

DIVISION OF ALCOHOL AND TOBACCO CONTROL

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INDUSTRY CIRCULAR

Missouri Broadcasters Assoc., et al. v. Eric S. Schmitt, et al.

Issued: December 16, 2021

On January 8, 2020, the Eighth Circuit Court of Appeal issued its final decision in *Missouri Broadcasters Association et al. v. Eric S. Schmitt et al.* This case struck down a portion of one statute and portions of one regulation of Missouri liquor law for violating the First Amendment right to freedom of speech: Section 311.070.1, RSMo, as applied through Section 311.070.4(10), RSMo; state regulation 11 CSR 70-2.240(5)(G); and state regulation 11 CSR 70-2.240(5)(I). The purpose of this circular is to clarify the Division's position and its enforcement policies moving forward.

In the wake of the Eighth Circuit's decision, the Division temporarily ceased all enforcement actions pertaining to alcohol advertising while we evaluated long-term options. After extensive research and consulting with legal counsel, the Division has decided not to propose any new statutes or regulations to replace the ones struck down by the Eighth Circuit.

In addition, the Division will not be enforcing state regulation 11 CSR 70-2.240(18). While this regulation was not specifically at issue in *Broadcasters*, the Division has decided that the Eighth Circuit's rationale preempts enforcement of this regulation.

Please note that all other advertising provisions of Section 311.070, RSMo, and state regulation 11 CSR 70-2.240 remain in effect. With the exception of the provisions struck down by the Eighth Circuit and state regulation 11 CSR 70-2.240(18), the Division will continue to enforce Chapter 311, RSMo, and the regulations promulgated thereunder as mandated by Sections 311.610 and 311.670, RSMo.

We appreciate the commitment from our licensees to ensure that their conduct follows all applicable laws and regulations. Should you have any questions about how the decisions

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Issued: December 16, 2021

outlined herein could impact your business, or how other portions of Missouri liquor law could impact your advertisements, please contact your legal counsel. If you have questions specific to the content of this circular, please contact the Division for clarification.