

DIVISION OF ALCOHOL AND TOBACCO CONTROL

2018

Spirits & Wine Samples – 311.070.4(7)

Wholesalers of intoxicating liquor may furnish or give, and a retailer may accept samples of distilled spirits or wines as long as the retailer has not previously purchased the brand, provided that:

- No more than seven hundred and fifty milliliters (750 ml) of any brand can be given to any one retailer. If a particular product is not available in a size within the quantity limitations of this subsection, a wholesaler may furnish or give to a retailer the next larger size;
- Wholesalers must keep a record of name and quantity given to each retailer.
- Samples may not be consumed on premises, except as provided by the retail license (e.g. RBD or OPT licenses).
- “Brand” refers to differences in brand name of product or differences in nature of product; examples of different brands would be products having a difference in: brand name; class, type or kind designation; appellation of origin (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof (distilled spirits);

(Taxes on samples must be paid by the Solicitor)

TRADE PRACTICES

Trade Practices -Compliance

- These apply to relationships between Manufacturers and retail licensees.
- If a Manufacturer holds a retail license they are by definition a manufacturer by Missouri statutes, that may hold a Retail by the Drink license under the exception of Section 311.070.11, RSMo.

Trade Practices-Compliance

Section 311.070, RSMo

- ◆ *Section 311.070, RSMo, provides that distillers, wholesalers, winemakers, brewers or their employees, officers or agents are prohibited, directly or indirectly, from having any financial interest in the retail business for sale of intoxicating liquors, and shall not, except as provided in this section, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers.*
- ◆ Exceptions to that follow:

Consumer Advertising Specialties

- 311.070.3(1) & .4(2)

- **Consumer Advertising Specialties (CAS)** - designed to be carried away by the consumer.
- Trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors.
- Can give CAS to consumers at retail locations without limit.

Permanent Point of Sale Advertising Materials

(PPOS) – Section 311.070.3(3) & .4(2)

- **Permanent Point of Sale Advertising Materials (PPOS)** - designed to be used by a retailer for an extended period of time to attract consumer attention to the products;
- Inside signs (electric, mechanical or otherwise) mirrors, and sweepstakes/contest prizes displayed on the licensed premises;
- Limited to \$500 per calendar year, per brand per retailer;

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Permanent Point of Sale Advertising Materials (PPOS) – Section 311.070.3(3) & .4(2)

- Must keep records of all materials provided to a retailer;
- Records shall be maintained for a period of three years; and
- The provider shall own and otherwise control the use of PPOS advertising materials.

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Temporary Point of Sale Advertising Materials (TPOS) - 311.070.3(6) & .4(2)

- Temporary point-of-sale advertising materials (TPOS) - designed to be used for short periods of time.
- Materials include, but are not limited to: banners, decorations reflecting a particular season or a limited-time promotion, or paper napkins, coasters, cups, or menus.
- Distillers, wholesaler, winemakers or brewers may give TPOS at retail locations **without limit**.

Applies to CAS, PPOS & TPOS - ADVERTISING

- Shall bear in a conspicuous manner substantial advertising matter about the product or the name of the distiller, wholesaler, winemaker or brewer;
- The name, address and logos of the retail business may appear on CAS, PPOS and TPOS; and
- Distillers, wholesaler, winemakers or brewers may not, directly or indirectly, pay or credit the retail business for using or distributing the CAS, PPOS or TPOS.

Product Displays 311.070.3(4) & .4(1)

- "Product Display" - wine racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products;
- Total value shall not exceed \$300 per brand at any one time in any one retail account. A manufacturer and a wholesaler could combine resources to reach the \$300 limit but cannot exceed it;
- Shall bear substantial advertising matter. Can be personalized with retailers name and address; and
- Giving or selling may be conditioned on the purchase of products in a quantity necessary for initial display.

EQUIPMENT AND SUPPLIES

311.070.3(2) & 4(4) and (5), (Page 1 of 3)

- 311.070.3(2) "Equipment and supplies", glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. "Dispensing accessories" include standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves;

(PLEASE NOTE THAT WINE DISPENSING EQUIPMENT (TAPS) MUST BE SOLD TO RETAILERS AT A PRICE ABOVE COST)

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EQUIPMENT AND SUPPLIES

311.070.3(2) & 4(4) and (5), (Page 2 of 3)

- 311.070.4. Notwithstanding other provisions contained herein, the distiller, wholesaler, winemaker or brewer, or their employees, officers or agents may engage in the following activities with a retail licensee licensed pursuant to this chapter:
- 311.070.4 (4) The distiller, wholesaler, winemaker or brewer **may sell equipment or supplies** to a retail business if all the following requirements are met:
 - (a) The equipment and supplies shall be **sold at a price not less than the cost** to the distiller, wholesaler, winemaker or brewer who initially purchased such equipment and supplies; and
 - (b) The price charged for the equipment and supplies shall be collected in accordance with credit regulations as established in the code of state regulations;

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DISPENSING ACCESSORIES FOR BEER

311.070.3(2) & 4(4) and (5), (Page 3 of 3)

- (5) The distiller, wholesaler, winemaker or brewer may install dispensing accessories at the retail business establishment, which shall include for the purposes of beer equipment to properly preserve and serve draught beer only and to facilitate the delivery to the retailer the **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 year;

Dispensing Accessories For Spirits

– Distillers and Wholesalers (311.070.7)

- May install dispensing accessories which shall include for the purposes of distilled spirits equipment to properly preserve and serve premixed distilled spirit beverages only.
- To facilitate delivery, may lend, give, rent or sell and/or may install or repair any of the following items or provide any of the following services:
 - coils and coil cleaning,
 - draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other minor tapping equipment components,
 - and damage caused by any delivery excluding normal wear and tear.
- A complete record of equipment furnished and installed and repairs or service made shall be kept by the distiller or wholesaler for a period of not less than one year.

Note - There are no provisions to provide dispensing accessories for wine.

Permanent Outside Signs

311.070.4(15)

- **Permanent Outside Signs** – changed to define as signs constructed of metal, glass, wood, plastic, or other durable, rigid material, with or without illumination, or painted or otherwise printed onto a rigid material or structure.
- Shall bear in a conspicuous manner substantial advertising matter about the product or the name of the Industry Member.
- The retail business shall not be compensated, directly or indirectly, for displaying the permanent sign.
- The cost shall not exceed five hundred (\$500) dollars.

Temporary Outdoor Banners

311.070.4(15)

- Temporary Outdoor Banners – temporary banners of a seasonal nature or promoting a specific event shall not be constructed to be permanent outdoor signs and may be provided to retailers.
- The total cost of temporary outdoor banners provided to a retailer in use at any one time shall not exceed five hundred dollars (\$500) per brand; and
- The retail business shall not be compensated, directly or indirectly, for displaying the temporary banner.

Sweepstakes/Contests

311.070.4(11)

- May conduct a local or national sweepstakes/contest upon a licensed retail premise.
- Prize dollar amount shall not be limited.
- Prize can be displayed in a photo, banner, or other temporary point-of-sale advertising materials on a licensed premises, if the following requirements are met:
 - No money or something of value is given to the retailer for the privilege or opportunity of conducting the sweepstakes or contest;
 - The actual sweepstakes/contest prize is not displayed on the licensed premises if the prize value exceeds the permanent point-of-sale advertising materials dollar limit of \$500 per year, per brand, per retailer.

Picnic Licensee Gift

311.070.4(3)

A distiller, wholesaler, winemaker, or brewer may give a gift not to exceed a value of one thousand dollars (\$1,000) per year to a holder of a picnic license.

They may also provide refrigerated trucks and other customary storage, cooling or dispensing equipment to picnic licensees.

Caterers are not included in this category.

May Provide Cooling Equipment to Festival License 311.483

The Festival license is similar to a catering license, but specifically allows wholesalers to provide refrigerated trucks and other customary storage, cooling or dispensing equipment that was not allowed prior to the law change in 2013.

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NonAlcoholic Beverage Sales, 311.070.5

- Distiller, wholesaler, winemaker, or brewer, who is also in business selling nonalcoholic beverages, shall not condition the sale of its alcoholic beverages on the sale of its nonalcoholic beverages nor combine the sale of its alcoholic beverages with the sale of its nonalcoholic beverages, except as provided in subdivision (8) of subsection 4 of this section.

- May sell, credit, market and promote nonalcoholic beverages in the same manner as other nonalcoholic vendors who do not sell alcohol.

- Fixtures, equipment, or furnishings provided by any distiller, wholesaler, winemaker, or brewer in furtherance of the sale of nonalcoholic products shall not be used by the retail licensee to store, service, display, advertise, furnish, or sell, or aid in the sale of alcoholic products.

- All such items shall be identified by the retail licensee as being furnished by a licensed distiller, wholesaler, winemaker, or brewer.

NO EXCLUSIVITY ALLOWED!!!

Section 311.070.6, was changed to clarify requiring exclusivity is illegal. Distillers, wholesalers, brewers and winemakers, or their officers or directors shall not require, by agreement or otherwise, that any retailer purchase any intoxicating liquor from such distillers, wholesalers, brewers or winemakers to the exclusion in whole or in part of intoxicating liquor sold or offered for sale by other distillers, wholesalers, brewers, or winemakers.

Combination Packaging – 311.070.4(8)

Newspaper cuts, Mats – 311.070.4(9)

COMBINATION PACKAGES–

- 1. DEFINITION - *Combination Packages*, are intoxicating beverages packaged with non-alcoholic merchandise and designed to be sold jointly to consumers (e.g. shot glasses, baseball caps, golf balls, etc.).
- 2. Must be originally packaged by supplier or solicitor.
- 3. Any up charge will have to be passed on to retailers as separate charge on the wholesalers' invoices.
- 4. Alcoholic beverages need to be approved for sale and must be price posted (if applicable).

NEWSPAPER CUTS, MATS OR ENGRAVED BLOCKS

- (9) The distiller, wholesaler, winemaker or brewer may sell or give the retail business newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business;

TASTING PROVISIONS

311.297. 1.

- Any winery, distiller, manufacturer, wholesaler, or brewer or designated employee may provide and pour distilled spirits, wine, or malt beverage samples off a licensed retail premises for tasting purposes provided no sales transactions take place. For purposes of this section, a sales transaction shall mean an actual and immediate exchange of monetary consideration for the immediate delivery of goods at the tasting site.
- May provide and pour distilled spirits, wine, or malt beverage samples on nonlicensed premises for tastings as long as no sales transaction occurs. Could be used for home tasting parties.

TASTING PROVISIONS

311.297. 2

- Notwithstanding any other provisions of this chapter to the contrary, any winery, distiller, manufacturer, wholesaler, or brewer or designated employee may provide, furnish, or pour distilled spirits, wine, or malt beverage samples for customer tasting purposes on any temporary licensed retail premises as described in section 311.218, 311.482, 311.485, 311.486, or 311.487, or on any tax exempt organization's licensed premises as described in section 311.090.
- May provide, furnish and pour for tasting purposes at picnic licensees events, caterers licensees events and also for tax exempt licensed premises.

TASTING PROVISIONS

311.297. 3.

- **Allows Wholesalers and Manufacturers to Provide Alcohol for Tastings on Retail Premises.**
- **Employees of the retailer or the manufacturer, as well as employees of a ‘sampling service’ hired by the retailer/manufacturer may pour alcohol samples;**
- **Please note that this change does not allow a wholesaler to pour alcohol samples, but wholesalers may furnish alcohol samples;**

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TASTING PROVISIONS

311.297. 3.

- No money or anything of value shall be given to the retailers for the privilege or opportunity of conducting the on-the-premises product tasting.
- A wholesaler may not under any circumstances provide other items – most commonly cheese or other food items – at any tastings.
- All remaining alcohol provided by the wholesaler shall be returned to the wholesaler.

UNFINISHED WINE MAY BE TAKEN OUT OF RESTAURANT BAR – 311.101.1 & 2.

- Any patron of a RESTAURANT BAR may carry out one or more bottles of wine if
 - they ordered a meal,
 - the wine was partially consumed during the meal;
 - the restaurant bar must provide a dated receipt, and also reseal and place in special bag.
 - Also, open container laws are not violated as long he/she has the dated receipt from the restaurant bar and the bottles remain in the tamper-proof bags with the seals intact.

UNFINISHED WINE MAY BE TAKEN OUT OF WINERY– 311.101.3-5

- Any patron of a WINERY may carry out one or more bottles of wine:
 - if the bottle of wine was partially consumed at the winery;
 - the winery must provide dated receipt, and also reseal and place in special bag.
 - Also, open container laws are not violated as long he/she has the dated receipt from the winery and the bottles remain in the tamper-proof bags with the seals intact.
 - Also defines “winery” as any establishment at which wine is made.

Any Questions???

**Division of Alcohol and Tobacco Control
Central Office
1738 East Elm Street, Lower Level
Jefferson City, MO 65101**

(573)751-2333

www.atc.dps.mo.gov

Contact Info:

Karen.Dorton@dps.mo.gov

Kristen.Cole@dps.mo.gov