

Colorado Liquor Enforcement Division 2018 Liquor Working Group (LWG)

Meeting of July 23, 2018
1:00 p.m.

Liquor Enforcement Division Office
1881 Pierce Street | Lakewood, CO

Meeting Minutes

Members In Attendance:

Liquor Enforcement Division - Patrick Maroney
Liquor Brewery Small - Daniel Bewley, Crooked Stove/Small Brewers
Liquor Brewery Small - Andres G. Zaldana, Colorado Brewers Guild
Liquor Brewery Large - Garin D. Vorthmann, AB
Liquor Brewpub - Chris Labbe, Brewpubs
Liquor Grocery Store Small - Mary Lou Chapman, Rocky Mountain Food Industry Association
Liquor Grocery Store Large - Larry Hudson, Safeway
Liquor Convenience Store Small - Amy Hicks
Liquor Wholesaler - Steve Findley, CBDA
Liquor Distillery - State - Stephen Gould, Colorado Distillers Guild
Liquor Cidery - Eric Foster, Colorado Cider Guild
Liquor Winery State - Doug Caskey, Colorado Wine Board
Liquor Attorney - Chas Runco, Runco and Proffitt
Liquor Off Premises Statewide - Jeanne McEvoy, CLBA
Liquor Off Premises Independent - Jim Shpall,
County Government - Kristen Huber, Boulder County
Community Prevention - Kacy Crawford, CDPHE
Liquor Distillery - National - Joanie Green Turner
Liquor Wholesaler - Micki Hackenberger - WSWC

Welcome and Introductions

Patrick Maroney opened with introductions and discussed the agenda for the meeting. The group was reminded of the ground rules where members may speak during the meetings, and those who are not members, there will be an allotted time at the end of each discussion for public input. Everyone was reminded to keep questions and responses under 2 minutes.

Updates from Subgroups

▪ Trade Practices

Patrick Maroney gave an update for the subgroup meetings held last June 6th and July 9th. Patrick reported that examples were brought to the table from all across the country which provided a good headway in the discussion on Value of Labor and Delivery Permits. A draft of Rules will be sent out to Stakeholders by August 8th for additional comments.

There is agreement among members for the need to clearly define what the State interprets as stocking, merchandising, rotating, refilling, or activities related to “building the brand,” and to clearly define what will be permissible and not permissible. It was suggested to integrate what is allowed on the Federal level and define what will be required for the State. Patrick Maroney commented that a definition of terms will be released no later than next Friday, August 3rd.

It was raised that identifying a frequency will be a challenging task, and it was suggested that frequency may be more of a business decision rather than a regulatory issue. There was also a concern of the difficulty of enforcing frequency requirements and the need to level the playing field for big brands and small brands as smaller brands may not have the ability to merchandise or fix the shelves as often as bigger brands.

▪ Delivery

Patrick Maroney discussed law changes on deliveries effective January 2019 and that the Division with the subgroup has drafted rules on the application process, setting limitations and approval process. The draft rules and guideline will be sent to stakeholders by next Friday for comments.

An inquiry was made regarding the involvement of local licensing authority and a clarification for the 50% requirement for on-off-site delivery. Patrick Maroney responded that the local licensing authority is not involved, only the state licensing authority and that the percentage requirement is set by statute and has to be a legislative amendment to be changed.

▪ Lodging and Entertainment

Jacob Baus reported that the subgroup has identified and made changes pursuant to the new legislation and has agreed on a consistent language for the rules and has circulated the draft rules to stakeholders. The subgroup has come up with an overarching definition of what entertainment is and what it is not. The draft rules broadly defined terms and provided examples and parameters on how the State will assess licensing application. The rules and regulations included descriptive types of activity that will qualify and will provide some guidance to make processes more efficient.

Jacob Baus clarified that even if the business is perceived as conducting entertainment activity but possess a health risk, a license will not be allowed. He further explained that as per statute, the primary purpose of the business should be for entertainment and this can be supported by assessing the business income showing that more than 50% of its total sales are generated from entertainment activities.

There were clarifications on some business models that may not fit the definition used by the rules, including Event Centers, Tavern issues, general licensee businesses, etc. Jacob Baus explained that the definitions were broad and provided examples that may encompass most business models.

Some members raised concerns of not receiving the draft rules. The Division will resend the redline draft and will post it as well in the website subgroup link. The draft will be provided a week before the rule hearing on August 13th.

Jacob Baus then provided the below overview of rules modifications due to statutory changes (other than SB 18-243)

1. FMB ON & OFF LICENSE

- No more new or renewed FMB On & Off licenses. Existing FMB On & Off licenses must convert to either an FMB On license or an FMB Off license.

§ 12-46-104(1)(c)(II), C.R.S. [p. 3]

§ 12-46-107(1)(c), C.R.S. [p. 4-5]

- New food requirements for certain FMB Off licensees, with some exceptions.

§ 12-46-107(3), C.R.S. [p. 5-6]

The Division is drafting a rule that would define the way in which applicable licensees will demonstrate their compliance with the food requirements, specifically, requiring licensees to affirm compliance on their applications. Furthermore, the state licensing authority and the local licensing authority shall have the authority to request additional documentation to demonstrate compliance.

Patrick Maroney briefly discussed changes on the following issue. He informed members that if 20% or more of sales come from food then they cannot be within 500 feet of a liquor store. He also clarified that existing malt beverage licenses before January 1st are exempted from the changes.

2. AGE OF EMPLOYEES

- An employee must be at least 18 years old to perform all alcohol beverage related functions at an FMB On license, FMB Off license, RLS license, or LLDS license.

§ 12-46-106(1), C.R.S. [p. 4]

§ 12-47-901(5)(p)(I)(B), (II), C.R.S. [p. 25-26]

- An employee must be at least 21 years old to make a delivery for an FMB Off license, RLS license, or LLDS license.

§ 12-46-106(1), C.R.S. [p. 4]

§ 12-47-901(5)(p)(III), C.R.S. [p. 26]

The Division is amending Regulation 47-426 regarding “Delivery of Alcohol Beverages”, Regulation 47-913 regarding “Age of Employees”, and Regulation 47-1012 regarding “Special Event Permit – Permitted Age of Servers” to reflect these statutes.

Colorado Liquor Rules Changes from SB 18-243

Patrick Maroney explained that businesses can still employ workers less than 18 years of age but these employees can only perform tasks other than handling alcohol.

3. DELIVERY

- An FMB On & Off license shall no longer deliver.

§ 12-46-107(1)(c), C.R.S. [p. 4]

- There are new delivery requirements and conditions for an FMB Off license, RLS license, or LLDS license.

§ 12-46-107(6), C.R.S. [p. 7]

§ 12-47-407(3), C.R.S. [p. 18]

§ 12-47-408(3), C.R.S. [p. 20-21]

The Division is amending Regulation 47-426 regarding “Delivery of Alcohol Beverages” to reflect this statute.

4. DISTANCE RESTRICTIONS

- An FMB Off license or an RLS license shall not relocate within 1500 feet or 3000 feet, as applicable, of an RLS license.

§ 12-47-301(9)(a)(I)(B)-(C), C.R.S. [p. 9]

- An RLS license or an LLDS license shall not locate within 1500 feet or 3000 feet, as applicable, of an RLS license or an LLDS license.

§ 12-47-301(12)(a), C.R.S. [p. 11]

§ 12-47-407(1)(a)(II), C.R.S. [p. 16-17]

§ 12-47-408(1)(a)(I), C.R.S. [p. 19]

- A new FMB Off license shall not locate within 500 feet of an RLS license, with exceptions.

§ 12-47-301(12)(a.5), C.R.S. [p. 11-12]

- A FMB Off license shall not locate within 500 feet of a school, with exceptions.

§ 12-47-313(1)(e), C.R.S. [p. 15-16]

The Division is amending only Regulation 47-326(A) regarding “Distance Restriction – Applicability and Measurement” to add the applicability to FMB Off licenses. The Division believes no other regulatory amendments are required.

5. TASTINGS

- There are new tastings permissions and responsibilities.

§ 12-47-301(10)(c)-(d), C.R.S. [p. 10-11]

The Division is drafting a rule clarifying the expectations for securely storing open and unconsumed samples for future tastings. Additionally, the Division is proposing to draft a rule clarifying which suppliers may and which suppliers may not participate in tastings. More specifically, clarifying that out of state manufacturers who don't hold an importers license are not allowed to participate in tastings.

There was a discussion on the need for a licensee to sell, solicit, and pour, and for suppliers who make beverages out of state, or has an import license, which does not have a license, may develop a relationship with Agents/Servants who are required to undergo responsible server training. The members were clarifying what training programs are certified and acceptable in the rules, and if all employees are required to be seller certified.

6. TRADE PRACTICE

- There is clarity regarding who may pour and serve at a tasting.

§ 12-47-301(10)(c)-(d), C.R.S. [p. 10-11]

The Division is drafting a rule under Regulation 47-322(L) regarding “Unfair Trade Practices” to reflect this statute.

7. LLDS EXPANSION

- There is new language solidifying the qualification for LLDS expansion of an existing license.

§ 12-47-408(4)(b)(IV), C.R.S. [p. 21]

- There is a new license that will qualify for LLDS expansion.

§ 12-47-408(4)(b)(V), C.R.S. [p. 21-22]

The Division believes the statute speaks for itself, and no regulatory amendments are required.

8. FINE OR SUSPENSION

- There are conditions the licensing authority is prohibited from considered when imposing a suspension or a fine for a violation of § 12-47-901(5)(a)(I), C.R.S.

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

The Division believes the statute speaks for itself, and no regulatory amendments are required.

9. PUBLIC CONSUMPTION

- A person may consume any alcohol beverage in any public place, with exceptions, and where public consumption has been authorized appropriately by ordinance, resolution, or rule.

§ 12-47-901(1)(h)(VII), C.R.S. [p. 24]

The Division is drafting a rule requiring the applicable licensing authorities to provide the Division with a copy of its relevant ordinance, resolution, or rule and other relevant information.

There was an inquiry if LED will provide outreach communication plan to localities and Patrick Maroney confirmed that the Division will conduct education outreach.

10. POSSESSION ON PREMISES

- A person with an FMB Off license may have an open container of FMB on the licensed premises only if it is for retailer sampling.

§ 12-47-901(5)(k)(II)(B), C.R.S. [p. 25]

- An FMB Off license, RLS license, or LLDS license may have an open container of alcohol beverage, respectively, that is damaged or defective if it is marked for return to the wholesaler.

§ 12-47-901(5)(k)(V), C.R.S. [p. 25]

The Division is drafting a rule under Regulation 47-322(F) regarding “Unfair Trade Practices” to clarify these statutes, specifically, concerning the returns of breakage to wholesalers.

11. FMB ON LICENSE CONTROL REGARDING THE REMOVAL OF ALCOHOL BEVERAGES

- A FMB On license is subject to the existing requirements regarding not allowing the removal of alcohol beverages from the licensed premises and the posting of the related warning sign.

§ 12-47-901(9)(b), C.R.S. [p. 26]

The Division believes the statute speaks for itself, and no regulatory amendments are required.

12. IDENTIFICATION CHECK

- A FMB Off license is subject to the mandatory identification requirements, with exception to those persons who reasonably appear to be 50 years old or older.

§ 12-47-901(10), C.R.S. [p. 26-27]

The Division believes the statute speaks for itself, and no regulatory amendments are required.

13. RETAIL SALE TO CUSTOMER

- An FMB Off license, RLS license, or LLDS license shall not sell alcohol beverages, respectively, below cost. However, this does not prohibit a bona fide loyalty or rewards program so long as the price for the alcohol beverages are not below the retailer's cost for the product.

§ 12-46-107(4)(a), C.R.S. [p. 6]

§ 12-47-407(2)(a)(II), C.R.S. [p. 17]

§ 12-47-408(2)(a)(II), C.R.S. [p. 19-20]

The Division is drafting a new regulation to clarify these statutes. These regulations will be consistent in how rules were drafted concerning LLDS sales after SB16-197. The Division is looking for input from the industry in regards to the regulation for the bona fide loyalty programs.

Patrick Maroney discussed new rules that businesses cannot sell below cost based on the per item line in the invoice and that invoice delivery date and payment needs to be the same. There was a concern that rules cannot be the same for wholesalers and retailers.

Members are requesting for rules to be made available as soon as possible and to allow wholesalers 90-120 days to allow for their system to be upgraded for compliance to the new rule changes.

Patrick Maroney is requesting clarification to members on how the Division can marry invoice cost price and discount programs. The group discussed the impact of a bona fide loyalty programs with the rules on prohibiting selling below cost. It was suggested that reward points can be treated as a credit which has cash value and that the customer is still purchasing the full amount of the product and are just using credit with cash value like a gift card. The customer is still being subject to sales tax on the full value of the purchase.

14. CONSOLIDATED ENTITY, BUT NO PURCHASE OR CREDIT COMMINGLING

- An FMB Off license, RLS license, or LLDS license with multiple licenses for multiple licensed premises may operate under a consolidated entity. However, this does not permit the commingling of alcohol beverages purchases or credit extensions for multiple licensed premises.

§ 12-46-107(5), C.R.S. [p. 7]

§ 12-47-407(2)(b), C.R.S. [p. 17-18]

§ 12-47-408(8), C.R.S. [p. 22]

The Division believes the statute speaks for itself, and no regulatory amendments are required.

15. EFFECT ON COMPETITION

- The licensing authorities must consider the effect on competition when approving or denying a second or additional license for all retail licenses, except RLS licenses and LLDS licenses.

§ 12-47-301(2), C.R.S. [p. 8]

The Division believes the statute speaks for itself, and no regulatory amendments are required.

There was a discussion on what criteria will be used to determine effects of competition and a call for the Division to provide parameters and more guidance on the structure. Patrick Maroney clarified that this is not a priority for LED.

Announcements

Patrick Maroney announced upcoming subgroup sessions on August 8th and August 13th. He reminded everyone that effective August 1st the fee reduction will be in place. He also announced Training schedule in the middle of October and encouraged everyone to access the LED website for more details and training requests. He also informed everyone that they can submit questions and comments on the website.

Public Comment (limited to 2 minutes per person)

No further comments were raised.

Meeting Adjourned

3:30 pm adjournment