

MISSOURI ALCOHOL AND TOBACCO CONTROL HISTORY AND MISSION

HISTORY OF ATC

A review of the historical development of the liquor industry reveals that it is a very unique industry. The liquor industry is the only industry that has ever been completely prohibited by a Constitutional Amendment (Eighteenth Amendment) and, subsequently, the only industry that has ever required a Constitutional Amendment (Twenty-First Amendment) to be legalized. The advent of Prohibition with the passage of the Eighteenth Amendment was brought on largely by the abuses connected with the distribution, sale and consumption of alcoholic beverages. Subsequently, it was the illegal production and free flow of unregulated alcoholic beverages during Prohibition which gave rise to the repeal of the Eighteenth Amendment and the ratification of the Twenty-First Amendment.

By the adoption of the Twenty-First Amendment, Congress granted to each of the states the primary responsibility and ultimate control of the importation, transportation, distribution and sale of alcoholic beverages within their borders. This was done in order to prevent a return to the abuses that were recognized as having been associated with the distribution and sale of alcoholic beverages prior to Prohibition. The states established comprehensive liquor control systems whereby the channels of distribution of alcoholic beverages are regulated from the time the product reaches the state's border until the time the product reaches the consumer. Thus, there has evolved a comprehensive interrelated system of regulation designed to protect the public health and safety; to protect the state's revenue; to protect the consumer; to protect the liquor industry from infiltration and exploitation by the criminal element; to ensure product quality and accountability; and to restore and maintain public confidence as it relates to the distribution, sale and consumption of alcoholic beverages.

The Missouri Department of Liquor Control was established under the Liquor Control Act passed by the 57th General Assembly in extra session. The Act was signed by the Governor on January 15, 1934, and became effective on that date. This law coincided with the repeal of the 18th Amendment (Prohibition) by the 21st Amendment to the United States Constitution. In the first year a total of 4,242 licenses were issued and the total collected from all sources was \$2,363,746 with an operating cost of \$88,220. The department first consisted of a supervisor, four auditors, 14 stenographers and clerks and 27 inspectors, now called agents. The first female agent was hired in 1977 and since 1995, all agents are required to be POST certified. The cost of a liquor license has not been increased since licensing began in 1934.

A review of the Missouri Liquor Control Laws and Regulations reveals a regulatory structure of permissive authority through licensed parties whose authority is defined by statute and regulation. Missouri's regulatory structure is intended to control importation,

transportation, distribution and sale of, and access to, alcoholic beverages. This control in Missouri has been accomplished primarily through the adoption of a three-tier system of distribution.

Missouri's three-tier system is a licensing system whereby alcoholic beverages are distributed through the manufacturer, wholesaler and retailer to the consumer by private business enterprises licensed and regulated by the State. Under this system, the three levels of manufacturer, wholesaler and retailer must be maintained separate and apart from each other. The manufacturer must sell only to the wholesaler, the wholesaler must sell only to the retailer, and the retailer may only sell to the consumer. This system remains in place for all of the licensing states in the USA, with limited exceptions made for the smaller manufacturers sprinkled throughout the Industry.

This three-tier system requires separate licenses for suppliers, wholesalers and retailers, and, with certain limited exceptions, prohibits distillers, winemakers, brewers, wholesalers or their employees from having a financial interest in the retail sale of intoxicating liquor. This three-tier system of distribution of alcoholic beverages protects against tied houses and exclusive outlets, protects against anti-competitive and monopolistic practices, fosters a stable industry, provides an orderly method for the collection of millions of dollars in state excise taxes each year and provides for a system of sound liquor control.

The Omnibus State Reorganization Act of 1974 created the Department of Public Safety, changed the Department of Liquor Control to the Division of Liquor Control, and made the Division of Liquor Control a division of the Department of Public Safety. The Liquor Control Laws are contained in Chapters 311 of the Revised Statutes of the State of Missouri. Effective on August 28, 2001, the Division also assumed authority and responsibility for enforcement of tobacco laws, and specifically those laws restricting youth (under 18) access to tobacco. House Bill 381, passed by the Missouri legislature in the 2001 session and signed by the Governor, made it illegal for a minor (under 18) to possess or attempt to purchase tobacco products. These provisions supplemented already-existing laws prohibiting tobacco sellers from selling to minors. As with liquor laws, the Division shares authority to enforce these tobacco laws with local and other state law enforcement agencies. The tobacco laws are contained in Sections 407.924 to 407.934 of the Revised Statutes of Missouri. It was during this time the Division of Liquor Control became the Division of Alcohol and Tobacco Control.

ORGANIZATION AND MISSION

The Division of Alcohol and Tobacco Control is actually three agencies in one. First, the Division is a revenue collection agency. Each year, the Division collects excise taxes, from the sale of alcoholic beverages within the State, and license fees.

Second, the Division is a licensing agency. The Division issues liquor licenses to individuals, partnerships, corporations, limited liability companies and other entities throughout the State, thereby authorizing their participation in the manufacture, distribution and sale of alcoholic beverages.

Third, the Division is a regulatory enforcement agency. The Supervisor of Alcohol and Tobacco Control, Agents and Special Agents, prosecuting attorneys, sheriffs, their deputies and police officers are all charged with the duty of enforcing the Liquor Control Law and the tobacco laws. The Division enforces all Missouri statutes and regulations relating to the manufacture, distribution and sale of alcoholic beverages and the youth access to tobacco.

ADMINISTRATIVE DISCIPLINARY PROCESS

The Supervisor of Alcohol and Tobacco Control is nominated by the Director of the Department of Public Safety and appointed by the Governor, with the advice and consent of the Senate. The Supervisor is vested with the exclusive authority to issue, and to revoke, suspend, and/or fine, licenses for the sale of intoxicating liquor and with the authority to promulgate rules and regulations governing the conduct and method of operation of all liquor licensees pursuant to Section 311.660, RSMo 1986. In the event of a suspension or revocation of the license, the licensee may, pursuant to Section 311.691, RSMo, appeal the decision to the Administrative Hearing Commission. Any person adversely affected by the Supervisor's decision regarding the sale of tobacco can file an appeal with the Administrative Hearing Commission per the procedures established in Chapter 621, RSMo. An appeal to the Commission may also be made in the case of license denials by the Supervisor.

LIQUOR LICENSING

State law makes it unlawful for any person to manufacture (except for limited personal use), distribute or sell alcoholic beverages in Missouri without a license. The opportunity to engage in the business of selling intoxicating liquor is not a general legal right, but rather a licensed privilege extended under controlling law. This licensed privilege is conditioned upon compliance with the liquor laws and regulations designed to preserve essential social values.

All license applications must be processed through the appropriate district office and the respective territory Agent or Special Agent. The location and contact information for the district offices are listed on our website.

All licenses issued by the Division expire on the 30th day of June, next following the date that such license was issued. All applications for renewal of licenses are required by law to be filed with the Division on or before the first day of May of each calendar year. Correct license fees must be paid before any license is issued. Cities and counties are permitted by law to license and regulate the sale of liquor.

The Division has found that most liquor licensees and tobacco sellers attempt to operate their businesses in a proper and lawful manner. It is the purpose of the Division to assist such licensees/sellers and to eliminate the persistent violator. This is accomplished by using the Supervisor's authority to fine, suspend and revoke liquor licenses, and fining or suspending the authority to sell tobacco. In addition, the Supervisor seeks to grant liquor licenses only to properly qualified persons.

LICENSING AND ENFORCEMENT RESPONSIBILITIES

The enforcement section of the Division of Alcohol and Tobacco Control maintains a highly qualified, well-trained staff consisting of District Supervisors, Agents and Special Agents who are charged with the duty and responsibility for the enforcement of the liquor and tobacco enforcement laws and Rules and Regulations. District Supervisors, Agents and Special Agents are required to receive training and must successfully complete the mandatory standards for the basic training and certification of peace officers established by the Peace Officers Standards and Training (P.O.S.T.) Commission.

Processing Licenses

Agents and Special Agents are responsible for processing all new and renewal liquor license applications in their respective assigned territories. Agents and Special Agents are also responsible for processing numerous other license changes, including dropping of partners, corporation name changes, changes of legal description, change of managing officers and stockholders, and transfer to the next of kin in the event of the death of the licensee.

Routine Inspections

Agents and Special Agents are required to make continuous routine inspections of liquor and tobacco premises to determine whether licensees and retailers are operating their businesses in compliance with the liquor and tobacco enforcement laws and Rules and Regulations and to answer any questions they may have concerning the liquor and tobacco enforcement laws and regulations. Routine inspections of premises have proven to be an effective means of educating retailers, deterring crime, and enforcing the liquor/tobacco laws and regulations.

Investigations

Agents and Special Agents are also required to make prompt and careful investigations of all complaints received by the Division of alleged liquor and tobacco law violations, which may require them to travel throughout the State to conduct investigations where they are not known. These investigations involve numerous types of violations of the laws and regulations, including, but not limited to:

1. Disorderly conduct
2. Lewdness
3. Prostitution
4. Sale and/or possession of controlled substances on liquor licensed premises
5. Sales of liquor to minors (under 21) or sale of tobacco to someone under 18
6. Unlawful refilling of bottles
7. Sales after hours on liquor licensed premises
8. Sales of liquor on Sundays
9. Sales of alcohol by minors
10. Sales of liquor without a state license
11. Unlawful employment of convicted felons on a liquor licensed premise

12. Sales to intoxicated persons
13. Attempt to purchase or possession of tobacco by minors (under 18)
14. Sale of tobacco without a sales tax license
15. Attempt to purchase or possession of alcohol by a minor (under 21)

Partnerships

While the Division of Alcohol and Tobacco Control is charged with the overall enforcement of the liquor and tobacco laws and Rules and Regulations, enforcement personnel cooperate and coordinate their activities with other law enforcement agencies and prosecuting attorneys throughout the State by personally contacting them and gathering information they may have received in the form of complaints from citizens or from their own personal knowledge. This type of cooperation is especially important in dealing with the unlawful sale of liquor committed by persons who are not licensed by the Supervisor since only the Supervisor has the authority to suspend or revoke the operation of a business establishment's liquor licenses. In order to protect the revenue due the State, enforcement personnel of this Division have diligently sought to prevent unlicensed persons from engaging in the liquor business in this State.

TRAINING IS ESSENTIAL

Enforcement personnel of the Division frequently participate in seminars and training programs of other law enforcement agencies in this State by conducting classes on the liquor and tobacco laws and regulations and proven methods of investigation for violations. Agents and Special Agents also conduct meetings with licensees and retailers and their employees for the purpose of explaining the liquor and tobacco laws and regulations. Special attention is given to the proper methods for checking identification of young individuals and how to avoid serving intoxicated persons.

AUDIT AND COLLECTION

The Division's audit and collection program performs many duties in carrying out the provisions of Chapters 311 and the Rules and Regulations of the Supervisor of Alcohol and Tobacco Control. The most important functions of the audit and collection program are to assure proper enforcement and compliance with the State liquor laws requiring the Supervisor to collect excise taxes on all alcoholic beverages sold in this State and to oversee regulatory compliance of the trade practice provisions within the statutes and regulations which assure industry members of a level even playing field.

Trade Practices Background

Trade Practices refer to alcohol beverage marketing practices that are allowed and those that are prohibited under the Missouri Liquor Control Laws and Regulations. These practices apply to alcohol beverage manufacturers, importers, wholesalers, and retailers in specific contexts. The objective of these trade practice standards is to promote fair competition in the alcohol beverage industry.

ATC is charged with administering and enforcing laws relating to these trade practices within the alcohol beverage industry. ATC conducts investigations to verify that the trade practice standards are being followed, including in response to allegations or complaints from members of the public. The relevant laws and regulations are found in Sections 311.070 and 311.071, RSMo, and 11 CSR 70-2.040 and 70-2.240.

Auditors conduct training workshops for alcohol beverage industry members to familiarize them with the laws and regulations that set forth these trade practice standards, to answer related questions from industry members, and to explain the current role of ATC.

Desk Audits

Auditors of the audit and collection program regularly conduct routine audits of all licensed liquor and beer manufacturers, brewers, distillers and wholesalers in this State to assure compliance with the liquor control laws and regulations. Audits consist of checking sales records, accounts receivable, inventory of liquor, beer and wine stock and possible violations of the trade practice, commercial credit and pricing laws. The audit and collection program conducts desk audits each year to ensure compliance with the excise tax reporting system and to guarantee that the State is receiving all excise taxes due on alcoholic beverages sold in this State.

Pricing Laws

In 1955, the Missouri Legislature enacted a price posting law to prevent wholesalers from discriminating between retailers in the prices of liquor and wine sold. In 2009, the Missouri Legislature repealed the price posting laws because ATC was facing possible lawsuits against the post and hold provisions in the price posting statutes and the Federal Trade Commission had already expressed concerns about the law violating the Sherman Act. Repealed were the post and hold requirements, the limit of 4% price reductions on liquor and wine, and the requirement that wholesalers file pricing schedules with Alcohol and Tobacco Control. The law currently requires wholesalers to provide retailers with pricing information no later than five days prior to the first day of the month in which the pricing takes effect. Wholesalers may not sell products below cost unless declaring them as closeouts the previous month. Wholesalers must invoice at the price in effect when the delivery is made, except for delayed shipments of orders received the last three business days of the month and delivered during the first three business days of the following month. The division is responsible for overseeing the proper enforcement of the Missouri pricing laws.

Refunds, Merchandise Returns, Salvage Liquor and Brand Registration

The audit and collection section audits and processes all claims approved by the Supervisor for refunds of State tax on intoxicating liquor returned to the manufacturer for various reasons and processes all requests to return merchandise from the retailer to the respective wholesaler. In addition, the Division administers and enforces the salvage liquor provisions which allow alcoholic beverages that have been damaged in this State as a result of flood, wreck, fire or similar occurrence to be sold for salvage provided the distressed merchandise has been approved by the Department of Health as fit for human consumption. Also

administered is the registration of brands and the removal, transfer or creation of distributorships in the State.

All licensed manufacturers and outstate solicitors who solicit orders from Missouri licensed wholesalers are required by law to register with the Supervisor as the primary American source of supply for the specific brands of liquor they sell to licensed wholesalers in this State.

ATTACHMENTS:

A History of the State Supervisors of Alcohol and Tobacco Control

A History of the State Supervisors of Alcohol and Tobacco Control State of Missouri

<u>Name</u>	<u>Date Appointed</u>
Becker, E.J.	January 15, 1934
Fitzgerald, Thomas F.	October 1, 1937
McMahon, Edmund J.	April 29, 1938
Pierce, Walker	January 27, 1939
Noel, C. Roy	January 29, 1940
Henderson, W.G.	July 15, 1941
Burke, Edmund	March 23, 1945
Hewitt, Covell R.	June 15, 1949
Ketchum, Hollis M.	February 3, 1953
Moran, Glennon T.	February 2, 1965
Wiggins, Harry	April 14, 1967
Wright, William P., Jr.	November 12, 1970
Goodman, Courtney, Jr.	February 15, 1972
Garrett, Michael D.	January 8, 1973
Stewart, Robert G. (Acting)	July, 1974
Letz, Albert J.	May 17, 1977
Franklin, Duane (Acting)	January 21, 1981
Franklin, James A., Jr.	April 29, 1981
Smarr, Charles E.	June 18, 1984
Schler, Michael D. (Acting)	February 19, 1993
Bonner, Ruby	April 21, 1993
Taylor, JT (Acting)	August, 1996
Whitehead, Hope	June 1, 1997
Fuller, Keith	October 1, 2001
Shimmens, Stephen (Acting)	April, 2005
Roberts, Dale Hardy	May 16, 2005
Schler, Mike (Acting)	December 1, 2005
Lobdell, Peter	December 7, 2005
Schler, Mike (Acting)	January, 12, 2009
Lacey, Lafayette E.	April 16, 2009
Hendrickson, Keith (Acting)	January, 2017
Taylor, Dorothy (Dottie) (Acting)	November 1, 2017