

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

PROPOSED AMENDMENT

11 CSR 70-2.140 All Licensees. The division is amending sections (1) through (17).

Purpose – To revise this section that establishes additional rules for the conduct of business in both retail and wholesale establishments regarding inspection, record keeping, storage, employment, sales, gambling and consumption by minors, to reflect the elimination of Chapter 312, RSMo, regulating nonintoxicating beer. The Division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Section 7 was removed as it is a duplicate of Section 311.300, RSMo. Changes were made in section (11) allowing convicted felons to participate in direct retail sales as a result of legislation in 2009. Gambling regulations were redefined in section (10) to reflect recent case law decisions that have determined that the Division has no authority to seize gambling devices. Section (16) is also removed as it is a duplication of statutes. Renumbering changes are made throughout.

(1) Licensees at all times are responsible for the conduct of their business and at all times are directly responsible for any act or conduct of any employee on the premises which is in violation of the Intoxicating Liquor **Control Laws** [or the *Nonintoxicating Beer Laws*] or the regulations of the supervisor of [*liquor*] **alcohol and tobacco** control.

(2) [All licensees shall allow f]The licensed premises and all portions of the buildings of the premises, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards, attics and all buildings used in connection with the operations carried on under the license and which are in [*their*] **the licensee's** possession or under [*their*] **its** control, and all places where [*they*] **the licensee** keeps or ha[ve]s liquor stored,[to] **may** be inspected by the supervisor of [*liquor*] **alcohol and tobacco** control and [*their*] **his/her** agents. Licensees shall cooperate fully with the agents during the inspections.

(3) All licensees [*are required*] **shall** [to] keep complete and accurate records pertaining to their businesses. [*These*] **Such** records [*shall*] include a complete and accurate record of all purchases and of all sales of intoxicating liquor [*and nonintoxicating beer*] made by them. These records [*must*] **are to** include the names and addresses of all persons from whom the liquor is purchased, the dates, kinds and quantities of the purchases and the dates and amounts of payments on account. They also should include the daily gross returns from sales.

(A) All licensees *[shall]* **are to** keep all files, books, records, papers, state, county and city licenses, *[federal tax stamps]* and accounts and memoranda pertaining to the business conducted by them, on the licensed premises. *[and they, upon request of t]* **The supervisor of *[liquor]* alcohol and tobacco control or his/her** duly authorized agents and auditors, *[promptly shall allow an inspection and audit to be made by the supervisor or his/her agents, of files, books, records, papers, state, county and city licenses, federal tax stamps, accounts and memoranda and shall permit copies to be made and taken of them.]* **may inspect, audit or copy such records at any time.**

(B) All records required to be kept by law or rule of the supervisor *[must]* **shall** be kept and preserved for a period of two (2) years from the date the record was made.

(4) No licensee *[shall]* **may** buy or accept any warehouse receipt unless the seller or donor of the receipt first *[shall]* **acquires** the written permission of the supervisor of *[liquor]* **alcohol and tobacco** control to sell or give away the receipt.

(5) No licensee *[shall]* **may** have consigned to him/her, receive or accept the delivery of, or keep in storage any intoxicating liquors *[or nonintoxicating beer]* upon any premises other than those described in his/her license without first having obtained the written permission of the supervisor of *[liquor]* **alcohol and tobacco** control.

(6) No wholesale or retail licensee *[shall]* **may** sell or possess any spirituous liquor in any package or container holding less than fifty (50) milliliters (1.7 ounces) or more than one (1) gallon. No wholesale or retail licensee *[shall]* **may** sell or possess any wine in any package or container holding less than one hundred (100) milliliters (3.4 ounces) or more than fifteen and one-half (15 1/2) gallons.

(7) *[Sale by Minor Prohibited—Exceptions. No person licensed by the supervisor of liquor control to sell intoxicating liquor or nonintoxicating beer in the original package shall employ any person under the age of twenty-one (21) years to sell or assist in the sale or dispensing of intoxicating liquor or nonintoxicating beer except that any business so licensed may employ persons at least eighteen (18) years of age to stock, arrange displays, operate the cash register or scanner connected to a cash register, accept payment and sack for carrying out intoxicating liquor or nonintoxicating beer. Employees under the age of twenty-one (21) years may not deliver intoxicating liquor, nor take nonintoxicating beer away from the licensed premises. No person licensed by the supervisor of liquor control to sell intoxicating liquor, or nonintoxicating beer by the drink shall employ any person under the age of twenty-one (21) years to sell or assist in the sale or dispensing of intoxicating liquor, or nonintoxicating beer except that any business*

so licensed, persons eighteen (18) years of age or older, when acting in the capacity as a waiter or waitress, may accept payment for or serve intoxicating liquor, or nonintoxicating beer in places of business which sell food for consumption on the premises if at least fifty percent (50%) of all sales in those places consist of food. Employees under twenty-one (21) years of age shall not mix or serve across the bar intoxicating beverages or nonintoxicating beer.

[(8)] Licensees who—

(A) Desire to employ persons under the age of twenty-one (21) as authorized by section [(7)] **311.300 RSMo**, [shall] **may** [make application] **apply** to supervisor using forms provided for that purpose; and

(B) Employ persons under the age of twenty- one (21) years as authorized by section [(7)] **311.300 RSMo**, who do not have at least fifty percent (50%) of the gross sales consisting of nonalcoholic sales [shall have an] **may be permitted if an** employee twenty-one (21) years of age or older **is** on the licensed premises during all hours of operation.

[(9)] **(8)** No person licensed by the supervisor of [*liquor*] **alcohol and tobacco** control [*shall use or permit to be used*] **may allow** upon his/her licensed premises any self-service, coin-operated, mechanical devices or automatic dispensers for the purpose of selling or dispensing intoxicating liquor [*or nonintoxicating beer*] **except as pursuant to section 311.205, RSMo.**

[(10)] **(9)** [*No licensee shall permit, upon or about his/her licensed premises, any gambling of any kind or character whatsoever in which the one who plays stands to win or lose money, trade checks, prizes, merchandise or any other consideration whatsoever. No licensee shall have any gambling devices upon his/her licensed premises where money, trade checks, prizes, merchandise or property or any other consideration whatsoever may be won or lost. Notwithstanding the previously mentioned, a*]Any licensee may sponsor or allow promotional games [*or contests of chance*] to be conducted upon his/her licensed premises, provided that—

(A) [*For purposes of this section, the phrase something of value means any money or property, any token, object or article exchangeable for money or property or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest in them or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge;*

(B) *Money or something of value is not required to be given directly or indirectly for the privilege or opportunity of participating in games or contests or for receiving the award or prize from participation;*

(C) **The consumption of [intoxicating liquor[,] should [five percent (5%) beer or nonintoxicating beer is] not be related to or an element of a promotional game or contest either directly or indirectly;**

(B) Intoxicating liquor may not be a prize of a promotional game or contest either directly or indirectly;

[(D)] **(C)** The conduct or playing of games [of bingo] on [licensed] premises [by organizations licensed] **approved** by the Missouri Gaming Commission to conduct [bingo] **games** in accordance with Chapter 313, RSMo, [shall] **does** not constitute gambling or gambling activities when the games are conducted in accordance with Chapter 313, RSMo, and the activity, by itself, [shall] **does** not constitute a violation of this regulation;

[(E)] **(D)** The sale of state lottery tickets or shares on [licensed] premises licensed by the lottery commission to sell lottery tickets or shares to the public [shall] **does** not [be deemed to] constitute gambling or gambling devices when conducted in accordance with Chapter 313, RSMo and the activity, by itself, [shall] **does** not constitute a violation of this regulation; **and**

[(F)] *Pari-mutual wagering on horses at licensed tracks licensed by the Missouri Horse Racing Commission shall not be deemed to constitute gambling or gambling devices when conducted in accordance with Chapter 313, RSMo and this activity on licensed premises, by itself, shall not constitute a violation of this regulation; and*

(G) **(E)** The giving of door prizes or other gifts by lot or drawing after payment of a price by members or guests of a charitable organization which has obtained an exemption from payment of federal income taxes as provided in Section 501(C)(3) of the Internal Revenue Code of 1954, [shall] **does** not constitute gambling or gambling devices when conducted on licensed premises by the charitable organization [*and that activity, by itself, shall not constitute a violation of this regulation*].

[(11)] **(10)** No licensee [shall] **may** employ on or about the licensed premises any person who has been convicted since the ratification of the twenty-first amendment of the Constitution of the United States of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor; [nor shall any licensee employ on or about the licensed premises] **or** any person who [shall have] **has** had a license revoked under Chapter 311[or 312], RSMo, **unless five years have passed since the revocation of the license.**

[(A)] *No retail licensee shall employ a prohibited felon to any position that involves the direct participation in retail sales of intoxicating liquor. The phrase "direct participation in retail sales" includes the duties of accepting payment, taking orders, delivering, mixing or assisting in the mixing or serving of intoxicating*

liquor in the capacity of, but not limited to, bar manager, bartender, waiter, waitress, cashier, and sales clerk.

(B) A “prohibited felon” is one who has been convicted of a crime under the laws of any state or the United States, where the possible penalty at the time of the offense exceeded one (1) year confinement and the crime involves homicide, assault involving a threat of death or serious injury or actual physical injury, assault upon a law enforcement officer, kidnapping or false imprisonment, any action that would constitute a sexual offense under Chapter 566, RSMo, prostitution, pornography, robbery, arson, stealing, burglary, forgery, counterfeiting, identity theft or false identification, bribery, unlawful use of a weapon, gambling, driving or boating while intoxicated, perjury, fake reports or declarations, the possession, purchase, sale or manufacture of drugs, tax fraud, mail fraud, food stamp fraud, or welfare fraud.

(C) Each retail licensee shall report the identify of any employee with a felony conviction to the supervisor of alcohol and tobacco control within ten (10) days of his/her employment and each retail licensee shall notify the supervisor of alcohol and tobacco control within ten (10) days of the employee leaving the licensee’s employment, using forms provided by the division for that purpose.

[(D) If the employee is hired in a position that involves the direct participation in retail sales and is a prohibited felon, the division shall notify the licensee that the employee may not serve in the position involving the direct participation in retail sales upon receipt of notice from the licensee. The licensee will either dismiss the employee or reassign the employee to a position not involving the direct participation in retail sales within ten (10) days of the date notice is received by licensee from the division by regular mail service.

(E) If the division determines that an employee involved in the direct participation of retail sales has a felony conviction not listed in subsection (11)(B), above, but believes that the felon’s conviction should disqualify the employee from the direct participation in retail sales, the division will notify the licensee within ten (10) days. The licensee will either dismiss the employee, reassign the employee to a position not directly involving the retail sale of intoxicating liquor, or file a written appeal with the division within ten (10) days of receiving notice from the division by regular mail service.

(F) If a licensee, or any employee of the licensee acting through the licensee, wishes to appeal a determination by the division that the employee is disqualified from the direct participation in the retail sale of intoxicating liquor as set forth in subsection (11)(E), above, the appeal will be heard by the supervisor or his/her designee within thirty (30) days of the division receiving written notice of the appeal. At the appeal, the division will determine whether the employee’s conviction is reasonably related to the competency of the employee to be

involved in the direct participation of retail sales. A written determination will be sent to the licensee and employee, if an address is supplied by the employee, within ten (10) days of the appeal.]

[(12)] **(11)** No licensee, his/her agent or employee *[shall]* **may** sell intoxicating liquor *[or nonintoxicating beer]* in any place other than that designated on the license or at any other time or in any other manner except as authorized by the license.

[(13)] **(12)** No licensee, **his/her agent or employee** *[shall]* **may** permit anyone under the age of twenty-one (21) years of age to consume intoxicating liquor *[or three and two-tenths percent (3.2%) nonintoxicating beer]* upon or about his/her licensed premises.

[(14)] **(13)** No licensee, **his/her agent** or employee *[shall]* **may** allow upon or about the licensed premises solicitation for the purposes of prostitution or other immoral activities by any person.

[(15)] **(14)** No licensee, **his/her agent** or employee *[shall]* **may** possess, store, sell or offer for sale, give away or otherwise dispose of upon or about the licensed premises or permit any person upon or about the licensed premises to possess, store, sell or offer for sale, give away or otherwise dispose of any controlled substance as defined in Chapter 195, RSMo.

[(16)] Except as otherwise provided in any provision of Chapter 311 or 312 relating to Sunday licenses, no holder of a license to sell intoxicating liquor or nonintoxicating beer shall sell, give away or otherwise dispose of any nonintoxicating beer upon or about the licensed premises between the hours of 1:30 a.m. and 6:00 a.m. on weekdays and between the hours of 1:30 a.m. Sunday and 6:00 a.m. Monday. Further, no nonintoxicating beer may be sold, given away or otherwise disposed of, on premises used as a polling place, between the hours of 1:30 a.m. and 7:30 p.m. upon the day of any general or primary election day in this state.

(17)] **(15)** No licensee, **his/her agent** or employee *[shall]* **may** mix or pour, or permit to be mixed or poured, any intoxicating liquor *[or nonintoxicating beer]* directly into any person's mouth upon or about the licensed premises.

AUTHORITY: section 311.660, RSMo [2000] **2018**.* This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Aug. 23, 1974, effective Sept. 2, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 4, 1976, effective Nov. 11, 1976. Amended: Filed Sept. 30, 1976, effective April 15, 1977. Amended: Filed Aug. 21, 1980, effective Dec. 12, 1980. Amended: Filed Aug. 5, 1981, effective Nov. 12, 1981. Amended: Filed Nov. 6, 1981, effective Feb. 11, 1982. Amended: Filed April 7, 1983, effective July 11, 1983. Amended: Filed July 11, 1984, effective Oct. 11, 1984. Amended: Filed Aug. 30, 1985, effective Nov. 11, 1985. Amended: Filed May 13, 1986, effective July 26, 1986. Amended: Filed Aug. 14, 1987, effective Nov. 12, 1987. Amended: Filed Oct. 14, 1987, effective Jan. 14, 1988. Emergency amendment filed Nov. 22, 1989, effective Dec. 2, 1989, expired March 31, 1990. Amended: Filed

Nov. 30, 1989, effective Feb. 25, 1990. Amended: Filed Aug. 5, 1991, effective Jan. 13, 1992. Amended: Filed Nov. 4, 1991, effective March 9, 1992. Emergency amendment filed Aug. 26, 1996, effective Sept. 5, 1996, expired March 3, 1997. Amended: Filed Aug. 26, 1996, effective Feb. 28, 1997. Amended: Filed Nov. 21, 1996, effective May 30, 1997. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998. Amended: Filed Nov. 20, 2003, effective July 30, 2004. Amended: Filed June 5, 2018.

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

State ex rel., Glendinning Co. v. Letz, 591 SW2d 92 (Mo. App. 1979). The Supervisor of Liquor Control may prohibit gambling on licensed premises by rule despite the general preemption language contained in the criminal code at section 572.100, RSMo. Op. Atty. Gen. No. 178, Wilson (10-18-79). A person convicted of supplying intoxicating liquor to a minor does not necessarily violate section 311.060, RSMo (regarding licensing) or 11 CSR 70-2.140(13) (regarding employment).

State ex rel. Letz v. Riley, 559 SW2d 631 (Mo. App. 1977). Despite the issuance by the attorney general of a "no action" letter stating that certain games in theory were not violative of Chapter 563, RSMo, the doctrine of equitable estoppel was not available to support an injunction restraining the supervisor of the Division of Liquor Control from enforcing Liquor Control Regulations 15(k) (prohibiting any licensee from allowing any sort of gambling upon licensed premises) and 25 ll(c)(1)(g) (restricting advertisement of intoxicating liquor and nonintoxicating beer).

Op. Atty. Gen. No. 167, Moran (7-7-66). A licensee of the Department of Liquor Control is not violating the rules and regulations of the department by having on his/her licensed premises a pinball machine of the type designated by federal statute as a gambling device per se and requiring a \$250 Coin-Operated Gaming Device Stamp but on which the machine only awards free games for replay. It is a violation of regulation 15(1) (now covered by 11 CSR 70-2.140(12)) of the rules of the Department of Liquor Control if patrons using the pinball machines are actually paid off in money or merchandise by the liquor licensee or if patrons using the pinball machines actually wager money or property among themselves on the outcome of games played and the licensee allows such gambling.

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.