



2018 Colorado Liquor Law Changes



COLORADO
Department of Revenue

Enforcement Division - Liquor & Tobacco

Patrick Maroney, Director



AGENDA

- 1 SB16-197 - What Happens on January 1, 2019
- 2 SB18-243 - What Went Into Effect Prior to January 1, 2019;
And What Goes Into Effect on January 1, 2019
- 3 Question and Answer Session



Question?

SB16-197 –
What Does the Liquor World
Look Like in Less Than Six
Months in Colorado?



COLORADO



3.2% Beer (FMB) v. Malt Liquor On January 1, 2019

Background

- FMB is currently defined as an alcohol product (beer) with a maximum alcohol content by weight of no more than 3.2%.
- SB 16-197 changed the definition of FMB and eliminated the maximum alcohol content to where it is any “beer” greater than 0.5% alcohol by weight.
- Malt liquor is currently defined as an alcohol product (beer) with alcohol content by weight greater than 3.2%.
- SB 16-197 changed the definition of malt liquor where it is any “beer” greater than 0.5% alcohol by weight.
- In essence, FMB and malt liquor can be the same product after January 1, 2019.

BUT - they are still two separate products by law.

This is key in understanding how SB 16-197 and SB 18-243 will be implemented.



January 1, 2019

General Information

- Starting on January 1, 2019, the Liquor Enforcement Division (LED) will change the wording of all 3.2% beer licenses to state “Fermented Malt Beverage” instead of 3.2% beer. The changes to each license will be made during renewal so it will take a year for all licenses to be changed to FMB.
- All FMB licenses will be able to import, manufacture, distribute and sell at retail the new FMB defined product. Until January 1, 2019, those licenses still have to adhere to the current definition of FMB which is 3.2% or less.
- This means until January 1, 2019:
 - An FMB manufacturer cannot produce any beer over 3.2%
 - An FMB wholesaler may not store or sell beer over 3.2%

SB 18-243

Effective

June 4, 2018



SB 18-243 - Effective June 4, 2018

ELIMINATES THE FMB ON AND OFF LICENSE

Prior to SB 18-243, a person apply for and renew 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 an 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 (form to be provided with renewals) 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].)



SB 18-243 - Effective June 4, 2018

PROHIBITS FMB ON AND OFF LICENSE DELIVERY

- Prior to SB 18-243, an FMB On-Off licensee could deliver FMB.
- As stated previously, SB 18-243 eliminates the FMB On-Off license.
- While an FMB On-Off licensee may operate until their annual renewal and conversion, an 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].)



SB 18-243 - Effective June 4, 2018

CREATES FOOD SALES REQUIREMENTS FOR CERTAIN NEW LICENSEES

In addition to other requirements, to qualify for a *new* FMB Off license or to *renew* an 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
 - Lottery products

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



SB 18-243 - Effective June 4, 2018

CREATES FOOD SALES REQUIREMENTS FOR CERTAIN NEW LICENSEES (cont.)

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].)



SB 18-243 – Effective June 4, 2018

MODIFIES 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 systems license
- Optional premises license
- Vintner's restaurant license
- Distillery pub license
- Lodging and entertainment license
- Bed and breakfast permit
- Financial institution (referred to in section 12-47-308(4), C.R.S.)

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])



SB 18-243 - Effective June 4, 2018

CREATES AND AMENDS DISTANCE RESTRICTIONS BETWEEN CERTAIN LICENSED PREMISES

Distance Restrictions

- 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.

(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].)



SB 18-243 - Effective June 4, 2018

CREATES AND AMENDS DISTANCE RESTRICTIONS BETWEEN CERTAIN LICENSED PREMISES (cont.)

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, § 12-47-301(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].)*



SB 18-243 - Effective June 4, 2018

CREATES A MINIMUM 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].)



SB 18-243 - Effective June 4, 2018

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].)



SB 18-243 - Effective June 4, 2018

EXPANDS AND AMENDS CERTAIN TASTINGS LAWS AND LIMITATIONS

Expanded Tasting Laws:

- A tasting may be conducted later in the day (changed from 7 p.m. to 9 p.m.) and more days per year (156 days per year, any day of the week).
- A retail liquor store (RLS) or liquor-licensed drugstore (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 an RLS or LLDS employee who are seller server certified.

(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].)



SB 18-243 - Effective June 4, 2018

EXPANDS AND AMENDS CERTAIN TASTINGS LAWS AND LIMITATIONS (Cont.)

- 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 an RLS or LLDS licensed premises.
- **Note:** The maximum amount of time in a day is still 5 hours (does not have to be consecutive) and the sample size has not changed; 1 oz of malt and vinous liquor and ½ oz of spirituous liquor; and the number of samples remained the same - 4.

(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].)



SB 18-243 - Effective June 4, 2018

CREATES A NEW LIMITATION ON SUSPENSIONS OR FINES

Fine Limitations:

- 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].)

SB 18-243

Effective

Jan 1, 2019



SB 18-243 - Effective January 1, 2019

MODIFIES THE AGE REQUIREMENT FOR AN FMB LICENSE

SB 18-243 changes the age for a person to handle and otherwise act with respect to FMB in the same manner that a person does with other items sold at retail from under 18 to under 21.

Except that:

- A person under 18 shall not sell or dispense FMB, check identification, or make deliveries beyond the customary parking area for the customers of the retail outlet
- A person who is under 21 shall not deliver FMB in sealed containers to customers outside the parking area

(See SB 18-243, § 12-47-106(1)(a) and (b), C.R.S. [p. 4].)



SB 18-243 - Effective January 1, 2019

SALES REQUIREMENTS FOR AN FMB RETAILER

SB 18-243 requires an FMB off-premises retailer to sell FMB no less than the price on the wholesaler's invoice, unless the sale is of discontinued or close-out FMBs.

Allows for a bona fide loyalty or rewards program for FMB so long as the price for the product is not below the retailer's cost as listed on the wholesaler's invoice.

Does not allow consumers to purchase FMB at a self-checkout without assistance from and completion of the entire transaction by an employee of the FMB retailer.

(See SB 18-243, § 12-47-107(4)(a) and (b), C.R.S. [p. 6].)



SB 18-243 - Effective January 1, 2019

LICENSEE WITH MULTIPLE FMB RETAILER - PRIVILEGES

- Allows a licensee with multiple FMB licenses to operate under a single or consolidated corporate entity, but shall not commingle purchases of or credit extensions for purchases of FMB from a wholesaler for more than one licensed premises.
- A wholesaler shall not base the price for the FMB it sells to an FMB retailer on the total volume of FMB that the retailer purchases for multiple licensed premises.

(See SB 18-243, § 12-47-107(5), C.R.S. [p. 7].)



SB 18-243 - Effective January 1, 2019

ALLOWS FMB RETAILERS - DELIVERIES

Allows an FMB licensee to deliver FMB to a person of legal age, if:

- The person is located at a place that is not licensed as an FMB
- The delivery is made by an employee of the FMB retailer who is at least 21 years of age
- The delivery is made in a vehicle owned or leased by the licensee
- The person making the delivery must verify the age of the person purchasing the FMB in accordance with section 12-47-901(10) if the person appears under the age of 50
- The FMB retailer may not derive more than 50% of its gross annual revenues from the sales that the FMB delivers.

(See SB 18-243, § 12-47-107(6)(a), C.R.S. [p. 7].)



SB 18-243 - Effective January 1, 2019

SALES REQUIREMENTS FOR AN RLS

- SB 18-243 requires an RLS to sell malt, vinous, and spirituous liquors to consumers at no less than the price on the wholesaler's invoice, unless the sale is of discontinued or close-out malt, vinous or spirituous liquors.
- Allows for a bona fide loyalty or rewards program for RLS so long as the price for the product is not below the retailer's cost as listed on the wholesaler's invoice.

(See SB 18-243, § 12-47-407(2)(a), C.R.S. [p. 17].)



SB 18-243 - Effective January 1, 2019

LICENSEE WITH ADDITIONAL RLS - PRIVILEGES

- Allows a licensee with additional RLS licenses in accordance with section 12-47-407(4)(b)(III) to operate under a single or consolidated corporate entity, but shall not commingle purchases of or credit extensions for purchases of malt, vinous, or spirituous liquors from a wholesaler for more than one licensed premises.
- A wholesaler shall not base the price for the malt, vinous, or spirituous liquors it sells to an RLS based on the total volume of malt, vinous, or spirituous liquors that the retailer purchases for multiple licensed premises.

(See SB 18-243, § 12-47-407(2)(b), C.R.S. [p. 17-18].)



SB 18-243 - Effective January 1, 2019

RLS - DELIVERIES

Requires additional parameters for deliveries for an RLS:

- The delivery is made by an employee of the RLS retailer who is at least 21 years of age
- The delivery is made in a vehicle owned or leased by the licensee
- The person making the delivery must verify the age of the person purchasing the malt, vinous or spirituous liquors in accordance with section 12-47-901(10), C.R.S. if the person appears under the age of 50
- The RLS may not derive more than 50% of its gross annual revenues from the sales that the RLS delivers.

(See SB 18-243, § 12-47-407(3)(a), C.R.S. [p. 18].)



SB 18-243 - Effective January 1, 2019

SALES REQUIREMENTS FOR A LLDS

- SB 18-243 requires an LLDS to sell malt, vinous, and spirituous liquors to consumers at no less than the price on the wholesaler's invoice, unless the sale is of discontinued or close-out malt, vinous or spirituous liquors.
- Allows for a bona fide loyalty or rewards program for LLDS so long as the price for the product is not below the retailer's cost as listed on the wholesaler's invoice.
- Does not allow consumers to purchase malt, vinous, or spirituous liquors at a self-checkout without assistance from and completion of the entire transaction by an employee of the LLDS.

(See SB 18-243, § 12-47-408(2)(a), C.R.S. [p. 19-20].)



SB 18-243 - Effective January 1, 2019

LLDS - DELIVERIES

Requires additional parameters for deliveries for a LLDS:

- The delivery is made by an employee of the LLDS retailer who is at least 21 years of age
- The delivery is made in a vehicle owned or leased by the licensee
- The person making the delivery must verify the age of the person purchasing the malt, vinous or spirituous liquors in accordance with section 12-47-901(10), C.R.S. if the person appears under the age of 50
- The LLDS may not derive more than 50% of its gross annual revenues from the sales that the LLDS delivers.

(See SB 18-243, § 12-47-408(3)(a), C.R.S. [p. 20].)



SB 18-243 - Effective January 1, 2019

LICENSEE WITH ADDITIONAL LLDS - PRIVILEGES

- Allows a licensee with additional LLDS licenses in accordance with section 12-47-407(4)(b)(IV) or (4)(b)(V) to operate under a single or consolidated corporate entity, but shall not commingle purchases of or credit extensions for purchases of malt, vinous, or spirituous liquors from a wholesaler for more than one licensed premises.
- A wholesaler shall not base the price for the malt, vinous, or spirituous liquors it sells to a LLDS based on the total volume of malt, vinous, or spirituous liquors that the retailer purchases for multiple licensed premises.

(See SB 18-243, § 12-47-408(8), C.R.S. [p.22].)



SB 18-243 - Effective January 1, 2019

PUBLIC CONSUMPTION CHANGES

SB 18-243 prohibits the consumption of FMB, or malt, vinous or spirituous liquor in any public place, except:

- A person who is at least 21 years of age may consume alcohol beverages in any public place, other than a public right of way, where the consumption of FMB or malt, vinous or spirituous liquor has been specifically authorized by ordinance, resolution, or rules adopted by any municipality, city and county, or county or, for purpose of state parks, state wildlife areas or other properties open to recreation that are under the supervision of the Parks and Wildlife Commission.

(See SB 18-243, § 12-47-901(1)(h), C.R.S. [p.23-24].)



SB 18-243 - Effective January 1, 2019

FMB SALES PROHIBITED

SB 18-243 prohibits the sale of FMB in a sealed container on Christmas day.

(See SB 18-243, § 12-47-901(5)(c), C.R.S. [p. 24].)



SB 18-243 - Effective January 1, 2019

FMB - OPEN CONTAINERS

- SB 18-243 prohibits having a container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label.
- However, an FMB licensee may have on the licensed premises an open container that were brought onto the licensed premises by and remain solely in the possession of the sales personnel of a wholesale licensee for the purposes of sampling FMB by the FMB retailer licensee only.

(See SB 18-243, § 12-47-901(5)(k)(II)(B), C.R.S. [p. 24-25].)



SB 18-243 - Effective January 1, 2019

OPEN CONTAINERS - FMB, RLS AND LLDS

SB 18-243 prohibits having a container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label; However:

- An FMB licensee may have on the licensed premises an open container that were brought onto the licensed premises by and remain solely in the possession of the sales personnel of a wholesale licensee for the purposes of sampling FMB by the FMB retailer licensee only (this already existed for an RLS and LLDS)
- An RLS, LLDS or FMB licensee may have an open container of alcohol on the licensed premises that the licensee discovers to be damaged or defective, so long as the licensee marks the product as damaged or for return and stores the open container outside the sales area of the licensed premises until the licensee is able to return the product to the wholesaler.

(See SB 18-243, § 12-47-901(5)(k)(V), C.R.S. [p. 24-25].)



SB 18-243 - Effective January 1, 2019

AGE OF EMPLOYEES - RLS, LLDS AND FMB

- SB 18-243 allows an RLS and LLDS to employ a person who is at least 18 years of age to sell or dispense malt, vinous, or spirituous liquors without supervision.
- No person under the age of 21 may deliver malt, vinous or spirituous liquors or FMBs offered for sale on, or sold and removed from, the licensed premises of the RLS, LLDS FMB retailer.

(See SB 18-243, § 12-47-901(5)(p), C.R.S. [p. 26].)



SB 18-243 - Effective January 1, 2019

AGE VERIFICATION - FMB RETAILERS

SB 18-243 mandates FMB retailers may not sell FMB to a consumer for consumption off the licensed premises unless the retail licensee or employee verifies that the consumer is at least 21 years of age by requiring the consumer to present a valid identification, as determined by the state licensing authority by rule;

- Unless, the consumer reasonably appears to be over fifty years of age

(See SB 18-243, § 12-47-901(10)(a), C.R.S. [p. 26-27].)

Q&A



Questions & Answers

Q - When will full strength be able to be brought onto a fermented malt beverage (FMB) licensed premises?

A - January 1, 2019 - FMB does not change definition until January 1, 2019.

Q - What is the difference between malt liquor and fermented malt beverage?

A - Prior to January 1, 2019, FMB is any beer with an alcohol content between 0.5% alcohol by weight (abw) and 3.2% abw. Malt liquor is any beer with an alcohol content greater than 3.2% abw. On or after January 1, 2019, both products are defined as any beer with an alcohol content greater than 0.5% abw.

Q - Does SB 18-243 affect sake?

A - No. Sake is defined as a vinous liquor on and after August 8, 2018 and no changes occur due to SB 18-243.



Questions & Answers

Q - Are existing FMB (off-premises) license grandfathered from having a 20% food requirement and a 500 foot distance requirement?

A - In essence, Yes. The law does carve out an exception to the 20% food and 500 foot distance requirement as long as the business has applied for or received a certificate of occupancy or a building permit as of January 1, 2019.

Q - Do the new tasting laws for retail liquor stores and liquor-licensed drugstores allow a customer to “try before you buy?”

A - As long as they have been approved for a tasting permit from the local licensing authority and meet all the requirements set by law.

Q - Do employees of licensed suppliers who pour during an RLS or LLDS tasting required to be seller-server certified ?

A - Yes. All allowed persons who pour during a tasting must have a currently seller-server certified.



Questions & Answers

Q - Starting January 1, 2019, can a grocery store designate a small area of the store with a separate entrance and suite number and sell FMB "to go" while the rest of the store has an FMB on-premises license?

A - Yes. They must be treated as two separate licensed premises and alcohol cannot be comingled between the two licenses.

Q - What is the process for an FMB (on/off) license transitioning to either to an FMB on-premise or FMB off-premises license?

A - At the time of renewal, the FMB (on/off) must notify (in writing) the local and state licensing authority which license they want to change to. No extra fee will be applied.

Q - Is there a limit on the square footage for a new FMB license?

A - No.



Questions & Answers

Q - Will you be updating the multiple interest form?

A - Yes. It is expected to be updated later this year.

Q - What is the age of employee of an FMB or RLS/LLDS license?

A - After January 1, 2019, FMB, RLS and LLDS employees must be at least 18 years of age to handle alcohol - no supervision required. However, deliveries must be made by someone at least 21 years of age.

Q - Is there any change to the time when malt liquor or FMB can be sold?

A - No. The times are the same: Malt liquor: 7 a.m. to 2 a.m. (on-premises); 8 a.m. to midnight for off-premises. Also, all FMB license sales are between 8 a.m. and midnight. (Except for Christmas)



Questions & Answers

Q - Are grocery stores still able to purchase two RLSs to obtain a LLDS?

A - Yes. SB 16-197 allows this and it has not changed.

Q - Will 3.2% beer still be available in Colorado after January 1, 2019?

A - Possibly. The law allows any FMB or malt liquor retailer to sell any beer above 0.5% abw. However, there is no mandate that they sell beer 3.2% or less.

Q - After January 1, 2019, can an FMB off-premises licensee sell FMB even though they are within 500 of an RLS?

A - Yes, as long as they had the license prior to January 1, 2019. New licenses are bound by the 500 foot requirement.



Questions & Answers

Q - Will a new license be required to convert from an FMB license to a full strength beer license in order to sell beer > 3.2% abw?

A - No. No conversion is necessary since the definition of FMB will be any beer over 0.5% abw.

Q - Can an FMB manufacturer start producing beer > 3.2% abw prior to January 1, 2019?

A - No. Since the law that changes the definition of FMB does not go into effect until January 1, 2019, the product that is manufactured must be 3.2% abw or less.

Q - I heard the tasting laws changed. When can tastings occur?

A - Tasting can occur any day of the week up to 156 days a year. Tastings can occur from 11 a.m. to 9 p.m. but no more than 5 hours in one day (does not have to be consecutive).



Questions & Answers

Q - Who can pour at an RLS or LLDS tasting?

A - Employees of the RLS or LLDS, and employees from Colorado licensed manufacturers, limited wineries, brewpubs, distillery pubs, vintner restaurants, wholesalers and importers. Non-licensed companies and their employees/agents may not pour.



THANK YOU!

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