

FIRST REGULAR SESSION

# HOUSE BILL NO. 723

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOUX.

1049H.02I

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to alcohol trade practices.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 311.070, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 311.070, to read as follows:

311.070. 1. Distillers, wholesalers, winemakers, brewers, or their employees, officers, or agents shall not, except as provided in this section, directly or indirectly, have 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. However, notwithstanding any other provision of this chapter to the contrary, for the purpose of the promotion of tourism, a distiller whose manufacturing establishment is located within this state may apply for and the supervisor of ~~liquor~~ **alcohol and tobacco** control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises where sold; and provided further that the premises so licensed shall be in close proximity to the distillery and may remain open between the hours of 6:00 a.m. and 1:30 a.m., Monday through Saturday and between the hours of 9:00 a.m. and midnight, Sunday. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to the holder of a license issued under the provisions of this section in the same manner as they apply to establishments licensed under the provisions of section 311.085, 311.090, or 311.095.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           2. Any distiller, wholesaler, winemaker, or brewer who shall violate the provisions of  
19 subsection 1 of this section, or permit his **or her** employees, officers or agents to do so, shall be  
20 guilty of a misdemeanor, and upon conviction thereof shall be punished as follows:

21           (1) For the first offense, by a fine of one thousand dollars;

22           (2) For a second offense, by a fine of five thousand dollars; and

23           (3) For a third or subsequent offense, by a fine of ten thousand dollars or the license of  
24 such person shall be revoked.

25           3. As used in this section, the following terms mean:

26           (1) "Consumer advertising specialties", advertising items that are designed to be carried  
27 away by the consumer, such items include, but are not limited to: trading stamps, nonalcoholic  
28 mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches,  
29 printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

30           (2) "Equipment and supplies", glassware (or similar containers made of other ~~[material]~~  
31 **materials**), ~~[dispensing accessories,]~~ carbon dioxide (and other gasses used in dispensing  
32 equipment) ~~[or]~~ , ice~~[-"~~Dispensing accessories" include standards, faucets, cold plates, rods,  
33 ~~vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check~~  
34 ~~valves]~~ , **nonrefrigerated rolling coolers, portable bars, agitating tanks, tubs, tents not to**  
35 **exceed one hundred square feet in size, and any permanently inscribed or securely affixed**  
36 **brand identified nonrefrigerated item that promotes intoxicating liquor;**

37           (3) "**Nonrefrigeration dispensing accessories**", includes regulators, gauges, vents,  
38 **nuts, clamps, splicers, keg stackers, washers, shanks, wall brackets, beer and air**  
39 **distributors, beer line insulation, beer and gas hoses, faucets, taps, tap standards, couplers,**  
40 **air pumps, draft arms, blankets or other coverings for temporary wrapping of barrels, and**  
41 **tavern heads and their internal parts;**

42           (4) "Permanent point-of-sale advertising materials", advertising items designed to be  
43 used within a retail business establishment for an extended period of time to attract consumer  
44 attention to the products of a distiller, wholesaler, winemaker or brewer. Such materials shall  
45 only include inside signs (electric, mechanical or otherwise), mirrors, **table umbrellas**, and  
46 sweepstakes/contest prizes displayed on the licensed premises;

47           ~~[(4)]~~ (5) "Product display", wine racks, **portable branded nonrefrigerated coolers**,  
48 bins, barrels, casks, shelving or similar items the primary function of which is to hold and display  
49 consumer products;

50           ~~[(5)]~~ (6) "Promotion", an advertising and publicity campaign to further the acceptance  
51 and sale of the merchandise or products of a distiller, wholesaler, winemaker, or brewer;

52           ~~[(6)]~~ (7) "Temporary point-of-sale advertising materials", advertising items designed  
53 to be used for short periods of time. Such materials include, but are not limited to: banners,

54 decorations reflecting a particular season or a limited-time promotion, or paper napkins, coasters,  
55 cups, **tap handles, ice buckets, condiment caddies, napkin holders, bar rail mats, shakers,**  
56 **salt rimmers,** or menus.

57 4. Notwithstanding other provisions contained herein, the distiller, wholesaler,  
58 winemaker, or brewer, or their employees, officers, or agents may engage in the following  
59 activities with a retail licensee licensed pursuant to this chapter:

60 (1) The distiller, wholesaler, winemaker, or brewer may give or sell product displays to  
61 a retail business if all of the following requirements are met:

62 (a) The total value of all product displays given or sold to a retail business shall not  
63 exceed three hundred dollars per brand at any one time in any one retail outlet. There shall be  
64 no combining or pooling of the three hundred dollar limits to provide a retail business a product  
65 display in excess of three hundred dollars per brand. The value of a product display is the actual  
66 cost to the distiller, wholesaler, winemaker, or brewer who initially purchased such product  
67 display. Transportation and installation costs shall be excluded;

68 (b) All product displays shall bear in a conspicuous manner substantial advertising  
69 matter on the product or the name of the distiller, wholesaler, winemaker, or brewer. The name  
70 and address of the retail business may appear on the product displays; and

71 (c) The giving or selling of product displays may be conditioned on the purchase of  
72 intoxicating beverages advertised on the displays by the retail business in a quantity necessary  
73 for the initial completion of the product display. No other condition shall be imposed by the  
74 distiller, wholesaler, winemaker, or brewer on the retail business in order for such retail business  
75 to obtain the product display;

76 (2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler,  
77 winemaker, or brewer may provide, give or sell any permanent point-of-sale advertising  
78 materials, temporary point-of-sale advertising materials, and consumer advertising specialties  
79 to a retail business if all the following requirements are met:

80 (a) The total value of all permanent point-of-sale advertising materials provided to a  
81 retail business by a distiller, wholesaler, winemaker, or brewer shall not exceed five hundred  
82 dollars per calendar year, per brand, per retail outlet. **The replacement of similar in**  
83 **appearance, type, and dollar value permanent point-of-sale advertising materials that are**  
84 **damaged and nonfunctioning shall not count towards the maximum of five hundred dollars**  
85 **per calendar year, per brand, per retail outlet.** The value of permanent point-of-sale  
86 advertising materials is the actual cost to the distiller, wholesaler, winemaker, or brewer who  
87 initially purchased such item. Transportation and installation costs shall be excluded. All  
88 permanent point-of-sale advertising materials provided to a retailer shall be recorded, and records  
89 shall be maintained for a period of three years;

90 (b) The provider of permanent point-of-sale advertising materials shall own and  
91 otherwise control the use of permanent point-of-sale advertising materials that are provided by  
92 any distiller, wholesaler, winemaker, or brewer;

93 (c) All permanent point-of-sale advertising materials, temporary point-of-sale advertising  
94 materials, and consumer advertising specialties shall bear in a conspicuous manner substantial  
95 advertising matter about the product or the name of the distiller, wholesaler, winemaker, or  
96 brewer. The name, address and logos of the retail business may appear on the permanent  
97 point-of-sale advertising materials, temporary point-of-sale advertising materials, or the  
98 consumer advertising specialties; and

99 (d) The distiller, wholesaler, winemaker, or brewer shall not directly or indirectly pay  
100 or credit the retail business for using or distributing the permanent point-of-sale advertising  
101 materials, temporary point-of-sale advertising materials, or consumer advertising specialties or  
102 for any incidental expenses arising from their use or distribution;

103 (3) A distiller, wholesaler, winemaker, or brewer may give a gift not to exceed a value  
104 of one thousand dollars per year to a holder of a temporary permit as ~~defined~~ **described** in  
105 section 311.482;

106 (4) The distiller, wholesaler, winemaker, or brewer may sell equipment ~~or~~ **and** supplies  
107 to a retail business if all the following requirements are met:

108 (a) The equipment and supplies shall be sold at a price not less than the cost to the  
109 distiller, wholesaler, winemaker, or brewer who initially purchased such equipment and supplies;  
110 and

111 (b) The price charged for the equipment and supplies shall be collected in accordance  
112 with credit regulations as established in the code of state regulations;

113 (5) The ~~distiller,~~ wholesaler~~, winemaker~~ or brewer may install **nonrefrigeration**  
114 dispensing accessories at the retail business establishment, which shall include for the purposes  
115 of beer equipment to properly preserve and serve draught beer only and to facilitate the delivery  
116 to the retailer the brewers and wholesalers may lend, give, rent or sell and they may install or  
117 repair ~~[any of the following items or render to retail licensees any of the following services: beer~~  
118 ~~coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets and~~  
119 ~~tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer and air~~  
120 ~~distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable coil~~  
121 ~~boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box~~  
122 ~~overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons,~~  
123 ~~ice box grates, floor runways;]~~ **nonrefrigeration dispensing accessories** and damage caused by  
124 any beer delivery excluding normal wear and tear ~~and a~~ . A complete record of equipment,  
125 **supplies, and nonrefrigeration dispensing accessories** furnished and installed and repairs and

126 service made or rendered must be kept by the brewer or wholesalers furnishing, making, or  
127 rendering same for a period of not less than one year;

128 (6) The distiller, wholesaler, winemaker, or brewer may furnish, give, or sell ~~oil~~  
129 **cleaning and sanitation [service] services** to a retailer **to preserve product integrity** of distilled  
130 spirits, wine, or malt beverages;

131 (7) A wholesaler of intoxicating liquor may furnish or give and a retailer may accept a  
132 sample of distilled spirits or wine as long as the retailer has not previously purchased the brand  
133 from that wholesaler, if all the following requirements are met:

134 (a) The wholesaler may furnish or give not more than seven hundred fifty milliliters of  
135 any brand of distilled spirits and not more than seven hundred fifty milliliters of any brand of  
136 wine; if a particular product is not available in a size within the quantity limitations of this  
137 subsection, a wholesaler may furnish or give to a retailer the next larger size;

138 (b) The wholesaler shall keep a record of the name of the retailer and the quantity of each  
139 brand furnished or given to such retailer;

140 (c) For the purposes of this subsection, no samples of intoxicating liquor provided to  
141 retailers shall be consumed on the premises nor shall any sample of intoxicating liquor be opened  
142 on the premises of the retailer except as provided by the retail license;

143 (d) For the purpose of this subsection, the word "brand" refers to differences in brand  
144 name of product or differences in nature of product; examples of different brands would be  
145 products having a difference in: brand name; class, type or kind designation; appellation of  
146 origin (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof  
147 (distilled spirits); differences in packaging such a different style, type, size of container, or  
148 differences in color or design of a label are not considered different brands;

149 (8) The distiller, wholesaler, winemaker, or brewer may package and distribute  
150 intoxicating beverages in combination with other nonalcoholic items as originally packaged by  
151 the supplier for sale ultimately to consumers; notwithstanding any provision of law to the  
152 contrary, for the purpose of this subsection, intoxicating liquor and wine wholesalers are not  
153 required to charge for nonalcoholic items any more than the actual cost of purchasing such  
154 nonalcoholic items from the supplier;

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

157 (10) The distiller, wholesaler, winemaker, or brewer may in an advertisement list the  
158 names and addresses of two or more unaffiliated retail businesses selling its product if all of the  
159 following requirements are met:

160 (a) The advertisement shall not contain the retail price of the product;

161 (b) The listing of the retail businesses shall be the only reference to such retail businesses  
162 in the advertisement;

163 (c) The listing of the retail businesses shall be relatively inconspicuous in relation to the  
164 advertisement as a whole; and

165 (d) The advertisement shall not refer only to one retail business or only to a retail  
166 business controlled directly or indirectly by the same retail business;

167 (11) Distillers, winemakers, wholesalers, brewers or retailers may conduct a local or  
168 national sweepstakes/contest upon a licensed retail premise. The sweepstakes/contest prize  
169 dollar amount shall not be limited and can be displayed in a photo, banner, or other temporary  
170 point-of-sale advertising materials on a licensed premises, if the following requirements are met:

171 (a) No money or something of value is given to the retailer for the privilege or  
172 opportunity of conducting the sweepstakes or contest; and

173 (b) The actual sweepstakes/contest prize is not displayed on the licensed premises if the  
174 prize value exceeds the permanent point-of-sale advertising materials dollar limit provided in this  
175 section;

176 (12) The distiller, wholesaler, winemaker, or brewer may stock, rotate, rearrange or reset  
177 the products sold by such distiller, wholesaler, winemaker, or brewer at the establishment of the  
178 retail business so long as the products of any other distiller, wholesaler, winemaker, or brewer  
179 are not altered or disturbed;

180 (13) The distiller, wholesaler, winemaker, or brewer may provide a recommended shelf  
181 plan or shelf schematic for distilled spirits, wine, or malt beverages;

182 (14) The distiller, wholesaler, winemaker, or brewer participating in the activities of a  
183 retail business association may do any of the following:

184 (a) Display, serve, or donate its products at or to a convention or trade show;

185 (b) Rent display booth space if the rental fee is the same paid by all others renting similar  
186 space at the association activity;

187 (c) Provide its own hospitality which is independent from the association activity;

188 (d) Purchase tickets to functions and pay registration or sponsorship fees if such purchase  
189 or payment is the same as that paid by all attendees, participants or exhibitors at the association  
190 activity;

191 (e) Make payments for advertisements in programs or brochures issued by retail business  
192 associations if the total payments made for all such advertisements are fair and reasonable;

193 (f) Pay dues to the retail business association if such dues or payments are fair and  
194 reasonable;

195 (g) Make payments or donations for retail employee training on preventive sales to  
196 minors and intoxicated persons, checking identifications, age verification devices, and the liquor  
197 control laws;

198 (h) Make contributions not to exceed one thousand dollars per calendar year for  
199 transportation services that shall be used to assist patrons from retail establishments to his or her  
200 residence or overnight accommodations;

201 (i) Donate or serve up to five hundred dollars per event of alcoholic products at retail  
202 business association activities; and

203 (j) Any retail business association that receives payments or donations shall, upon  
204 written request, provide the division of alcohol and tobacco control with copies of relevant  
205 financial records and documents to ensure compliance with this subsection;

206 (15) The distiller, wholesaler, winemaker, or brewer may sell or give a permanent  
207 outside sign to a retail business if the following requirements are met:

208 (a) The sign, which shall be constructed of metal, glass, wood, plastic, or other durable,  
209 rigid material, with or without illumination, or painted or otherwise printed onto a rigid material  
210 or structure, shall bear in a conspicuous manner substantial advertising matter about the product  
211 or the name of the distiller, wholesaler, winemaker, or brewer;

212 (b) The retail business shall not be compensated, directly or indirectly, for displaying the  
213 permanent sign or a temporary banner;

214 (c) The cost of the permanent sign shall not exceed five hundred dollars; and

215 (d) Temporary banners of a seasonal nature or promoting a specific event shall not be  
216 constructed to be permanent outdoor signs and may be provided to retailers. The total cost of  
217 temporary outdoor banners provided to a retailer in use at any one time shall not exceed five  
218 hundred dollars per brand;

219 (16) A wholesaler may, but shall not be required to, exchange for an equal quantity of  
220 identical product or allow credit against outstanding indebtedness for intoxicating liquor with  
221 alcohol content of less than five percent by weight **and malt liquor** that was delivered in a  
222 damaged condition or damaged while in the possession of the retailer;

223 (17) To assure and control product quality, wholesalers at the time of a regular delivery  
224 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of  
225 intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in  
226 its undamaged original carton from the retailer's stock, if the wholesaler replaces the product  
227 with an equal quantity of identical product;

228 (18) In addition to withdrawals authorized pursuant to subdivision (17) of this  
229 subsection, to assure and control product quality, wholesalers at the time of a regular delivery  
230 may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of

231 intoxicating liquor with alcohol content of less than five percent by weight **and malt liquor** in  
232 its undamaged original carton from the retailer's stock and give the retailer credit against  
233 outstanding indebtedness for the product if:

234 (a) The product is withdrawn at least thirty days after initial delivery and within  
235 twenty-one days of the date considered by the manufacturer of the product to be the date the  
236 product becomes inappropriate for sale to a consumer; and

237 (b) The quantity of product withdrawn does not exceed the equivalent of twenty-five  
238 cases of twenty-four twelve-ounce containers; and

239 (c) To assure and control product quality, a wholesaler may, but not be required to, give  
240 a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight  
241 **and malt liquor**, in a container with a capacity of four gallons or more, delivered but not used,  
242 if the wholesaler removes the product within seven days of the initial delivery; and

243 (19) Nothing in this section authorizes consignment sales.

244 5. (1) A distiller, wholesaler, winemaker, or brewer that is also in business as a bona  
245 fide producer or vendor of nonalcoholic beverages shall not condition the sale of its alcoholic  
246 beverages on the sale of its nonalcoholic beverages nor combine the sale of its alcoholic  
247 beverages with the sale of its nonalcoholic beverages, except as provided in subdivision (8) of  
248 subsection 4 of this section. The distiller, wholesaler, winemaker, or brewer that is also in  
249 business as a bona fide producer or vendor of nonalcoholic beverages may sell, credit, market,  
250 and promote nonalcoholic beverages in the same manner in which the nonalcoholic products are  
251 sold, credited, marketed, or promoted by a manufacturer or wholesaler not licensed by the  
252 supervisor of alcohol and tobacco control.

253 (2) Any fixtures, equipment, or furnishings provided by any distiller, wholesaler,  
254 winemaker, or brewer in furtherance of the sale of nonalcoholic products shall not be used by  
255 the retail licensee to store, service, display, advertise, furnish, or sell, or aid in the sale of  
256 alcoholic products regulated by the supervisor of alcohol and tobacco control. All such fixtures,  
257 equipment, or furnishings shall be identified by the retail licensee as being furnished by a  
258 licensed distiller, wholesaler, winemaker, or brewer.

259 6. Distillers, wholesalers, brewers, and winemakers, or their officers or directors shall  
260 not require, by agreement or otherwise, that any retailer purchase any intoxicating liquor from  
261 such distillers, wholesalers, brewers, or winemakers to the exclusion in whole or in part of  
262 intoxicating liquor sold or offered for sale by other distillers, wholesalers, brewers, or  
263 winemakers.

264 7. Notwithstanding any other provisions of this chapter to the contrary, a distiller,  
265 **winemaker**, or wholesaler may install **nonrefrigeration** dispensing accessories at the retail  
266 business establishment, which shall include for the purposes of distilled spirits **and wine**



267 equipment to properly preserve and serve premixed distilled spirit **and wine** beverages only. To  
268 facilitate delivery to the retailer, ~~[the]~~ a distiller, **winemaker**, or wholesaler may lend, give, rent,  
269 or sell and ~~[the]~~ a distiller, **winemaker**, or wholesaler may install or repair ~~[any of the following~~  
270 ~~items or render to retail licensees any of the following services: coils and coil cleaning, draft~~  
271 ~~arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other minor~~  
272 ~~tapping equipment components,]~~ **nonrefrigeration dispensing accessories** and damage caused  
273 by any delivery excluding normal wear and tear. A complete record of ~~[equipment]~~  
274 **nonrefrigeration dispensing accessories** furnished and installed and repairs or service made  
275 or rendered shall be kept by the distiller, **winemaker**, or wholesaler furnishing, making, or  
276 rendering the same for a period of not less than one year.

277 8. Distillers, wholesalers, winemakers, brewers or their employees or officers shall be  
278 permitted to make contributions of money or merchandise to a licensed retail liquor dealer that  
279 is a charitable, fraternal, civic, service, veterans', or religious organization as defined in section  
280 313.005, or an educational institution if such contributions are unrelated to such organization's  
281 retail operations.

282 9. Distillers, brewers, wholesalers, and winemakers may make payments for  
283 advertisements in programs or brochures of tax-exempt organizations licensed under section  
284 311.090 if the total payments made for all such advertisements are the same as those paid by  
285 other vendors.

286 10. A brewer or manufacturer, its employees, officers or agents may have a financial  
287 interest in the retail business for sale of intoxicating liquors at entertainment facilities owned,  
288 in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates including, but not  
289 limited to, arenas and stadiums used primarily for concerts, shows and sporting events of all  
290 kinds.

291 11. For the purpose of the promotion of tourism, a wine manufacturer, its employees,  
292 officers or agents located within this state may apply for and the supervisor of ~~[liquor]~~ **alcohol**  
293 **and tobacco** control may issue a license to sell intoxicating liquor, as defined in this chapter, by  
294 the drink at retail for consumption on the premises where sold, if the premises so licensed is in  
295 close proximity to the winery. Such premises shall be closed during the hours specified under  
296 section 311.290 and may remain open between the hours of 9:00 a.m. and midnight on Sunday.

297 12. For the purpose of the promotion of tourism, a person may apply for and the  
298 supervisor of ~~[liquor]~~ **alcohol and tobacco** control may issue a license to sell intoxicating liquor  
299 by the drink at retail for consumption on the premises where sold, but seventy-five percent or  
300 more of the intoxicating liquor sold by such licensed person shall be Missouri-produced wines  
301 received from manufacturers licensed under section 311.190. Such premises may remain open

302 between the hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours  
303 of 11:00 a.m. and 9:00 p.m. on Sundays.

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