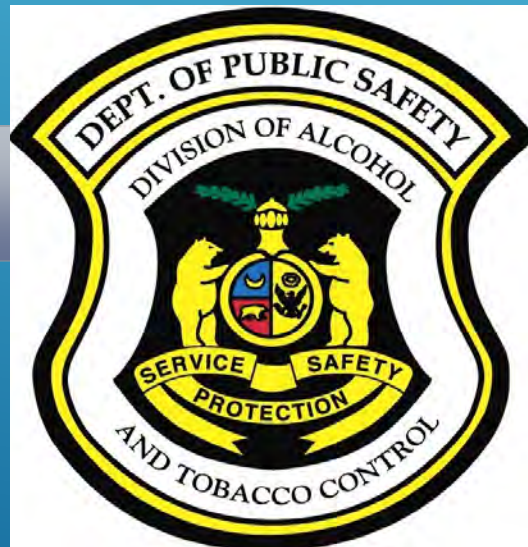


# DIVISION OF ALCOHOL AND TOBACCO CONTROL

2019





# OVERVIEW

1. New Legislation – SB197 and HB266
2. Trade Practices – Definitions and Interpretations
3. Current Issues Requiring Additional Information

# LEGISLATION PASSED IN 2019

# SUNSET EXTENSION ON PORTABLE REFRIGERATION UNITS – SB197

Section 311.198 – Extends the sunset provision from January 1, 2020 to January 1, 2026 allowing brewers and wholesalers to lease refrigeration units (no bigger than 40 cubic feet) to retailers at a cost plus 2% of the lease value.

## ALLOWS SUPERVISED 18 YEAR OLD TO DELIVER ALCOHOL – SB197

- Employees who are at least 18 years old are currently allowed to rotate, stock, and arrange displays at retail establishments.
- This change allows them to actually unload it from the delivery truck and bring it into the retail establishment.
- Note that employees between the age of 18-20 must be supervised by an employee 21 or over

## DEFINES "MISSOURI BOURBON" – HB266

- Must be produced in Missouri
- Corn must be grown in Missouri.
- Requires the whiskey to be aged in Missouri produced barrels.
- Prevents distillers in other states from labeling a whiskey as a Missouri whiskey and selling it in Missouri.

# TRADE PRACTICES

Discussing the Laws, and the Current  
Industry Trends From Our Position

August 1, 2019  
St. Louis, MO

# TTB AND ATC HAVE THE SAME PURPOSES IN REGULATING TRADE PRACTICES

## Purposes:

- Prevent wholesaler, solicitor and manufacturer from having control over retailer
- To help keep the playing field level among all industry members



# ATC'S STANDARD OF PROOF.

- Preponderance of Evidence means that the evidence shows guilt is more likely than not.
- Administrative Hearing Commission uses this as the standard of evidence in their decisions for regulatory agencies.
- The AHC determines whether the State Supervisor had sufficient evidence to act – not whether the penalty is too harsh.

# TRADE PRACTICES - COMPLIANCE

- ▶ These apply to relationships between Manufacturers / wholesaler to retail licensees.
- ▶ If a Manufacturer holds a retail license they are by definition a manufacturer by Missouri statutes, that also may hold a Retail by the Drink license under the exceptions in Section 311.070 RSMo.

# Trade Practices-Compliance

Section 311.070, RSMo

*Section 311.070, RSMo, provides*

- *Upper tiers cannot have financial interest in retailer, directly or indirectly.*
- *Cannot loan, give away or furnish equipment, money, credit or property of any kind, except OCC for liquors sold.*
- *Exceptions to that follow:*

# EXCEPTIONS:

- ▶ CAS, PPOS, TPOS
- ▶ Product Displays
- ▶ Equipment & Supplies
- ▶ Dispensing Accessories for Beer and Spirits
- ▶ Permanent Outside Signs and Temporary Outdoor Banners
- ▶ Sweepstakes/Contests
- ▶ Picnic Gift / Festival License
- ▶ Samples
- ▶ Nonalcoholic Beverage Sales
- ▶ Combination Packaging/Newspaper Cuts

# CONSUMER ADVERTISING SPECIALTIES

– 311.070.3(1) & .4(2)

- ▶ 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.

CAS items cannot be given to the retailer to supplant what the retailer would otherwise purchase in the course of normal business.

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

- 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;
- Limited to \$500 per calendar year, per brand per retailer;

Continued on next page

- ▶ Must keep records of all materials provided to a retailer;
- ▶ Records - Required to maintain for three years; and
- ▶ The Manufacturer or Wholesaler owns and controls the use of PPOS advertising materials.

Continued from previous page

PERMANENT POINT OF SALE ADVERTISING  
MATERIALS (PPOS) – SECTION 311.070.3(3) & .4(2)

# TEMPORARY POINT OF SALE ADVERTISING MATERIALS (TPOS) - 311.070.3(6) & .4(2)

- Used for short periods of time.
- Includes banners, decorations reflecting a particular season or a limited-time promotion, or paper napkins, coasters, cups, or menus.
- 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 provider;
- ▶ The name, address and logos of the retail business may appear on CAS, PPOS and TPOS; and
- ▶ 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)

- Wine racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products;
- Value shall not exceed \$300 per brand at any one time.
- 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) 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 not less than cost)

- ▶ 311.070.4 (4) **May sell** equipment or supplies if:
  - ▶ (a) Sold at a price not less than the cost to the initial purchaser; and
  - ▶ (b) Must collect payment in accordance with ordinary commercial credit regulations;

## EQUIPMENT AND SUPPLIES

311.070.3(2) & 4(4) AND (5), (PAGE 2 OF 3)

# DISPENSING ACCESSORIES FOR BEER

311.070.3(2) & 4(4) AND (5), (PAGE 3 OF 3)

(5) May lend, give, rent or sell and may install or repair to properly preserve and serve draught beer and to facilitate the delivery as follows:

- ▶ 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

**A record of all equipment and services must be kept for one year**

# DISPENSING ACCESSORIES FOR SPIRITS – DISTILLERS AND WHOLESALERS (311.070.7)

May **lend, give, rent or sell and may install or repair** equipment to properly preserve and serve premixed distilled spirit beverages and to facilitate delivery, as follows:

- ▶ coils and coil cleaning,
- ▶ draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other **minor** tapping equipment components,
- ▶ repair damage caused by any delivery excluding normal wear and tear.

**A record of all equipment and services must be kept for one year**

# SELF DISPENSING EQUIPMENT – 311.205

- ▶ Retail by Drink Licensees may use a self-dispensing system, that allows patrons of the licensee to self-dispense beer or wine.
- ▶ May not exceed thirty-two ounces of beer or sixteen ounces of wine per patron, at any one time.
- ▶ The upper tiers may not furnish (or sell) self-dispensing or cooling equipment or provide services for self-dispensing systems.

# Permanent Outside Signs

311.070.4(15)

- Defined 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.
- Must bear in a conspicuous manner substantial advertising matter about the product and/or the name of the Industry Member.
- The retail business shall not be compensated.
- The cost shall not exceed five hundred (\$500) dollars.



# Temporary Outdoor Banners

311.070.4(15)

- Defined as of a temporary seasonal nature or promoting a specific event
- May be provided to retailers
- Cost of 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.

**Shall not be constructed to be permanent outdoor signs!**

# Sweepstakes/Contests

311.070.4(11)

- May conduct a local or national sweepstakes/contest at retailers.
- Prize dollar amount shall not be limited.
- Prize can be displayed on the premises if under the PPOS limits of \$500 per year, per brand.
- If prize exceeds the PPOS limit, it may be displayed in a photo or banner.
- No money given to retailer for the sweepstakes or contest.

# Picnic Licensee Gift

311.070.4(3)

May give a gift not to exceed value of one thousand dollars (\$1,000) per year to a holder of a picnic license.

May 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

## Festival license

- ▶ Similar to a catering license.
- ▶ Specifically allows wholesalers to provide refrigerated trucks and other customary storage, cooling or dispensing equipment.

## SPIRITS & WINE SAMPLES – 311.070.4(7)

Wholesalers may give samples of distilled spirits or wines as long as the retailer has not previously purchased the brand, and:

- ▶ No more than seven hundred and fifty milliliters (750 ml) of any brand can be given.
- ▶ 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).

**(Taxes on samples must be paid by the Solicitor)**

## BEER SAMPLES - 311.197

Wholesalers may give samples of malt liquor as long as the retailer has not previously purchased the brand, and:

- ▶ No more than 72 fluid oz. of any brand can be given.
- ▶ 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).

# NONALCOHOLIC BEVERAGE SALES, 311.070.5

- ▶ Suppliers and Wholesalers, who also sell nonalcoholic beverages, cannot 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 for in Combination Packaging in subsection 4(8) 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 to promote 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.

# COMBINATION PACKAGING 311.070.4(8)

Intoxicating beverages packaged with non-alcoholic merchandise sold jointly to consumers (e.g. shot glasses, baseball caps, golf balls, etc.).

- Must be originally packaged by supplier or solicitor.
- Any up charge must be passed on to retailers as separate charge on the wholesalers' invoices.



## NEWSPAPER CUTS, MATS 311.070.4(9)

### NEWSPAPER CUTS, MATS OR ENGRAVED BLOCKS

The upper tiers may sell or give the retailer newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business.

# TASTING PROVISIONS

311.297. 1.

## UNLICENSED VENUES

- ▶ May provide and pour intoxicating liquor samples off a licensed retail premises for tasting purposes provided no sales transactions take place.
- ▶ A sales transaction means an actual and immediate exchange of monetary consideration for the immediate delivery of goods at the tasting site.
- ▶ Could be used for home tasting parties.

## TAX EXEMPT, PICNIC, CATERERS AND OTHER TEMPORARY LICENSES

- ▶ The Upper tiers may provide, furnish, or pour distilled spirits, wine, or malt beverage samples for 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. 2

# TASTING PROVISIONS

311.297.3.

## LICENSED RETAIL PREMISES

- ▶ The upper tiers may provide alcohol for tastings.
- ▶ Employees of the retailer or the manufacturers, or a 'sampling service company' hired by the retailer/ manufacturer may pour alcohol samples;
- ▶ **Please note this does not allow a wholesaler to pour alcohol samples, but wholesalers may furnish alcohol samples;**

Continued on next page

## LICENSED RETAIL PREMISES (Continued)

- ▶ No money or anything of value shall be given to the retailers for conducting the tasting.
- ▶ The manufacturer or 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 manufacturer/wholesaler.
- ▶ Original Package Licensees must hold a tasting license.

## TASTING PROVISIONS

311.297. 3.

# NO EXCLUSIVITY ALLOWED!!!

Section 311.070.6, clarifies that exclusivity is illegal.

The upper two tiers shall not require, by agreement or otherwise, any retailer purchase any intoxicating liquor to the exclusion in whole or in part of intoxicating liquor sold or offered for sale by other members of the industry.

# RECORDKEEPING FOR TRADE PRACTICE COMPLIANCE - SAME AS TTB REQUIREMENTS

## Required records must include:

- ▶ Name and address of retailer
- ▶ Date furnished
- ▶ Item furnished
- ▶ Industry member's cost of item
- ▶ Charges to retailer (if any)

# CURRENT ISSUES/TRENDS IN THE INDUSTRY

ATC provides industry circulars on our website when we receive a lot of questions or complaints on a specific issue.



## TTB TIED HOUSE – SAME AS ATC

Industry member provides free labor to reset stock on a retailer's premises (other than stock offered for sale by the industry member).

Industry member purchases or rents display, shelf, storage, or warehouse space from a retailer (i.e. slotting allowance).

Industry member pays for live entertainment for an on-premises retailer in exchange for product promotion and preferential display space within the retailer's premises.

# INDUSTRY PARTICIPATION IN RETAILER MARKETING OR PROMOTIONAL PROGRAMS

May manufacturers or wholesalers participate in a retailer-initiated marketing or promotional programs that result in the industry member furnishing the retailer with the things of value as provided in Section 311.070, RSMo?

- Although there is a blanket prohibition against furnishing things of value to a retailer, an industry member may furnish retailers with the items and services specified in Section 311.070.
- However, it is the industry member's responsibility to provide oversight and guidance to ensure that only those items, services, and things of value listed are furnished to the retailer.

The retailer is also responsible not to accept more than what is allowed under Section 311.070.

# THIRD PARTY PROMOTERS / SPONSORSHIPS

Industry members are using third-party marketing companies to indirectly provide things of value to retailers, things of value include payments for entertainment at the retail venue and marketing support that includes items or services not specifically excepted under Section 311.070.

**The industry members are responsible** for the actions of a third party promoter even if they have an agreement specifying the third party will adhere to all laws in carrying out their duties. Industry members are responsible for oversight of third party's actions on their behalf.

# CAN THE UPPER TIERS PROVIDE MONEY TO RETAILERS FOR PROMOTIONAL SUPPORT?

No.

Any money provided to a retailer for promotional support would be in violation of liquor laws even if they in turn use those funds to purchase items that are allowed to be provided.

# LARGE NATIONAL CHAIN DEALS

A violation occurs when a large manufacturer makes a deal with a large national chain to offer special packaging pricing or other favorable treatment outside of the exceptions allowed.

- ▶ Offering 6 pack pricing to one chain of retailers at special pricing that other retailers can't purchase.
- ▶ Providing expensive tap systems to retailers in exchange for exclusive or majority of draught systems in their establishments.

# STOCKING, SETTING, ROTATING

ATC is seeing a trend in the industry where retailers are requiring wholesalers to perform services in excess of the routine stocking, setting and rotating services allowed.

## **Industry circular sets out guidance.**

- ▶ Inventory Management Systems are typically in excess of allowable services.
- ▶ Wholesalers should not provide an on call employee to perform warehousing services to retailers.
- ▶ Stocking and rotating services may only be provided to the retailers during the wholesalers regular course of business.
- ▶ Wholesalers may not affix prices or inventory control devices.

Both wholesaler and retailer can be cited for exceeding limits.

# ADDITIONAL NOTES – CURRENT TRENDS

Refrigerated Draught Systems – Glycol - Section 311.070 gives no exceptions for industry members to rent, sell, give or loan refrigerated equipment to retailers. ATC considers glycol draught systems to be refrigeration equipment, and correspondingly, glycol systems and/or glycol system components may not be given, sold, rented, or loaned to retailers in any manner.

Beer Buckets – Buckets that retailers use to sell “buckets of beer” (typically 5 or 6 beers in an iced bucket) can be considered as similar to glassware and should be classified as equipment and supplies. Buckets must be sold at a price not less than cost and retailers must pay for the buckets within ordinary commercial credit terms.

Umbrellas - Consistent with ATC’s position through the years, it is unlawful to rent, sell, give or lease umbrellas to retailers.

# ADDITIONAL NOTES – CURRENT TRENDS

T-shirts - May be provided to consumers/patrons as a consumer advertising specialty, but industry members may not provide T-shirts to retailer or the retailers employees. T-shirts should not be given to the retailers for their own use.

Gifts - Many gifts to retailers, including but not limited to meals, t-shirts, entertainment expenses such as concerts, sporting events, golf, travel, etc. are prohibited.

In addition, retailers accepting financial incentives from industry members that are outside trade practice laws face administrative disciplinary actions against their licenses.



# ADDITIONAL NOTES – CURRENT TRENDS

- ▶ **Tastings** – Please see the tasting guidelines for wholesalers and manufacturers and solicitors on our website.
- ▶ Industry members may not under any circumstances provide other items – most commonly cheese or other food items – at any tastings.
- ▶ Tastings **may not** be used as an opportunity to provide a party at a licensed retail location to benefit the retailer.

# ADDITIONAL NOTES – CURRENT TRENDS

Slotting Fees – 11 CSR 70-2.040(2) prohibits industry members from paying retailers any fee, rental or other consideration for the use of any part of the licensed premises for advertising.

Industry members may not pay retailers for premium shelf space or displays in areas of high traffic.

# ADDITIONAL NOTES – CURRENT TRENDS

- ▶ Coolers – May be provided to retailers as product displays (311.070.3(4)). The total value cannot exceed \$300 per brand.
- ▶ May not be used by retailers as portable bars, or taken home by retailers or their employees.
- ▶ May provide coolers to picnic and/or festival licensees.
- ▶ May be used as a sweepstakes gift to a consumer at the end of a promotion under PPOS. The total value cannot exceed \$500 per calendar year, per brand.

# ADDITIONAL NOTES – CURRENT TRENDS

## Guidelines for Retailers Who Want to Deliver Alcohol

- ▶ Sale must take place on the licensed premises. Delivery driver cannot accept payment.
- ▶ Must make sure the delivery is not made to minor or intoxicated person.
- ▶ Driver must ask for ID
- ▶ Retailer is responsible for all actions of the delivery driver.

# 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](http://www.atc.dps.mo.gov)**

Contact Info:

[Karen.Dorton@dps.mo.gov](mailto:Karen.Dorton@dps.mo.gov)

[Kristen.Cole@dps.mo.gov](mailto:Kristen.Cole@dps.mo.gov)

[Christin.Templeton@dps.mo.gov](mailto:Christin.Templeton@dps.mo.gov)