

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

PROPOSED AMENDMENT

11 CSR 70-2.130 Retailer's Conduct of Business. The division is amending sections (1), (2), (4), and (9) through (15) and deleting Section (8).

Purpose – To revise this section that establishes general rules of conduct for retail establishments 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. Also, Section 8 disallowing a licensee to have a trade name of liquor store is being eliminated.

(1) No licensee who [*shall have*] **has** had his/her license suspended by order of the supervisor of [*liquor*] **alcohol and tobacco** control [*shall*] **may** sell, give away or permit the consumption of any intoxicating liquor [*or nonintoxicating beer*], nor [*shall*] **may** s/he order or accept delivery of any intoxicating liquor [*or nonintoxicating beer*] 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 [*shall*] **should** display the order of suspension issued by the supervisor of [*liquor*] **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.

(2) No person holding a license for the retail sale of malt liquor by the drink [*or for the sale of nonintoxicating beer by the drink*] **may** knowingly [*shall*] 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 [*shall*] **may** any licensee allow any person while in or upon the premises covered by the license to possess or consume any intoxicating liquor other than malt liquor, [*if the license is to sell malt liquor containing more than three and two-tenths percent (3.2%) alcohol by weight or any kind of intoxicating liquor if the license is to sell nonintoxicating beer*] 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 [*shall*] **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 the retail sale of intoxicating liquor [*or nonintoxicating beer shall*] **may** sell or deliver any 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.

(5) No licensee [*shall*] **may** sell, give away or possess any spirituous 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 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.

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

[(8) No person holding a license authorizing the sale of intoxicating liquor in the original package shall have the trade name using the words liquor store nor shall s/he advertise his/her place of business as or doing business as a liquor store.]

[(9)] **(8)** No retail licensee *[shall]* **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 *[shall not apply]* **is inapplicable** to any legal sign or advertisement placed on a vehicle being used to deliver intoxicating liquor or malt beverages.

[(10)] **(9)** Whenever hours of time are set forth in the Liquor Control Act, they *[shall]* **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.

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

[(12)] **(11)** No holder of a license to sell intoxicating liquor¹, *five percent (5%) beer or nonintoxicating beer* by the drink *[shall]* **may** give to, sell or permit to be given to or sold to any on duty employee of the establishment operated by the licensee any intoxicating liquor *[or nonintoxicating beer]*, in any quantity, nor *[shall]* **may** s/he permit any patron of the establishment operated by him/her to give to any on duty employee any intoxicating liquor *[or nonintoxicating beer]*, 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 *[shall not apply]* **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[s] 311 *[or 312]* relating to opening and closing.

[(13)] **(12)** Improper Acts.

(A) At no time, under any circumstances, *[shall]* **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 *[shall]* **may** any licensee or his/her employees allow any indecent, profane or obscene *[language, song, entertainment,]* 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 *[shall]* report the occurrence to law enforcement authorities and *[shall]* cooperate with law enforcement authorities and agents of the Division of *[Liquor]* **Alcohol and Tobacco** Control during the course of any investigation into an occurrence.

[(14)] **(13)** Lewdness. No retail licensee or his/her employee *[shall]* **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.

[(15)] **(14)** In the event the premises of any licensee is declared to be off-limits by the military authorities, the licensee *[shall]* **may** not permit any member of the armed forces to be in or upon the premises covered by his/her license. Provided, this *[shall not apply unless]* **is only effective after** the licensee is notified of the order by the supervisor of *[liquor]* **alcohol and tobacco** control. *[nor shall it apply to m]* **Members of the Military Police or Shore Patrol are exempt from this provision.**

AUTHORITY: section 311.660, RSMo [1994] **2018**. * 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 October 10, 2018.**

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

Chilton v. Wright, 480 SW2d 1 (1972). Two agents testifying that they removed 44 bottles of liquor from licensee's premises suspected to be refills in violation of rules and regulations because some appeared to be overfilled and some had worn strip stamps on their necks, along with testimony of expert chemist, was competent substantial evidence that the licensee possessed refilled bottles in violation of rules and regulations 13(c) (now covered by 11 CSR 70-2.130(6)). But evidence of "several different brands of liquor—the bulk of it was in half-pints and pints" and the geographical location of the retail outlet and its proximity to known "dry" states did not constitute substantial evidence that the licensees had reasonable cause to believe that their customers purchased liquor for purposes of resale in violation of rule 13(d) (now 11 CSR 70-2.130(4)).

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.*