

Missouri Liquor Advertising Amendments

December 10, 2018

The Missouri Division of Alcohol and Tobacco Control (ATC) recently passed a "temporary" emergency amendment that could affect business operations in Missouri. Missouri's liquor control laws and regulations are designed to ensure public health and safety are protected as it relates to alcoholic beverages. In an official capacity, the ATC "supervises the collection of state revenue derived from alcoholic beverage excise taxes and license fees [and] protect[s] consumers from tainted alcoholic beverages and the liquor industry from infiltration and exploitation by the criminal element."^[1]

The ATC's new amendment^[2] was made to 11 CSR 70-2.240 related to the advertising of intoxicating liquor in Missouri. The two main takeaways from this amendment as it relates to retail sales of intoxicating liquor are:

1. The term "advertisement" is expanded to include any dissemination of information by internet, email, texting, website, or mobile applications in addition to traditional mediums such as print, television, and radio.
2. Retailers (including stores selling liquor, bars and restaurants) can now offer rebate coupons for and advertise the sale of intoxicating liquor below the retailer's actual cost for their Missouri locations.

As a further result of the amendment, the Missouri ATC has confirmed that it will not enforce any restrictions from advertising specific intoxicating liquor brands or enforce any restrictions that apply to advertising promotions and/or happy hour pricing. The term "Intoxicating liquor" includes beer, wine, and liquor.

The "temporary" emergency amendment was deemed necessary as a result of a 2018 decision from the U.S. District Court for the Western District of Missouri in the case of *Missouri Broadcasters Association v. Taylor*, in which the Court held that certain advertising restrictions violate commercial speech rights protected by the First Amendment to the U.S. Constitution.

By its terms, the amendment is scheduled to expire on April 17, 2019, however, professionals in the industry believe that the amendment will stay in effect until the case has been fully adjudicated, which may be well after that date. The Missouri ATC has appealed the ruling, so if the prior court's decision is overturned, the previous rules will go back into effect, which would prevent retailers from advertising discounts, incentives, coupons, and below cost pricing.



If you have questions about this alert, please contact your Lathrop Gage attorney or any of the attorneys listed above.

[1] <https://atc.dps.mo.gov/about/>

[2] <https://atc.dps.mo.gov/documents/70-2.240Amendment-AfterCourtCase-emergency.pdf>