale of malt liquor containing not in excess of five percent of alcohol
26 by weight, to, by or through a duly licensed wholesaler within this state, the sum
27 of fifty dollars;

28 (5) For the privilege of selling to duly licensed wholesalers and soliciting
29 orders for the sale of intoxicating liquor containing not in excess of twenty-two
30 percent of alcohol by weight, to, by or through a duly licensed wholesaler within
31 this state, the sum of one hundred dollars;

32 (6) For the privilege of selling to duly licensed wholesalers and soliciting
33 orders for the sale of intoxicating liquor of all kinds, to, by or through a duly
34 licensed wholesaler within this state, the sum of two hundred and fifty dollars;

35 (7) For the privilege of selling intoxicating liquor containing not in excess
36 of five percent of alcohol by weight by a wholesaler to a person duly licensed to
37 sell such malt liquor at retail and the privilege of selling to duly licensed
38 wholesalers and soliciting orders for the sale of malt liquor containing not in
39 excess of five percent of alcohol by weight, to, by or through a duly licensed
40 wholesaler within this state, the sum of one hundred dollars;

41 (8) For the privilege of selling intoxicating liquor containing not in excess
42 of twenty-two percent of alcohol by weight by a wholesaler to a person duly
43 licensed to sell such intoxicating liquor at retail and the privilege of selling to
44 duly licensed wholesalers and soliciting orders for the sale of intoxicating liquor
45 containing not in excess of twenty-two percent of alcohol by weight, to, by or
46 through a duly licensed wholesaler within this state, the sum of two hundred
47 dollars;

48 (9) For the privilege of selling intoxicating liquor of all kinds by a
49 wholesaler to a person duly licensed to sell such intoxicating liquor at retail and
50 the privilege of selling to duly licensed wholesalers and soliciting orders for the
51 sale of intoxicating liquor of all kinds, to, by or through a duly licensed
52 wholesaler within this state, the sum of five hundred dollars, except that a
53 license authorizing the holder to sell to duly licensed wholesalers and to solicit
54 orders for sale of intoxicating liquor, to, by or through a duly licensed wholesaler,

55 shall not entitle the holder thereof to sell within the state of Missouri, direct to
56 retailers;

57 (10) For the privilege of selling to duly licensed wholesalers and soliciting
58 orders for the sale of vintage wine as defined in section 311.191, to, by, or
59 through a duly licensed wholesaler within this state, the sum of five hundred
60 dollars.

61 2. Solicitors, manufacturers and blenders of intoxicating liquor shall not
62 be required to take out a merchant's license for the sale of their products at the
63 place of manufacture or in quantities of not less than one gallon.

64 3. The provisions of this section relating to the privilege of selling malt
65 liquor are subject to and limited by the provisions of sections 311.181 [and],
66 311.182, and 311.183.

67 4. The licenses prescribed in this section for the privilege of selling
68 intoxicating liquor by a wholesaler to a person duly licensed to sell such
69 intoxicating liquor at retail shall allow such wholesaler to sell intoxicating liquor
70 to licensees licensed by the gaming commission to sell beer or alcoholic beverages
71 pursuant to section 313.840.

**311.183. 1. The provisions of subsection 2 of this section apply
2 to the following entities:**

3 **(1) A brewer;**

4 **(2) An officer, director, manager, agent, or employee of a brewer;**

5 **and**

6 **(3) An affiliate of a person described in this subsection.**

7 **2. No person named in subsection 1 of this section may have any
8 financial interest in a beer wholesaler, or serve as a director, manager,
9 employee, or agent of a beer wholesaler, except:**

10 **(1) A security interest granted to the person by the wholesaler
11 pursuant to the uniform commercial code under chapter 400 in
12 products sold to a wholesaler until the full purchase price has been
13 paid therefore;**

14 **(2) An interest in the wholesaler or assets of the wholesaler for
15 no more than one year and only for the purpose of facilitating an
16 orderly transfer of the interest to a person not affiliated with the
17 brewer, when the interest is the result of:**

18 **(a) Obtaining a judgment against the wholesaler;**

19 **(b) Acquiring the wholesaler or the assets of the wholesaler as**

20 a result of a written request of the wholesaler; however, such request
21 may not be included in a franchise agreement or required as a
22 condition of receiving, renewing, or amending a franchise agreement;
23 or

24 (3) A minority interest of less than fifty percent in a beer
25 wholesaler for a period of not more than two years under a written
26 agreement with the wholesaler.

27 3. Notwithstanding the provisions of this chapter to the contrary,
28 if a wholesaler that has been granted distribution rights for a brand in
29 a designated sales territory is unable to service that brand in the
30 territory for any reason, and the reason is not the result of an action
31 of the brewer that is prohibited under the franchise agreement or
32 sections 407.400 to 407.413, then the brewer shall be allowed to sell or
33 ship that brand directly to retailers in the designated sales territory
34 that the wholesaler is unable to service or grant to another licensed
35 wholesaler in this State the right to sell the brand to those retailers in
36 the territory that the wholesaler is unable to serve until the earlier of
37 one year or until the wholesaler is able to service that brand in the
38 designated territory. Nothing contained in this subsection shall
39 eliminate any rights or remedies that the impacted wholesaler may
40 have under the franchise agreement or sections 407.400 to 407.413.

41 4. Notwithstanding the provisions of subsection 2 of this section
42 to the contrary, if a wholesaler sold ten percent or more of a brewer's
43 total production during two of the past three calendar years and:

44 (1) Such wholesaler's franchise agreement for a brand of beer in
45 a designated sales territory is terminated for cause as permitted by
46 sections 407.400 to 407.413 and the termination is not stayed; or

47 (2) More than fifty percent of the ownership of the wholesaler is
48 transferred;

49 then the brewer may serve as a wholesaler of its products in the
50 designated sales territory indefinitely, upon obtaining a wholesaler's
51 license for its products from the supervisor of liquor control. No
52 provision of this subsection shall eliminate any rights or remedies that
53 the wholesaler whose franchise was terminated may have under the
54 franchise agreement or sections 407.400 to 407.413.

55 5. Notwithstanding the provisions of subsection 2 of this section
56 to the contrary, a brewer that manufactures beer with an annual

57 production of ten thousand barrels or less may own or have an interest
58 in a beer wholesaler that sells only the brewer's products. This
59 subsection shall not apply to a microbrewery licensed under section
60 311.195. This section shall not be construed to prohibit a wine
61 manufacturer from lawfully producing and selling products under any
62 other provision of this chapter.

63 6. No wholesaler may have a financial interest in a brewer,
64 except that a wholesaler may own up to five percent of the stock of a
65 publicly traded brewer.

66 7. As used in this section, the following terms shall mean:

67 (1) "Affiliate", any person who, other than by means of franchise,
68 is controlled by, or is under common control with, any other person,
69 whether through stock ownership or otherwise;

70 (2) "Brewer", any person who brews beer;

71 (3) "Financial interest", a financial interest as defined in
72 subsection 4 of section 311.060;

73 (4) "Person", any individual, firm, partnership, corporation,
74 association, or other entity;

75 (5) "Wholesaler", any person who is licensed to sell beer to
76 retailers in this state.

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