

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

1. Work Group Sponsor (s): Jason Bassett and Kathryn Works on behalf of Colorado’s Convenience Store community, Including Colorado/ Wyoming Petroleum Marketers Association, 7- Eleven, Kum & Go Convenience Stores and CSTBrands/Circle K (Hereafter “Convenience Store Industry” or “CSI”)
  
2. Describe the Recommendation:  
The Convenience Store Industry recommends very little substantial change from current law. We default to the plain language of the enacted legislation that was agreed to by most parties including the provisions that Article 46 license holders will not have their existing licenses altered before 1/1/19. This provision is commonly understood in that “the 3.2 cap is removed on existing licenses.” Convenience Store Industry’s recommendation is that this language is maintained as outlined in SB-197.

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“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 AND ARTICLE 47 OF THIS TITLE. 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 FURTHER recognizes that fermented malt beverages AND MALT LIQUORS are separate and distinct from, AND HAVE A UNIQUE REGULATORY HISTORY IN RELATION TO, vinous and spirituous liquors, and as such require THE RETENTION OF a separate and distinct regulatory framework under this article.*** To aid administrative efficiency, however, the provisions in article 47 of this title shall ~~apply~~ APPLIES to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article.

SECTION 4.

In Colorado Revised Statutes, 12-46-103, amend (1) as follows: 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) (a) "Fermented malt beverage" means BEER AND any OTHER 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~~

(b) "Fermented malt beverage" shall DOES not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1) (i) (II), C.R.S.

This language clearly articulates **the legislative intent** (*emphasis added above*) of maintaining a separate article and license for the sale of beer in the Colorado Revised Statutes.

Importantly, we also acknowledge the charge of the general assembly to the liquor enforcement group for engagement of designated industry members to:

***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.***

Important to this discussion, nowhere does this language implicitly mandate or require the establishment of a "new license." An implementation process can simply mean administrative changes to the format and wording of the existing Article 46 license. Further the language noted above does not ask the working group to recommend any changes at all to the existing Article 46 license pertaining to any trade or operational restrictions either before or after 1/1/19.

It is important that Liquor Enforcement Division (LED) and the other working group members understand that the CSI will default to the plain language of the statute, including the continued existence of article 46 both until 1/1/19, and in current law after 1/1/19 including the already enacted law pertaining to the alcohol content change effective 1/1/19, absent any changes.

Other language in SB-197 does ask, as the Division has noted below under subsection b, that the working group "analyze the impact that removing the alcohol content limit on Fermented Malt Beverages will have on the industry." This language and any policy recommendations that are forthcoming are not mandated by SB-197 to be tied to "any implementation process" or the continued and statutorily maintained Article 46 license after 1/1/19. Should the working group recommend such a change that is under their purview, but the group is under no obligation to make any changes.

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?

SB-197 was a compromise between various off-premise retailers and other industry partners for a legislative solution in lieu of citizen referred measures that would have immediately altered the retail sale of fermented malt beverages and malt beverages in Colorado. Participants in SB-197 worked in good faith and expect that the measures granted to each of the entities during the compromise be adhered to. The crux of “the deal” for current 3.2 merchants was “we will wait till 2019 for the cap to be removed, allow liquor stores access to a broader variety of products, and then be able to enter the beer market.”

Off premise liquor stores have already been granted provisions, (recently amended and supported in multiple committees this last legislative session,) to ensure their sustained viability. Liquor stores now enjoy unrestricted sales of 4 of the top 5 inside sales product categories sold by the convenience store industry. Again the Convenience store industry supported these changes that went into effect long before the 1/1/19 FMB conversion date, and stood by our position of increased access to product lines when amended language was offered during the 2017 legislative session.

Further, liquor stores now enjoy barriers to entry for would-be competitors for the sale of vinous and spirituous liquors (off premise) that other small business entities in Colorado will never achieve for their primary products. In our view these measures were granted to the liquor stores in Colorado in recognition of the forthcoming competition in the beer market.

Article 46 changes:

The Convenience Store Industry offers for the workgroups consideration that there be some further defining of what constitutes a “Convenience Store” and a “Grocery Store”. That change in definition would take effect January 2019 if agreed to by this working group and adopted by the legislature. While it is commonly understood in practice, further clarifying these retail categories for the purposes of Article 46 may be beneficial to avoid unanticipated entrants into the off premise beer market. To be clear, this is not a recommendation that any current 3.2 license holders be restricted from conversion or the opportunity to maintain current business models, but it does warrant scrutiny.

5. What issue or issues does your recommendation resolve? Please identify the issues. Our recommendation addresses the language in SB-197 pertaining to Article 46. The language also upholds the plain language and legislative intent of altering the cap on fermented malt beverage license holders prior to 1/1/19 in order to allow sales of full strength beer effective 1/1/19.

3.2 merchants already go through a similar application and community review process that off premise liquor stores are subject to. Local jurisdictions often don't have substantially different requirements between article 46 and article 47 off premise retailers.

For the record, the Convenience Store Industry has a long history of responsible sales of age restricted products. Reviewing enforcement summary reports over the last five years, the 3.2 industry's compliance record pertaining to sales to minors, in a plain aggregate violation analysis, is better than off-premise liquor stores and far superior to on-premise retailers of alcohol products. We do not anticipate that our current business practice of responsibly selling age restricted products will change simply because the alcohol content is higher. As such, our position is to maintain the point-of-sales age of our clerks at Eighteen (18.) Further, many of our stores are located in regions of the state where the employee pool of qualified candidates is more restrictive, and more than 2/3<sup>rd</sup>'s of convenience stores are family businesses, franchisee operators, or other types of small businesses.

The introduction of any new off-premise retailer of full strength beer will increase competition and have a corollary effect on prices which is a consumer benefit. The industry does not see the need for alcohol beverage caps, or any other undue competitive trade restriction which we find unduly burdensome for our industry and not consistent with the industry established free market principles for other sales categories. It is true there was some discussion during the SB16-197 negotiations. However, the outcome was the additional time afforded before article 46 licenses were statutorily altered.

Finally, while we acknowledge that we supported the barriers to entry that the majority of the liquor store industry wanted placed upon their specific license, competition from other convenience stores is not something our industry has in any other type of trade. We therefore, uniformly oppose distance restrictions pertaining to our industry in Article 46.

6. What stakeholders would be positively or negatively impacted by this recommendation, and how would they be impacted? The recommendation upholds the language in 197 that grants existing fermented malt beverage licensees, those that both were part of the negotiations on 197 and those that have been responsible retailers of age restricted products the ability to sell full strength beer without having to go through additional regulatory barriers already passed upon application of the current license. This is a positive impact upon current 46 license holders and adheres to the compromise and agreement under SB-197.

Our recommendation does not seek to alter any of the provisions granted to off-premise liquor stores including barriers to entry established by the legislature and increased product sales of non-liquor products. These provisions while not uniformly supported by all members of the liquor community were granted by the legislature to help ensure viability.

Our recommendation, in our view, does not restrict or hamper the distributor or manufacturer level of the three tier system in Colorado in any way.

New entrants into the off-premise beer market will still have to apply through the state and local licensing process. We have confidence that the state and local communities already have the current tools necessary to deny unqualified applicants and take community interests into account. Cities and counties still maintain local approval authority and can vet new entrants into the off-premise environment under current law.

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
  - b. Department of Revenue
  - c. Local Government
  - 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.

Before we submitted these comments, the Convenience Store Industry had reviewed the published comments by other stakeholders effective 8/3/17. Our recommendation in some instances conforms to others in the working group and are in some cases are conflicting.

Recommendation 9 argues that a new license is mandated by the state legislature which is not supported by the plain language in SB-197. In the most liberal reading, the legislature asked the working group to review if changes are necessary in the process for grocery stores and convenience to sell beer after 1/1/19. This recommendation also seeks to impose a slew of trade practice restrictions, most of which were neither mandated nor discussed in any committee during the passage of SB-197. These trade restriction recommendations impose an uneven and restrictive burden on one class of off-premise beer sales to the economic benefit of the another. Recommendation 9 has other comments that we have elected to either not address through this submission, or have addressed in earlier sections.

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

Please refer to “Section 2” of these comments. The statutory references are taken from the enacted version of SB16-197.

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 legislative approval to include definitions of “convenience stores” or “grocery stores” under article 46.

Further the Convenience Store Industry reserves the right to alter or revise our comments based on future discussions. These comments are in large part the result of industry review of other stakeholder positions.

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

The comments do not seek to project costs upon the state or the division. The Division has current authority to adjust fees accordingly

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

The 2018 legislative session with a recommendation of a safety clause for regulatory surety.