FIRST REGULAR SESSION

SENATE BILL NO. 340

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 4, 2019, and ordered printed.

1771S.01I

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 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Section A. Section 311.070, RSMo, is repealed and one new section 2 enacted in lieu thereof, to be known as section 311.070, to read as follows: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 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 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 where sold; and provided further that the premises so licensed shall be in close 12proximity to the distillery and may remain open between the hours of 6:00 a.m. 13 and 1:30 a.m., Monday through Saturday and between the hours of 9:00 a.m. and 14 midnight, Sunday. The authority for the collection of fees by cities and counties 15 as provided in section 311.220, and all other laws and regulations relating to the 16 sale of liquor by the drink for consumption on the premises where sold, shall 17 apply to the holder of a license issued under the provisions of this section in the 18 same manner as they apply to establishments licensed under the provisions of

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

- 20 section 311.085, 311.090, or 311.095.
- 2. Any distiller, wholesaler, winemaker, or brewer who shall violate the
- 22 provisions of subsection 1 of this section, or permit his or her employees, officers
- 23 or agents to do so, shall be guilty of a misdemeanor, and upon conviction thereof
- 24 shall be punished as follows:

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- (1) For the first offense, by a fine of one thousand dollars;
- 26 (2) For a second offense, by a fine of five thousand dollars; and
- 27 (3) For a third or subsequent offense, by a fine of ten thousand dollars or 28 the license of such person shall be revoked.
- 29 3. As used in this section, the following terms mean:
- 30 (1) "Consumer advertising specialties", advertising items that are
- 31 designed to be carried away by the consumer, such items include, but are not
- 32 limited to: trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle
- 33 or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets,
- 34 cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;
- 35 (2) "Equipment and supplies", glassware (or similar containers made of
- 36 other [material] materials), [dispensing accessories,] carbon dioxide (and other
- 37 gasses used in dispensing equipment)[or], table umbrellas, ice[. "Dispensing
- 38 accessories" include standards, faucets, cold plates, rods, vents, taps, tap
- 39 standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and
- 40 check valves], nonrefrigerated rolling coolers, portable bars, agitating
- 41 tanks, taps, tap standards, couplers, portable coil boxes, cold plates,
- 42 jockey boxes, air pumps, tubs, blankets, keg covers, and tents not to
- 43 exceed one hundred square feet in size;
- 44 (3) "Nonrefrigeration dispensing accessories" include regulators,
- 45 gauges, vents, nuts, clamps, splicers, keg stackers, washers, shanks,
- 46 wall brackets, beer and air distributors, beer line insulation, beer and
- 47 gas hoses, faucets, and tavern heads and their internal parts;
- 48 (4) "Permanent point-of-sale advertising materials", advertising items
- 49 designed to be used within a retail business establishment for an extended period
- 50 of time to attract consumer attention to the products of a distiller, wholesaler,
- 51 winemaker, or brewer. Such materials shall only include inside signs (electric,
- 52 mechanical or otherwise), mirrors, and sweepstakes/contest prizes displayed on
- 53 the licensed premises;
- [(4)] (5) "Product display", wine racks, portable branded
- 55 nonrefrigerated coolers, bins, barrels, casks, shelving, or similar items the

primary function of which is to hold and display consumer products;

- [(5)] (6) "Promotion", an advertising and publicity campaign to further the acceptance and sale of the merchandise or products of a distiller, wholesaler, winemaker, or brewer;
 - [(6)] (7) "Temporary point-of-sale advertising materials", advertising items designed to be used for short periods of time. Such materials include, but are not limited to: banners, decorations reflecting a particular season or a limited-time promotion, or paper napkins, coasters, cups, tap handles, ice buckets, condiment caddies, napkin holders, bar rail mats, shakers, salt rimmers, or menus.
 - 4. Notwithstanding other provisions contained herein, the distiller, wholesaler, winemaker, or brewer, or their employees, officers or agents may engage in the following activities with a retail licensee licensed pursuant to this chapter:
 - (1) The distiller, wholesaler, winemaker, or brewer may give or sell product displays to a retail business if all of the following requirements are met:
 - (a) The total value of all product displays given or sold to a retail business shall not exceed [three] four hundred dollars per brand at any one time in any one retail outlet. There shall be no combining or pooling of the [three] four hundred dollar limits to provide a retail business a product display in excess of [three] four hundred dollars per brand. The value of a product display is the actual cost to the distiller, wholesaler, winemaker, or brewer who initially purchased such product display. Transportation and installation costs shall be excluded;
 - (b) All product displays shall bear in a conspicuous manner substantial advertising matter on the product or the name of the distiller, wholesaler, winemaker, or brewer. The name and address of the retail business may appear on the product displays; and
- (c) The giving or selling of product displays may be conditioned on the purchase of intoxicating beverages advertised on the displays by the retail business in a quantity necessary for the initial completion of the product display. No other condition shall be imposed by the distiller, wholesaler, winemaker, or brewer on the retail business in order for such retail business to obtain the product display;
 - (2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler, winemaker, or brewer may provide, give or sell any permanent

point-of-sale advertising materials, temporary point-of-sale advertising materials,
and consumer advertising specialties to a retail business if all the following
requirements are met:

- (a) The total value of all permanent point-of-sale advertising materials provided to a retail business by a distiller, wholesaler, winemaker, or brewer shall not exceed [five] seven hundred dollars per calendar year, per brand, per retail outlet. The replacement of similar in appearance, type, and dollar value permanent point-of-sale advertising materials that are damaged and nonfunctioning shall not count towards the maximum of seven hundred dollars per calendar year, per brand, per retail outlet. The value of permanent point-of-sale advertising materials is the actual cost to the distiller, wholesaler, winemaker, or brewer who initially purchased such item. Transportation and installation costs shall be excluded. All permanent point-of-sale advertising materials provided to a retailer shall be recorded, and records shall be maintained for a period of three years;
- (b) The provider of permanent point-of-sale advertising materials shall own and otherwise control the use of permanent point-of-sale advertising materials that are provided by any distiller, wholesaler, winemaker, or brewer;
- (c) All permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, and consumer advertising specialties shall bear in a conspicuous manner substantial advertising matter about the product or the name of the distiller, wholesaler, winemaker, or brewer. The name, address and logos of the retail business may appear on the permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, or the consumer advertising specialties; and
- (d) The distiller, wholesaler, winemaker, or brewer shall not directly or indirectly pay or credit the retail business for using or distributing the permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, or consumer advertising specialties or for any incidental expenses arising from their use or distribution;
- (3) A distiller, wholesaler, winemaker, or brewer may give a gift not to exceed a value of one thousand dollars per year to a holder of a temporary permit as [defined] **described** in section 311.482;
- (4) The distiller, wholesaler, winemaker, or brewer may sell equipment [or] and supplies to a retail business if all the following requirements are met:
- (a) The equipment and supplies shall be sold at a price not less than the

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128 cost to the distiller, wholesaler, winemaker, or brewer who initially purchased 129 such equipment and supplies; and

- (b) The price charged for the equipment and supplies shall be collected in accordance with credit regulations as established in the code of state regulations;
- 132 (5) The [distiller,] wholesaler[, winemaker] or brewer may lend, give, 133 rent, or sell, and may install [dispensing] or repair nonrefrigeration dispensing accessories at the retail business establishment, which shall include for the purposes of beer equipment to properly preserve and serve draught beer 136 only and] to facilitate the [delivery to the retailer the brewers and wholesalers may lend, give, rent or sell and they may install or repair any of the following items or render to retail licensees any of the following services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets 140 and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable coil boxes, air pumps, blankets or other coverings for 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 145 146 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] dispensing of draft beer;
 - (a) The fair market value of nonrefrigeration dispensing accessories as defined in this section given or lent by a wholesaler or brewer to a retailer shall not exceed two thousand dollars per calendar year; and
 - (b) A complete record of nonrefrigeration dispensing accessories given, rented, sold, installed, and loaned, and repairs and services made to a retailer shall be retained for a period of not less than three years by the wholesaler or brewer;
 - (6) (a) The [distiller,] wholesaler[, winemaker] or brewer may [furnish, give or sell coil cleaning service to a retailer of distilled spirits, wine or malt beverages] lend, rent, or sell, and may install or repair portable coil boxes, cold plates, and jockey boxes at the retail business establishment to facilitate the dispensing of draft beer;
 - (b) A complete record of these accessories loaned, rented, sold,

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installed, and repairs and services made to a retailer, shall be retained for a period of not less than three years by the wholesaler or brewer;

- (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;
- 195 (9) The distiller, wholesaler, winemaker, or brewer may sell or give the 196 retail business newspaper cuts, mats, or engraved blocks for use in the 197 advertisements of the retail business;
- 198 (10) The distiller, wholesaler, winemaker, or brewer may in an 199 advertisement list the names and addresses of two or more unaffiliated retail

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200 businesses selling its product if all of the following requirements are met:

- (a) The advertisement shall not contain the retail price of the product;
- 202 (b) The listing of the retail businesses shall be the only reference to such 203 retail businesses in the advertisement;
- 204 (c) The listing of the retail businesses shall be relatively inconspicuous in 205 relation to the advertisement as a whole; and
- 206 (d) The advertisement shall not refer only to one retail business or only 207 to a retail business controlled directly or indirectly by the same retail business;
- 208 (11) Distillers, winemakers, wholesalers, brewers or retailers may conduct 209 a local or national sweepstakes/contest upon a licensed retail premise. The 210 sweepstakes/contest prize dollar amount shall not be limited and can be displayed 211 in a photo, banner, or other temporary point-of-sale advertising materials on a 212 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
- 215 (b) The actual sweepstakes/contest prize is not displayed on the licensed 216 premises if the prize value exceeds the permanent point-of-sale advertising 217 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;
- 225 (14) The distiller, wholesaler, winemaker, or brewer participating in the activities of a retail business association may do any of the following:
- 227 (a) Display, serve, or donate its products at or to a convention or trade 228 show;
- 229 (b) Rent display booth space if the rental fee is the same paid by all 230 others renting similar space at the association activity;
- 231 (c) Provide its own hospitality which is independent from the association 232 activity;
- 233 (d) Purchase tickets to functions and pay registration or sponsorship fees 234 if such purchase or payment is the same as that paid by all attendees, 235 participants or exhibitors at the association activity;

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236 (e) Make payments for advertisements in programs or brochures issued 237 by retail business associations if the total payments made for all such 238 advertisements are fair and reasonable:

- 239 (f) Pay dues to the retail business association if such dues or payments 240 are fair and reasonable;
- 241 (g) Make payments or donations for retail employee training on preventive 242 sales to minors and intoxicated persons, checking identifications, age verification 243 devices, and the liquor control laws;
- 244 (h) Make contributions not to exceed one thousand dollars per calendar 245 year for transportation services that shall be used to assist patrons from retail 246 establishments to his or her residence or overnight accommodations;
 - (i) Donate or serve up to [five] seven hundred dollars per event of alcoholic products at retail business association activities; and
 - (j) Any retail business association that receives payments or donations shall, upon written request, provide the division of alcohol and tobacco control with copies of relevant financial records and documents to ensure compliance with this subsection;
- 253 (15) The distiller, wholesaler, winemaker, or brewer may sell or give a 254 permanent outside sign to a retail business if the following requirements are met:
- 255 (a) The sign, which shall be constructed of metal, glass, wood, plastic, or 256 other durable, rigid material, with or without illumination, or painted or 257 otherwise printed onto a rigid material or structure, shall bear in a conspicuous 258 manner substantial advertising matter about the product or the name of the 259 distiller, wholesaler, winemaker, or brewer;
 - (b) The retail business shall not be compensated, directly or indirectly, for displaying the permanent sign or a temporary banner;
- 262 (c) The cost of the permanent sign shall not exceed [five] **seven** hundred 263 dollars; and
- 264 (d) Temporary banners of a seasonal nature or promoting a specific event 265 shall not be constructed to be permanent outdoor signs and may be provided to 266 retailers. The total cost of temporary outdoor banners provided to a retailer in 267 use at any one time shall not exceed five hundred dollars per brand;
- 268 (16) A wholesaler may, but shall not be required to, exchange for an equal quantity of identical product or allow credit against outstanding indebtedness for intoxicating liquor with alcohol content of less than five percent by weight **and** 271 **malt liquor** that was delivered in a damaged condition or damaged while in the

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- (17) To assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in its undamaged original carton from the retailer's stock, if the wholesaler replaces the product with an equal quantity of identical product;
- (18) In addition to withdrawals authorized pursuant to subdivision (17) of this subsection, to assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in its undamaged original carton from the retailer's stock and give the retailer credit against outstanding indebtedness for the product if:
 - (a) The product is withdrawn at least thirty days after initial delivery and within twenty-one days of the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and
 - (b) The quantity of product withdrawn does not exceed the equivalent of twenty-five cases of twenty-four twelve-ounce containers; and
 - (c) To assure and control product quality, a wholesaler may, but not be required to, give a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight **and malt liquor**, in a container with a capacity of four gallons or more, delivered but not used, if the wholesaler removes the product within seven days of the initial delivery; and
 - (19) Nothing in this section authorizes consignment sales.
- 297 5. (1) A distiller, wholesaler, winemaker, or brewer that is also in 298 business as a bona fide producer or vendor of nonalcoholic beverages shall not 299 condition the sale of its alcoholic beverages on the sale of its nonalcoholic 300 beverages nor combine the sale of its alcoholic beverages with the sale of its 301 nonalcoholic beverages, except as provided in subdivision (8) of subsection 4 of this section. The distiller, wholesaler, winemaker, or brewer that is also in 302 303 business as a bona fide producer or vendor of nonalcoholic beverages may sell, 304 credit, market, and promote nonalcoholic beverages in the same manner in which 305 the nonalcoholic products are sold, credited, marketed, or promoted by a 306 manufacturer or wholesaler not licensed by the supervisor of alcohol and tobacco 307 control.

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308 (2) Any fixtures, equipment, or furnishings provided by any distiller, 309 wholesaler, winemaker, or brewer in furtherance of the sale of nonalcoholic 310 products shall not be used by the retail licensee to store, service, display, 311 advertise, furnish, or sell, or aid in the sale of alcoholic products regulated by the 312 supervisor of alcohol and tobacco control. All such fixtures, equipment, or 313 furnishings shall be identified by the retail licensee as being furnished by a 314 licensed distiller, wholesaler, winemaker, or brewer.

- 6. Distillers, wholesalers, brewers, and winemakers, or their officers or directors shall not require, by agreement or otherwise, that any retailer purchase any intoxicating liquor from such distillers, wholesalers, brewers, or winemakers to the exclusion in whole or in part of intoxicating liquor sold or offered for sale by other distillers, wholesalers, brewers, or winemakers.
- 7. [Notwithstanding any other provisions of this chapter to the contrary, a distiller or wholesaler may install dispensing accessories at the retail business establishment, which shall include for the purposes of distilled spirits equipment to properly preserve and serve premixed distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the following items or render to retail licensees any of the following services: coils and coil cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other minor tapping equipment components, and damage caused by any delivery excluding normal wear and tear. A complete record of equipment furnished and installed and repairs or service made or rendered shall be kept by the distiller or wholesaler furnishing, making or rendering the same for a period of not less than one year] The distiller, wholesaler, or winemaker may lend, give, rent, or sell and may install or repair distilled spirits and wine nonrefrigeration dispensing accessories at the retail business establishment to facilitate the dispensing of distilled spirits and wine;
- (1) The fair market value of nonrefrigeration dispensing accessories as defined in this section given or lent by a distiller, wholesaler, or winemaker to a retailer shall not exceed two thousand dollars per calendar year; and
- (2) A complete record of nonrefrigeration dispensing accessories and nonrefrigeration keg flow accessories given, rented, sold, installed, and loaned, and repairs and services made to a retailer, shall be

344 retained for a period of not less than three years by the distiller, 345 wholesaler, or winemaker.

- 8. Distillers, wholesalers, winemakers, brewers or their employees or officers shall be permitted to make contributions of money or merchandise to a licensed retail liquor dealer that is a charitable, fraternal, civic, service, veterans', or religious organization as defined in section 313.005, or an educational institution if such contributions are unrelated to such organization's retail operations.
- 9. Distillers, brewers, wholesalers, and winemakers may make payments for advertisements in programs or brochures of tax-exempt organizations licensed under section 311.090 if the total payments made for all such advertisements are the same as those paid by other vendors.
- 10. A brewer or manufacturer, its employees, officers or agents may have a financial interest in the retail business for sale of intoxicating liquors at entertainment facilities owned, in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates including, but not limited to, arenas and stadiums used primarily for concerts, shows and sporting events of all kinds.
- 11. For the purpose of the promotion of tourism, a wine manufacturer, its employees, officers or agents located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for consumption on the premises where sold, if the premises so licensed is in close proximity to the winery. Such premises shall be closed during the hours specified under section 311.290 and may remain open between the hours of 9:00 a.m. and midnight on Sunday. A wine manufacturer who is a holder of a license to sell intoxicating liquor by the drink at retail for consumption on the premises shall be exempt from the provisions of section 311.280 for such intoxicating liquor that is produced on the premises in accordance with the provisions of this chapter.
- 12. For the purpose of the promotion of tourism, a person may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor by the drink at retail for consumption on the premises where sold, but seventy-five percent or more of the intoxicating liquor sold by such licensed person shall be Missouri-produced wines received from manufacturers licensed under section 311.190. Such premises may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours of

380 11:00 a.m. and 9:00 p.m. on Sundays.

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