

Initiative 101 Final

*Be it enacted by the People of the State of Colorado:*

### **SECTION 1. Declaration of Purpose.**

The People of the State of Colorado find and declare that it is in the interest of Colorado to allow for the sale of wine in some grocery stores.

### **SECTION 2.** In Colorado Revised Statutes, **add** 44-3-410.5 as follows:

**44-3-410.5. BEER AND WINE OFF-PREMISES RETAILER LICENSE.** (1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE 3, A MAXIMUM OF TWELVE BEER AND WINE OFF-PREMISES RETAILER LICENSES MAY BE ISSUED TO BEER AND WINE OFF-PREMISES RETAILERS SELLING MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER THIS SECTION TO SELL MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE 3.

(3) IT IS UNLAWFUL FOR ANY OWNER, PART-OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN A BEER AND WINE OFF-PREMISES RETAILER LICENSE TO CONDUCT, OWN EITHER IN WHOLE OR IN PART, OR BE DIRECTLY OR INDIRECTLY INTERESTED IN ANY MANUFACTURER OR WHOLESALER LICENSED PURSUANT TO THIS ARTICLE 3.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE 3, A LICENSEE UNDER SECTION 44-4-107(1)(a) WITH A VALID LICENSE FOR THE SALE OF FERMENTED MALT BEVERAGES FOR OFF-PREMISES CONSUMPTION IN EFFECT ON MARCH 1, 2023, MAY APPLY TO A LOCAL LICENSING AUTHORITY TO OBTAIN UP TO TWELVE NEW BEER AND WINE OFF-PREMISES RETAILER LICENSES, OR TO CONVERT A MAXIMUM OF TWELVE OF ITS EXISTING LICENSES INTO BEER AND WINE OFF-PREMISES RETAILER LICENSES, ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY SHALL CONSIDER AT A PUBLIC HEARING THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD, THE DESIRES OF THE ADULT INHABITANTS AS EVIDENCED BY PETITIONS, REMONSTRANCES, OR OTHERWISE, AND ALL OTHER REASONABLE RESTRICTIONS THAT ARE OR MAY BE PLACED UPON THE NEIGHBORHOOD BY THE LOCAL LICENSING AUTHORITY IN ACCORDANCE WITH SECTION 44-3-301. AFTER THE LOCAL LICENSING AUTHORITY APPROVES AN APPLICATION FOR A NEW BEER AND WINE OFF-PREMISES LICENSE OR TO CONVERT AN EXISTING LICENSE INTO A BEER AND WINE OFF-PREMISES RETAILER LICENSE, THE LICENSEE SHALL APPLY TO THE STATE LICENSING AUTHORITY FOR APPROVAL.

(5) A BEER AND WINE OFF-PREMISES RETAILER MAY ALLOW TASTINGS OF MALT AND VINOUS LIQUORS TO BE CONDUCTED ON THE LICENSED PREMISES IF THE LICENSEE HAS RECEIVED AUTHORIZATION TO CONDUCT TASTINGS PURSUANT TO SECTION 44-3-301.

(6) A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER THIS SECTION:

(a)(I) SHALL NOT SELL MALT OR VINOUS LIQUORS TO CONSUMERS AT A PRICE THAT IS BELOW THE RETAILER'S COST, AS LISTED ON THE WHOLESALE INVOICE RELATED TO THE PURCHASE OF THE MALT AND VINOUS LIQUORS, UNLESS THE SALE IS OF DISCONTINUED OR CLOSE-OUT MALT OR VINOUS LIQUORS.

(II) THIS SUBSECTION (6)(a) DOES NOT PROHIBIT A BEER AND WINE OFF-PREMISES RETAILER FROM OPERATING A BONA FIDE LOYALTY OR REWARDS PROGRAM FOR MALT AND VINOUS LIQUORS SO LONG AS THE PRICE FOR THE PRODUCT IS NOT BELOW THE RETAILER'S COST AS LISTED ON THE INVOICE.

(b) SHALL NOT ALLOW CONSUMERS TO PURCHASE MALT OR VINOUS LIQUORS AT A SELF-CHECKOUT OR OTHER MECHANISM THAT ALLOWS THE CONSUMER TO COMPLETE THE MALT OR VINOUS LIQUORS PURCHASE WITHOUT ASSISTANCE FROM AND COMPLETION OF THE ENTIRE TRANSACTION BY AN EMPLOYEE OF THE BEER AND WINE OFF-PREMISES RETAILER.

(7) A PERSON LICENSED UNDER SUBSECTION (1) OF THIS SECTION THAT HOLDS MULTIPLE BEER AND WINE OFF-PREMISES RETAILER LICENSES FOR MULTIPLE LICENSED PREMISES MAY OPERATE UNDER A SINGLE OR CONSOLIDATED CORPORATE ENTITY BUT SHALL NOT COMMINGLE PURCHASES OF OR CREDIT EXTENSIONS FOR PURCHASES OF MALT OR VINOUS LIQUORS FROM A WHOLESALER LICENSED UNDER THIS ARTICLE 3 FOR MORE THAN ONE LICENSED PREMISES. A WHOLESALER LICENSED UNDER THIS ARTICLE 3 SHALL NOT BASE THE PRICE FOR THE MALT OR VINOUS LIQUORS IT SELLS TO A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER SUBSECTION (1) OF THIS SECTION ON THE TOTAL VOLUME OF MALT OR VINOUS LIQUORS THAT THE LICENSEE PURCHASES FOR MULTIPLE LICENSED PREMISES.

**SECTION 3:** In Colorado Revised Statutes, 44-3-103 **add** (4.5) as follows:

**44-3-103. Definitions.** As used in this article 3 and article 4 of this title 44, unless the context otherwise requires:

(4.5)(a) "BEER AND WINE OFF-PREMISES RETAILER" MEANS AN ESTABLISHMENT THAT SELLS MALT AND VINOUS LIQUORS FOR OFF-PREMISES CONSUMPTION AND THAT DERIVES AT LEAST TWENTY PERCENT OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES FROM THE SALE OF FOOD ITEMS FOR CONSUMPTION OFF THE PREMISES.

(b) FOR PURPOSES OF CALCULATING GROSS ANNUAL REVENUES FROM TOTAL SALES, REVENUES DERIVED FROM THE SALE OF THE FOLLOWING PRODUCTS ARE EXCLUDED:

(I) FUEL PRODUCTS, AS DEFINED IN SECTION 8-20-201 (2);

(II) CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS, AS DEFINED IN SECTION 18-13-121 (5); AND,

(III) LOTTERY PRODUCTS.

(c) AS USED IN THIS SUBSECTION (4.5), "FOOD ITEMS" MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE, OR BEVERAGE, OTHER THAN A BEVERAGE CONTAINING ALCOHOL, THAT IS INTENDED FOR USE OR FOR SALE, IN WHOLE OR IN PART, FOR HUMAN CONSUMPTION.

**SECTION 4.** In Colorado Revised Statutes, 44-3-301, **amend** (10)(b), (10)(c)(I)(A), (10)(c)(XII), (10)(d), and (10)(e); and **add** (12)(a.5)(III) and (12)(a.5)(IV) as follows:

**44-3-301. Licensing in general.** (10)(b) A retail liquor store, liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee who wishes to conduct tastings may submit an application or application renewal to the local licensing authority. The local licensing authority may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood. A local licensing authority may establish its own application procedure and may charge a reasonable application fee.

(c) Tastings are subject to the following limitations:

(I)(A) By a person who: Has completed a server training program that meets the standards established by the liquor enforcement division in the department and is a retail liquor store, or liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee, an employee of a retail liquor store or liquor-licensed drugstore licensee, or a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant promoting the alcohol beverages for the tasting; and

(XII) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The retail liquor store, or liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee bears the financial and all other responsibility for a tasting conducted on its licensed premises.

(d) A violation of a limitation specified in this subsection (10) by a retail liquor store, or liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee, whether by the licensee's employees, agents, or otherwise or by a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant that promoted the alcohol beverages for the tasting, is the responsibility of, and section 44-3-801 applies to, the retail liquor store, or liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee that conducted the tasting.

(e) A retail liquor store, or liquor-licensed drugstore, OR BEER AND WINE OFF-PREMISES RETAILER licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

12(a.5)(III) NOTWITHSTANDING ANY OTHER PROVISION OF SUBSECTION 12(a) OF THIS SECTION, THE STATE AND LOCAL LICENSING AUTHORITIES SHALL NOT ISSUE A NEW BEER AND WINE OFF-PREMISES RETAILER LICENSE UNDER THIS ARTICLE 3 AUTHORIZING THE SALE AT RETAIL OF MALT AND VINOUS LIQUORS IN SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES IF THE PREMISES FOR WHICH THE RETAIL LICENSE IS SOUGHT IS LOCATED WITHIN FIVE HUNDRED FEET OF A RETAIL LIQUOR STORE LICENSED UNDER SECTION 44-3-409.

(IV) NOTWITHSTANDING ANY OTHER PROVISION OF SUBSECTION 12(a) OF THIS SECTION, THE STATE AND LOCAL LICENSING AUTHORITIES SHALL NOT ISSUE A NEW RETAIL LIQUOR STORE LICENSE UNDER THIS ARTICLE 3 AUTHORIZING THE SALE AT RETAIL OF MALT, VINOUS, OR SPIRITUOUS LIQUORS IN SEALED CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES IF THE PREMISES FOR WHICH THE RETAIL LICENSE IS SOUGHT IS LOCATED WITHIN FIVE HUNDRED FEET OF A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER SECTION 44-3-410.5.

**SECTION 5.** In Colorado Revised Statutes, 44-3-309, **add** (1)(o) as follows:

**44-3-309. Local licensing authority - applications - optional premises licenses.** (1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 44-3-505:

(o) BEER AND WINE OFF-PREMISES RETAILER LICENSE.

**SECTION 6:** In Colorado Revised Statutes, 44-3-401(1), **add** (y) as follows:

**44-3-401. Classes of licenses and permits - rules.** (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license or permit from any of the following classes, subject to the provisions and restrictions provided by this article 3:

(y) BEER AND WINE OFF-PREMISES RETAILER LICENSE.

**SECTION 7.** In Colorado Revised Statutes, 44-3-501, **amend** (3)(a)(XVIII) and (XIX); and **add** (1)(f.5) and (3)(a)(XX) as follows:

**44-3-501. State fees - rules - one-time fee waiver - repeal.** (1) The applicant shall pay the following license and permit fees to the department annually in advance:

(f.5) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE, ONE HUNDRED DOLLARS.

(3)(a) The state licensing authority shall establish fees for processing the following types of applications, notices, or reports required to be submitted to the state licensing authority:

(XVIII) Applications for the renewal of a license or permit issued in accordance with this article 3;

(XIX) Applications for a permit for or attachment to a communal outdoor dining area or for modification of a licensed premises to include a communal outdoor dining area; AND

(XX) APPLICATIONS TO OBTAIN A NEW BEER AND WINE OFF-PREMISES RETAILER LICENSE OR TO CONVERT A FERMENTED MALT BEVERAGE RETAILER'S LICENSE TO A BEER AND WINE OFF-PREMISES RETAILER LICENSE PURSUANT TO SECTION 44-3-410.5 AND RULES ADOPTED PURSUANT TO THAT SECTION.

**SECTION 8.** In Colorado Revised Statutes, 44-3-505, **add** (1)(b.5) and (4)(a)(VI) as follows:

**44-3-505. Local license fees.** (1) The applicant shall pay the following license fees to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(b.5)(I) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH BEER AND WINE OFF-PREMISES RETAILER LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

(4)(a) Each application for a license provided for in this article 3 and article 4 of this title 44 filed with a local licensing authority must be accompanied by an application fee in an amount determined by the local licensing authority to cover actual and necessary expenses, subject to the following limitations:

(VI) FOR CONVERSION PURSUANT TO SECTION 44-3-410.5, NOT TO EXCEED ONE THOUSAND DOLLARS.

**SECTION 9.** In Colorado Revised Statutes, 44-3-901, **amend** (1)(g), (1)(i)(III), (6)(i)(II), (6)(k)(I), (6)(k)(IV), (6)(k)(V), (6)(p)(I)(B), (6)(p)(III), (8)(b) and (11)(c) and **add** (6)(k)(II)(C) as follows:

**44-3-901. Unlawful acts - exceptions - definitions.** (1) Except as provided in section 18-13-122, it is unlawful for any person:

~~(g) To sell at retail: any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor licensed drugstore license, except as permitted by section 44-3-107 (2) or 44-3-301 (6)(b) or any other provision of this article 3; or to sell at retail any fermented malt beverages in sealed containers without holding a fermented malt beverage retailer's license under sections 44-4-104(1)(c) and 44-4-107(1)(a).~~

(I) ANY MALT, VINOUS, OR SPIRITUOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A RETAIL LIQUOR STORE OR LIQUOR-LICENSED DRUGSTORE LICENSE, EXCEPT AS PERMITTED BY SECTION 44-3-107 (2) OR SECTION 44-3-301 (6)(B) OR ANY OTHER PROVISION OF THIS ARTICLE 3; OR TO SELL AT RETAIL ANY FERMENTED MALT BEVERAGES IN SEALED CONTAINERS WITHOUT HOLDING A FERMENTED MALT BEVERAGE RETAILER'S LICENSE UNDER SECTION 44-4-104(1)(C) AND SECTION 44-4-107(1)(A).

(II) ANY MALT OR VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A BEER AND WINE OFF-PREMISES RETAILER LICENSE; or

(III) Any fermented malt beverages in sealed containers without holding a fermented malt beverage retailer's license under sections 44-4-104 (1)(c) and 44-4-107 (1)(a);

(i)(III) Notwithstanding subsection (1)(i)(I) of this section, it shall not be unlawful for adult patrons of a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to consume malt, vinous, or spirituous liquors on the licensed premises when the consumption is conducted within the limitations of the licensee's license and is part of a tasting if authorization for the tasting has been granted pursuant to section 44-3-301.

(6) It is unlawful for any person licensed to sell at retail pursuant to this article 3 or article 4 of this title 44:

(i)(II) Notwithstanding subsection (6)(i)(I) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 44-3-301.

(k)(I) Except as provided in subsections (6)(k)(II), (6)(k)(IV), and (6)(k)(V) of this section, to have on the licensed premise, if licensed as a retail liquor store, liquor-licensed drugstore, BEER AND WINE OFF-PREMISES RETAILER, or fermented malt beverage retailer, any container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label of the container.

(II)(C) A PERSON HOLDING A BEER AND WINE OFF PREMISES RETAILER LICENSE UNDER THIS ARTICLE 3 MAY HAVE UPON THE LICENSED PREMISES MALT OR VINOUS LIQUORS IN OPEN CONTAINERS WHEN THE OPEN CONTAINERS WERE BROUGHT ONTO THE LICENSED PREMISES BY AND REMAIN SOLELY IN THE POSSESSION OF THE SALES PERSONNEL OF A PERSON LICENSED TO SELL AT WHOLESALE PURSUANT TO THIS ARTICLE 3 FOR THE PURPOSE OF SAMPLING MALT OR VINOUS LIQUORS BY THE BEER AND WINE OFF PREMISES RETAILER LICENSEE ONLY.

(IV) It is not unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow tastings to be conducted on the licensed premises if authorized for the tastings has been granted pursuant to section 44-3-301.

(V) A person holding a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER license under this article 3 or a fermented malt beverage retailer's license under section 44-4-107(1)(a) may have upon the licensed premises an open container of an alcohol beverage product 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 from whom the product was purchased.

(p)(I)(B) Except as provided in subsection (6)(p)(II) of this section, to employ a person who is at least eighteen years of age but under twenty-one years of age to sell or dispense malt, vinous, or spirituous liquors unless the employee is supervised by another person who is on the licensed premises and is at least twenty-one years of age; except that this subsection (6)(p)(I)(B) does not apply to a retail liquor store licensed under section 44-3-409, or a liquor-licensed drugstore licensed under section 44-3-410, OR A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER 44-3-410.5;

(III) If licensed as a retail liquor store under section 44-3-409, a liquor-licensed drugstore under section 44-3-410, A BEER AND WINE OFF-PREMISES RETAILER LICENSED UNDER SECTION 44-3-410.5, or a fermented malt beverage retailer under section 44-4-107 (1)(a), to permit an employee who is under twenty-one years of age to deliver malt, vinous, or spirituous liquors or fermented malt beverages offered for sale on, or sold and removed from, the licensed premises of the retail liquor store, liquor-licensed drugstore, BEER AND WINE OFF-PREMISES RETAILER, or fermented malt beverage retailer.

(8)(b) Notwithstanding subsection (8)(a) of this section, it shall not be unlawful for a retail liquor store, liquor-licensed drugstore, or BEER AND WINE OFF-PREMISES RETAILER licensee to allow tasting to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 44-3-301.

(11)(c) As used in this subsection (11), "retail licensee" means a person licensed under section 44-3-409, 44-3-410, **44-3-410.5**, 44-4-104(1)(c), or 44-4-107(1)(a).

**SECTION 10. Effective date.** This measure shall go into effect on March 1, 2023.