

FIRST REGULAR SESSION

# SENATE BILL NO. 392

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR HOLSMAN.

Read 1st time February 6, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1760S.01I

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## AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to operating hours of distilleries, with existing penalty provisions.

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Section A. Section 311.070, RSMo, is repealed and one new section  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

311.070. 1. Distillers, wholesalers, winemakers, brewers or their  
2 employees, officers or agents shall not, except as provided in this section, directly  
3 or indirectly, have any financial interest in the retail business for sale of  
4 intoxicating liquors, and shall not, except as provided in this section, directly or  
5 indirectly, loan, give away or furnish equipment, money, credit or property of any  
6 kind, except ordinary commercial credit for liquors sold to such retail  
7 dealers. However, notwithstanding any other provision of this chapter to the  
8 contrary, for the purpose of the promotion of tourism, a distiller whose  
9 manufacturing establishment is located within this state may apply for and the  
10 supervisor of liquor control may issue a license to sell intoxicating liquor, as in  
11 this chapter defined, by the drink at retail for consumption on the premises  
12 where sold; and provided further that the premises so licensed shall be in close  
13 proximity to the distillery and may remain open between the hours of 6:00 a.m.  
14 and [midnight] **1:30 a.m.**, Monday through Saturday and between the hours of  
15 **[11:00] 9:00 a.m.** and **[9:00 p.m.] midnight**, Sunday. The authority for the  
16 collection of fees by cities and counties as provided in section 311.220, and all  
17 other laws and regulations relating to the sale of liquor by the drink for  
18 consumption on the premises where sold, shall apply to the holder of a license  
19 issued under the provisions of this section in the same manner as they apply to

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

20 establishments licensed under the provisions of section 311.085, 311.090, or  
21 311.095.

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

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

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

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

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

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

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

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

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

49 (5) "Promotion", an advertising and publicity campaign to further the  
50 acceptance and sale of the merchandise or products of a distiller, wholesaler,  
51 winemaker or brewer;

52 (6) "Temporary point-of-sale advertising materials", advertising items  
53 designed to be used for short periods of time. Such materials include, but are not  
54 limited to: banners, decorations reflecting a particular season or a limited-time  
55 promotion, or paper napkins, coasters, cups, or menus.

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

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

62           (a) The total value of all product displays given or sold to a retail business  
63 shall not exceed three hundred dollars per brand at any one time in any one  
64 retail outlet. There shall be no combining or pooling of the three hundred dollar  
65 limits to provide a retail business a product display in excess of three hundred  
66 dollars per brand. The value of a product display is the actual cost to the  
67 distiller, wholesaler, winemaker or brewer who initially purchased such product  
68 display. Transportation and installation costs shall be excluded;

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

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

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

84           (a) The total value of all permanent point-of-sale advertising materials  
85 provided to a retail business by a distiller, wholesaler, winemaker, or brewer  
86 shall not exceed five hundred dollars per calendar year, per brand, per retail  
87 outlet. The value of permanent point-of-sale advertising materials is the actual  
88 cost to the distiller, wholesaler, winemaker or brewer who initially purchased  
89 such item. Transportation and installation costs shall be excluded. All  
90 permanent point-of-sale advertising materials provided to a retailer shall be  
91 recorded, and records shall be maintained for a period of three years;

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

95 (c) All permanent point-of-sale advertising materials, temporary  
96 point-of-sale advertising materials, and consumer advertising specialties shall  
97 bear in a conspicuous manner substantial advertising matter about the product  
98 or the name of the distiller, wholesaler, winemaker or brewer. The name, address  
99 and logos of the retail business may appear on the permanent point-of-sale  
100 advertising materials, temporary point-of-sale advertising materials, or the  
101 consumer advertising specialties; and

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

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

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

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

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

117 (5) The distiller, wholesaler, winemaker or brewer may install dispensing  
118 accessories at the retail business establishment, which shall include for the  
119 purposes of beer equipment to properly preserve and serve draught beer only and  
120 to facilitate the delivery to the retailer the brewers and wholesalers may lend,  
121 give, rent or sell and they may install or repair any of the following items or  
122 render to retail licensees any of the following services: beer coils and coil  
123 cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets and  
124 tap markers, beer and air hose, taps, vents and washers, gauges and regulators,  
125 beer and air distributors, beer line insulation, coil flush hose, couplings and  
126 bucket pumps; portable coil boxes, air pumps, blankets or other coverings for  
127 temporary wrappings of barrels, coil box overflow pipes, tilting platforms, bumper

boards, skids, cellar ladders and ramps, angle irons, ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear and tear and a complete record of equipment furnished and installed and repairs and service made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering same for a period of not less than one year;

(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;

(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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

233 (d) Temporary banners of a seasonal nature or promoting a specific event  
234 shall not be constructed to be permanent outdoor signs and may be provided to  
235 retailers. The total cost of temporary outdoor banners provided to a retailer in

236 use at any one time shall not exceed five hundred dollars per brand;

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

242 (17) To assure and control product quality, wholesalers at the time of a  
243 regular delivery may, but shall not be required to, withdraw, with the permission  
244 of the retailer, a quantity of intoxicating liquor with alcohol content of less than  
245 five percent by weight in its undamaged original carton from the retailer's stock,  
246 if the wholesaler replaces the product with an equal quantity of identical product;

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

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

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

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

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

265 5. (1) A distiller, wholesaler, winemaker, or brewer that is also in  
266 business as a bona fide producer or vendor of nonalcoholic beverages shall not  
267 condition the sale of its alcoholic beverages on the sale of its nonalcoholic  
268 beverages nor combine the sale of its alcoholic beverages with the sale of its  
269 nonalcoholic beverages, except as provided in subdivision (8) of subsection 4 of  
270 this section. The distiller, wholesaler, winemaker, or brewer that is also in  
271 business as a bona fide producer or vendor of nonalcoholic beverages may sell,



272 credit, market, and promote nonalcoholic beverages in the same manner in which  
273 the nonalcoholic products are sold, credited, marketed, or promoted by a  
274 manufacturer or wholesaler not licensed by the supervisor of alcohol and tobacco  
275 control;

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

283 6. Distillers, wholesalers, brewers and winemakers, or their officers or  
284 directors shall not require, by agreement or otherwise, that any retailer purchase  
285 any intoxicating liquor from such distillers, wholesalers, brewers or winemakers  
286 to the exclusion in whole or in part of intoxicating liquor sold or offered for sale  
287 by other distillers, wholesalers, brewers, or winemakers.

288 7. Notwithstanding any other provisions of this chapter to the contrary,  
289 a distiller or wholesaler may install dispensing accessories at the retail business  
290 establishment, which shall include for the purposes of distilled spirits equipment  
291 to properly preserve and serve premixed distilled spirit beverages only. To  
292 facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent  
293 or sell and the distiller or wholesaler may install or repair any of the following  
294 items or render to retail licensees any of the following services: coils and coil  
295 cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping  
296 heads, hoses, valves and other minor tapping equipment components, and damage  
297 caused by any delivery excluding normal wear and tear. A complete record of  
298 equipment furnished and installed and repairs or service made or rendered shall  
299 be kept by the distiller or wholesaler furnishing, making or rendering the same  
300 for a period of not less than one year.

301 8. Distillers, wholesalers, winemakers, brewers or their employees or  
302 officers shall be permitted to make contributions of money or merchandise to a  
303 licensed retail liquor dealer that is a charitable, fraternal, civic, service,  
304 veterans', or religious organization as defined in section 313.005, or an  
305 educational institution if such contributions are unrelated to such organization's  
306 retail operations.

307 9. Distillers, brewers, wholesalers, and winemakers may make payments

308 for advertisements in programs or brochures of tax-exempt organizations licensed  
309 under section 311.090 if the total payments made for all such advertisements are  
310 the same as those paid by other vendors.

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

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

323 12. For the purpose of the promotion of tourism, a person may apply for  
324 and the supervisor of liquor control may issue a license to sell intoxicating liquor  
325 by the drink at retail for consumption on the premises where sold, but  
326 seventy-five percent or more of the intoxicating liquor sold by such licensed  
327 person shall be Missouri-produced wines received from manufacturers licensed  
328 under section 311.190. Such premises may remain open between the hours of  
329 6:00 a.m. and midnight, Monday through Saturday, and between the hours of  
330 11:00 a.m. and 9:00 p.m. on Sundays.

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