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**Sent:** Sunday, August 4, 2024 12:10 PM

**To:** dor\_led\_rulemaking@state.co.us

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**Subject:** Comment on Proposed Rule 47-950 Display of Alcohol Products

Attached please find a comment on Proposed Rule 47-950.

Thank you,

<image001.png>



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August 4, 2024

Colorado Liquor Enforcement Division  
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Re: *Comment on Draft Rule 94-950 Regarding Displays of Alcohol Beverages – Substance Use Disorder Recovery Working Group*

There are two significant issues with both the existing and the proposed rule:

- 1) The rule does little, if anything, to achieve its stated purposes; and
- 2) Applying the rule to retail liquor stores causes an absurd result, imposing a significant and unnecessary burden while accomplishing nothing of value.

#### Background

It is important to recognize that for nearly 90 years Colorado had no need for this type of rule. Without very few exceptions, liquor, wine, and full-strength beer were sold only in specialty stores (retail liquor stores) where only adults shop. Grocery and convenience stores sold only low-strength 3.2% beer and generally merchandised that product only in one designated area of their stores.

Everything changed beginning in 2019 when grocery and convenience stores began selling full-strength beer and malt beverages and began displaying them throughout their stores and sometimes at point of sale, apparently in a manner designed to trigger impulse purchases. This problem was greatly exacerbated when these stores began selling wine and adopted similar merchandising strategies many deem irresponsible.

In short, an increasing amount of alcohol sales in Colorado have shifted from being made by local retailers in specialty liquor stores where children do not shop to being made by large chains as accessory sales in food stores where unaccompanied minors regularly make purchases. Chain stores looking to maximize their profits have begun using alcohol products both as a loss-leader to entice customers into their stores and as a key impulse-buy product to trigger unplanned alcohol purchases and increase their sales and profits with little or no consideration of public safety.

#### The Advent of Crossover Products

A second factor adding to this problem is the development of “crossover” products by certain suppliers where brands that have historically been for non-alcohol products were released in alcohol versions. When sold in stores where minors regularly shop alongside the original versions of these products that have been marketed to children for decades, this creates a significant risk factor for promoting alcohol products to children and potentially consumer confusion between alcohol and non-alcohol versions of the products.

It is certainly appropriate to prohibit food stores where children regularly shop that sell alcohol as an accessory product from merchandising alcohol products alongside soda, candy, chips, toys, and other unregulated products that are marketed to and appeal to children. However, allowing these practices to continue and only requiring a little sign that is unlikely to be seen or read by most consumers is arguably worse than no regulation



at all because it gives the appearance of having solved the problem without actually having accomplished anything of substance.

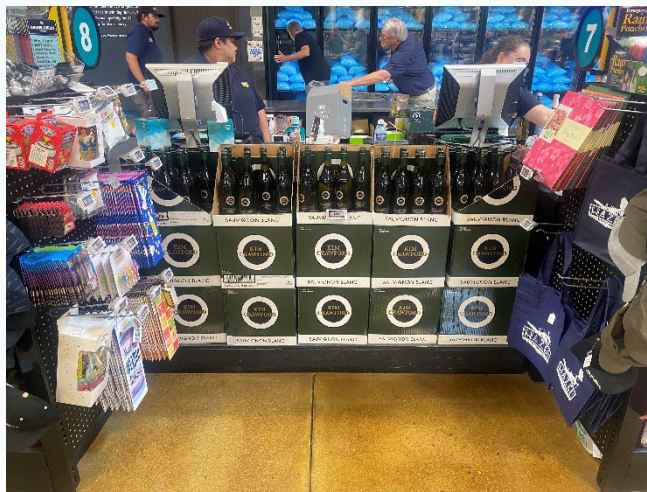
Accomplishing the Stated Purposes of the Rule

The proposed rule says its purposes are to prevent consumer confusion and reduce the likelihood of unplanned impulse purchases by people with substance abuse disorders. However, both the existing rule and the proposed rule allow the irresponsible merchandising to continue so long as the stores put up a small sign.

In practice, in the visually intense context of a retail store, these signs are unlikely to be noticed or read by a majority of consumers. Unless the sign is read and understood, nothing is accomplished to prevent consumer confusion. And whether or not the sign is read, nothing is accomplished to prevent individuals with substance abuse disorders or anyone else trying to avoid alcohol from being subjected to unwanted alcohol displays as they shop for food.

Rather than allowing these practices to continue with a state-mandated sign, the merchandising of alcohol products in stores where children regularly shop should be limited to a designated area. Co-merchandising alongside non-alcohol products should be prohibited. Impulse displays and floor stacks in other departments of the store and point-of-sale alcohol displays should be prohibited. Doing so would clearly be more effective in accomplishing the rule's stated purposes than blessing these practices with a small sign.

To demonstrate this point, please review the two photos below from a retail liquor store. One reflects a display where the existing rule applies, the other reflects a display where the existing rule does not:



Although the rule is well-intentioned, it seems clear this is not the most effective way to accomplish the stated purposes. Most consumers will never see or read the sign.

Further, in my store the state-mandated sign actually risks causing consumer confusion because the statutory language implies that non-alcohol products may be purchased by persons under age 21, whereas in reality, we do not sell ANY product to an individual under age 21.



### Applying the Same Rule to Completely Different Business Models

Taking a problem that has been created by chain food stores selling alcohol as an accessory product and applying it to retail liquor stores selling alcohol as a specialty product to adults only fails to distinguish between two very different business models and punishes the innocent for the sins of the guilty.

Most liquor stores derive over 98% of their revenue from alcohol sales, and a significant portion of the remaining 1% - 2% is derived from selling other over-21 products like tobacco and e-cigarettes. Unaccompanied minors are generally prohibited from shopping in liquor stores, and many liquor stores will not sell ANY product to a person under age 21. No one needs to go to a liquor store unless they want to buy liquor, and so it is easy for people recovering from substance abuse to avoid going into liquor stores. Self-checkout is extremely rare.

Conversely, grocery stores, big box stores, and convenience stores derive over 95% of their gross revenue from the sale of food and similar products that are not age restricted. Unaccompanied minors regularly shop in these stores. Unaccompanied minors make many purchases in these stores. Everyone needs to eat, and so even people who are actively trying to avoid alcohol must shop in these stores. Self-checkout is very common and rapidly expanding.

It is obvious these two types of stores are polar opposites in many ways. The differences between selling alcohol as an accessory product in a food store warrants different regulation than selling alcohol as the primary product in a destination liquor store. There is simply no justification for applying a one-size-fits-all rule to these two very different business types the same on this issue. Given the stated purposes of the rule, there is no need to apply this rule to liquor stores at all to accomplish the purposes, and complying with the rule imposes a material burden on liquor stores. Accordingly, this rule should not apply to retail liquor stores.

If the LED feels it cannot distinguish between license types on this issue, then the rule could exempt any business that does not permit unaccompanied minors and does not sell products to persons under age 21. If a grocery store wanted to comply with those requirements, then it too could be exempt.

### Exemptions for Small Businesses

It is noteworthy that the proposed rule would exempt certain "grocery retail location(s)" but there are no proposed exemptions for liquor stores of any size. Accordingly, if adopted in its current form, the rule would actually be more burdensome on liquor stores than some grocery stores. Many Colorado liquor store owners feel there is a growing bias against them due to the undue influence large chain grocery retailers and their lobbyists are exerting over alcohol law and policy in Colorado.

This is an excellent opportunity for the LED to show that it has no bias against liquor stores and recognize that retail liquor stores are very different than grocery, big box, and convenience stores and should not be regulated the same on all issues nor punished for the irresponsible practices of the chain stores.

Sincerely,

Bruce Dierking

