



COLORADO

Department of Revenue

Enforcement Division – Liquor & Tobacco

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BULLETIN 19-08

REFERENCE: Fermented Malt Beverage Retailers – Products Labelled as “Malt Liquors”

DATE: November 27, 2019

Colorado Liquor Enforcement Division

The Liquor Enforcement Division (LED) is publishing this bulletin to provide clarity regarding the definitions of “fermented malt beverage” and “malt liquors” in the Colorado Beer and Liquor Codes. The Division has received several calls from industry members advising that during routine inspections at the licensed premises of fermented malt beverage retailers, such licensees were told to remove all products labelled with the words “malt liquor.” For the reasons discussed below, such products need not be removed from the licensed premises of fermented malt beverage retailers, and are authorized for sale by such licensees.

On January 31, 2019, the Governor Polis signed into law Senate Bill 19-011 (“Concerning the conversion of certain fermented malt beverage licenses issued under the ‘Colorado Beer Code’ to malt liquor licenses under the ‘Colorado Liquor Code’”) (SB 19-11). Among other things, SB 19-11 changed the definition of “fermented malt beverage” in the Colorado Beer Code, which now reads as follows:

(1)(a) “Fermented malt beverage” *means malt liquors, when purchased by a fermented malt beverage retailer* from a wholesaler licensed pursuant to article 3 of this title 44; *or when sold by a fermented malt beverage retailer* to consumers or to persons licensed under section 44-3-411, 44-3-413, 44-3-414, 44-3-416 to 44-3-420, 44-3-422, 44-3-426, or 44-3-428.

(b) “Fermented malt beverage” does not include confectionery containing alcohol within the limits prescribed by section 25-5-410(1)(i)(II).

§ 44-4-103(1), C.R.S. (emphasis added). Pursuant to section 44-3-103(18), C.R.S., this same definition applies to the Colorado Liquor Code. Similarly, the definition of “malt liquors” in the Liquor Code states:

(30)(a) “Malt liquors” includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing not less than one-half of one percent alcohol by volume.

(b) For purposes of licenses described in section 44-3-401(1)(j) to (1)(p), (1)(s), (1)(t), (1)(v), and (1)(w), “*malt liquors*” *includes fermented malt beverages when purchased from a retailer licensed pursuant to section 44-4-104(1)(c).*

§ 44-3-103(30), C.R.S. (emphasis added).

Bulletin 19-07

Fermented Malt Beverage Retailers – Products Labeled as “Malt Liquors”

Pursuant to the introductory language preceding each definition in section 44-3-103, the definition of “malt liquors” applies to both the Beer Code and the Liquor Code. In other words, the terms “malt liquors” and “fermented malt beverage” effectively have the same definition. As some industry members have put it, “beer is beer.”

In addition to changing the foregoing definitions, SB 19-11 also eliminated manufacturer, importer and wholesaler licenses formerly issued under the Colorado Beer Code, and automatically converted such licenses to the corresponding license types under the Colorado Liquor Code, effective January 1, 2019. *See* § 44-4-104(1)(c)(II) and (1)(e), C.R.S. As a result, beer manufacturers, importers and wholesalers are no longer required to have separate fermented malt beverage and malt liquors licenses, or to sell them through different channels to retailers holding fermented malt beverage or malt liquors licenses. Instead, “malt liquors” manufactured and/or sold by manufacturers, importers and wholesalers licensed under the Colorado Liquor Code may be sold to either retailers licensed under the Liquor Code to sell “malt liquors” or to retailers licensed under the Beer Code to sell “fermented malt beverages.”

Given the changes in the law discussed above, the Division’s position is that regardless of whether the label on a bottle or can of beer says “fermented malt beverage” or “malt liquors,” a fermented malt beverage retailer is permitted to stock and sell it. This is why the definition of “fermented malt beverage” says that fermented malt beverage “means malt liquors, when purchased by a fermented malt beverage retailer...or when sold by a fermented malt beverage retailer...” § 44-4-104(1)(a), C.R.S. It is also why the definition of “malt liquors” says that it “includes fermented malt beverages when purchased from a retailer licensed pursuant to section 44-4-104(1)(c), C.R.S.” § 44-3-103(30)(b), C.R.S.

Please note that the division will be updating regulations to ensure they accurately reflect the changes made by SB 19-11, including Regulation 47-004, 1 C.C.R. 203-2.

If you have any questions about this bulletin, please contact the division at (303)205-2300 or dor_led@state.co.us.