

COLORADO BEER CODE

ARTICLE 46, TITLE 12, C.R.S.

Updated January 19, 2018

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12-46-101. Short title. This article shall be known and may be cited as the "Colorado Beer Code".

12-46-102. Legislative declaration.

(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. 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 and applicable provisions of articles 47 and 48 of this title.

(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. To aid administrative efficiency, however, the provisions in article 47 of this title shall apply to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article.

12-46-103. Definitions. Definitions applicable to this article also appear in article 47 of this title. As used in this article, 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), C.R.S.

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

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

(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 of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

12-46-104. Licenses - state license fees - requirements.

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

(a)(I) A manufacturer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 12-47-301 and not prohibited from licensure under section 12-47-307 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 paragraph (a) shall be authorized to manufacture fermented malt beverages upon an alternating proprietor licensed premises, as defined in section 12-47-103, 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 12-47-301 and not prohibited from licensure under section 12-47-307 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) A retailer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 12-47-301 and not prohibited from licensure under section 12-47-307 to sell at retail the said fermented malt beverages upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(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 subparagraph (III) of this paragraph (d), 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 subparagraph (III) of this paragraph (d), upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority.

(III) The licenses referred to in subparagraphs (I) and (II) of this paragraph (d) 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 such 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 shall not contract with more than one wholesaler to sell the products of such manufacturer, nonresident manufacturer, or importer in the same territory.

(1.5) 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), C.R.S., 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), C.R.S.

(2) The manufacturer's or wholesaler's licenses provided by this article 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 (2) shall be liable for the payment of any tax due on such products under section 12-47-503.

(3) 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 to be interested financially, directly or indirectly, in the business of any retail licensee licensed pursuant to this article, or for any retail licensee under this article 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.

12-46-105. 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 12-47-301 and regulations thereunder; applications for change of location pursuant to section 12-47-301 and regulations thereunder; applications for changing, altering, or modifying licensed premises pursuant to section 12-47-301 and regulations thereunder; applications for warehouse or branch house permits pursuant to section 12-46-104 and regulations thereunder; applications for duplicate licenses; and notices of change of name or trade name pursuant to section 12-47-301 and regulations 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 12-47-502 (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 and articles 47 and 48 of this title. 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 paragraph (c) of this subsection (1), 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, C.R.S., 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 paragraph (b) of this subsection (1) shall not be applicable to any state or local governmental agency.

(2)(a) All state license fees provided for by this article and all fees provided for by paragraphs (a) and (b) of subsection (1) of this section for processing applications, reports, and notices shall be paid to the department of revenue, 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 and the processing fees provided for by paragraphs (a) and (b) of subsection (1) of this section shall be transferred out of the general fund to the liquor enforcement division and state licensing authority cash fund. Such transfer shall be made by the state treasurer as soon as possible after the twentieth day of the month following the payment of such 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 24-35-401, C.R.S.

(3) Eighty-five percent of the local license fees set forth in section 12-46-107 (2) shall be paid to the department of revenue, which shall transmit the fees to the state treasurer to be credited to the old age pension fund.

12-46-106. Lawful acts. 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.

12-46-107. Local licensing authority - application - fees.

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

(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.

12-46-108. Exemption. This article 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.

12-46-109. 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 47 of this title and the ability of retail liquor stores licensed under section 12-47-407 to sell growlers containing malt liquors.

(2) The executive director of the department of revenue shall appoint the following members to serve on the

liquor industry working group:

- (a) A member from the department of revenue;
 - (b) A member from the liquor enforcement division in the department of revenue;
 - (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 12-47-411;
 - (o) One member representing persons licensed under section 12-47-412;
 - (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 the effective date of this section, 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.