

SECOND REGULAR SESSION

SENATE BILL NO. 834

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Pre-filed December 29, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5268S.02I

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Section A. Section 311.070, RSMo, is repealed and one new section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
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 1:30 a.m., Monday through Saturday and between the hours of 9:00 a.m. and
15 midnight, Sunday. The authority for the collection of fees by cities and counties
16 as provided in section 311.220, and all other laws and regulations relating to the
17 sale of liquor by the drink for consumption on the premises where sold, shall
18 apply to the holder of a license issued under the provisions of this section in the
19 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.

21 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:

25 (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)] **nonrefrigeration logoed items**, dispensing accessories, carbon
37 dioxide (and other gasses used in dispensing equipment), or ice. "Dispensing
38 accessories" include, **but are not limited to, items such as** standards, faucets,
39 cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas
40 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, **ice buckets, condiment caddies,**

56 **napkin holders, bar rail mats, shakers, salt rimmers,** or menus.

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

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

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

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

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

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

86 (a) The total value of all permanent point-of-sale advertising materials
87 provided to a retail business by a distiller, wholesaler, winemaker, or brewer
88 shall not exceed ~~[five]~~ **eight** hundred dollars per calendar year, per brand, per
89 retail outlet. **The replacement of similar in appearance, type, and dollar**
90 **value permanent point-of-sale advertising materials shall not count**
91 **towards the maximum of eight hundred dollars per calendar year, per**

92 **brand, per retail outlet.** The value of permanent point-of-sale advertising
93 materials is the actual cost to the distiller, wholesaler, winemaker, or brewer who
94 initially purchased such item. Transportation and installation costs shall be
95 excluded. All permanent point-of-sale advertising materials provided to a retailer
96 shall be recorded, and records shall be maintained for a period of [three] **two**
97 years;

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

101 (c) All permanent point-of-sale advertising materials, temporary
102 point-of-sale advertising materials, and consumer advertising specialties shall
103 bear in a conspicuous manner substantial advertising matter about the product
104 or the name of the distiller, wholesaler, winemaker, or brewer. The name,
105 address and logos of the retail business may appear on the permanent
106 point-of-sale advertising materials, temporary point-of-sale advertising materials,
107 or the consumer advertising specialties; and

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

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

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

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

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

123 (5) The [distiller,] wholesaler[, winemaker] or brewer may install **non-**
124 **refrigeration beer** dispensing accessories at the retail business establishment,
125 [which shall include for the purposes of beer equipment to properly preserve and
126 serve draught beer only] and to facilitate the [delivery to the retailer]
127 **dispensing of draft beer**, the brewers and wholesalers may lend, give, rent or

128 sell and they may install or repair any of the following items or render to retail
129 licensees any of the following services: [beer coils and coil cleaning, sleeves and
130 wrappings, box couplings and draft arms, beer faucets and tap markers, beer and
131 air hose, taps, vents and washers, gauges and regulators, beer and air
132 distributors, beer line insulation, coil flush hose, couplings and bucket pumps;
133 portable coil boxes, air pumps, blankets or other coverings for temporary
134 wrappings of barrels, coil box overflow pipes, tilting platforms, bumper boards,
135 skids, cellar ladders and ramps, angle irons, ice box grates, floor runways; and
136 damage caused by any beer delivery excluding normal wear and tear and a
137 complete record of equipment furnished and installed and repairs and service
138 made or rendered must be kept by the brewer or wholesalers furnishing, making
139 or rendering same for a period of not less than one year] **tap markers,**
140 **regulators, gauges, vents, nuts, clamps, splicers, keg stackers, washers,**
141 **couplings, shanks, faucets, non-insulated beer and air hoses, and wall**
142 **brackets;**

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

146 **(b) Portable coil boxes, air pumps, tubs, blankets, coolers,**
147 **rolling coolers, carbon dioxide and nitrogen-driven cold plans or jockey**
148 **boxes, tents not to exceed ten square feet in size, or other coverings for**
149 **temporary wrappings of barrels may be loaned by a wholesaler or**
150 **brewer to a retailer only if a deposit is given by the retailer in an**
151 **amount that covers the cost of such equipment, and the deposit shall**
152 **not be refunded to the retailer until such loaned equipment is returned**
153 **to the wholesaler or brewer. An actual deposit payment, other than a**
154 **charge to a retailer's account, shall be received if an equipment item**
155 **is loaned for more than ten days within a thirty day period; and**

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

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

163 **(7) A wholesaler of intoxicating liquor may furnish or give and a retailer**

164 may accept a sample of distilled spirits or wine as long as the retailer has not
165 previously purchased the brand from that wholesaler, if all the following
166 requirements are met:

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

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

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

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

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

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

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

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

199 (b) The listing of the retail businesses shall be the only reference to such

200 retail businesses in the advertisement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

270 (17) To assure and control product quality, wholesalers at the time of a
271 regular delivery may, but shall not be required to, withdraw, with the permission

272 of the retailer, a quantity of intoxicating liquor with alcohol content of less than
273 five percent by weight **and malt liquor** in its undamaged original carton from
274 the retailer's stock, if the wholesaler replaces the product with an equal quantity
275 of identical product;

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

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

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

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

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

294 5. (1) A distiller, wholesaler, winemaker, or brewer that is also in
295 business as a bona fide producer or vendor of nonalcoholic beverages shall not
296 condition the sale of its alcoholic beverages on the sale of its nonalcoholic
297 beverages nor combine the sale of its alcoholic beverages with the sale of its
298 nonalcoholic beverages, except as provided in subdivision (8) of subsection 4 of
299 this section. The distiller, wholesaler, winemaker, or brewer that is also in
300 business as a bona fide producer or vendor of nonalcoholic beverages may sell,
301 credit, market, and promote nonalcoholic beverages in the same manner in which
302 the nonalcoholic products are sold, credited, marketed, or promoted by a
303 manufacturer or wholesaler not licensed by the supervisor of alcohol and tobacco
304 control.

305 (2) Any fixtures, equipment, or furnishings provided by any distiller,
306 wholesaler, winemaker, or brewer in furtherance of the sale of nonalcoholic
307 products shall not be used by the retail licensee to store, service, display,

308 advertise, furnish, or sell, or aid in the sale of alcoholic products regulated by the
309 supervisor of alcohol and tobacco control. All such fixtures, equipment, or
310 furnishings shall be identified by the retail licensee as being furnished by a
311 licensed distiller, wholesaler, winemaker, or brewer.

312 6. Distillers, wholesalers, brewers, and winemakers, or their officers or
313 directors shall not require, by agreement or otherwise, that any retailer purchase
314 any intoxicating liquor from such distillers, wholesalers, brewers, or winemakers
315 to the exclusion in whole or in part of intoxicating liquor sold or offered for sale
316 by other distillers, wholesalers, brewers, or winemakers.

317 7. [Notwithstanding any other provisions of this chapter to the contrary,
318 a distiller or wholesaler may install dispensing accessories at the retail business
319 establishment, which shall include for the purposes of distilled spirits equipment
320 to properly preserve and serve premixed distilled spirit beverages only. To
321 facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent
322 or sell and the distiller or wholesaler may install or repair any of the following
323 items or render to retail licensees any of the following services: coils and coil
324 cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping
325 heads, hoses, valves and other minor tapping equipment components, and damage
326 caused by any delivery excluding normal wear and tear. A complete record of
327 equipment furnished and installed and repairs or service made or rendered shall
328 be kept by the distiller or wholesaler furnishing, making or rendering the same
329 for a period of not less than one year] **The distiller, wholesaler, or**
330 **winemaker may install non-refrigeration distilled spirits and wine**
331 **dispensing accessories at the retail business establishment and, to**
332 **facilitate the dispensing of distilled spirits and wine, the distiller,**
333 **wholesaler, or winemaker may lend, give, rent, sell, install, or repair,**
334 **or render to retail licensees, any of the following items or services: tap**
335 **markers, regulators, gauges, vents, nuts, clamps, splicers, keg stackers,**
336 **washers, couplings, shanks, faucets, non-insulated spirits and wine**
337 **hoses, air hoses, and wall brackets;**

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

341 **(2) Portable coil boxes, air pumps, tubs, blankets, coolers, rolling**
342 **coolers, portable bars, agitating tanks, carbon dioxide and nitrogen-**
343 **driven cold plates or jockey boxes, tents not to exceed ten square feet,**

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

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

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

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

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

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

378 12. For the purpose of the promotion of tourism, a person may apply for
379 and the supervisor of liquor control may issue a license to sell intoxicating liquor

380 by the drink at retail for consumption on the premises where sold, but
381 seventy-five percent or more of the intoxicating liquor sold by such licensed
382 person shall be Missouri-produced wines received from manufacturers licensed
383 under section 311.190. Such premises may remain open between the hours of
384 6:00 a.m. and midnight, Monday through Saturday, and between the hours of
385 11:00 a.m. and 9:00 p.m. on Sundays.

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