

**Title II – DEPARTMENT OF PUBLIC SAFETY
Division 70-Division of Alcohol and Tobacco Control
Chapter 2-Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.040 Manufacturers, Wholesalers and Distributors. The division is amending all sections.

Purpose – To revise this section that defines ordinary commercial credit and advertising items that are allowed to be provided to retailers by manufacturers, wholesalers and distributors; to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The Division’s name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) Except as provided in section 311.070, RSMo, no retail licensee, directly or indirectly, *[shall] may* accept any loans, equipment, money, credit or property of any kind, except ordinary commercial credit. Except as provided in section 311.070, RSMo, no *[person licensed to sell intoxicating liquor, or nonintoxicating beer at retail, shall]* **retail licensee may** permit any distiller, wholesaler, wine maker, **solicitor**, brewer or *[his/her or their]* employees, officers or agents, under any circumstances*[, directly or indirectly,]* to have any **direct or indirect** financial interest in his/her retail business for the sale of intoxicating liquor, *[or nonintoxicating beer]* and s/he shall not accept, directly or indirectly, from a distiller, wholesaler, wine maker, **solicitor**, brewer or its employees, officers or agents any loan, gift, equipment, money, credit or property of any kind except ordinary commercial credit for intoxicating liquor *[and nonintoxicating beer]* sold to the retailer.*[, except that]* **A retailer may accept**, to properly preserve and serve draught beer *[only and to facilitate the delivery to the retailer s/he may accept, and 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 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 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 (1) year, and except, that]* **and** to properly preserve and serve draught wine, *[wine tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, coupling, gas gauges, vent tongues, shanks and check valves may be sold to a retailer and installed in the retailer’s establishment if the tapping accessories are sold at a price not less than the cost to the distiller, wine maker, brewer or wholesaler who initially purchased them and if the price is collected within thirty (30) days of the date of sale. Coil cleaning service may be furnished, given or sold to a retailer of wine or malt beverages]* **only equipment and services as allowed in Section 311.070, RSMo.**

(A) A sale by a licensed wholesaler to a licensed retailer of intoxicating liquor *[or nonintoxicating beer]* at a price which is less than the cost of the intoxicating liquor to the licensed wholesaler making the sale is presumed (subject to rebuttal as set out in this

rule) to constitute a gift of money or property to the licensed retailer in violation of this regulation and sections 311.060 and 311.070, RSMo.

(B) The word cost as used in this regulation *[shall]* means the actual invoice charge for the merchandise *[in question]* by the supplier of the merchandise to the wholesaler **or manufacturer or brewer or solicitor**, plus the cost of transportation *[of the merchandise]* to the wholesaler and all federal and Missouri excise taxes and custom duties allocable to the merchandise.

(C) The presumption may be rebutted by reasonable proof that the fair wholesale market value of the intoxicating liquor *[or nonintoxicating beer]* in question is less than the cost of intoxicating liquor *[or nonintoxicating beer]* to the wholesaler selling the same, **and has been designated as close-out merchandise pursuant to Section 311.335.3, RSMo and 11 CSR 70-2.190(2) (D). A licensed wholesaler may not use close out pricing as an inducement for retailers to purchase other intoxicating liquors.**

(2) No distiller, wholesaler, wine maker, **solicitor**, brewer or *[his/her or their]* employees, officers or agents **of same may**, directly or indirectly, *[shall]* pay any fee rental or other consideration to any retail licensee for the use of any part of the licensed retail premises for advertising any brand name of distilled spirits, wine, **or** malt liquor *[or nonintoxicating beer]*, or for the purpose of advertising the name, trademark or trade name of any marker of the trademark¹, *provided, however, that nothing in this rule shall be construed as abrogating or altering in any manner or preventing the renewal of any existing contract or rental, whether oral or written, entered into before, for any part of any licensed retail premises*].

(3) Except as provided in section 311.070, RSMo, no distiller, solicitor, wholesaler, wine maker, brewer or their employees, officers or agents, directly or indirectly, *[shall]* **may** give or offer to give any financial assistance, gratuity or make or offer to make any gift of their products to any retail licensee.

AUTHORITY: section 311.660, RSMo [1994] **2018**. * This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Feb. 24, 1987, effective May 11, 1987. Amended: Filed May 14, 1987, effective Aug. 13, 1987. Amended: Filed Nov. 21, 1996, effective May 30, 1997. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998.
Amended: Filed October 10, 2018.

**Original authority: 311.660, RSMo 1939, amended 1989.*

PUBLIC COST: *This proposed amendment will not cost state agencies or political subdivisions.*

PRIVATE COST: *This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, Mo 65101 or by facsimile at 573-526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*