

**COLORADO BEER CODE**

ARTICLE 4, TITLE 44, C.R.S.

*Updated October 1, 2018*

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**44-4-101. Short title.** This article shall be known and may be cited as the "Colorado Beer Code".

**44-4-102. Legislative declaration.**

[Editor's note: This version of this section is effective until January 1, 2019.] (1) The general assembly hereby declares that it is in the public interest that fermented malt beverages shall be manufactured, imported, and sold only by persons licensed as provided in this article 4. The general assembly further declares that it is lawful to manufacture and sell fermented malt beverages containing not more than three and two-tenths percent alcohol by weight subject to the provisions of this article 4 and applicable provisions of articles 3 and 5 of this title 44.

(2) The general assembly recognizes that fermented malt beverages are separate and distinct from malt, vinous, and spirituous liquors, and as such require a separate and distinct regulatory framework under this article 4. To aid administrative efficiency, however, the provisions in article 3 of this title 44 shall apply to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article 4.

*SECOND OF TWO VERSIONS OF THIS SECTION*

[Editor's note: This version of this section is effective January 1, 2019.] (1) The general assembly hereby declares that it is in the public interest that fermented malt beverages shall be manufactured, imported, and sold only by persons licensed as provided in this article 4 and article 3 of this title 44. The general assembly further declares that it is lawful to manufacture and sell fermented malt beverages subject to this article 4 and applicable provisions of articles 3 and 5 of this title 44.

(2) The general assembly further recognizes that fermented malt beverages and malt liquors are separate and distinct from, and have a unique regulatory history in relation to, vinous and spirituous liquors, and as such require the retention of a separate and distinct regulatory framework under this article 44. To aid administrative efficiency, however, article 3 of this title 44 applies to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article 44.

**44-4-103. Definitions.**

Definitions applicable to this article 4 also appear in article 3 of this title 44. As used in this article 4, unless the context otherwise requires:

(1) [Editor's note: This version of subsection (1) is effective until January 1, 2019.] "Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume; except that "fermented malt beverage" shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1)(i)(II).

(1) [Editor's note: This version of subsection (1) is effective January 1, 2019.] (a) "Fermented malt beverage" means beer and any other beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume.

(b) "Fermented malt beverage" does not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1)(i)(II).

(2) "License" means a grant to a licensee to manufacture or sell fermented malt beverages as provided by this article 4.

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

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

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

(6) "State licensing authority" means the executive director or the deputy director of the department if the executive director so designates.

**44-4-104. Licenses - state license fees – requirements – repeal.**

(1) The licenses to be granted and issued by the state licensing authority pursuant to this article 4 for the manufacture, importation, and sale of fermented malt beverages are as follows:

(a)

(I) A manufacturer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44-3-307 to manufacture and sell fermented malt beverages upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority. A manufacturer so licensed may have additional warehouses in the state upon payment of the wholesaler's license fee as provided in this section.

(II) A manufacturer that has received a license pursuant to this subsection (1)(a) shall be authorized to manufacture fermented malt beverages upon an alternating proprietor licensed premises, as defined in section 44-3-103, as approved by the state licensing authority, but the manufacturer shall not conduct retail sales of fermented malt beverages from an area licensed or defined as an alternating proprietor licensed premises.

(b) A wholesaler's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44-3-307 to sell fermented malt beverages upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority. Each wholesaler's license application shall designate the territory within which the licensee may sell the designated products of any manufacturer, as agreed upon by the licensee and the manufacturer of such products.

(c)

(I) On and after June 4, 2018, a retailer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44-3-307 to sell at retail fermented malt beverages either for consumption off the licensed premises or on

the licensed premises, but not for consumption on and off the licensed premises, upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(II) (A) On and after June 4, 2018, the state licensing authority shall not issue a new or renew a fermented malt beverage retailer's license for the sale of fermented malt beverages for consumption on and off the licensed premises. Any licensee holding a fermented malt beverage license authorizing the sale of fermented malt beverages for consumption on and off the licensed premises that was issued by the state licensing authority under this subsection (1)(c) before June 4, 2018, that applies to renew the license on or after June 4, 2018, must simultaneously apply to convert the license either to a license for the sale of fermented malt beverages at retail for consumption off the licensed premises or to a license for the sale of fermented malt beverages at retail for consumption on the licensed premises.

(B) This subsection (1)(c)(II) is repealed, effective July 1, 2019.

(d)

(I) A nonresident manufacturer's license shall be granted and issued to any person manufacturing fermented malt beverages outside of the state of Colorado for the sole purposes listed in subsection (1)(d)(III) of this section, upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority.

(II) An importer's license shall be granted and issued to any person importing fermented malt beverages into this state for the sole purposes listed in subsection (1)(d)(III) of this section, upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority.

(III) The licenses referred to in subsections (1)(d)(I) and (1)(d)(II) of this section shall be issued for the following purposes only:

(A) To import and sell fermented malt beverages within this state to a person licensed as a wholesaler pursuant to this section;

(B) To maintain stocks of fermented malt beverages and to operate fermented malt beverages warehouses by procuring a wholesaler's license as provided in this section;

(C) To solicit orders from retail licensees and fill such orders through licensed wholesalers.

(IV) Each applicant for a license as a manufacturer, nonresident manufacturer, or importer of fermented malt beverages shall enter into a written contract with each wholesaler with which the applicant intends to do business, which contract shall designate the territory within which the product of such applicant shall be sold by the respective wholesaler. The contract shall be submitted to the state licensing authority with an application, and the applicant, if licensed, shall have a continuing duty to submit any subsequent revisions, amendments, or superseding contracts to the state licensing authority.

(V) A manufacturer, nonresident manufacturer, or importer licensed to sell fermented malt beverages under this article 4 shall not contract with more than one wholesaler to sell the products of such manufacturer, nonresident manufacturer, or importer in the same territory.

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the state licensing authority, by rule or as otherwise provided by law, may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority, by rule or as otherwise provided by law, may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(3) The manufacturer's or wholesaler's licenses provided by this article 4 shall permit the licensee to sell fermented malt beverages in sealed containers to retailers and consumers, thereof, as long as the beverages have been unloaded and placed in the physical possession of a licensed wholesaler at its licensed premises in this state and inventoried for purposes of tax collection before being delivered to any such retailer or consumer. Wholesalers of fermented malt beverages receiving products to be held as required by this subsection (3) shall be liable for the payment of any tax due on the products under section 44-3-503.

(4) It is unlawful for any manufacturer or wholesaler or any person, partnership, association, organization, or corporation interested financially in or with any of the licensees described in this article 4 to be interested financially, directly or indirectly, in the business of any retail licensee licensed pursuant to this article 4, or for any retail licensee under this article 4, to be interested financially, directly or indirectly, in the business of any manufacturer or wholesaler or any person, partnership, association, organization, or corporation interested in or with any of the manufacturers or wholesalers licensed pursuant to this article 4.

**44-4-105. Fees and taxes - allocation.**

(1) (a) The state licensing authority shall establish fees for processing the following types of applications, notices, or reports required to be submitted to the state licensing authority: Applications for new fermented malt beverage licenses pursuant to section 44-3-301 and rules thereunder; applications for change of location pursuant to section 44-3-301 and rules thereunder; applications for changing, altering, or modifying licensed premises pursuant to section 44-3-301 and rules thereunder; applications for warehouse or branch house permits pursuant to section 44-4-104 and rules thereunder; applications for duplicate licenses; and notices of change of name or trade name pursuant to section 44-3-301 and rules thereunder. The amounts of such fees, when added to the other fees and taxes transferred to the liquor enforcement division and state licensing authority cash fund pursuant to subsection (2) of this section and section 44-3-502 (1), shall reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of this article 4 and articles 3 and 5 of this title 44. At least annually, the amounts of the fees shall be reviewed and, if necessary, adjusted to reflect such direct and indirect costs.

(b) Except as provided in subsection (1)(c) of this section, the state licensing authority shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state licensing authority or upon any employee of the division, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104 for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(c) The subpoena fee established pursuant to subsection (1)(b) of this section shall not be applicable to any state or local governmental agency.

(2) (a) All state license fees provided for by this article 4 and all fees provided for by subsections (1)(a) and (1)(b) of this section for processing applications, reports, and notices shall be paid to the department, which shall transmit the fees and taxes to the state treasurer. The state treasurer shall credit eighty-five percent of the fees and taxes to the old age pension fund and the balance to the general fund.

(b) An amount equal to the revenues attributable to fifty dollars of each state license fee provided for by this article 4 and the processing fees provided for by subsections (1)(a) and (1)(b) of this section shall be transferred out of the general fund to the liquor enforcement division and state licensing authority cash fund. The transfer shall be made by the state treasurer as soon as possible after the twentieth day of the month following the payment of the fees.

(c) The expenditures of the state licensing authority and the liquor enforcement division shall be paid out of appropriations from the liquor enforcement division and state licensing authority cash fund as provided in section 44-6-101.

(3) Eighty-five percent of the local license fees set forth in section 44-4-107 (2) shall be paid to the department, which shall transmit the fees to the state treasurer to be credited to the old age pension fund.

**44-4-106. Lawful acts.**

[Editor's note: This version of this section is effective until January 1, 2019.] It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises over eighteen years of age to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under eighteen years of age may handle and otherwise act with respect to fermented malt beverages in the same manner as that person does with other items sold at retail; except that no person under eighteen years of age shall sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet. This section shall not be construed to permit the violation of any other provisions of this section under circumstances not specified in this section.

***SECOND OF TWO VERSIONS OF THIS SECTION***

[Editor's note: This version of this section is effective January 1, 2019.] (1) It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises eighteen years of age or older to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under twenty-one years of age may

handle and otherwise act with respect to fermented malt beverages in the same manner as that person does with other items sold at retail; except that:

- (a) A person under eighteen years of age shall not sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet; and
- (b) A person who is under twenty-one years of age shall not deliver fermented malt beverages in sealed containers to customers under section 44-4-107 (6).

(2) This section does not permit the violation of any other provisions of this section under circumstances not specified in this section.

**44-4-107. Local licensing authority - application – fees –definition – rules - repeal.**

(1) The local licensing authority shall issue only the following classes of fermented malt beverage licenses:

- (a) Sales for consumption off the premises of the licensee;
- (b) Sales for consumption on the premises of the licensee;
- (c)

(I) Sales for consumption both on and off the premises of the licensee; except that, on or after June 4, 2018, a local licensing authority shall not issue a new fermented malt beverage license or renew an existing fermented malt beverage license for the sale of fermented malt beverages for consumption on and off the licensed premises. Any licensee holding a fermented malt beverage license issued under this subsection (1)(c) prior to June 4, 2018, that applies to renew the license on or after June 4, 2018, must simultaneously apply to convert the license either to a license for the sale of fermented malt beverages for consumption off the licensed premises as specified in subsection (1)(a) of this section or to a license for the sale of fermented malt beverages for consumption on the licensed premises as specified in subsection (1)(b) of this section.

(II) This subsection (1)(c) is repealed, effective July 1, 2019.

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

(3) (a) In addition to any other requirements specified in this article 4 or article 3 of this title 44, to qualify for a new license under subsection (1)(a) of this section on or after June 4, 2018, or to renew a license that was issued under subsection (1)(a) of this section on or after June 4, 2018, a person must derive at least twenty percent of its gross annual revenues from total sales from the sale of food items for consumption off the premises.

(b) For purposes of calculating gross annual revenues from total sales, revenues derived from the sale of the following products are excluded:

- (I) Fuel products, as defined in section 8-20-201 (2);
- (II) Cigarettes, tobacco products, and nicotine products, as defined in section 18-13-121 (5); and
- (III) Lottery products.

(c) The state licensing authority may adopt rules specifying the form and manner in which an applicant for a new or renewal license may demonstrate compliance with this subsection (3).

(d) This subsection (3) does not apply to a person that owns or leases a proposed fermented malt beverage retailer licensed premises and, as of January 1, 2019, has applied for or received from the municipality, city and county, or county in which the premises are located:

(I) A building permit for the structure to be used for the fermented malt beverage retailer licensed premises, which permit is currently active and will not expire before the completion of the liquor licensing process; or

(II) A certificate of occupancy for the structure to be used for the fermented malt beverage retailer licensed premises.

(e) As used in this subsection (3), "food items" means any raw, cooked, or processed edible substance, ice, or beverage, other than a beverage containing alcohol, that is intended for use or for sale, in whole or in part, for human consumption.

(4) [Editor's note: Subsection (4) is effective January 1, 2019.] On or after January 1, 2019, a fermented malt beverage retailer licensed under subsection (1)(a) of this section:

(a)

(I) Shall not sell fermented malt beverages to consumers at a price that is below the retailer's cost, as listed on the invoice, to purchase the fermented malt beverages, unless the sale is of discontinued or close-out fermented malt beverages.

(II) This subsection (4)(a) does not prohibit a fermented malt beverage retailer from operating a bona fide loyalty or rewards program for fermented malt beverages so long as the price for the product is not below the retailer's costs as listed on the invoice. The state licensing authority may adopt rules to implement this subsection (4)(a).

(b) Shall not allow consumers to purchase fermented malt beverages at a self-checkout or other mechanism that allows the consumer to complete the fermented malt beverages purchase without assistance from and completion of the entire transaction by an employee of the fermented malt beverage retailer.

(5) [Editor's note: Subsection (5) is effective January 1, 2019.] A person licensed under subsection (1)(a) of this section that holds multiple fermented malt beverage retailer's licenses for multiple licensed premises may operate under a single or consolidated corporate entity but shall not commingle purchases of or credit extensions for purchases of fermented malt beverages from a wholesaler licensed under this article 4 or article 3 of this title 44 for more than one licensed premises. A wholesaler licensed under this article 4 or article 3 of this title 44 shall not base the price for the fermented malt beverages it sells to a fermented malt beverage retailer licensed under subsection (1)(a) of this section on the total volume of fermented malt beverages that the retailer purchases for multiple licensed premises.

(6) [Editor's note: Subsection (6) is effective January 1, 2019.] (a) A person licensed under subsection (1)(a) of this section who complies with this subsection (6) and rules promulgated under this subsection (6) may deliver fermented malt beverages in sealed containers to a person of legal age if:

(I) The person receiving the delivery of fermented malt beverages is located at a place that is not licensed pursuant to this section;

(II) The delivery is made by an employee of the fermented malt beverage retailer who is at least twenty-one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;

(III) The person making the delivery verifies, in accordance with section 44-3-901 (11), that the person receiving the delivery of fermented malt beverages is at least twenty-one years of age; and

(IV) The fermented malt beverage retailer derives no more than fifty percent of its gross annual revenues from total sales of fermented malt beverages from the sale of fermented malt beverages that the fermented malt beverage retailer delivers.

(b) The state licensing authority shall promulgate rules as necessary for the proper delivery of fermented malt beverages pursuant to this subsection (6) and may issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages under subsection (1)(a) of this section. A permit issued under this subsection (6) is subject to the same suspension and revocation provisions as are set forth in section 44-3-601 for other licenses granted pursuant to article 3 of this title 44.

**44-4-108. Exemption.**

This article 4 does not apply to a state institution of higher education when the institution is engaged in the manufacture and tasting, at the place of manufacture or at a licensed premises, of fermented malt beverages for teaching or research purposes, so long as the fermented malt beverages are not sold or offered for sale and are only tasted by a qualified employee, qualified student, or expert taster. Any unused fermented malt beverage product that is produced by a state institution of higher education in accordance with this section must be removed from a licensed premises at the end of an event if the event is held at a licensed premises located off campus.

**44-4-109. Liquor industry working group - creation - duties - report – repeal.**

(1) The state licensing authority shall convene a liquor industry working group to develop an implementation process for grocery and convenience stores to apply for a license to sell malt liquor and fermented malt beverages containing at least one-half percent alcohol by volume starting January 1, 2019. The working group shall analyze the impact that removing the alcohol content limit on fermented malt beverages will have on the alcohol beverage industry as a whole, as well as on current retail licensees, and shall consider other legislative, regulatory, or administrative changes necessary to promote the three-tiered distribution system in Colorado. Additionally, the working group shall examine and make recommendations regarding laws governing tastings

conducted on retail premises licensed under article 3 of this title 44 and the ability of retail liquor stores licensed under section 44-3-409 to sell growlers containing malt liquors.

(2) The executive director shall appoint the following members to serve on the liquor industry working group:

- (a) A member from the department;
- (b) A member from the liquor enforcement division in the department;
- (c) A member from the attorney general's office;
- (d) A member representing municipal government;
- (e) A member representing county government;
- (f) A member representing community prevention;
- (g) A member representing law enforcement;
- (h) Two members representing large breweries;
- (i) Two members representing small breweries;
- (j) One member representing a national distillery;
- (k) One member representing a Colorado distillery;
- (l) Three members representing retail liquor store licensees, one of which must represent a small retail liquor store licensee;
- (m) One member representing a statewide off-premises retail licensee;
- (n) Two members representing persons licensed under section 44-3-413;
- (o) One member representing persons licensed under section 44-3-414;
- (p) Two members representing licensed wholesalers;
- (q) One member representing a national vinous liquors manufacturer;
- (r) One member representing a Colorado vinous liquors manufacturer;
- (s) Two attorneys who practice in the area of liquor law and regulation;
- (t) One member representing Mothers Against Drunk Driving or its successor organization;
- (u) Two members representing grocery stores;
- (v) Two members representing convenience stores; and
- (w) Two members of the public.

(3) The liquor industry working group shall convene as soon as practicable after July 1, 2016, but no later than August 1, 2016, and by January 1, 2018, shall report its findings and recommendations for an implementation process, including any legislative or administrative recommendations, to the senate business, labor, and technology committee and the house of representatives business affairs and labor committee, or their successor committees.

(4) This section is repealed, effective July 1, 2019.