

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0876.01 Christy Chase

HOUSE BILL 11-1284

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF ALCOHOL BEVERAGES.**

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 manufacturing or selling fermented malt beverages, which is beer with an alcohol content of 3.2% or less by weight (3.2% beer), as distinguished from licenses that permit the manufacture or sale of other alcohol beverages with higher alcohol content, including malt liquor (full-strength beer), wine, and spirits. Persons licensed under the "Colorado Beer Code" (beer code) may manufacture or sell only 3.2%

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.

beer, and persons licensed under the "Colorado Liquor Code" (liquor code) may manufacture or sell only full-strength beer.

Additionally, current law requires the executive director of the department of revenue, who is the state licensing authority for purposes of alcohol beverage regulation, to adopt rules regarding the testing of the alcohol content of malt liquor and fermented malt beverages sold by persons licensed under the liquor code or the beer code. Finally, current law prohibits the sale of 3.2% beer at retail between 12 midnight and 5 a.m.

Section 2 of the bill eliminates the maximum alcohol content of fermented malt beverages, as defined under the beer code, thereby allowing persons licensed under the beer code to manufacture or sell full-strength beer. **Section 4** reduces the minimum alcohol content of malt liquor, as defined under the liquor code, to 0.5%, thereby allowing persons licensed under the liquor code to manufacture or sell 3.2% beer.

Section 3 permits an employee of a retailer licensed under the beer code who is at least 18 years of age but less than 21 years of age to sell or dispense beer and check age identification of purchasers if the licensee can document that the employee has complied with server and seller training program requirements established by the director of the liquor enforcement division in the department of revenue or is supervised by a person who is on the premises and is at least 21 years of age.

Section 5 allows the state licensing authority to modify or repeal alcohol content testing rules as necessary based on the elimination of the distinction between 3.2% beer and full-strength beer.

Persons licensed to sell beer at retail can only do so between the hours of 8 a.m. and 12 midnight under **section 7** of the bill.

The remaining sections of the bill contain conforming or technical amendments to provisions in the beer and liquor codes. The bill takes effect July 1, 2012.

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 shall be manufactured, imported, and sold only by persons
7 licensed as provided in this article AND ARTICLE 47 OF THIS TITLE. The
8 general assembly further declares that it is lawful to manufacture and sell

1 fermented malt beverages ~~containing not more than three and two-tenths~~
2 ~~percent alcohol by weight~~ subject to the provisions of this article and
3 applicable provisions of articles 47 and 48 of this title.

4 (b) THE GENERAL ASSEMBLY RECOGNIZES THAT SINCE THE
5 FEDERAL GOVERNMENT REQUIRED THE STATE TO RAISE ITS MINIMUM AGE
6 FOR THE CONSUMPTION OF FERMENTED MALT BEVERAGES TO TWENTY-ONE
7 YEARS OF AGE, THE SPECIAL LABELING FOR, AND ALCOHOL CONTENT
8 LIMITATIONS OF, FERMENTED MALT BEVERAGES ARE NO LONGER
9 NECESSARY.

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

18 **SECTION 2.** 12-46-103 (1), Colorado Revised Statutes, is
19 amended to read:

20 **12-46-103. Definitions.** Definitions applicable to this article also
21 appear in article 47 of this title. As used in this article, unless the context
22 otherwise requires:

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

1 ~~percent alcohol by volume; except that~~

2 (b) "Fermented malt beverage" ~~shall~~ DOES not include
3 confectionery containing alcohol within the limits prescribed by section
4 25-5-410 (1) (i) (II), C.R.S.

5 **SECTION 3.** 12-46-106, Colorado Revised Statutes, is amended
6 to read:

7 **12-46-106. Lawful acts.** (1) It is lawful for a person under
8 eighteen years of age who is under the supervision of a person on the
9 premises over eighteen years of age to be employed in a place of business
10 where fermented malt beverages are sold at retail in containers for
11 off-premises consumption. During the normal course of such
12 employment, any person under eighteen years of age may handle and
13 otherwise act with respect to fermented malt beverages in the same
14 manner as that person does with other items sold at retail; except that no
15 person under eighteen years of age shall sell or dispense fermented malt
16 beverages, check age identification, or make deliveries beyond the
17 customary parking area for the customers of the retail outlet. NOTHING
18 ~~IN this section shall not be construed to permit~~ SUBSECTION (1) PERMITS
19 ~~the violation of any other provisions of this section~~ SUBSECTION (1) under
20 circumstances not specified in this ~~section~~ SUBSECTION (1).

21 (2) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE OR
22 ARTICLE 47 OF THIS TITLE TO THE CONTRARY, AN EMPLOYEE WHO IS AT
23 LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-ONE YEARS OF AGE
24 MAY SELL OR DISPENSE FERMENTED MALT BEVERAGES, CHECK AGE
25 IDENTIFICATION, OR MAKE DELIVERIES BEYOND THE CUSTOMARY PARKING
26 AREA FOR THE CUSTOMERS OF THE LICENSED RETAILER EMPLOYING THE
27 PERSON ONLY IF THE LICENSED RETAILER CAN DOCUMENT THAT THE

1 EMPLOYEE:

2 (a) HAS COMPLIED WITH THE SERVER AND SELLER TRAINING
3 PROGRAM REQUIREMENTS ESTABLISHED BY THE DIRECTOR OF THE LIQUOR
4 ENFORCEMENT DIVISION IN THE DEPARTMENT OF REVENUE PURSUANT TO
5 SECTION 12-47-1002; OR

6 (b) IS SUPERVISED BY ANOTHER PERSON WHO IS ON THE PREMISES
7 AND WHO IS AT LEAST TWENTY-ONE YEARS OF AGE.

8 **SECTION 4.** 12-47-103 (19), Colorado Revised Statutes, is
9 amended to read:

10 **12-47-103. Definitions.** As used in this article and article 46 of
11 this title, unless the context otherwise requires:

12 (19) "Malt liquors" includes beer and ~~shall be construed to mean~~
13 MEANS any beverage obtained by the alcoholic fermentation of any
14 infusion or decoction of barley, malt, hops, or any other similar product,
15 or any combination thereof, in water containing ~~more than three and~~
16 ~~two-tenths percent of alcohol by weight or four percent alcohol by~~
17 ~~volume~~ NOT LESS THAN ONE-HALF OF ONE PERCENT ALCOHOL BY VOLUME.

18 **SECTION 5.** The introductory portion to 12-47-202 (2) (a) (I)
19 and 12-47-202 (2) (a) (I) (S), Colorado Revised Statutes, are amended to
20 read:

21 **12-47-202. Duties of state licensing authority.** (2) (a) (I) Rules
22 ~~and regulations~~ made pursuant to paragraph (b) of subsection (1) of this
23 section may cover, but ~~shall~~ ARE not ~~be~~ limited to, the following subjects:

24 (S) The testing of the alcohol content of malt liquor and fermented
25 malt beverage sold by persons licensed pursuant to this article or article
26 46 of this title. The state licensing authority shall adopt such rules no
27 later than January 1, 2011. HOWEVER, IF, AFTER JANUARY 1, 2011, THE

1 GENERAL ASSEMBLY ENACTS AMENDMENTS, BY BILL, TO THIS ARTICLE OR
2 ARTICLE 46 OF THIS TITLE THAT MAKE THE RULES OBSOLETE, THE STATE
3 LICENSING AUTHORITY MAY AMEND OR REPEAL THE RULES AS NECESSARY.

4 **SECTION 6.** 12-47-301 (6) (a), Colorado Revised Statutes, is
5 amended to read:

6 **12-47-301. Licensing in general.** (6) (a) Licensees at facilities
7 owned by a municipality, county, or special district or at publicly or
8 privately owned sports and entertainment venues with a minimum seating
9 capacity of one thousand five hundred seats may possess and serve for
10 on-premises consumption any type of malt, vinous, and spirituous liquor
11 ~~or fermented malt beverage~~ as may be permitted pursuant to guidelines
12 established by the local and state licensing authorities, and THE LICENSEES
13 need not have meals available for consumption. ~~However, fermented~~
14 ~~malt beverages and malt, vinous, and spirituous liquors may not be served~~
15 ~~on the same premises at the same time.~~

16 **SECTION 7.** 12-47-407 (1) and (4), Colorado Revised Statutes,
17 are amended to read:

18 **12-47-407. Retail liquor store license.** (1) (a) A retail liquor
19 store license shall be issued to persons selling only malt, vinous, and
20 spirituous liquors in sealed containers not to be consumed at the place
21 where sold. Malt, vinous, and spirituous liquors in sealed containers shall
22 not be sold at retail other than in retail liquor stores except as provided in
23 section 12-47-408.

24 (b) In addition TO SELLING MALT, VINOUS, AND SPIRITUOUS
25 LIQUORS, A retail liquor stores STORE may sell SOFT DRINKS AND MIXERS
26 IN SEALED CONTAINERS FOR CONSUMPTION OFF PREMISES; nonfood items
27 DIRECTLY related to the consumption of such MALT, VINOUS, AND

1 SPIRITUOUS liquors OR SOFT DRINKS AND MIXERS; liquor-filled candy; and
2 NONPERISHABLE food items; approved by the state licensing authority that
3 are prepackaged, labeled, directly related to the consumption of such
4 liquors, and sold solely for the purpose of cocktail garnish in containers
5 up to sixteen ounces. Nothing in this section shall be construed to
6 authorize the sale of food items that could constitute a snack, a meal, or
7 a portion of a meal LEMONS, LIMES, AND SIMILAR COCKTAIL
8 GARNISHMENTS; AND TOBACCO, TOBACCO PRODUCTS, AND SMOKERS'
9 SUPPLIES.

10 (c) Nothing in this section or in section 12-47-103 (31) shall be
11 construed to prohibit the sale of items by PROHIBITS a retail liquor store
12 LICENSEE FROM:

13 (I) SELLING ITEMS on behalf of or to benefit a charitable
14 organization, as defined in section 39-26-102, C.R.S., or a nonprofit
15 corporation subject to the "Colorado Revised Nonprofit Corporation Act",
16 articles 121 to 137 of title 7, C.R.S., and determined to be exempt from
17 federal income tax by the federal internal revenue service, if the retail
18 liquor store does not receive compensation for any such THE sale; Nothing
19 in this section shall prohibit a retail liquor store licensee

20 (II) At the option of the licensee, from displaying promotional
21 material furnished by a manufacturer or wholesaler, which material
22 permits a customer to purchase other items from a third person, if the
23 retail liquor store licensee does not receive payment from the third person
24 and if the ordering of the additional merchandise is done by the customer
25 directly from the third person; Nothing in this subsection (1) shall prohibit
26 a retail liquor store licensee from OR

27 (III) Allowing tastings to be conducted on his or her THE licensed

1 premises if an authorization for the tastings has been granted pursuant to
2 section 12-47-301.

3 (4) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS
4 SUBSECTION (4), it is unlawful for any owner, part owner, shareholder, or
5 person interested directly or indirectly in a retail liquor store to conduct,
6 own either in whole or in part, or be directly or indirectly interested in any
7 other business licensed pursuant to this article. ~~except that such a person~~

8 (b) AN OWNER, PART OWNER, SHAREHOLDER, OR PERSON
9 INTERESTED DIRECTLY OR INDIRECTLY IN A RETAIL LIQUOR STORE may
10 have ~~an interest~~ INTERESTS in:

11 (I) ADDITIONAL RETAIL LIQUOR STORE LICENSES, IF THE LICENSED
12 RETAIL LIQUOR STORE AND ANY ADDITIONAL RETAIL LIQUOR STORES IN
13 WHICH THE OWNER, PART OWNER, SHAREHOLDER, OR PERSON OBTAINS AN
14 INTEREST DO NOT CONTAIN MORE THAN FIVE THOUSAND SQUARE FEET OF
15 TOTAL RETAIL SPACE AND DO NOT HAVE A PHARMACY ON THE LICENSED
16 PREMISES;

17 (II) ~~an Arts license or an~~ LICENSES;

18 (III) Airline public transportation system ~~license~~ LICENSES granted
19 under this article; or ~~in a~~

20 (IV) Financial ~~institution~~ INSTITUTIONS referred to in section
21 12-47-308 (4).

22 **SECTION 8.** 12-47-901 (5) (c) and (8), Colorado Revised
23 Statutes, are amended to read:

24 **12-47-901. Unlawful acts - exceptions.** (5) It is unlawful for any
25 person licensed to sell at retail pursuant to this article:

26 (c) Except as provided in section 18-13-122, C.R.S., ~~for any~~
27 ~~person~~ to sell fermented malt beverages to any person under the age of

1 twenty-one years or to any person between the hours of 12 midnight and
2 5 8 a.m.;

3 (8) ~~It is unlawful for any manufacturer or wholesaler licensed~~
4 ~~pursuant to article 46 of this title to sell, deliver, or cause to be delivered~~
5 ~~to any retail licensee any beverage containing alcohol in excess of three~~
6 ~~and two-tenths percent by weight or four percent by volume, or for any~~
7 ~~fermented malt beverage retailer to sell, possess, or permit the~~
8 ~~consumption on the premises of any of the beverages containing alcohol~~
9 ~~in excess of three and two-tenths percent by weight or four percent by~~
10 ~~volume, or for any fermented malt beverage retail licensee to hold or~~
11 ~~operate under any license for the sale of any beverages containing alcohol~~
12 ~~in excess of three and two-tenths percent by weight or four percent by~~
13 ~~volume for the same premises. Any violation by any fermented malt~~
14 ~~beverage licensee of the provisions of this subsection (8) shall~~
15 ~~immediately cause the cancellation of the license granted under this~~
16 ~~article.~~

17 **SECTION 9. Act subject to petition - effective date.** This act
18 shall take effect July 1, 2012; except that, if a referendum petition is filed
19 pursuant to section 1 (3) of article V of the state constitution against this
20 act or an item, section, or part of this act within the ninety-day period
21 after final adjournment of the general assembly, then the act, item,
22 section, or part shall not take effect unless approved by the people at the
23 general election to be held in November 2012 and shall take effect on
24 July 1, 2012, or on the date of the official declaration of the vote thereon
25 by the governor, whichever is later.