



COLORADO
Department of Revenue

Enforcement Division - Liquor & Tobacco

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BULLETIN 18-07

REFERENCE: IMMEDIATE STATUTORY CHANGES PURSUANT TO
SB 18-243

June 5, 2018

COLORADO LIQUOR ENFORCEMENT DIVISION

On June 4, 2018, Governor John Hickenlooper signed SB 18-243. Generally, the bill modifies laws governing the retail sale of fermented malt beverages (FMB), which will become synonymous in definition with malt liquor as of January 1, 2019.

The Liquor Enforcement Division (Division) will provide materials and conduct classes to address the bill's comprehensive details. However, until those classes are held, this bulletin addresses certain **immediate** statutory changes requiring all stakeholders' attention.

This bulletin provides an overview of the laws affected upon the enactment of SB 18-243. For more information, please visit leg.colorado.gov/bills/sb18-243 to view the entirety of the bill.

Below is a list of items that are **effective as of June 4, 2018** along with the legal citation and the page number of where the information can be found within SB 18-243 ("An Act" version).

1. ELIMINATES THE FMB ON AND OFF LICENSE

Prior to SB 18-243, a person could hold an FMB retail license for consumption both on and off the licensed premises (FMB On-Off). *SB 18-243 eliminates the FMB On-Off license.* This means:

- No FMB On-Off licenses shall be issued new or renewed by the local or state licensing authority.
- Upon their annual renewal, an existing FMB On-Off licensee must convert to a FMB retail license for consumption either on (FMB On) or off (FMB Off) the licensed premises.
 - In order to facilitate this request, the licensee must submit along with their renewal application a written notification to the local licensing authority and state licensing

authority which license it will be converted to (either FMB On or FMB Off). The Division will not accept renewal applications for an FMB On-Off license without this written notification.

See SB 18-243, § 12-46-104(1)(c), C.R.S. [p. 3] and § 12-46-107(1)(c), C.R.S. [p. 4-5].

2. PROHIBITS FMB ON AND OFF LICENSE DELIVERY

Prior to SB 18-243, a FMB On-Off licensee could deliver FMB. As stated above, SB 18-243 eliminates the FMB On-Off license. While a FMB On-Off licensee may operate until their annual renewal and conversion, a FMB On-Off licensee may no longer deliver FMB effective as of June 4, 2018.

See SB 18-243, § 12-46-107(1)(c)(I), C.R.S. [p. 4].

3. CREATES FOOD SALES REQUIREMENTS FOR CERTAIN NEW LICENSEES

SB 18-243 creates food sales requirements for certain new licensees. In addition to other requirements, to qualify for a *new* FMB Off license or to *renew* a FMB Off license issued on or after June 4, 2018, a person must:

- Derive at least 20% of its gross annual revenues from total sales from the sale of food items for consumption off the premises.
 - For purposes of calculating gross annual revenues from total sales, revenues derived from the sale of the following products are excluded:
 - Fuel products;
 - Cigarettes, tobacco products, and nicotine products; and
 - Lottery products.

However, this requirements does not apply to:

- A person that owns or leases a proposed FMB 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:
 - An active building permit, or
 - A certificate of occupancy.

See SB 18-243, § 12-46-107(3), C.R.S. [p. 5-6].

4. CREATES ADDITIONAL LICENSING CONSIDERATIONS

SB 18-243 requires the local licensing authority and state licensing authority to consider the effect on competition before granting or denying a second or additional license for a:

- Beer and wine license;
- Hotel and restaurant license;
- Tavern license;
- Brew pub license;
- Club license;
- Arts license;
- Racetrack license;
- Public transportation system license;
- Optional premises license;
- Vintner’s restaurant license;
- Distillery pub license;
- Lodging and entertainment license;
- Bed and breakfast permit; or
- Financial institution referred to in section 12-47-308(4) for the same licensee.

The local licensing authority and the state licensing authority shall deny a second or additional license that would restrain competition.

(Note: Prior to SB 18-243, this provision only applied to a hotel and restaurant license or vintner’s restaurant license.)

See SB 18-243, § 12-47-301(2)(a), C.R.S. [p. 8].

5. CREATES AND AMENDS DISTANCE RESTRICTIONS BETWEEN CERTAIN LICENSED PREMISES

SB 18-243 creates and amends distance restrictions between certain licensees under certain conditions.

- Neither an *existing* FMB Off nor an *existing* retail liquor store (RLS) license shall change its license location within 1,500 feet or 3,000 feet of an existing RLS license.
- Neither a *new* RLS nor a *new* liquor-licensed drugstore (LLDS) license shall locate within 1,500 feet of an RLS or LLDS license if located within a municipality with a population less than 10,000 people and is contiguous to the City and County of Denver.
- A *new* FMB Off license shall not be located within 500 feet of an RLS license. This distance requirement does not apply to:
 - A person that owns or leases a proposed FMB 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:
 - An active building permit, or
 - A certificate of occupancy.

See SB 18-243, § 12-47-301(9)(a)(I)(B)-(C), C.R.S. [p. 8-9] and § 12-47-301(12)(a)-(a.5), C.R.S. [p. 11-12].

6. CREATES A MIMIMUM DISTANCE REQUIREMENT FOR CURRENT FMB OFF LICENSES WHO CHANGE LOCATION AND NEW FMB OFF LICENSES FROM SCHOOLS

SB 18-243 prohibits new FMB Off licenses from locating within 500 feet of any public or parochial school, or the principal campus of any college, university, or seminary, with limited exceptions. This distance restriction also applies to a change of location for an existing FMB Off license. The distance computation is the same as other distance requirement from any public or parochial school currently found in law.

See SB 18-243, § 12-47-313(1)(e), C.R.S. [p. 15-16].

7. EXPANDS QUALIFYING CONDITIONS REQUIRED TO ACQUIRE ADDITIONAL LLDS LICENSES

In addition to existing qualifying conditions, SB 18-243 further allows a licensee to acquire interest in additional LLDS licenses over time if the LLDS submitted an application for a new LLDS before October 1, 2016.

See SB 18-243, § 12-47-408(4)(b)(V), C.R.S. [p. 21].

8. EXPANDS AND AMENDS CERTAIN TASTINGS LAWS AND LIMITATIONS

SB 18-243 expands and amends certain tastings laws and limitations.

- A tasting may be conducted later in the day (until 9 p.m.) and more days per year (156 days per year, any day of the week).
- An RLS or LLDS licensee may securely store open and unconsumed alcohol beverage containers for future tastings as long as they are not stored in the sales area.
- A tasting may be conducted by a representative, employee, or agent of a wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant, in addition to a RLS or LLDS licensee employee.
- Any violation of a tastings limitation is the responsibility of the RLS or LLDS licensee even if the violation was committed by a representative, employee, or agent of another licensee named above.
- A representative, employee, or agent of a manufacturer, limited winery, wholesaler, or importer may pour or serve alcohol beverages as part of a tasting at a RLS or LLDS licensed premises.

See SB 18-243, § 12-47-301(10)(c)(I)(A), (V), (VII), (XI), C.R.S. [p. 10], § 12-47-301(10)(d), C.R.S. [p. 10-11], and § 12-47-308(1)(a)(II)(B), (3)(a)(II)(B), (5)(b)(II), C.R.S. [p. 13-15].

9. CREATES A NEW LIMITATION ON SUSPENSIONS OR FINES

SB 18-243 creates a new limitation on suspensions or fines. When imposing a suspension or fine against a retail licensee for a violation of section 12-47-901(5)(a)(I), C.R.S., the local licensing authority or state licensing authority shall not consider any violation that occurred more than five years before the violation for which a suspension or fine is being considered.

See SB 18-243, § 12-47-601(7.5)(c), C.R.S. [p. 22-23].

As stated above, the Division will prepare additional materials and conduct classes to address the bill's comprehensive details. If you have any questions about this bulletin, please contact the Division at (303) 205-2306.