

MISSOURI ALCOHOL RETAILERS NO LONGER TONGUE-TIED BY TIED-HOUSE RESTRICTIONS ON ADVERTISING

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Missouri tied-house law, which restricts dealings between suppliers, wholesalers and retailers, is currently in flux following a recent ruling by the US District Court for the Western District, which held that several of Missouri's regulations pertaining to supplier advertising were unconstitutional. This pivotal opinion—which has wide-ranging implications for alcohol advertising in the state—was appealed to the 8th Circuit Court of Appeals on October 11, 2018 and has garnered widespread attention in the industry. The case raises economic and practical issues for retailers and significant legal and policy issues for state regulators.

In June, 2018 the District Court struck down three types of restrictions on alcohol advertising: 1) a restriction forbidding media advertising of price discounts—including restrictions prohibiting retailers from offering discounts on the purchase of beer or wine and from outside advertising of discounts on alcohol; 2) a restriction forbidding retailers from advertising prices below cost; and 3) a statute prohibiting suppliers and wholesalers from providing any financial aid to retailers, including through advertising, with certain exceptions allowing suppliers or wholesalers to advertise on behalf of retailers under certain conditions.

The Court held that these restrictions did not directly advance the State's interests in dissuading overconsumption of alcohol and combating underage drinking, and that the regulations were more extensive than necessary to further the government's interest. Additionally, the Court found that the Missouri statute requiring wholesalers to list more than one retailer on an advertisement was unconstitutional because it compelled speech. The Court's order enjoined the State from enforcing the aforementioned restrictions on advertising.

Just this week, the State appealed the Court's ruling to the Eighth Circuit Court of Appeals. **In the interim, Missouri cannot enforce regulations which previously restricted retailers' advertisements/discounts and manufacturer/wholesaler advertisements on behalf of retailers.** It remains to be seen how other courts in the State will interpret the contours of the *Taylor* ruling. In the meantime, the Missouri Division of Alcohol and Tobacco Control has promulgated an emergency amendment to its regulations, which would allow "manufacturers of intoxicating liquor to offer consumer rebate coupons and advertise [...] sales below cost." **The proposed amendment**

also expands the definition of the word “advertisement” to include “internet, email, texting, website, mobile applications... or any electronic means.” The practical effect of these developments remains to be seen, but until another Court weighs in on the matter, it appears that many of Missouri’s tied-house laws are effectively unenforceable as they relate to advertising by alcohol retailers.

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