

**COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION
NOTICE OF RULEMAKING HEARING**

The State Licensing Authority of the Colorado Department of Revenue, Liquor Enforcement Division, will consider the promulgation of amendments to its Rules and Regulations as authorized by the Colorado Liquor Code, sections 44-3-101 *et seq.*, C.R.S. For specific information and language concerning the proposed changes, please refer to the contents of this Notice and to the proposed rule that is set forth below in this notice and are also at the Colorado Department of Revenue, Liquor Enforcement Division's website at www.colorado.gov/enforcement/liquor.

STATUTORY AUTHORITY FOR RULEMAKING

The State Licensing Authority promulgates this regulation pursuant to the authority granted in subsections 24-4-103, 44-3-102, 44-3-201(1), 44-3-202(1)(b), 44-3-202(2)(a), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(G), 44-3-202(2)(a)(I)(R), 44-3-308, and 44-4-102, C.R.S., and section 24-4-103, C.R.S.

SUBJECT OF RULEMAKING

The proposed regulation and relevant information are posted on the Colorado Department of Revenue, Liquor Enforcement Division's website at www.colorado.gov/enforcement/liquor. In addition, the proposed regulation is set forth below.

On June 27, 2019, the State Licensing Authority adopted an emergency rule through the issuance of a Statement of Emergency Justification and Adoption order ("Emergency Adoption Order"), a copy of which is attached to this Notice. The primary purpose for which the State Licensing Authority is initiating permanent rulemaking pursuant to this Notice is to provide sufficient opportunity for stakeholder and public participation on the subjects identified in the Emergency Adoption Order.

The State Licensing Authority will consider the promulgation of the following existing regulation with changes proposed. For specific information and language concerning the proposed changes, please refer to the proposed regulation that is set forth with this notice, at the Colorado Department of Revenue, Liquor Enforcement Division's website, and on the Colorado Secretary of State website.

RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

Certain provisions of Regulation 47-322, namely, subsection (L), which addresses the value of labor as it affects unfair trade practices and competition, and sets forth parameters for allowable and prohibited labor activities as between suppliers and retailer licensees.

Regulation 47-322. Unfair Trade Practices and Competition.

Basis and Purpose. The statutory authority for this regulation is located at subsections 44-3-102, 44-3-201(1), 44-3-202(1)(b), 44-3-202(2)(a), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(G), 44-3-202(2)(a)(I)(R), 44-3-308, and 44-4-102, C.R.S. The purpose of this regulation is to establish certain permitted and prohibited trade practices between suppliers and retailers in order to clarify and prevent statutorily prohibited financial assistance between tiers.

Suppliers and their agents or employees may not attempt to control a retail licensee's product purchase selection by engaging in unfair trade practices or competition.

Nothing in this regulation shall apply to non-profit, charitable, or other qualifying organizations, when such organization conducts licensed events pursuant to the requirements contained in article 5 of title 44 and related regulations, and such organization does not otherwise hold a retail license pursuant to article 3 or 4 of title 44. However, nothing herein shall authorize any financial assistance for the purpose of altering or influencing an organization's product selection for said events.

Retailers may not accept any prohibited financial assistance as described herein, and suppliers are prohibited from directly or indirectly engaging in the following unfair practices:

...

L. Value of Labor

1. Definitions for purposes of this subsection (L):

- a. "Deliver" or "delivering" is the act of a supplier bringing and unloading its alcohol beverage product from its delivery vehicle onto the retailer's licensed premises or permitted retail warehouse storage location. "Deliver" or "delivering" does not include a supplier bringing and unloading its alcohol beverage product from a permitted retail warehouse storage location to a retailer's licensed premises.
- b. "Merchandise" or "merchandising" is the act of organizing, constructing, maintaining, or stocking a display of alcohol beverage product or alcohol beverage product promotional materials, including alcohol beverage product signs, consumer advertising specialties, or point-of-sale advertising, within the retailer's licensed premises.
- c. "Price stamp" or "price stamping" is the act of affixing the retail price of alcohol beverage product to its respective shelf, refrigerator, or any other similar location within the retailer's licensed premises.

- d. "Rotate" or "rotating" is the act of moving alcohol beverage product from the rear to the front of any shelf, refrigerator, or similar location within the retailer's licensed premises.
 - e. "Service" or "servicing" is the act of replacing, staging, and/or tapping kegs within a retail premises. "Service" or "servicing" also includes performing necessary cleaning of alcohol beverage dispensing equipment, to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.
 - f. "Stock" or "stocking" is the act of placing or replenishing alcohol beverage product on any shelf, refrigerator, or similar location within the retailer's licensed premises.
2. In a supplier's sole discretion, and if allowed by the retailer, a supplier may deliver, merchandise, price stamp, rotate, service, and stock its alcohol beverage product on the retailer's licensed premises at no cost to the retailer.
- a. A supplier is prohibited from materially disturbing another supplier's alcohol beverage product while delivering, merchandising, price stamping, rotating, servicing, or stocking its own alcohol beverage product.
 - b. A supplier may only service the portion of the retailer's alcohol beverage dispensing equipment used for dispensing its alcohol beverage product.
3. A retailer is prohibited from requiring a supplier to provide any labor to the retailer, including, but not limited to, merchandising, price stamping, rotating, servicing, or stocking activities, as an express or implied condition of the delivery, purchase, or future purchases between the supplier and retailer.
4. Unless otherwise permitted under this Regulation, the Liquor Code, or the Beer Code, or unless the retailer pays the supplier at the normal hourly rate of the employee performing the labor, a supplier is prohibited from providing to a retailer, and a retailer is prohibited from accepting from a supplier, any labor other than the kinds of labor described in subsection (L)(2) of this Regulation, including, but not limited to:
- a. Cleaning, repairing, or otherwise maintaining the interior or exterior of a retailer's premises;
 - b. Operating the retailer's powered mechanical equipment, other than pallet jacks; or

- c. Performing inventory for the retailer's records.

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on August 6, 2019 will include any written comments or oral testimony submitted or presented. In an effort to avoid unnecessary duplication of effort, the record shall also include the written and recorded materials from the stakeholder meetings held on May 13, 2019, June 3, 2019, and June 5, 2019 and all relevant written comments and oral testimony submitted or presented in connection with the hearing held on November 1, 2018, pursuant to the Notice of Rulemaking Hearing Filed with the Secretary of State on September 27, 2018 (*see* SOS Tracking No. 2018-00498).
2. Written Comments. The State Licensing Authority encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by July 31, 2019 so that the State Licensing Authority can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is August 9, 2019 at 5:00 P.M.

The State Licensing Authority will accept all written comments which may be emailed to: dor_led@state.co.us. In addition, you may submit completed Rule Forms to:

Liquor Enforcement Division
Attn: Rules
1697 Cole Boulevard
Suite 200
Lakewood, Colorado 80401

Written comments will be accepted at the rulemaking hearing.

3. Oral Comments. At her discretion, the State Licensing Authority may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations will likely be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise. The State Licensing Authority encourages interested parties to avoid duplicating previously-submitted material and testimony.

HEARING SCHEDULE

Date: August 6, 2019
Time: 9:00 a.m.
Location: 1881 Pierce Street
Room 110
Lakewood, CO 80214

Location of the rulemaking hearing will also be posted on the Liquor Enforcement Division's website and the Secretary of State's website.

The hearing may be continued at such place and time as the State Licensing Authority may announce.

The State Licensing Authority shall deliberate upon the rulemaking record, including testimony and written submissions presented at this hearing, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the State Licensing Authority will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

If you are an individual with a disability who needs a reasonable accommodation in order to participate in this rulemaking hearing, please contact dor_led@state.co.us no later than July 31, 2019.

Dated this 27th day of June, 2019.

THE COLORADO DEPARTMENT OF REVENUE,
STATE LICENSING AUTHORITY,
LIQUOR ENFORCEMENT DIVISION



Heidi Humphreys
Deputy Director/Chief Operating Officer
State Licensing Authority
Colorado Department of Revenue