

Title 11--DEPARTMENT OF PUBLIC SAFETY
Division 45--Missouri Gaming Commission
Chapter 12--Liquor Control

PROPOSED AMENDMENT

11 CSR 45-12.090 Rules of Liquor Control. The commission is amending sections (1)–(3), and sections (5)–(26).

PURPOSE: This amendment lists requirements for the prevention of improper acts and improper conduct at the licensed premises; provides direction regarding consumption of alcohol by employees; allows for employees to serve liquor not purchased by the licensee at private parties, when the facility is rented; gives guidelines for advertising materials; removes the requirement to notify the commission of the kind and quantity of liquor delivered to the facility; recognizes that liquor may be sold off-property with a valid license; and clarifies standards for liquor provided at fund-raising activities.

(1) Inspection. All licensees shall allow the licensed premises, including all rooms, passageways, closets, vaults, attics, docks, yards and all buildings used in connection with the operations carried on under the license and which are in their possession or under their control, and all places where they keep or have liquor stored, to be inspected by the **Missouri Gaming Commission** (commission) and their agents. Licensees shall cooperate fully with the commission and their agents during the inspections.

(2) Record Keeping. All licensees are required to keep complete and accurate records of all purchases and of all sales of intoxicating liquor made by them. These records must 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 shall also include the daily gross returns from sales.

(A) All licensees shall keep all files, books, records, papers, state, county and city licenses, federal tax stamps, accounts and memoranda pertaining to the business conducted by the licensee on the licensed premises and upon request of the commission or their duly authorized agents and auditors, the licensees shall promptly allow an inspection and audit to be made by the commission or *[their]* **its** 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.

(B) All records required to be kept by this chapter must be kept and preserved for a period of **at least** two (2) years from the date the record was made.

(3) Sale to Minors and Other Persons. An excursion liquor licensee shall not, through actions of *[his/her]* **its** own or of an **agent or** employee, sell, vend, give away its or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one (21) years, to any person intoxicated or appearing to be in the state of intoxication, or to a habitual drunkard. A licensee shall not permit any person under the age of twenty-one (21) years, any intoxicated person, or any habitual drunkard to consume intoxicating liquor on the licensed premises.

(A) Any licensee who in good faith relies on a valid and unexpired driver's or commercial driver's license issued under the provision of section 302.177, RSMo or under the laws of any state or territory of the United States to residents of those states or territories, or a valid and unexpired identification card as provided under section 302.181, RSMo, or under the laws of any state or territory of the United States to residents of those states or territories, or a valid and unexpired identification card issued by any uniformed service of the United States, or a valid and unexpired passport shall not be disciplined for a sale to a minor in violation of section (1).

(B) In order to be deemed acting in good faith, the licensee or the licensee's *[servant,]* agent or employee, upon presentation must compare the photograph and physical characteristics of the person presenting the identification.

(4) Orderly Place. The licensee shall at all times maintain an orderly place.

(5) Improper Acts. At no time, under any circumstances, shall any licensee or its employees or agents fail to prevent or immediately suppress improper or unlawful conduct by any person upon the licensed premise, nor shall any licensee or its employees and agent allow any indecent or obscene entertainment, literature, or advertising material upon the licensed premises.

(6) Lewdness. No Class B licensee or its employee or agent shall permit in or upon its licensed premises:

(A) The performance of acts, or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

(B) The displaying of any portion of the areola of the female breast;

(C) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus, or genitals;

(D) The actual or simulated displaying of the pubic hair, anus, vulva, or genitals;

(E) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his/her genitals or anus; and

(F) The displaying of films, video programs, or pictures depicting acts, the live performances of which are prohibited by this regulation or by any other law.

[(5)] (7) Employees.

(A) *[Except upon written authorization from the director as provided in subsection (5)(B), no]* **No Class B licensee as holder of an excursion liquor license shall give to, sell, or permit to be given to or sold any intoxicating liquor, in any quantity, to any employee of the Class A or B licensee on the gaming floor or to any on-duty employee [of the Class B licensee, nor shall the holder of an excursion liquor license permit any patron to give to any employee any intoxicating liquor, in any quantity, or to purchase it for or drink it with any employee in the establishment or on the premises of the licensee.] off the gaming floor, with the following exceptions:**

[(B)] **1. An excursion liquor licensee may submit to the director a written request for authorization for—**

[1.] **A. Level I licensees or applicants, the licensee's food and beverage director, or corporate officers to consume alcoholic beverages in the nongaming areas of the premises while on-duty for business purposes. The director's authorization or denial shall be in writing; or**

B. A brewmaster, winemaker, or distiller while on-duty to taste test products produced by the Class B licensee for quality control in nongaming areas of the premises. The director's authorization or denial shall be in writing.

[2. Employees to consume alcoholic beverages in the nongaming areas of the premises at specific functions sponsored by the excursion liquor licensee. The director's authorization or denial shall be in writing; or

3. Training beverage servers in the nongaming areas of the premises by using taste testing in order to inform the beverage server about the characteristics of beverages offered by the licensee. The director's authorization or denial shall be in writing.]

2. An excursion liquor licensee may conduct taste testing sessions in the nongaming areas of the premises closed to the public at which on-duty food and beverage employees may consume alcoholic beverages for the purpose of training to inform them about the characteristics of beverages offered by the licensee.

[(C)] **(B) Except [upon written authorization from the director as provided] as permitted** in subsection *[(5)(B)]* **(7)(A)** or as specifically required to provide intoxicating liquor service to patrons in the performance of one's job functions, no **on-duty** employee of a **Class A or Class B licensee** shall, while on the premises of the riverboat gaming operation by which so employed, purchase, consume, or otherwise possess any intoxicating liquor in any quantity.

[(D)] **(C)** An excursion liquor licensee may not permit a person under the age of twenty-one (21) years to sell or assist in the sale or dispensing of intoxicating liquor, except persons eighteen (18) years of age or older may, when acting in the capacity of a waiter or waitress, accept payment for or serve intoxicating liquor in

areas where the excursion liquor licensee sells food for on-premises consumption, and if at least fifty percent (50%) of all sales in those areas consists of food or if two hundred thousand dollars (\$200,000) in gross **annual** sales is from the sale of prepared meals or food. Nothing in this section shall authorize persons under twenty-one (21) years of age to mix or serve intoxicating liquors across the bar.

(D) No holder of an excursion liquor license shall permit any patron to give to any employee any intoxicating liquor, in any quantity, or to purchase it for any employee in the establishment or on the premises of the licensee.

[(6)] **(8) Purchase of Intoxicating Liquor.** An excursion liquor licensee may purchase intoxicating liquor only from a wholesale liquor dealer duly licensed by the Missouri Supervisor of Liquor Control. No excursion liquor licensee or any of *[his/her/]* its employees or agents, shall—

(A) Offer or give an order for such intoxicating liquor to a person licensed as a manufacturer (**brewer, distiller or wine maker**) or solicitor of intoxicating liquor, *[containing alcohol or any of his/her]* or its officers, directors, employees, agents, or representatives; and

(B) Call upon, contact or meet at places other than the retailer's place of business with the manufacturers or solicitors of any of his/her or its officers, directors, employees, agents, or representatives for any purpose in any way connected with or related to intoxicating liquor by any means or place.

[(7)] **(9) May Not Possess Unless Purchased from a Wholesaler or Manufactured by Licensee Pursuant to a Valid Microbrewer's License.** No excursion liquor licensee shall possess any intoxicating liquor which has not been purchased from, by, or through wholesalers duly licensed by the Missouri Supervisor of Liquor Control, or brewed by the licensee pursuant to a valid microbrewer's license issued to the licensee by the Missouri Supervisor of Liquor Control. *[All purchases of intoxicating liquor containing alcohol in excess of five percent (5%) by weight, shall be purchased at the price posted at the Division of Liquor Control pursuant to sections 311.332–311.338, RSMo and 11 CSR 70-2.190.]* **Nothing in this section shall prohibit parties renting facilities for a private function from providing their own intoxicating liquor and permitting employees of the licensee to serve the liquor at the private function.**

[(8)] **(10) Commercial Credit.** No excursion liquor licensee shall accept any equipment, money, credit or property of any kind, except ordinary commercial credit for liquors purchased from a distiller, wholesaler, wine maker or brewer.

(A) Ordinary commercial credit as used in the malt beverage and nonintoxicating beer industry shall be credit on such terms as shall require payment to be made by the excursion licensee by the last day of the month for malt beverages or nonintoxicating beer which is delivered to the excursion licensee on or after the first day of the month and up to and including the fifteenth day of the month and by the fifteenth day of the month next succeeding for malt beverages or nonintoxicating beer which is delivered to the excursion licensee on or after the sixteenth day of the month and up to and including the last day of the month. No brewer or wholesaler shall sell or deliver to any excursion licensee any malt beverage or nonintoxicating beer while the excursion licensee owes the brewer or wholesaler for any malt beverage or nonintoxicating beer beyond the period of time as indicated in this subsection.

(B) Ordinary commercial credit as used in the intoxicating liquor industry, other than the malt beverage industry, shall be credit on such terms as shall require payment to be made by the excursion liquor licensee within thirty (30) days after the delivery of any intoxicating liquor, other than malt beverage, to the excursion licensee. No distiller, wholesaler or wine maker shall sell or deliver to any retail licensee any intoxicating liquor, other than malt beverage, while the licensee owes the distiller, wholesaler, or wine maker for any intoxicating liquor, other than malt beverage, beyond the period of time as indicated in this subsection.

~~[(9)]~~ **(11) Retailers Shall Accept Only Ordinary Credit—May Supply Retailers with Following Items.** No excursion liquor licensee, directly or indirectly, shall accept any loans, equipment, money, credit or property of any kind, except ordinary commercial credit. No excursion liquor licensee shall permit any distiller, wholesaler, wine maker, brewer or ~~[his/her/]~~ its employees, officers or agents, under any circumstances, directly or indirectly, to have any financial interest in ~~[his/her/]~~ its retail business for the sale of intoxicating liquor and ~~[s/he/it]~~ **the licensee** shall not accept, directly or indirectly, from a distiller, wholesaler, wine maker, brewer or its employees, officers or agents any loan, gifts, equipment, money, credit or property of any kind except ordinary commercial credit for intoxicating liquor sold to the licensee.

(A) Notwithstanding other provisions contained herein, the distiller, wholesaler, winemaker or brewer, or its employees, officers, or agents may engage in the following activities with a retail licensee licensed pursuant to this chapter:

1. The distiller, wholesaler, winemaker, or brewer may give or sell product displays, as defined in section 311.070 RSMo, to a retail business if all of the following requirements are met:

A. The total value of all product displays given or sold to a retail business shall not exceed three hundred dollars (\$300) per brand at any one time in any one authorized location on the premises. There shall be no combining or pooling of the three hundred dollar (\$300) limits to provide an authorized location a product display in excess of three hundred dollars (\$300) per brand. The value of a product display is the actual cost to the distiller, wholesaler, winemaker, or brewer who initially purchased such product display. Transportation and installation costs shall be excluded;

B. All product displays shall bear in a conspicuous manner substantial advertising matter on the product or the name of the distiller, wholesaler, winemaker, or brewer. The name and address of the authorized location may appear on the product displays; and

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

2. Notwithstanding any provision of law to the contrary, the distiller, wholesaler, winemaker, or brewer may provide, give or sell any permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, and consumer advertising specialties, as those terms are defined in section 311.070 RSMo, to a retail business if all the following requirements are met:

A. The total value of all permanent point-of-sale advertising materials provided to a retail business by a distiller, wholesaler, winemaker, or brewer shall not exceed five hundred dollars (\$500) per calendar year, per brand, per authorized location on the premises. The value of permanent point-of-sale advertising materials is the actual cost to the distiller, wholesaler, winemaker or brewer who initially purchased such item. Transportation and installation costs shall be excluded. All permanent point-of-sale advertising materials provided to a retailer shall be recorded, and records shall be maintained for a period of three (3) years;

B. The provider of permanent point-of-sale advertising materials shall own and otherwise control the use of permanent point-of-sale advertising materials that are provided by any distiller, wholesaler, winemaker, or brewer;

C. All permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, and consumer advertising specialties 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 authorized location may appear on the permanent point-of-sale advertising materials, temporary point-of-sale advertising materials, or the consumer advertising specialties; and

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

[(A)] **(B)** Notwithstanding the statements of section *[(9)]* **(11)**, to properly preserve and serve draught beer only and to facilitate the delivery to the licensee, *[s/he/it]* **the licensee** may accept, any of the following items or 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 repair of damage caused by any beer delivery excluding normal wear and tear. A complete record of equipment, repairs and service accepted must be kept for a period of not less than one (1) year.

[(B)] **(C)** Notwithstanding the provisions of subsection *[(9)(A)]* **(11)(B)**, to properly preserve and serve draught wine, wine tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, coupling, gas gauges, vent tongues, shanks and check valves may be purchased if the tapping accessories are purchased at a price not less than the cost to the distiller, wine maker, brewer or wholesaler who initially purchased them and if the price is collected within thirty (30) days of the date of sale. Coil cleaning service may be accepted by a licensee.

[(C)] **(D)** Defining certain sales to be a gift of money or property. A sale by a licensed wholesaler to an excursion liquor licensee at a price which is less than the cost of the intoxicating liquor to the licensed wholesaler making the sale is presumed (subject to rebuttal as set out in this rule) to constitute a gift of money or property to the licensed retailer in violation of this rule. The presumption may be rebutted by reasonable proof that the fair wholesale market value of the intoxicating liquor in question is less than the cost of intoxicating liquor to the wholesaler selling the same.

[(D)] **(E)** Defining the word cost. The word cost as used in this rule shall mean the actual charge for the merchandise in question by the supplier of the merchandise to the wholesaler, plus the cost of transportation of the merchandise to the wholesaler and all federal and Missouri excise taxes and custom duties allocable to the merchandise.

[(10)] **(12)** Advertising.

(A) Prohibited Advertising. No advertisement of intoxicating liquor **visible outside the premises** shall contain any statement offering any coupon, premium, prize, rebate, or sale price below **the licensee's actual** cost or at a discount, as an inducement to purchase intoxicating liquor.

(B) Fee Not to be Accepted For Advertising Product. No licensee *[, directly or indirectly,]* shall accept payment of any fee, rental or other consideration **from manufacturers, wholesalers, or distributors** for the use of any part of the licensed retail premises for advertising any brand name of distilled spirits, wine, malt liquor or nonintoxicating beer or for the purpose of advertising the name, trademark or trade name of any maker thereof from any distiller, wholesaler, wine maker, brewer or *[his/her/]* its employees, officers, or agents.

[(11)] **(13)** Liquor In Storage. *[Any excursion liquor licensee who shall keep or store any intoxicating liquor in any warehouse, or other storage place in this state, at the time liquor is received and stored, shall notify the commission and furnish the commission a list of the kind and quantity of the intoxicating liquor, and the name and address of the owner, and upon the withdrawal of the intoxicating liquor, or any part of it, shall notify the commission.]* No licensee shall have consigned to *[him/her]* **it**, receive or accept the delivery of, or keep in storage any intoxicating liquors or upon any premises other than those described in *[his/her]* **its** license without first having obtained the written permission of the commission.

[(12)] **(14)** Labeling. No person shall sell any intoxicating liquors, as defined in this rule, within this state, which have not been inspected and labeled according to the provisions of this rule and the Missouri Liquor Control *[Act]* **Law** and corresponding rules.

[(13)] **(15) Substitution.** No excursion liquor licensee, through actions of *[his/her]* **its** own or an employee, may sell malt liquor, or any other intoxicating liquor in this state, or shall offer for sale any such malt liquor, or any other intoxicating liquor, whatsoever, in substitution for, or with a representation that any such malt liquor or other intoxicating liquor is any other brand or product.

[(14)] **(16) Manufacturer's Label.** No licensee shall sell, give away, or possess any spirituous liquor from, or in, any container when the intoxicating liquor is not that set out on the manufacturer's label on the container or does not have the alcoholic content shown on the manufacturer's label.

[(15)] **(17) Licensee Must Not Bottle.** No excursion liquor licensee may bottle any intoxicating liquor, **unless produced pursuant to a valid liquor license issued by the Missouri Supervisor of Liquor Control**, from any barrel or other container nor may *[s/he]* **the licensee** refill any bottle or add to the contents of the bottle from any barrel or other container.

[(16)] **(18) Adulteration.** No excursion licensee, through actions of *[his/her/]* its own or of an employee, for any purpose whatsoever may mix, or permit, or cause to be mixed with any intoxicating liquor kept for sale, sold or supplied by *[him/her]* **the licensee** as a beverage, any drug or form of methanol alcohol or impure form of alcohol.

[(17)] **(19) Container Sizes.** No excursion liquor licensee shall 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 excursion liquor licensee shall 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 (15.5) gallons.

[(18)] **(20) Dispensing by Mechanical Devices Prohibited.** No retail licensee shall use or permit to be used upon *[his/her/]* its licensed premises any self-service, coin-operated, mechanical devices or automatic dispensers for the purpose of selling or dispensing intoxicating liquor. This shall not prohibit sales using a controlled access liquor cabinet system as provided in 11 CSR 45-12.091.

[(19)] **(21) Prohibited Dispensing.** No licensee or employee shall mix or pour, or permit to be mixed or poured, any intoxicating liquor directly into any person's mouth upon or about the licensed premises.

[(20)] **(22) Sale Off-Premises Prohibited.** No excursion liquor licensee or the licensee's agent or employee shall sell intoxicating liquor in any place other than that designated on the license or at any other time or otherwise authorized by the license. **Nothing in this section shall prohibit a licensee from selling intoxicating liquor off-premises pursuant to a valid liquor license issued by the Missouri Supervisor of Liquor Control.**

[(21)] **(23) Sale for Resale—Prohibited.** No person holding a license authorizing the retail sale of intoxicating liquor shall sell or deliver any liquor to any person with knowledge or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the liquor for the purpose of reselling it.

[(22)] **(24) Complimentary Service of Intoxicating Liquor.** An excursion liquor licensee shall not, through actions of *[his/her]* **its** own or of an employee, supply any intoxicating liquor in any quantity whatsoever free of charge or as a complimentary to any person on the gaming floor of the premises.

[(23)] **(25) Unfinished bottles of wine may be carried out of a restaurant bar, when—**It shall not be unlawful for the excursion liquor licensee or employee of a food and beverage outlet located in nongaming areas to allow patrons to carry out one (1) or more bottles of unfinished wine under the following conditions:

- (A) The patron must have ordered a meal;
- (B) The bottle(s) *[or bottles]* of wine must have been at least partially consumed during the meal;
- (C) The restaurant bar must provide a dated receipt for the unfinished bottle(s) *[or bottles]* of wine; and
- (D) The restaurant bar must securely reseal the bottle(s) *[or bottles]* of wine and place them in one (1) or more one (1)-time-use, tamperproof, transparent bags and securely seal the bags.

[(24)] **(26)** Activities for certain organizations allowed, when—Excursion liquor licensees may, in nongaming areas of their licensed premises, permit charitable or religious organizations as defined in section 313.005, RSMo, or educational institutions, to hold:

(A) Events or activities for which admission is charged and *[beer, wine, brandy, or nonintoxicating beer]* **liquor** which has been donated, delivered or caused to be delivered pursuant to the provisions of section 311.332, RSMo, is available without a separate charge. Such occurrences shall not constitute resale for the purposes of this rule; or

(B) Auctions of *[wine]* **liquor** in the original package for fund-raising purposes pursuant to the provisions of section 311.332, RSMo; provided that all remaining *[beer, wine, brandy, and nonintoxicating beer]* **liquor** so donated, delivered, or caused to be delivered to the charitable or religious organization or educational institution at the close of the event, activity, or auction shall remain the property and responsibility of the charitable or religious organization or educational institution and shall not be converted to the benefit of the excursion liquor licensee.

*AUTHORITY: section 313.004, RSMo 2000, and sections 313.805 and 313.840, RSMo Supp. 2011. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed January 14, 2016.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for Tuesday, March 29, 2016, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.