

FIRST REGULAR SESSION

SENATE BILL NO. 299

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

1190S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to alcohol trade practices, with existing 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Section A. Section 311.070, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 311.070,
3 to read as follows:

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

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

19 a.m. and 1:30 a.m., Monday through Saturday and between the
20 hours of 9:00 a.m. and midnight, Sunday. The authority for
21 the collection of fees by cities and counties as provided in
22 section 311.220, and all other laws and regulations relating
23 to the sale of liquor by the drink for consumption on the
24 premises where sold, shall apply to the holder of a license
25 issued under the provisions of this section in the same
26 manner as they apply to establishments licensed under the
27 provisions of section 311.085, 311.090, or 311.095.

28 2. Any distiller, wholesaler, winemaker, or brewer who
29 shall violate the provisions of subsection 1 of this
30 section, or permit his **or her** employees, officers or agents
31 to do so, shall be guilty of a misdemeanor, and upon
32 conviction thereof shall be punished as follows:

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

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

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

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

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

48 (2) "Equipment and supplies", glassware (or similar
49 containers made of other **[material] materials**), **[dispensing**
50 **accessories,]** carbon dioxide (and other gasses used in

51 dispensing equipment) [or], ice[. "Dispensing accessories"
52 include standards, faucets, cold plates, rods, vents, taps,
53 tap standards, hoses, washers, couplings, gas gauges, vent
54 tongues, shanks, and check valves], **nonrefrigerated rolling**
55 **coolers, portable bars, agitating tanks, tubs, tents not to**
56 **exceed one hundred square feet in size, and any permanently**
57 **inscribed or securely affixed brand identified**
58 **nonrefrigerated item that promotes intoxicating liquor;**

59 (3) "Nonrefrigeration dispensing accessories",
60 includes regulators, gauges, vents, nuts, clamps, splicers,
61 keg stackers, washers, shanks, wall brackets, beer and air
62 distributors, beer line insulation, beer and gas hoses,
63 faucets, taps, tap standards, couplers, air pumps draft
64 arms, blankets or other coverings for temporary wrapping of
65 barrels, and tavern head and their internal parts;

66 (4) "Permanent point-of-sale advertising materials",
67 advertising items designed to be used within a retail
68 business establishment for an extended period of time to
69 attract consumer attention to the products of a distiller,
70 wholesaler, winemaker or brewer. Such materials shall only
71 include inside signs (electric, mechanical or otherwise),
72 mirrors, **table umbrellas**, and sweepstakes/contest prizes
73 displayed on the licensed premises;

74 [(4)] (5) "Product display", wine racks, **portable**
75 **branded nonrefrigerated coolers**, bins, barrels, casks,
76 shelving or similar items the primary function of which is
77 to hold and display consumer products;

78 [(5)] (6) "Promotion", an advertising and publicity
79 campaign to further the acceptance and sale of the
80 merchandise or products of a distiller, wholesaler,
81 winemaker, or brewer;

82 [(6)] (7) "Temporary point-of-sale advertising
83 materials", advertising items designed to be used for short
84 periods of time. Such materials include, but are not
85 limited to: banners, decorations reflecting a particular
86 season or a limited-time promotion, or paper napkins,
87 coasters, cups, **tap handles, ice buckets, condiment caddies,**
88 **napkin holders, bar rail mats, shakers, salt rimmers,** or
89 menus.

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

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

98 (a) The total value of all product displays given or
99 sold to a retail business shall not exceed three hundred
100 dollars per brand at any one time in any one retail outlet.
101 There shall be no combining or pooling of the three hundred
102 dollar limits to provide a retail business a product display
103 in excess of three hundred dollars per brand. The value of
104 a product display is the actual cost to the distiller,
105 wholesaler, winemaker, or brewer who initially purchased
106 such product display. Transportation and installation costs
107 shall be excluded;

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

113 (c) The giving or selling of product displays may be
114 conditioned on the purchase of intoxicating beverages
115 advertised on the displays by the retail business in a
116 quantity necessary for the initial completion of the product
117 display. No other condition shall be imposed by the
118 distiller, wholesaler, winemaker, or brewer on the retail
119 business in order for such retail business to obtain the
120 product display;

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

127 (a) The total value of all permanent point-of-sale
128 advertising materials provided to a retail business by a
129 distiller, wholesaler, winemaker, or brewer shall not exceed
130 five hundred dollars per calendar year, per brand, per
131 retail outlet. **The replacement of similar in appearance,**
132 **type, and dollar value permanent point-of-sale advertising**
133 **materials that are damaged and nonfunctioning shall not**
134 **count towards the maximum of five hundred dollars per**
135 **calendar year, per brand, per retail outlet.** The value of
136 permanent point-of-sale advertising materials is the actual
137 cost to the distiller, wholesaler, winemaker, or brewer who
138 initially purchased such item. Transportation and
139 installation costs shall be excluded. All permanent point-
140 of-sale advertising materials provided to a retailer shall
141 be recorded, and records shall be maintained for a period of
142 three years;

143 (b) The provider of permanent point-of-sale
144 advertising materials shall own and otherwise control the

145 use of permanent point-of-sale advertising materials that
146 are provided by any distiller, wholesaler, winemaker, or
147 brewer;

148 (c) All permanent point-of-sale advertising materials,
149 temporary point-of-sale advertising materials, and consumer
150 advertising specialties shall bear in a conspicuous manner
151 substantial advertising matter about the product or the name
152 of the distiller, wholesaler, winemaker, or brewer. The
153 name, address and logos of the retail business may appear on
154 the permanent point-of-sale advertising materials, temporary
155 point-of-sale advertising materials, or the consumer
156 advertising specialties; and

157 (d) The distiller, wholesaler, winemaker, or brewer
158 shall not directly or indirectly pay or credit the retail
159 business for using or distributing the permanent point-of-
160 sale advertising materials, temporary point-of-sale
161 advertising materials, or consumer advertising specialties
162 or for any incidental expenses arising from their use or
163 distribution;

164 (3) A distiller, wholesaler, winemaker, or brewer may
165 give a gift not to exceed a value of one thousand dollars
166 per year to a holder of a temporary permit as **[defined]**
167 **described** in section 311.482;

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

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

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

178 (5) The [distiller,] wholesaler[, winemaker] or brewer
179 may install **nonrefrigeration** dispensing accessories at the
180 retail business establishment, which shall include for the
181 purposes of beer equipment to properly preserve and serve
182 draught beer only and to facilitate the delivery to the
183 retailer the brewers and wholesalers may lend, give, rent or
184 sell and they may install or repair [any of the following
185 items or render to retail licensees any of the following
186 services: beer coils and coil cleaning, sleeves and
187 wrappings, box couplings and draft arms, beer faucets and
188 tap markers, beer and air hose, taps, vents and washers,
189 gauges and regulators, beer and air distributors, beer line
190 insulation, coil flush hose, couplings and bucket pumps;
191 portable coil boxes, air pumps, blankets or other coverings
192 for temporary wrappings of barrels, coil box overflow pipes,
193 tilting platforms, bumper boards, skids, cellar ladders and
194 ramps, angle irons, ice box grates, floor runways;]
195 **nonrefrigeration dispensing accessories** and damage caused by
196 any beer delivery excluding normal wear and tear [and a]. **A**
197 complete record of equipment **and supplies, and**
198 **nonrefrigeration dispensing accessories** furnished and
199 installed and repairs and service made or rendered must be
200 kept by the brewer or wholesalers furnishing, making or
201 rendering same for a period of not less than one year;
202 (6) The distiller, wholesaler, winemaker, or brewer
203 may furnish, give, or sell [coil] cleaning **and sanitation**
204 [service] **services** to a retailer **to preserve product**
205 **integrity** of distilled spirits, wine, or malt beverages;

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

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

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

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

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

236 (8) The distiller, wholesaler, winemaker, or brewer
237 may package and distribute intoxicating beverages in

238 combination with other nonalcoholic items as originally
239 packaged by the supplier for sale ultimately to consumers;
240 notwithstanding any provision of law to the contrary, for
241 the purpose of this subsection, intoxicating liquor and wine
242 wholesalers are not required to charge for nonalcoholic
243 items any more than the actual cost of purchasing such
244 nonalcoholic items from the supplier;

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

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

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

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

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

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

264 (11) Distillers, winemakers, wholesalers, brewers or
265 retailers may conduct a local or national
266 sweepstakes/contest upon a licensed retail premise. The
267 sweepstakes/contest prize dollar amount shall not be limited
268 and can be displayed in a photo, banner, or other temporary

269 point-of-sale advertising materials on a licensed premises,
270 if the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

344 (16) A wholesaler may, but shall not be required to,
345 exchange for an equal quantity of identical product or allow
346 credit against outstanding indebtedness for intoxicating
347 liquor with alcohol content of less than five percent by
348 weight **and malt liquor** that was delivered in a damaged
349 condition or damaged while in the possession of the retailer;

350 (17) To assure and control product quality,
351 wholesalers at the time of a regular delivery may, but shall
352 not be required to, withdraw, with the permission of the
353 retailer, a quantity of intoxicating liquor with alcohol
354 content of less than five percent by weight **and malt liquor**
355 in its undamaged original carton from the retailer's stock,
356 if the wholesaler replaces the product with an equal
357 quantity of identical product;

358 (18) In addition to withdrawals authorized pursuant to
359 subdivision (17) of this subsection, to assure and control
360 product quality, wholesalers at the time of a regular
361 delivery may, but shall not be required to, withdraw, with
362 the permission of the retailer, a quantity of intoxicating
363 liquor with alcohol content of less than five percent by
364 weight **and malt liquor** in its undamaged original carton from

365 the retailer's stock and give the retailer credit against
366 outstanding indebtedness for the product if:

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

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

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

382 (19) Nothing in this section authorizes consignment
383 sales.

384 5. (1) A distiller, wholesaler, winemaker, or brewer
385 that is also in business as a bona fide producer or vendor
386 of nonalcoholic beverages shall not condition the sale of
387 its alcoholic beverages on the sale of its nonalcoholic
388 beverages nor combine the sale of its alcoholic beverages
389 with the sale of its nonalcoholic beverages, except as
390 provided in subdivision (8) of subsection 4 of this
391 section. The distiller, wholesaler, winemaker, or brewer
392 that is also in business as a bona fide producer or vendor
393 of nonalcoholic beverages may sell, credit, market, and
394 promote nonalcoholic beverages in the same manner in which
395 the nonalcoholic products are sold, credited, marketed, or

396 promoted by a manufacturer or wholesaler not licensed by the
397 supervisor of alcohol and tobacco control.

398 (2) Any fixtures, equipment, or furnishings provided
399 by any distiller, wholesaler, winemaker, or brewer in
400 furtherance of the sale of nonalcoholic products shall not
401 be used by the retail licensee to store, service, display,
402 advertise, furnish, or sell, or aid in the sale of alcoholic
403 products regulated by the supervisor of alcohol and tobacco
404 control. All such fixtures, equipment, or furnishings shall
405 be identified by the retail licensee as being furnished by a
406 licensed distiller, wholesaler, winemaker, or brewer.

407 6. Distillers, wholesalers, brewers, and winemakers,
408 or their officers or directors shall not require, by
409 agreement or otherwise, that any retailer purchase any
410 intoxicating liquor from such distillers, wholesalers,
411 brewers, or winemakers to the exclusion in whole or in part
412 of intoxicating liquor sold or offered for sale by other
413 distillers, wholesalers, brewers, or winemakers.

414 7. Notwithstanding any other provisions of this
415 chapter to the contrary, a distiller, **winemaker**, or
416 wholesaler may install **nonrefrigeration** dispensing
417 accessories at the retail business establishment, which
418 shall include for the purposes of distilled spirits **and wine**
419 equipment to properly preserve and serve premixed distilled
420 spirit **and wine** beverages only. To facilitate delivery to
421 the retailer, the distiller, **winemaker**, or wholesaler may
422 lend, give, rent or sell and the distiller, **winemaker**, or
423 wholesaler may install or repair [any of the following items
424 or render to retail licensees any of the following
425 services: coils and coil cleaning, draft arms, faucets and
426 tap markers, taps, tap standards, tapping heads, hoses,
427 valves and other minor tapping equipment components,]

428 **nonrefrigeration dispensing accessories** and damage caused by
429 any delivery excluding normal wear and tear. A complete
430 record of [equipment] **nonrefrigeration dispensing**
431 **accessories** furnished and installed and repairs or service
432 made or rendered shall be kept by the distiller, **winemaker**,
433 or wholesaler furnishing, making or rendering the same for a
434 period of not less than one year.

435 8. Distillers, wholesalers, winemakers, brewers or
436 their employees or officers shall be permitted to make
437 contributions of money or merchandise to a licensed retail
438 liquor dealer that is a charitable, fraternal, civic,
439 service, veterans', or religious organization as defined in
440 section 313.005, or an educational institution if such
441 contributions are unrelated to such organization's retail
442 operations.

443 9. Distillers, brewers, wholesalers, and winemakers
444 may make payments for advertisements in programs or
445 brochures of tax-exempt organizations licensed under section
446 311.090 if the total payments made for all such
447 advertisements are the same as those paid by other vendors.

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

455 11. For the purpose of the promotion of tourism, a
456 wine manufacturer, its employees, officers or agents located
457 within this state may apply for and the supervisor of
458 [liquor] **alcohol and tobacco** control may issue a license to
459 sell intoxicating liquor, as defined in this chapter, by the

460 drink at retail for consumption on the premises where sold,
461 if the premises so licensed is in close proximity to the
462 winery. Such premises shall be closed during the hours
463 specified under section 311.290 and may remain open between
464 the hours of 9:00 a.m. and midnight on Sunday.

465 12. For the purpose of the promotion of tourism, a
466 person may apply for and the supervisor of **[liquor] alcohol**
467 **and tobacco** control may issue a license to sell intoxicating
468 liquor by the drink at retail for consumption on the
469 premises where sold, but seventy-five percent or more of the
470 intoxicating liquor sold by such licensed person shall be
471 Missouri-produced wines received from manufacturers licensed
472 under section 311.190. Such premises may remain open
473 between the hours of 6:00 a.m. and midnight, Monday through
474 Saturday, and between the hours of 11:00 a.m. and 9:00 p.m.
475 on Sundays.

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