

**Senate Bill 16-197 Working Group
Legislative Report Recommendation Form**

1. Work Group Sponsor (s): **Jeanne McEvoy, Colorado Licensed Beverage Association (Off Premises Retail)**

2. Describe the Recommendation:

SB 16-197 was a landmark piece of legislation that dramatically changed the landscape of liquor law in Colorado. Many of the changes, such as expanding the number of retail and drug store liquor licenses a licensee may own and eliminating the 3.2% alcohol by volume (ABV) cap for fermented malt beverage licensees (i.e. grocery and convenience stores), have the potential to materially impact the viability of the hundreds of small businesses that comprise the CLBA. Nevertheless, the CLBA was an active participant and supporter of Senate Bill 16-197 and the compromises and agreements made therein. CLBA maintained its support for the commitments in SB 197 throughout the 2017 legislative session and continues to work toward its successful implementation through participation in the SB 197 Statutory Working Group (Working Group).

One of the primary goals of the Working Group is 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.” While some in the Working Group believe current licenses for fermented malt beverage sales will “automatically convert” to “malt liquor licenses” beginning January 1, 2019, it is not only harmful public policy, but it is in direct contradiction to the language and intent of SB-197. C.R.S 12-46-109 (1) requires the Working Group to establish a process for current fermented malt beverage licensees to apply for a new license to sell malt liquor. To that end, CLBA recommends that the General Assembly create a new statutory “grocery and convenience store refrigerated malt liquor license” that includes the following provisions:

- Existing fermented malt beverage licensees as of January 1, 2019 shall be eligible for an expedited application process for a “grocery and convenience store refrigerated fermented malt liquor license” (GCSRML) if they meet the following requirements:
 1. Application. Local licensing authorities may retain all the proceeds associated with the application for grocery and convenience store refrigerated malt liquor licenses by current fermented malt beverage licensees.
 2. The licensee shall not sell or offer for sale any malt liquor products containing more than 6% ABV.
 3. Malt liquor products must be refrigerated.
 4. The licensee shall not dedicate more than 20% of its refrigerated beverage retail space (excluding space used for dairy products) to malt liquor, and shall not use freezers, low-temperature and spot cases, or service cases to display malt liquor products.
 5. The licensee shall not make any substantial modifications to shelf space and product offerings from the licensee’s practices as of July 1, 2016. Substantial modification by licensee would trigger substantial modification review.
 6. The licensee shall not comingle malt liquor products with non-alcohol products in the same refrigerated case door.
 7. The licensee’s premises must be at least 1500 feet from the nearest pre K-12 public or private elementary, secondary, or vocational school or daycare center grounds. The distance shall be

measured in a straight line from the nearest property boundary of the school property to the address point of the licensee.

8. The licensee's premises is at least 1500 feet from the nearest retail liquor licensed premises.
 9. The licensee shall not sell general merchandise branded by alcohol manufacturers or distributors.
 10. The licensee shall not sell home brew/winemaking equipment.
 11. The licensee shall not sell malt liquor products at below invoice cost.
 12. The licensee shall not warehouse products for multiple stores at one licensed premises or transfer products between multiple stores.
 13. The licensee shall not have any point of sale sales or marketing of malt liquor products.
 14. The licensee shall only be eligible to sell 6-packs and 12-packs.
 15. Employees who check ID's, make sales, handle, stock, receive, or carry out fermented malt beverage must be at least 21 years of age.
 16. All current On and Off Premise Licenses may be converted to a GCSRMBL for off-premises sales or on-premises sales, but not both.
 17. Licensee shall comply with all other existing requirements of a fermented malt beverage license.
- Grocery and convenience store applicants applying on after January 1, 2019 must meet the following requirements:
 1. Application, which shall include a survey and needs and desires hearing. Proceeds from license fees distributed pursuant to the CRS 12-47-502.
 2. The licensee shall not sell or offer for sale any malt liquor products containing more than 6% ABV.
 3. Malt liquor products must be refrigerated
 4. The licensee shall not dedicate more than 20% of its refrigerated beverage retail space (excluding space used for dairy products) to malt liquor, and shall not use freezers, low-temperature and spot cases, or other all service cases to display malt liquor products.
 5. The licensee shall not comingle malt liquor products with non-alcohol products in the same refrigerated case door.
 6. The licensee's premises must be at least 1500 feet from the nearest pre K-12 public or private elementary, secondary, or vocational school or daycare center grounds. The distance shall be measured in a straight line from the nearest property boundary of the school property to the address point of the licensee.
 7. The licensee's premises is at least 1500 feet from the nearest retail liquor licensed premises.
 8. The licensee shall not sell malt liquor products at below invoice cost.
 9. The licensee shall not warehouse products for multiple stores at one licensed premises or transfer products between multiple stores.
 10. The licensee shall not sell general merchandise branded by alcohol manufacturers or distributors.
 11. The licensee shall not sell home brew/winemaking equipment.
 12. The licensee shall not have any point of sale sales or marketing of malt liquor products.
 13. The licensee shall only be eligible to sell 6-packs and 12 packs.
 14. Employees who check ID's, make sales, handle, stock, receive, or carry out fermented malt beverage must be at least 21 years of age.
 15. Licensee shall comply with all other existing requirements of a fermented malt beverage license.
3. Which portion or portions of Senate Bill 16-197 does this recommendation address (underline all those that apply)?
 - a. 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.

- b. **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.**
- c. Legislative, regulatory, or administrative changes necessary to promote the three-tiered distribution system in Colorado.
- d. 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.

4. Please summarize the rationale for the recommendation – why is it important?

For the reasons outlined below, this recommendation best balances economic interests and the desire for accessibility with concerns regarding public health and safety, underage drinking, and crime.

Required by Law

These recommendations achieve the legislative intent of SB 16-197, which instructs the 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.” (emphasis added). The General Assembly did not intend for an “automatic conversion” of fermented malt beverage licenses, allowing each and every licensee to sell malt liquor unfettered. If they did, they would not have instructed the Liquor Enforcement Division to convene a Working Group and develop an application process for a license to sell malt liquor. SB 197 does not instruct the Working Group to make recommendations on this topic, as it does for growlers and tasting rooms, it instructs the Working Group to actually develop an implementation process for license application. It makes no reference to automatic conversion or any similar result.

Best Interest of the Community

It would be detrimental to our communities to allow all current fermented malt beverage licensees to sell full-strength malt liquor. Existing liquor stores (i.e. retail and drug store liquor licensees) are highly regulated and must comply with a wide range of rules designed to ensure public safety and deter underage consumption. Allowing all fermented malt beverage licensees to sell malt liquor, which in some products can exceed the ABV of most hard liquors, under their current regulatory structure would undermine these important public policy considerations.

Liquor stores typically do not permit underage individuals from even entering the premises if unaccompanied by someone over the age of 21. This substantially limits underage exposure to alcohol and alcohol related products and advertising. However, because of their diverse range of products, grocery and convenience stores do not operate under the same restrictions. Teenagers and other underage consumers unaccompanied by adults often frequent grocery and convenient stores for candy, snacks, energy drinks, and other everyday items. This is particularly true when the premises are located near schools as students often flock to these stores before and after school and during breaks.

Introducing full strength malt liquor products to these child-friendly premises will have harmful effects on the community. The data consistently supports the idea that the availability of and exposure to alcohol and related products heavily contributes to underage drinking. Underage drinking, in turn, makes young people six times more likely to become dependent on alcohol.¹ A 2005 Rand Health study, supported by the National Institute on Alcohol

¹ “2015 National Survey on Drug Use and Health: Detailed Tables. Substance Abuse and Mental Health Services Administration.” *Center for Behavioral Health Statistics and Quality* (2016) (Youth who begin drinking before the age of 15 compared to those who begin drinking after age 21).

Abuse and Alcoholism, found that adolescents who more frequently viewed beer advertisements in grocery store displays and convenience stores were more likely to start drinking than peers who viewed fewer displays.² For initial non-drinkers in-store beer displays were particularly persuasive.³ Limiting product displays to refrigerated spaces will help reduce underage exposure and the associated negative impacts.⁴

Moreover, such a significant increase in the number of outlets for alcohol purchase will almost certainly increase alcohol consumption. In a recent report, the Center for Disease Control Community Preventive Services Task Force (Task Force) recommended limiting alcohol outlet density “on the basis of sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms.”⁵ Outlet density and its consequences have developed into such a prominent issue that the Community Anti-Drug Coalitions of America and the Johns Hopkins University Bloomberg School of Public Health created a guide to regulating outlet density in conjunction with the CDC Task Force findings. Similarly, in its 2017 analysis of liquor retail density, Denver Public Health concluded that “as the number of alcohol establishments in a community increases, so do rates of alcohol consumption and alcohol-related harms, including: motor vehicle crashes, liver cirrhosis deaths, hospital admissions, suicide, crime, and violence.”⁶

In local communities, the average citizen believes that eliminating the 3.2% ABV restriction will simply result in grocery and convenience stores selling full strength beer (i.e. a six-pack of full strength beer instead of a six-pack of 3.2% beer). Few consumers understand the full range of products that fit under the category of fermented beverage or malt liquor, which now share the same statutory definition following the passage of SB 16-197. Without an ABV restriction, fermented malt beverage licensees (or grocery and convenience store refrigerated malt liquor licensees) would be permitted to sell a wide variety of products, including some, like Schorschbock at 57% ABV (or 114 proof), that contain more alcohol by volume than most whiskeys.⁷ Moreover, malt liquor products come in an array of styles and flavors that are especially attractive to underage drinkers, such as “hard” root beers and cream sodas.⁸ These products are often marketed in packaging that resemble products typically marketed and sold to children and youth. It is important that these beverages, which are often hard to discern from their non-alcoholic counterparts, be sold in designated areas as proposed in this recommendation.

5. What issue or issues does your recommendation resolve? Please identify the issues.

- ✓ Implements the law as written
- ✓ Addresses public safety concerns
- ✓ Mitigates major disruption to licensed beverage industry

² “Forging the Link Between Alcohol Advertising and Underage Drinking.” *Rand Health* (2006). http://www.rand.org/content/dam/rand/pubs/research_briefs/2006/RAND_RB9073.pdf

³ Id.

⁴ “The Effectiveness of Limiting Alcohol Outlet Density As a Means of Reducing Excessive Alcohol Consumption and Alcohol-Related Harms.” *Centers for Disease Control and Prevention Community Preventive Services Task Force* (2007). See also: “Regulating Density of Alcohol Outlets a Promising Strategy to Improve Public Health.” *Johns Hopkins Bloomberg School of Public Health* (2013).

⁵ <http://www.thecommunityguide.org/alcohol/EffectivenessLimitingAlcoholOutletDensityMeansReducingExcessiveAlcoholConsumptionAlcohol-RelatedHarms.pdf>

⁶ Belstock, S., et al. “Liquor Retailer Density Analysis: Council District 3.” *Denver Public Health* (2017): http://denverpublichealth.org/Portals/32/Public-Health-and-Wellness/Public-Health/Health-Information/Docs/DPH-District-3-Alcohol-Density-Report_FINAL_20170415.pdf?ver=2017-05-09-090433-473

⁷ For example, “Schorschbock”: <https://www.beeradvocate.com/beer/profile/6513/73368/>

⁸ For example, “Not Your Father’s Root Beer”: <http://smalltownbrewery.com/our-beers/nyfrb/>

- ✓ Helps prevent underage drinking

6. What stakeholders would be positively or negatively impacted by this recommendation, and how would they be impacted?

Positive:

Schools

Allowing malt liquor sales in close proximity to schools is irresponsible. Easy access to alcohol contributes to delinquency and other disciplinary issues. Students often frequent grocery and convenience stores before, during, and after school for snacks, energy drinks, and other everyday products. Retail liquor and marijuana stores have school distance restrictions and must complete needs and desires hearings to obtain local approval. This is in addition to the fact that law and practice prevents individuals under 21 from entering marijuana and liquor stores, respectively. Grocery and convenience stores by nature do not have the same age restriction and therefore alcohol exposure significantly increase. This recommendation would help prevent increased access and exposure by imposing distance restrictions from schools and limiting in-store exposure.

Local communities

As referenced in the studies discussed above, reducing exposure and access to alcohol helps prevent long-term addiction issues and other negative societal impacts. Increasing alcohol outlet density increases alcohol consumption and related harms. This recommendation would address these concerns by imposing distance restrictions from existing retail liquor licenses, thereby reducing outlet density. It would also prevent high alcohol content products from being sold in each and every grocery and convenience store.

This recommendation would also allow local governments to retain all revenue associated with license conversion applications.

Law enforcement

Multiple studies show a correlation between alcohol outlet density and increases in crime and violence.⁹ This recommendation would address those concerns by preventing a rapid increase in access to alcohol and the associated harms.

Retail liquor licensees

SB 16-197 directs the Working Group to consider the impacts of removing the alcohol content limit for fermented malt beverages on the alcohol beverage industry as a whole, as well as current retail liquor licensees.¹⁰ Allowing each and every grocery and convenience store to sell malt liquor would be a dramatic disruption to the licensed beverage industry. An oversaturation of the liquor market would cost retail liquor licensees a substantial amount of revenue, leading to the closure of hundreds of liquor stores across the state. A recent economic study of the impact of removing the 3.2% ABV cap found that if the law were changed as

⁹ Ibanez, Angel. "Bridget Freisthler's Research Shows Correlation Between Alcohol Density and Crime." *UCLA Luskin School of Public Affairs* (2015). See also: "Regulating Density of Alcohol Outlets a Promising Strategy to Improve Public Health." *Johns Hopkins Bloomberg School of Public Health* (2013).

¹⁰ CRS 12-46-109

many as 52% of the retail liquor licensees would face long term closure.¹¹ Despite these closures, the market would still see a roughly 100% increase in malt liquor outlets. What consumers gain in quantity of malt liquor outlets, they lose in quality and the variety of choices offered by retail liquor stores.

These closures would drastically reduce the number of outlets for vinous and spirituous beverages. The same economic study referenced above concluded that removing the 3.2% ABV cap and the resulting liquor store closures would significantly impact the craft beer and wine industries from accessing retail markets for their products.¹² In Tennessee, where grocery stores and “big box” stores were recently authorized to sell wine, distributors are reporting a 30% decline in sales of wine for retail liquor stores.¹³

Lastly, CLBA is comprised of small businesses from across the state that very often have deep roots in their community. For this reason it is very important to our members that the Working Group craft sensible policies that allow grocery and convenience stores to sell malt liquor under a framework that preserves the safety and wellbeing of our communities and their institutions. Moreover, as the face of the retail liquor industry, CLBA and its members have a vested interest in getting these policies right. If SB 16-197 leads to an oversaturated liquor market and all the negative impacts associated with such density, it will be the liquor stores that are blamed and suffer the consequences. This recommendation is consistent with the intent of SB 16-197, striking a thoughtful balance between allowing grocery and convenience stores to sell malt liquor and protecting the best interests of our communities.

7. Which of the following does the recommendation impact (underline those that apply):

- a. **Statute (legislation)**
- b. **Policy**
- c. **Rules and Regulations**
- d. Other: *(please describe)*

8. Who owns implementation of the recommendation (underline those that apply):

- a. **State Legislature** → Create new statutory Grocery and Convenience Store Malt Liquor License
- b. **Department of Revenue** → Implementation, licensing, and enforcement
- c. **Local Government** → Implementation, licensing, and enforcement
- d. Other: *(please describe)*

9. Is there a dissenting voice on the working group concerning this recommendation? If yes, please provide a summary of the minority opinion about this recommendation.

Some members of the Working Group mistakenly believe SB 16-197 intended for fermented malt beverage licenses to “automatically convert” to allow the sale of full strength malt liquor products at each such licensed premises on January 1, 2019. They believe fermented malt beverage licensees should be permitted to sell full

¹¹ “Economic Impact of Replacing 3.2 Beer Sales with Full Strength Beer Sales.” Prepared by: Summit Economics LLC (2009) (Findings reiterated in 2011 review by Summit Economics).

¹² Id.

¹³ http://marketwatchmag.com/tennessees-evolving-liquor-license-laws/?utm_medium=email&utm_source=JH-Retailer-Report-05082017&utm_campaign=JH_Retail_Rpt_050817

strength malt liquor without any of the restrictions or regulations imposed on liquor stores or other licensed premises selling full strength malt liquor. This is contrary to legislative intent and good public policy that protects community safety and wellbeing.

10. Are you aware of any statutory authority or regulation that supports the basis of this recommendation? If yes, please include it here.

✓ C.R.S 12-46-109 (Senate Bill 16-197).

11. Is the implementation of your recommendation dependent on another decision or action? If yes, specifically what actions or decisions are required before this recommendation can be implemented?

The recommendation requires the creation of a new statutory "Grocery and convenience store refrigerated malt liquor license."

12. Will the recommendation have a cost to implement? If yes, please explain the reason for the cost and provide an estimate.

- ✓ Expedited licenses would create no additional costs for the state
- ✓ Combined application for state and local
- ✓ License fees
 - \$75 – state
 - \$1,000 – local (This fee is exempt from the OAP provision and 100% will be retained by the local.) CRS 12-47-502.

13. Provide an estimate of how long it would take to implement the recommendation.

- ✓ Expedited license applications can begin July 1, 2018.
- ✓ No expedited licenses issued until January 1, 2019.
- ✓ Normal timeline (i.e. retail liquor license) for grocery and convenience store refrigerated malt liquor license for applications after January 1, 2019.