

**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. 11-0823.01 Christy Chase

SENATE BILL 11-194

SENATE SPONSORSHIP

Boyd,

HOUSE SPONSORSHIP

(None),

Senate Committees
Business, Labor and Technology

House Committees

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 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 sale of other alcohol beverages with higher alcohol content, including malt liquor (full beer), wine, and spirits.

Sections 1 to 6 of the bill allow the sale of full beer, in addition to 3.2% beer, in convenience stores, which are defined as retail businesses

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.*

of less than 5,000 square feet that offer quick purchases of food, beverages, or gasoline but do not contain a pharmacy. Convenience stores would continue to be prohibited from selling other types of alcohol beverages such as wine or spirits and would be permitted to sell regular beer only between the hours of 8 a.m. and 12 midnight, but not on Christmas day. A convenience store licensed to sell full and 3.2% beer may employ a person under 18 years of age if the person is supervised by a person who is at least 21 years of age, but the employee under 18 cannot sell or dispense beer, check age identification, or make deliveries beyond the customary parking area for the licensed premises.

Section 7 modifies the definition of "malt liquor" in the "Colorado Liquor Code" to include 3.2% beer, thereby allowing all persons licensed under the "Colorado Liquor Code" to manufacture, import, sell at wholesale or retail, sell for on-premise consumption, or serve full beer and 3.2% beer.

Section 9 permits retail liquor store licensees to have an interest in multiple retail liquor store licenses as long as the licensed premises of each retail liquor store does not exceed 5,000 square feet of total retail space and does not contain a pharmacy on the premises.

The remaining sections of the bill contain conforming amendments necessitated by the substantive law changes.

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

13 (2) The general assembly FURTHER recognizes that fermented malt

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

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

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

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

19 ~~(1)~~ (2) "Fermented malt beverage" means any beverage obtained
20 by the fermentation of any infusion or decoction of barley, malt, hops, or
21 any similar product or any combination thereof in water containing not
22 less than one-half of one percent alcohol by volume and not more than
23 three and two-tenths percent alcohol by weight or four percent alcohol by
24 volume; except that "fermented malt beverage" ~~shall~~ DOES not include
25 confectionery containing alcohol within the limits prescribed by section
26 25-5-410 (1) (i) (II), C.R.S.

27 ~~(2)~~ (3) "License" means a grant to a licensee to manufacture or

1 sell fermented malt beverages OR MALT LIQUORS as provided by this
2 article.

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

8 ~~(4)~~ (5) "Local licensing authority" means the governing body of
9 a municipality or city and county, the board of county commissioners of
10 a county, or any authority designated by municipal or county charter,
11 municipal ordinance, or county resolution.

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

14 ~~(5)~~ (7) "Sell at wholesale" means selling to ~~any~~ ANYONE other
15 than the intended consumer of fermented malt beverages. "Sell at
16 wholesale" ~~shall not be construed to~~ DOES NOT prevent a brewer or
17 wholesale beer dealer from selling fermented malt beverages to the
18 intended consumer thereof or ~~to~~ prevent a licensed manufacturer or
19 importer from selling such beverages to a licensed wholesaler.

20 ~~(6)~~ (8) "State licensing authority" means the executive director of
21 the department of revenue or the deputy director of the department of
22 revenue if the executive director so designates.

23 (9) "TOTAL RETAIL SPACE" MEANS THE AREA OF A LICENSED
24 PREMISES THAT IS ACCESSIBLE TO THE PUBLIC, INCLUDING ENCLOSED
25 REFRIGERATED UNITS AND SPACE LOCATED BEHIND THE POINT OF SALE
26 AREA WHERE PRODUCTS ARE AVAILABLE FOR PURCHASE. "TOTAL RETAIL
27 SPACE" DOES NOT INCLUDE ANY AREA OF THE LICENSED PREMISES USED

1 FOR STORAGE, OFFICE SPACE, OR RESTROOMS.

2 **SECTION 3.** The introductory portion to 12-46-104 (1) and
3 12-46-104 (1) (c), Colorado Revised Statutes, are amended to read:

4 **12-46-104. Licenses - state license fees - requirements - repeal.**

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

9 (c) (I) A FERMENTED MALT BEVERAGE retailer's license, ~~shall be~~
10 ~~granted and issued~~ WHICH THE STATE LICENSING AUTHORITY SHALL
11 GRANT AND ISSUE to any person, partnership, association, organization,
12 or corporation qualifying under section 12-47-301 and not prohibited
13 from licensure under section 12-47-307 to sell at retail ~~the said~~ fermented
14 malt beverages upon paying an annual license fee of seventy-five dollars
15 to the state licensing authority.

16 (II) A MALT LIQUOR RETAILER'S LICENSE, WHICH THE STATE
17 LICENSING AUTHORITY SHALL GRANT AND ISSUE TO ANY PERSON,
18 PARTNERSHIP, ASSOCIATION, ORGANIZATION, OR CORPORATION
19 QUALIFYING UNDER SECTION 12-47-301 AND NOT PROHIBITED FROM
20 LICENSURE UNDER SECTION 12-47-307 TO SELL MALT LIQUORS IN SEALED
21 CONTAINERS AT RETAIL, IN A CONVENIENCE STORE, FOR CONSUMPTION OFF
22 THE LICENSED PREMISES, BETWEEN THE HOURS OF 8 A.M. UNTIL 12
23 MIDNIGHT EACH DAY EXCEPT CHRISTMAS DAY. THE STATE LICENSING
24 AUTHORITY SHALL ISSUE THE LICENSE TO THE PERSON, PARTNERSHIP,
25 ASSOCIATION, ORGANIZATION, OR CORPORATION UPON RECEIPT OF AN
26 ANNUAL LICENSE FEE OF SEVENTY-FIVE DOLLARS.

27 (III) ANY LICENSEE HOLDING A FERMENTED MALT BEVERAGE

1 RETAILER'S LICENSE THAT WAS ISSUED PRIOR TO THE EFFECTIVE DATE OF
2 THIS PARAGRAPH (c), AS AMENDED, IS ELIGIBLE TO AUTOMATICALLY
3 CONVERT THAT LICENSE TO A MALT LIQUOR RETAILER'S LICENSE WITHOUT
4 ADDITIONAL APPLICATION OR FEE IF THE FOLLOWING CONDITIONS ARE MET
5 ON THE DATE OF ANNUAL RENEWAL OF THE FERMENTED MALT BEVERAGE
6 RETAILER'S LICENSE:

7 (A) THE FERMENTED MALT BEVERAGE RETAILER'S LICENSE HAS
8 NOT EXPIRED;

9 (B) THE LICENSEE TIMELY FILES A RENEWAL APPLICATION AND
10 APPLICABLE RENEWAL FEES AND INCLUDES WITH THE APPLICATION A
11 STATEMENT THAT THE LICENSEE ELECTS TO CONVERT THE FERMENTED
12 MALT BEVERAGE RETAILER'S LICENSE, ONCE RENEWED, TO A MALT LIQUOR
13 RETAILER'S LICENSE;

14 (C) THE LICENSEE IS A CONVENIENCE STORE AND SATISFIES THE
15 REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND THE
16 APPLICABLE REQUIREMENTS SET FORTH IN PART 3 OF ARTICLE 47 OF THIS
17 TITLE; AND

18 (D) THE CONVENIENCE STORE LOCATION IS NOT WITHIN FIVE
19 HUNDRED FEET OF A PUBLIC OR PAROCHIAL SCHOOL OR THE PRINCIPAL
20 CAMPUS OF ANY COLLEGE, UNIVERSITY, OR SEMINARY, UNLESS THE LOCAL
21 LICENSING AUTHORITY OR APPROPRIATE GOVERNING BODY HAS REDUCED
22 OR ELIMINATED THE DISTANCE REQUIREMENT PURSUANT TO SECTION
23 12-47-313 (1) (d).

24 **SECTION 4.** 12-46-105 (1) (a), Colorado Revised Statutes, is
25 amended to read:

26 **12-46-105. Fees and taxes - allocation.** (1) (a) (I) The state
27 licensing authority shall establish fees for processing the following types

1 of applications, notices, or reports required to be submitted to the state
2 licensing authority:

3 (A) Applications for new fermented malt beverage OR MALT
4 LIQUOR licenses pursuant to section 12-47-301 and ~~regulations thereunder~~
5 RULES ADOPTED PURSUANT TO THAT SECTION;

6 (B) Applications for change of location pursuant to section
7 12-47-301 and ~~regulations thereunder~~ RULES ADOPTED PURSUANT TO
8 THAT SECTION;

9 (C) Applications for changing, altering, or modifying licensed
10 premises pursuant to section 12-47-301 and ~~regulations thereunder~~ RULES
11 ADOPTED PURSUANT TO THAT SECTION;

12 (D) Applications for warehouse or branch house permits pursuant
13 to section 12-46-104 and ~~regulations thereunder~~ RULES ADOPTED
14 PURSUANT TO THAT SECTION; AND

15 (E) Applications for duplicate licenses and notices of change of
16 name or trade name pursuant to section 12-47-301 and ~~regulations~~
17 ~~thereunder~~ RULES ADOPTED PURSUANT TO THAT SECTION.

18 (II) The amounts of such fees, when added to the other fees and
19 taxes transferred to the liquor enforcement division and state licensing
20 authority cash fund pursuant to subsection (2) of this section and section
21 12-47-502 (1), ~~shall~~ MUST reflect the direct and indirect costs of the liquor
22 enforcement division and the state licensing authority in the
23 administration and enforcement of this article and articles 47 and 48 of
24 this title. At least annually, the STATE LICENSING AUTHORITY SHALL
25 REVIEW THE amounts of the fees ~~shall be reviewed~~ and, if necessary,
26 ~~adjusted~~ SHALL ADJUST THE FEE AMOUNTS to reflect ~~such~~ THE direct and
27 indirect costs.

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

17 **SECTION 6.** 12-46-107 Colorado Revised Statutes, is
18 amended to read:

19 **12-46-107. Local licensing authority - application - fees - rules.**

20 (1) The local licensing authority shall issue only the following classes of
21 fermented malt beverage RETAILER'S licenses:

22 (a) Sales for consumption off the premises of the licensee. A
23 PERSON LICENSED PURSUANT TO THIS PARAGRAPH (a) MAY DELIVER AT
24 RETAIL FERMENTED MALT BEVERAGES IN FACTORY-SEALED CONTAINERS
25 IN CONJUNCTION WITH THE DELIVERY OF FOOD PRODUCTS IF THE PERSON
26 HAS OBTAINED A PERMIT FROM THE STATE LICENSING AUTHORITY FOR THE
27 DELIVERY OF FERMENTED MALT BEVERAGES.

1 (b) Sales for consumption on the premises of the licensee;
2 (c) Sales for consumption both on and off the premises of the
3 licensee. A person licensed pursuant to this paragraph (c) may deliver at
4 retail fermented malt beverages in factory-sealed containers in
5 conjunction with the delivery of food products if such THE person has
6 obtained a permit for the delivery of fermented malt beverages from the
7 state licensing authority. The state licensing authority shall promulgate
8 rules as are necessary for the proper delivery of fermented malt beverages
9 pursuant to this paragraph (c) and shall have the authority to issue a
10 permit to any person who is licensed pursuant to and delivers fermented
11 malt beverages under this paragraph (c).

12 (2) THE LOCAL LICENSING AUTHORITY SHALL ISSUE A MALT
13 LIQUOR RETAILER'S LICENSE, WHICH PERMITS ONLY SALES OF MALT LIQUOR
14 FOR CONSUMPTION OFF THE LICENSED PREMISES. A PERSON LICENSED
15 PURSUANT TO THIS SUBSECTION (2) MAY DELIVER AT RETAIL MALT LIQUOR
16 IN FACTORY-SEALED CONTAINERS IN CONJUNCTION WITH THE DELIVERY OF
17 FOOD PRODUCTS IF THE PERSON HAS OBTAINED A PERMIT FROM THE STATE
18 LICENSING AUTHORITY FOR THE DELIVERY OF MALT LIQUOR.

19 (2)(3) The local licensing authority shall collect an annual license
20 fee of twenty-five dollars if the licensed premises is located in a
21 municipality or city and county and fifty dollars if the licensed premises
22 is located outside the corporate limits of a municipality or city and county.

23 **SECTION 7.** 12-47-103 (8) and (19), Colorado Revised Statutes,
24 are amended, and the said 12-47-103 is further amended BY THE
25 ADDITION OF A NEW SUBSECTION, to read:

26 **12-47-103. Definitions.** As used in this article and article 46 of
27 this title, unless the context otherwise requires:

1 (5.5) "CAFFEINATED ALCOHOL BEVERAGE" MEANS A FERMENTED
2 MALT BEVERAGE OR MALT LIQUOR:

3 (a) CONTAINING AT LEAST ONE-HALF OF ONE PERCENT ALCOHOL
4 BY VOLUME;

5 (b) TO WHICH IS ADDED, OR WHICH IS INFUSED WITH, CAFFEINE OR
6 OTHER STIMULANTS, INCLUDING GUARANA, GINSENG, OR TAURINE; AND

7 (c) THAT IS SOLD OR DISTRIBUTED IN A PRE-MIXED CONTAINER.

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

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

16 **SECTION 8.** 12-47-301 (6) (a), Colorado Revised Statutes, is
17 amended to read:

18 **12-47-301. Licensing in general.** (6) (a) Licensees at facilities
19 owned by a municipality, county, or special district or at publicly or
20 privately owned sports and entertainment venues with a minimum seating
21 capacity of one thousand five hundred seats may possess and serve for
22 on-premises consumption any type of malt, vinous, and spirituous liquor
23 or fermented malt beverage as may be permitted pursuant to guidelines
24 established by the local and state licensing authorities, and THE LICENSEES
25 need not have meals available for consumption. ~~However, fermented~~
26 ~~malt beverages and malt, vinous, and spirituous liquors may not be served~~
27 ~~on the same premises at the same time.~~

1 **SECTION 9.** 12-47-901 (1), Colorado Revised Statutes, is
2 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3 **12-47-901. Unlawful acts - exceptions.** (1) Except as provided
4 in section 18-13-122, C.R.S., it is unlawful for any person:

5 (n) TO IMPORT, PRODUCE, MANUFACTURE, DISTRIBUTE, SELL AT
6 WHOLESALE OR AT RETAIL, GIVE AWAY, OR SERVE A CAFFEINATED
7 ALCOHOL BEVERAGE.

8 **SECTION 10.** 12-47-901 (8), Colorado Revised Statutes, is
9 amended to read:

10 **12-47-901. Unlawful acts - exceptions.** (8) It is unlawful for any
11 manufacturer or wholesaler licensed pursuant to article 46 of this title to
12 sell, deliver, or cause to be delivered to any ~~retail licensee~~ PERSON
13 LICENSED PURSUANT TO SECTION 12-47-407 OR 12-47-408 any beverage
14 containing alcohol in excess of three and two-tenths percent by weight or
15 four percent by volume, or for any fermented malt beverage retailer
16 LICENSED PURSUANT TO SECTION 12-46-104 (1) (c) (I) to sell, possess, or
17 permit the consumption on the premises of any of the beverages
18 containing alcohol in excess of three and two-tenths percent by weight or
19 four percent by volume, or for any fermented malt beverage retail licensee
20 LICENSED PURSUANT TO SECTION 12-46-104 (1) (c) (I) to hold or operate
21 under any license for the sale of any beverages containing alcohol in
22 excess of three and two-tenths percent by weight or four percent by
23 volume for the same premises. Any violation OF THIS SUBSECTION (8) by
24 any fermented malt beverage licensee ~~of the provisions of this subsection~~
25 ~~(8) shall~~ LICENSED PURSUANT TO ARTICLE 46 OF THIS TITLE immediately
26 ~~cause the cancellation of~~ INVALIDATES the license granted under this
27 article 46 OF THIS TITLE.

1 **SECTION 11.** 12-47-902 (1) and (2), Colorado Revised Statutes,
2 are amended to read:

3 **12-47-902. Testing for intoxication by law enforcement**
4 **officers - when prohibited.** (1) No person who is patronizing a licensed
5 premises as defined in sections 12-47-103 (~~14~~) and 12-46-103 (~~3~~) shall
6 be required or solicited by any law enforcement officer to submit to any
7 mechanical test for the purpose of determining the alcohol content of ~~such~~
8 THE person's blood or breath while ~~such~~ THE person is upon ~~such~~ THE
9 licensed premises except to determine if there is a violation of section
10 42-4-1301, C.R.S., by a driver of a motor vehicle unless the law
11 enforcement officer is acting pursuant to a court order obtained in the
12 manner described in subsection (2) of this section. No such test may be
13 performed upon any licensed premises to obtain evidence of alleged
14 intoxication, except pursuant to a court order as provided in this section
15 or in case of a medical emergency, regardless of whether such alleged
16 intoxication is a violation of any provision of this article.

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

1 (5) (a) (I).

2 **SECTION 12. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.