

## **Jim Shpall**

*Applejack Wine & Spirits*

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### **Topic:** Purchase of Inventory

Currently, a retail liquor licensee who is going out of business cannot sell its inventory except in the normal course of business. There is no mechanism by which the licensee can sell its inventory in bulk. This proposal would allow a retail liquor licensee to sell its inventory (retailer #1), in bulk, to another retail liquor licensee (retailer #2) to facilitate the ability to go out of business.  
sale of inventory:

1. A Retail Liquor Store Licensee who is going out of business or otherwise giving up its license (the "Selling Licensee"), may sell or otherwise transfer all its inventory to another Retail Liquor Store Licensee (the "Acquiring Licensee") upon the following terms and conditions:
  - a. The Selling Licensee must sell all its inventory remaining at the time the decision is made to effectuate such a sale or transfer only to one Acquiring Licensee.
  - b. Both the Selling Licensee and the Acquiring Licensee shall give notice to the State and local licensing authorities of the sale or transfer of the inventory not less than 15 days prior to the sale or transfer of the inventory.
  - c. Prior to the payment of funds to the Selling Licensee, the Selling Licensee shall each give notice to all wholesalers who have sold product to the Selling Licensee within 4 months of the sale or transfer informing the wholesalers of the impending sale or transfer. The wholesaler(s) shall, within not more than 15 business days of receiving said notice, notify the Acquiring Licensee and the Selling Licensee of any outstanding debt owed by the Selling Licensee to the wholesaler for the products being sold or transferred. Upon timely receipt of such notice from wholesaler(s), the Acquiring Licensee shall first use the proceeds to be paid for the inventory of the Selling Licensee to first satisfy the indebtedness claimed to be owed by the Selling Licensee to the wholesalers. Any funds remaining funds owed for the purchased inventory remaining after payments made to wholesalers, if any, shall be paid to the Selling Licensee in a manner consistent with the agreement between the Selling Licensee and the Acquiring Licensee. Failure of a wholesaler to provide notice of any indebtedness owed to the wholesaler by the Selling Licensee within the required time will excuse any obligation of the Acquiring Licensee to a wholesaler who fails to comply.
  - d. At the time the Selling Licensee offers its inventory for sale to an Acquiring Licensee, the Selling Licensee shall also give notice to all licensed wholesalers of the offer and the Selling Licensee shall immediately upon giving notice cease to purchase any further product from a licensed wholesaler.
  - e. Upon purchase of the Selling Licensee's inventory, the Selling Licensee's Retail Liquor license shall become canceled, invalid, and considered to have been surrendered. A new

retail liquor store license as set-forth in Section 44-3-409 C.R.S. shall not be issued to the Selling Licensee or for said licensed premises or within 1500 feet of said licensed premises for a period of five years following the sale or transfer of the inventory. Notwithstanding the forgoing provisions of this subsection, under the following terms and conditions, the Acquiring Licensee may, at in its sole discretion and subject to required State and local approvals, apply to obtain the retail liquor license of the Selling Licensee so long as:

- i. The licensed premises of the Selling Licensee does not exceed 10,000 square feet.
    - ii. The acquisition of the license shall be subject to local and states approval for a change of ownership as required by law.
    - iii. The acquired licensed premises shall at no time exceed the square footage that existed at the time of acquisition for a period of 10 years.
    - iv. The acquisition of the license shall be in addition to the number of licenses a retail liquor store licensee allowed pursuant to Section 44-3-309 C.R. S.
  - f. For purposes of the law pertaining to selling below cost, the cost of the acquired product shall be considered to be the highest cost for the same product existing in the Acquiring Licensee's inventory at the time of the acquisition.
  - g. If the Acquiring Licensee owner owns more than one retail liquor store license, the purchased inventory can be paid for by Acquiring Licensee but allocated between or among all of the stores owned by the Acquiring Licensee owner, so long as the allocation occurs at the prior to or at the time the product is removed from the premises of the Selling Licensee
2. Upon entering into an agreement for the sale of the inventory, the Selling Licensee and the Acquiring Licensee shall provide notice of the pending sale to the Liquor Enforcement Division who shall then post said notice on the LED website.
  3. The product purchased by the Acquiring Licensee can only be transported by the Acquiring Licensee to the Acquiring Licensee's licensed premises or to one of the other licensed locations owned by the Acquiring Licensee as designated in accordance with 1(g) above.