

# DIVISION OF ALCOHOL AND TOBACCO CONTROL

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## **INDUSTRY CIRCULAR**

### **Wholesalers Discriminating Between Retailers - Prohibited**

Recently the Division has received questions about wholesalers offering reduced or discounted prices to certain retailers. The Division would like to clarify its position on this type of favoritism.

Section 311.332.1, RSMo, prohibits wholesalers licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight from discriminating between or in favor of any retailer or group of retailers. These wholesalers must treat all retailers equally, regardless of retailer size, reputation, or past business relations. The only exceptions are discounts up to 1.00% for larger purchases, discounts up to 1.00% for early payments, and manufacturer rebate coupons. Please see state regulation 11 CSR 70-2.190(3) for more information about permissible discounts.

Similarly, section 311.333.2 RSMo, and state regulation 11 CSR 70-2.190(2) require wholesalers licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent alcohol by weight to publish the per-bottle and per-case prices for all products at least five days before the beginning of each calendar month. These per-bottle and per-case prices must be offered equally to all retailers. Once the prices are published, wholesalers must deliver their products at the prices in effect for the calendar month in which the delivery occurs under section 311.335.1, RSMo, and state regulation 11 CSR 70-2.190(6).

There is an exception in section 311.490.3, RSMo, which specifically excludes beer, intoxicating malt liquor, and malt beverages from being subject to section 311.332.1 (among others).

Violating any of these statutes is a serious offense. Under section 311.338, RSMo, any wholesaler who violates any of these sections is guilty of an unclassified misdemeanor and will have their license suspended or revoked. Additionally, any retailer who accepts

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an illegal discount or induces any wholesaler to violate any of these statutes may have their license disciplined under 11 CSR 70-2.130(12) and 11 CSR 70-2.190(3)(E).

If you have any future questions or concerns, please contact the Division for clarification.

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