

PROPOSED AMENDMENT

11 CSR 70-2.130 Retailer's Conduct of Business. The Division of Alcohol and Tobacco Control is amending the purpose of this regulation. The division is also amending (1), (2), (3), (5), (6), (7), (8), (10), (11) and (13), adding new sections (4), (12) and (14), and removing previous sections (3) and (12).

PURPOSE: This rule establishes general rules [of] for conducting retail establishments. This amendment clarifies rules of conduct for retailers. Previous section (12) is being moved to 11 CSR 70-2.140.

(1) No *[licensee]* **person holding a license for the retail sale of intoxicating liquor** who has had his/her license suspended by order of the supervisor of Alcohol and Tobacco Control may sell, give away, or permit the consumption of any intoxicating liquor **on or about the licensed premise**, nor may s/he order or accept delivery of any intoxicating liquor during the period of time the order of suspension is in effect. Any licensee desiring to keep his/her premises open for the sale of food or merchandise during the period of suspension *[should]* **shall** display the order of suspension issued by the supervisor of Alcohol and Tobacco Control in a conspicuous place on the premises so that all persons visiting the premises may readily see the order of suspension **and shall ensure that all places where intoxicating liquor is stored or dispensed on or about the licensed premises are closed in accordance with section 311.290, RSMo, for the duration of the suspension.**

(2) No person holding a license for the retail sale of malt liquor by the drink may knowingly sell, give away, or serve upon the premises described in the license any glass, ice, water, soda water, phosphates, or any other kind of liquids to be used for the purpose of mixing intoxicating drinks and commonly referred to as set-ups; nor may any *[licensee]* **person holding a license for the retail sale of malt liquor by the drink** allow any person *[while in or upon the premises covered by the license]* **on or about the licensed premise** to possess or consume any intoxicating liquor other than malt liquor, or to pour into, mix with or add intoxicating liquor other than malt liquor, to water, soda water, ginger ale, seltzer, or other liquid.

(3) *[The holder of a license authorizing the retail sale of intoxicating liquor by the drink may sell liquor in any quantity, not for resale, but may not possess any spirituous liquor in any container having a capacity of more than one (1) gallon or any wine in any container having a capacity of more than fifteen and one-half (15 1/2) gallons.*

(4) No person holding a license *[authorizing]* **for** the retail sale of intoxicating liquor may sell or deliver any **intoxicating** liquor to any person with knowledge or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the liquor for the purpose of peddling or reselling it.

(4) Any person holding a license for the retail sale of intoxicating liquor who delivers intoxicating liquor to a consumer at a location other than the licensed premises must ensure that delivery:

(A) Is not made during any hours when the licensed premises is required by law to be a closed place;

(B) Is not made to the licensed premises of a licensed retailer;

(C) Is made by an employee or agent of the licensee expressly authorized to deliver intoxicating liquor on the licensee's behalf; and

(D) Complies with all other provisions of Chapter 311, RSMo, and the regulations promulgated thereunder.

(5) No *[licensee]* **person holding a license for the retail sale of intoxicating liquor** may sell, give away, or possess any *[spirituous]* **intoxicating** liquor from or in any container when the intoxicating liquor is not that set out on the manufacturer's label on the container or does not have alcoholic content shown on the manufacturer's label.

(6) No *[retail licensee]* **person holding a license for the retail sale of intoxicating liquor** may bottle any intoxicating liquor from any barrel or other container nor may s/he refill any bottle or add to the contents of the bottle from any barrel or other container **except where explicitly authorized by statute.**

(7) *[A licensee selling]* **Any person holding a license for the retail sale of** intoxicating liquor by the drink, when requested to serve a particular brand or type of *[spirituous liquor or beer]* **intoxicating liquor**, may not substitute another brand or type of *[spirituous liquor or beer]* **intoxicating liquor.**

(8) No *[retail licensee]* **person holding a license for the retail sale of intoxicating liquor** may allow or cause any sign or advertisement pertaining to intoxicating liquor *[or malt beverages]* to be carried or transported upon any sidewalk or street of any municipality or upon any highway of the state. This provision is inapplicable to any legal sign or advertisement placed on a vehicle being used to deliver intoxicating liquor *[or malt beverages]*.

(9) Whenever hours of time are set forth in the Liquor Control Act, they are to be interpreted to mean clock time which shall be either Central Standard Time or Central Daylight Time, whichever one is then being observed.

(10) No person holding a license *[authorizing]* **for** the retail sale of intoxicating liquor may possess any intoxicating liquor which has not been purchased from, by, or through duly licensed wholesalers.

(11) No *[holder of]* **person holding** a license *[to sell]* **for the retail sale of** intoxicating liquor *[by the drink]*, **nor their employees or agents**, may *[give to, sell, or permit to be given to or sold to any on duty employee of the establishment operated by the licensee]* consume any intoxicating liquor, in any quantity, **while on duty or acting within the scope of employment or agency relationship.** *[, nor may s/he permit any patron of the establishment operated by him/her to give to any on duty employee any intoxicating liquor, in any quantity, or to purchase it for or drink it with any on duty employee, in the establishment or on premises of the licensee. This provision is inapplicable when the establishment is closed to the public, so long as the licensee is allowed to be open at that time pursuant to section 311.290, RSMo, or any other provisions of Chapter 311 relating to opening and closing.]* **This provision shall not apply to a licensee, their employee, or agent who:**

(A) is conducting a tasting for one or more customers and tastes the product, but does not consume or imbibe, to educate the consumer on the product; or

(B) is sampling a new product presented by a salesperson marketing the product, as authorized by RSMo. 311.070.4(7) and/or 311.197; or

(C) is in the business, but is not on duty nor acting within the scope of employment, whether the establishment is open or closed to the public, so long as the licensee is

allowed to be open pursuant to section 311.290, RSMo, or any other provision of Chapter 311 relating to opening and closing.

(12) *[Improper Acts.]* **Any person holding a license for the retail sale of intoxicating liquor must have at least one (1) on duty employee at the establishment who is responsible for the sale, dispersion, and consumption of intoxicating liquor on or about the licensed premises whenever the establishment is not a closed place in accordance with section 311.290, RSMo.**

[(A) At no time, under any circumstances, may any licensee or his/her employees immediately fail to prevent or suppress any violent quarrel, disorder, brawl, fight, or other improper or unlawful conduct of any person upon the licensed premises, nor may any licensee or his/her employees allow any indecent, profane, or obscene literature or advertising material upon the licensed premises.

[(B) In the event that a licensee or his/her employee knows or should have known, that an illegal or violent act has been committed on or about the licensed premises, they are obligated to immediately report the occurrence to law enforcement authorities and cooperate with law enforcement authorities and agents of the Division of Alcohol and Tobacco Control during the course of any investigation into an occurrence.]

(13) **Lewdness. No [retail licensee or his/her employee] person holding a license for the retail sale of intoxicating liquor may permit in or upon his/her licensed premises—**

(A) The performance of acts, or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

(B) The displaying of any portion of the areola of the female breast;

(C) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus, or genitals;

(D) The actual or simulated displaying of the pubic hair, anus, vulva, or genitals;

(E) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his/her genitals or anus; and

(F) The displaying of films, video programs, or pictures depicting acts, the live performances of which are prohibited by this regulation or by any other law.

(14) No person holding a license for the retail sale of intoxicating liquor may permit any person to smoke or imbibe marijuana on or about the licensed premises or create any non-public or quasi-public areas on or about the licensed premises for marijuana usage anytime when intoxicating liquor is being sold, displayed for sale, or consumed. This provision may not preclude a licensee from hosting a private event during which persons holding a valid medical marijuana patient ID card issued by the Department of Health and Senior Services smoke or imbibe medical marijuana in a designated non-public or quasi-public area on or about the licensed premises. To be eligible, the event must occur during allowable hours of operation pursuant to section 311.290, RSMo, or any other provision of Chapter 311 relating to opening and closing; no intoxicating liquor may be sold, displayed for sale, or consumed on or about the licensed premises, and all refrigerators, cabinets,

cases, boxes, and taps from which intoxicating liquor is dispensed shall be kept securely locked during the event; and written approval must be obtained from the supervisor of alcohol and tobacco control prior to the event.

(15) In the event the premises of any licensee is declared to be off-limits by the military authorities, the licensee may not permit any member of the armed forces to be in or upon the premises covered by his/her license. Provided, this is only effective after the licensee is notified of the order by the supervisor of Alcohol and Tobacco Control. Members of the Military Police or Shore Patrol are exempt from this provision.

*AUTHORITY: section 311.660, RSMo 2016. * This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Aug. 23, 1974, effective Sept. 2, 1974. Amended: Filed May 16, 1977, effective Aug. 11, 1977. Amended: Filed Aug. 20, 1979, effective Dec. 13, 1979. Amended: Filed April 23, 1981, effective Aug. 13, 1981. Amended: Filed April 7, 1983, effective July 11, 1983. Amended: Filed May 25, 1983, effective Sept. 11, 1983. Amended: Filed Aug. 5, 1991, effective Jan. 13, 1992. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998. Amended: Filed Oct. 10, 2018, effective May 30, 2019. **Amended: Filed May 27, 2022*****