

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0565.01 Duane Gall

HOUSE BILL 10-1186

HOUSE SPONSORSHIP

Liston, McFadyen, Pommer, Casso, Balmer, Soper

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONDITIONS ON THE AUTHORITY TO SELL ALCOHOL
102 BEVERAGES IN ESTABLISHMENTS OF LESS THAN FIVE THOUSAND
103 SQUARE FEET.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law contains a separate category of licenses for establishments selling fermented malt beverages with an alcohol content of 3.2% or less by weight (3.2% beer), as distinguished from licenses that permit the sale of other alcohol beverages with higher alcohol content,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

including regular beer, malt liquor, wine, and spirits.

Sections 1 to 5 of the bill would allow the sale of malt liquor in convenience stores, defined as retail businesses of less than 5,000 square feet and offering quick purchases of food, beverages, or gasoline but not a pharmacy, which otherwise would be limited to selling 3.2% beer. It would not, however, allow these establishments to sell other types of alcohol beverages such as wine or spirits.

Section 6 of the bill requires the department of revenue to conduct a study and report to the general assembly on the effects of the new licensing program by January 1, 2016.

Section 8 allows retail liquor stores of less than 5,000 square feet to sell nonperishable food items.

Sections 7 and 9 make technical amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 12-46-102, Colorado Revised Statutes, is amended
3 to read:

4 **12-46-102. Legislative declaration.** (1) (a) The general
5 assembly hereby declares that it is in the public interest that fermented
6 malt beverages AND MALT LIQUORS shall be manufactured, imported, and
7 sold only by persons licensed as provided in this article. The general
8 assembly further declares that it is lawful to manufacture and sell
9 fermented malt beverages containing not more than three and two-tenths
10 percent alcohol by weight, AND MALT LIQUORS, subject to ~~the provisions~~
11 ~~of~~ this article and applicable provisions of articles 47 and 48 of this title.

12 (b) THE GENERAL ASSEMBLY RECOGNIZES THAT THOSE RETAILERS
13 THAT HAVE SOLD FERMENTED MALT BEVERAGES UNDER AN ALCOHOL
14 PERCENTAGE LIMITATION HAVE SUFFERED SIGNIFICANTLY REDUCED SALES
15 AND ECONOMIC HARDSHIP DUE TO BOTH PREVIOUS LEGISLATIVE ACTION
16 IN COLORADO AND FEDERAL MANDATES. BY ALLOWING THE SALE OF
17 MALT LIQUORS IN SMALL ESTABLISHMENTS SUCH AS CONVENIENCE
18 STORES, THE GENERAL ASSEMBLY INTENDS TO ALLEVIATE THIS HARDSHIP,

1 AT LEAST IN PART, AT THE NEIGHBORHOOD LEVEL AND TO ALLOW
2 ASSOCIATED INDUSTRIES SUCH AS CRAFT BREWERS AND DISTRIBUTORS TO
3 BENEFIT FROM THE INCREASED AVAILABILITY OF LOCAL OUTLETS.

4 (2) The general assembly FURTHER recognizes that fermented malt
5 beverages AND MALT LIQUORS are separate and distinct from, ~~malt~~ AND
6 HAVE A UNIQUE REGULATORY HISTORY IN RELATION TO, vinous and
7 spirituous liquors, and as such require THE RETENTION OF a separate and
8 distinct regulatory framework under this article. To aid administrative
9 efficiency, however, ~~the provisions in~~ article 47 of this title shall apply to
10 the regulation of fermented malt beverages, except when otherwise
11 expressly provided for in this article.

12 **SECTION 2.** 12-46-103, Colorado Revised Statutes, is amended
13 to read:

14 **12-46-103. Definitions.** Definitions applicable to this article also
15 appear in article 47 of this title. As used in this article, unless the context
16 otherwise requires:

17 (1) "CONVENIENCE STORE" MEANS A RETAIL BUSINESS WITH A
18 TOTAL SQUARE FOOTAGE OF LESS THAN FIVE THOUSAND SQUARE FEET
19 WHOSE PRIMARY BUSINESS CONSISTS OF PROVIDING THE PUBLIC WITH A
20 CONVENIENT LOCATION TO QUICKLY PURCHASE FOOD ITEMS, BEVERAGES,
21 GASOLINE, OR A COMBINATION THEREOF AND THAT DOES NOT HAVE A
22 PHARMACY OR EMPLOY PHARMACISTS.

23 ~~(1)~~ (2) "Fermented malt beverage" means any beverage obtained
24 by the fermentation of any infusion or decoction of barley, malt, hops, or
25 any similar product or any combination thereof in water containing not
26 less than one-half of one percent alcohol by volume and not more than
27 three and two-tenths percent alcohol by weight or four percent alcohol by

1 volume; except that "fermented malt beverage" shall not include
2 confectionery containing alcohol within the limits prescribed by section
3 25-5-410 (1) (i) (II), C.R.S.

4 ~~(2)~~ (3) "License" means a grant to a licensee to manufacture or
5 sell fermented malt beverages OR MALT LIQUORS as provided by this
6 article.

7 ~~(3)~~ (4) "Licensed premises" means the premises specified in an
8 application for a license under this article ~~which~~ THAT are owned or in
9 possession of the licensee and within which such licensee is authorized
10 to sell, dispense, or serve fermented malt beverages in accordance with
11 ~~the provisions of~~ this article.

12 ~~(4)~~ (5) "Local licensing authority" means the governing body of
13 a municipality or city and county, the board of county commissioners of
14 a county, or any authority designated by municipal or county charter,
15 municipal ordinance, or county resolution.

16 (6) "MALT LIQUORS" HAS THE SAME MEANING AS SET FORTH IN
17 SECTION 12-47-103.

18 ~~(5)~~ (7) "Sell at wholesale" means selling to any other than the
19 intended consumer of fermented malt beverages. "Sell at wholesale" shall
20 not be construed to prevent a brewer or wholesale beer dealer from selling
21 fermented malt beverages to the intended consumer thereof or to prevent
22 a licensed manufacturer or importer from selling such beverages to a
23 licensed wholesaler.

24 ~~(6)~~ (8) "State licensing authority" means the executive director of
25 the department of revenue or the deputy director of the department of
26 revenue if the executive director so designates.

27 **SECTION 3.** The introductory portion to 12-46-104 (1), Colorado

1 Revised Statutes, is amended, and the said 12-46-104 (1) is further
2 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

3 **12-46-104. Licenses - state license fees - requirements - repeal.**

4 (1) The licenses to be granted and issued by the state licensing authority
5 pursuant to this article for the manufacture, importation, and sale of
6 fermented malt beverages OR MALT LIQUORS, AS APPLICABLE, shall be as
7 follows:

8 (e) (I) A MALT LIQUOR STORE LICENSE SHALL BE GRANTED AND
9 ISSUED TO ANY PERSON, PARTNERSHIP, ASSOCIATION, ORGANIZATION, OR
10 CORPORATION QUALIFYING UNDER SECTION 12-47-301 AND NOT
11 PROHIBITED FROM LICENSURE UNDER SECTION 12-47-307 TO SELL MALT
12 LIQUORS AT RETAIL, IN A CONVENIENCE STORE, FOR CONSUMPTION OFF THE
13 PREMISES OF THE LICENSEE.

14 (II) THE FOLLOWING LICENSE FEES SHALL BE PAID TO THE
15 TREASURER OF THE MUNICIPALITY, CITY AND COUNTY, OR COUNTY WHERE
16 THE LICENSED PREMISES IS LOCATED ANNUALLY IN ADVANCE:

17 (A) FOR EACH MALT LIQUOR STORE LICENSE FOR PREMISES
18 LOCATED WITHIN THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY
19 AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

20 (B) FOR EACH MALT LIQUOR STORE LICENSE FOR PREMISES
21 LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY
22 AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

23 (III) EIGHTY-FIVE PERCENT OF THE LOCAL LICENSE FEES SET FORTH
24 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (e) SHALL BE PAID TO THE
25 DEPARTMENT OF REVENUE, WHICH SHALL TRANSMIT THE FEES TO THE
26 STATE TREASURER TO BE CREDITED TO THE OLD AGE PENSION FUND
27 CREATED IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION.

1 **SECTION 4.** 12-46-106, Colorado Revised Statutes, is amended
2 to read:

3 **12-46-106. Lawful acts.** It is lawful for a person under eighteen
4 years of age who is under the supervision of a person on the premises
5 over eighteen years of age to be employed in a place of business where
6 fermented malt beverages OR MALT LIQUORS are sold at retail in
7 containers for off-premises consumption. During the normal course of
8 such employment, any person under eighteen years of age may handle and
9 otherwise act with respect to fermented malt beverages OR MALT LIQUORS
10 in the same manner as that person does with other items sold at retail;
11 except that no person under eighteen years of age shall sell or dispense
12 fermented malt beverages OR MALT LIQUORS, check age identification, or
13 make deliveries beyond the customary parking area for the customers of
14 the retail outlet. This section shall not be construed to permit the
15 violation of any other provisions of this section under circumstances not
16 specified in this section.

17 **SECTION 5.** The introductory portion to 12-46-107 (1) and
18 12-46-107 (1) (c), Colorado Revised Statutes, are amended to read:

19 **12-46-107. Local licensing authority - application - fees.**
20 (1) The local licensing authority shall issue only the following classes of
21 ~~fermented malt beverage~~ licenses FOR FERMENTED MALT BEVERAGES OR
22 MALT LIQUORS, AS APPLICABLE:

23 (c) Sales for consumption both on and off the premises of the
24 licensee. A person licensed pursuant to this paragraph (c) may deliver at
25 retail fermented malt beverages OR MALT LIQUORS, AS APPLICABLE, in
26 factory-sealed containers in conjunction with the delivery of food
27 products if such person has obtained a permit for the delivery of

1 fermented malt beverages OR MALT LIQUORS, AS APPLICABLE, from the
2 state licensing authority. The state licensing authority shall promulgate
3 rules as are necessary for the proper delivery of ~~fermented malt~~ beverages
4 pursuant to this paragraph (c) and shall have the authority to issue a
5 permit to any person who is licensed pursuant to and delivers ~~fermented~~
6 ~~malt~~ beverages under this paragraph (c).

7 **SECTION 6.** Article 46 of title 12, Colorado Revised Statutes, is
8 amended BY THE ADDITION OF A NEW SECTION to read:

9 **12-46-108. Malt liquor store licensing program - study - report**

10 **- repeal.** (1) (a) COMMENCING ON OR BEFORE JULY 1, 2015, THE STATE
11 LICENSING AUTHORITY SHALL CONDUCT A STATEWIDE STUDY OF THE
12 COSTS AND BENEFITS OF THE CREATION OF THE MALT LIQUOR STORE
13 LICENSE DESCRIBED IN SECTION 12-46-104 (1) (e), WHICH STUDY SHALL
14 INCLUDE THE FOLLOWING INFORMATION:

- 15 (I) THE NUMBER OF MALT LIQUOR STORE LICENSES ISSUED;
- 16 (II) THE AMOUNT OF STATE REVENUE THAT IS GENERATED BY THE
17 SALE OF MALT LIQUOR IN CONVENIENCE STORES;
- 18 (III) ESTIMATES OF HOW EFFECTIVE THE ISSUANCE OF MALT
19 LIQUOR STORE LICENSES HAS BEEN IN SUPPORTING LOCAL RETAIL
20 ECONOMIES;
- 21 (IV) CONSIDERATION OF WHETHER STATE LAW GOVERNING MALT
22 LIQUOR STORE LICENSEES SHOULD BE AMENDED AND, IF SO, HOW; AND
- 23 (V) ANY OTHER ISSUES THE STATE LICENSING AUTHORITY
24 DETERMINES APPROPRIATE.

25 (b) THE STATE LICENSING AUTHORITY SHALL DEVOTE
26 DEPARTMENT RESOURCES AS NECESSARY TO COMPLETE THE STATEWIDE
27 STUDY.

1 (c) THE STATE LICENSING AUTHORITY SHALL SEEK PUBLIC INPUT
2 AND MAY CONDUCT PUBLIC HEARINGS OR APPOINT STUDY GROUPS AS
3 NECESSARY TO OBTAIN INFORMATION RELEVANT TO THE STUDY.

4 (2) ON OR BEFORE JULY 1, 2016, THE STATE LICENSING AUTHORITY
5 SHALL SUBMIT A REPORT ON THE STATEWIDE STUDY CONDUCTED
6 PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE BUSINESS, LABOR,
7 AND TECHNOLOGY COMMITTEE OF THE SENATE AND THE BUSINESS AFFAIRS
8 AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR
9 SUCCESSOR COMMITTEES.

10 (3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016.

11 **SECTION 7.** 12-47-103 (8), Colorado Revised Statutes, is
12 amended to read:

13 **12-47-103. Definitions.** As used in this article and article 46 of
14 this title, unless the context otherwise requires:

15 (8) "Fermented malt beverage" has the same meaning as provided
16 in section 12-46-103. ~~(†)~~.

17 **SECTION 8.** 12-47-407 (1), Colorado Revised Statutes, is
18 amended to read:

19 **12-47-407. Retail liquor store license.** (1) A retail liquor store
20 license shall be issued to persons selling only malt, vinous, and spirituous
21 liquors in sealed containers not to be consumed at the place where sold.
22 Malt, vinous, and spirituous liquors in sealed containers shall not be sold
23 at retail other than in retail liquor stores except as provided in section
24 12-47-408. In addition, retail liquor stores may sell nonfood items related
25 to the consumption of such liquors, liquor-filled candy, and food items
26 approved by the state licensing authority that are prepackaged, labeled,
27 directly related to the consumption of such liquors, and sold solely for the

1 purpose of cocktail garnish in containers up to sixteen ounces. Nothing
2 in this section shall be construed to authorize the sale of food items that
3 could constitute a snack, a meal, or a portion of a meal; EXCEPT THAT A
4 RETAIL LIQUOR STORE WITH A TOTAL SQUARE FOOTAGE OF LESS THAN FIVE
5 THOUSAND SQUARE FEET MAY SELL NONPERISHABLE FOOD ITEMS.
6 Nothing in this section or in section 12-47-103 (31) shall be construed to
7 prohibit the sale of items by a retail liquor store on behalf of or to benefit
8 a charitable organization, as defined in section 39-26-102, C.R.S., or a
9 nonprofit corporation subject to the "Colorado Revised Nonprofit
10 Corporation Act", articles 121 to 137 of title 7, C.R.S., and determined to
11 be exempt from federal income tax by the federal internal revenue
12 service, if the retail liquor store does not receive compensation for any
13 such sale. Nothing in this section shall prohibit a retail liquor store
14 licensee, at the option of the licensee, from displaying promotional
15 material furnished by a manufacturer or wholesaler, which material
16 permits a customer to purchase other items from a third person if the
17 retail liquor store licensee does not receive payment from the third person
18 and if the ordering of the additional merchandise is done by the customer
19 directly from the third person. Nothing in this subsection (1) shall
20 prohibit a retail liquor store licensee from allowing tastings to be
21 conducted on his or her licensed premises if an authorization for the
22 tastings has been granted pursuant to section 12-47-301.

23 **SECTION 9.** 12-47-902 (1) and (2), Colorado Revised Statutes,
24 are amended to read:

25 **12-47-902. Testing for intoxication by law enforcement**
26 **officers - when prohibited.** (1) No person who is patronizing a licensed
27 premises as defined in sections 12-47-103 (~~14~~) and 12-46-103 (~~3~~) shall

1 be required or solicited by any law enforcement officer to submit to any
2 mechanical test for the purpose of determining the alcohol content of such
3 person's blood or breath while such person is upon such licensed premises
4 except to determine if there is a violation of section 42-4-1301, C.R.S.,
5 by a driver of a motor vehicle unless the law enforcement officer is acting
6 pursuant to a court order obtained in the manner described in subsection
7 (2) of this section. No such test may be performed upon any licensed
8 premises to obtain evidence of alleged intoxication, except pursuant to a
9 court order as provided in this section or in case of a medical emergency,
10 regardless of whether such alleged intoxication is a violation of any
11 provision of this article.

12 (2) An ex parte order to permit any law enforcement officer to
13 solicit any person who is patronizing a licensed premises as defined in
14 sections 12-47-103 (~~14~~) and 12-46-103 (~~3~~) to submit to any mechanical
15 test for the purpose of determining the alcohol content of such person's
16 blood or breath while such person is upon such licensed premises may be
17 issued by any judge of competent jurisdiction in the state of Colorado,
18 including a district, county, or municipal court judge, upon application of
19 a district attorney or a law enforcement agency showing probable cause
20 to believe that evidence will be obtained of the commission of the crime
21 of providing any alcohol beverage to a visibly intoxicated person or minor
22 in violation of section 12-47-901 (1) (a) or (5) (a) (I).

23 **SECTION 10. Act subject to petition - effective date.** This act
24 shall take effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part shall not take effect
3 unless approved by the people at the general election to be held in
4 November 2010 and shall take effect on the date of the official
5 declaration of the vote thereon by the governor.