

CHAPTER 111

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 96-1168

BY REPRESENTATIVES Taylor, Acquafresca, and Schwarz;
also SENATOR Wattenberg.

AN ACT

CONCERNING THE CREATION OF A BREW PUB LIQUOR LICENSE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-47-103 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-47-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-47-103. Definitions. As used in this article, unless the context otherwise requires:

(2) ~~"Brewery" means any establishment where malt liquors are manufactured.~~
"BREW PUB" MEANS A RETAIL ESTABLISHMENT THAT MANUFACTURES NOT MORE THAN ONE MILLION EIGHT HUNDRED SIXTY THOUSAND GALLONS OF MALT LIQUOR ON ITS PREMISES EACH YEAR.

(2.5) "BREWERY" MEANS ANY ESTABLISHMENT WHERE MALT LIQUORS ARE MANUFACTURED, EXCEPT BREW PUBS LICENSED UNDER THIS ARTICLE.

SECTION 2. 12-47-112 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-47-112. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of malt, vinous, and spirituous liquors, 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 from any of the following classes, subject to the provisions and restrictions provided by this article:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(h.2) BREW PUB LICENSE;

SECTION 3. 12-47-119 (1.5) and (4) (b) (I), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-47-119. Hotel and restaurant license. (1.5) (a) (I) A hotel and restaurant license may be issued to persons operating a licensed brewery in the state of Colorado and selling the malt liquors manufactured at such brewery in addition to selling other malt, vinous, and spirituous liquors at retail for consumption in a restaurant operated on the premises or immediately adjacent to the premises of such licensed brewery. The requirements of this article shall be applicable to the issuance of such a hotel and restaurant license; except that, notwithstanding the provisions of paragraph (a) of subsection (1) of this section, a restaurant licensed pursuant to this subsection (1.5) need only receive fifteen percent of its gross income from the sale of meals.

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE DECEMBER 31, 1996.

(b) EFFECTIVE JANUARY 1, 1997, A HOTEL AND RESTAURANT LICENSEE OPERATING A LICENSED BREWERY SHALL AUTOMATICALLY BE ISSUED A BREW PUB LICENSE PURSUANT TO SECTION 12-47-119.8.

(4) (b) (I) (A) Every person selling malt, vinous, and spirituous liquors pursuant to the provisions of subsection (1.5) of this section shall purchase such malt liquors, other than malt liquors which are manufactured at the licensed brewery issued the hotel and restaurant license, and such vinous and spirituous liquors from a wholesaler licensed pursuant to this article.

(B) THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE DECEMBER 31, 1996.

SECTION 4. Article 47 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-47-119.8. Brew pub license. (1) A BREW PUB LICENSE MAY BE ISSUED TO ANY PERSON OPERATING A BREW PUB AND ALSO SELLING MALT, VINOUS, AND SPIRITUOUS LIQUORS IN THE PLACE WHERE SUCH LIQUORS ARE TO BE CONSUMED. EFFECTIVE JANUARY 1, 1997, A BREW PUB LICENSE SHALL BE ISSUED TO ANY HOTEL AND RESTAURANT LICENSEE OPERATING A LICENSED BREWERY WITH NO ACTION REQUIRED ON THE PART OF THE HOTEL AND RESTAURANT LICENSEE.

(2) DURING THE HOURS ESTABLISHED IN SECTION 12-47-128 (5) (c) (I), MALT LIQUORS MANUFACTURED BY A BREW PUB LICENSEE ON THE LICENSED PREMISES MAY BE:

(a) FURNISHED FOR CONSUMPTION ON THE PREMISES;

(b) SOLD TO INDEPENDENT WHOLESALERS FOR DISTRIBUTION TO LICENSED RETAILERS;

(c) SOLD TO THE PUBLIC IN SEALED CONTAINERS FOR OFF-PREMISES CONSUMPTION. ONLY MALT LIQUORS MANUFACTURED AND PACKAGED ON THE PREMISES BY THE LICENSEE SHALL BE SOLD IN SEALED CONTAINERS.

(d) SOLD AT WHOLESALE TO LICENSED RETAILERS IN AN AMOUNT UP TO THREE HUNDRED THOUSAND GALLONS PER CALENDAR YEAR.

(3) EVERY PERSON SELLING MALT, VINOUS, AND SPIRITUOUS LIQUORS PURSUANT TO THIS SECTION SHALL PURCHASE SUCH MALT, VINOUS, AND SPIRITUOUS LIQUORS, OTHER THAN THOSE THAT ARE MANUFACTURED AT THE LICENSED BREW PUB, FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE; EXCEPT THAT NOT MORE THAN FIVE HUNDRED DOLLARS' WORTH OF MALT, VINOUS, AND SPIRITUOUS LIQUORS MAY BE PURCHASED DURING EACH CALENDAR YEAR FROM A RETAIL LIQUOR STORE. EACH SUCH PURCHASE OF MALT, VINOUS, AND SPIRITUOUS LIQUORS SHALL BE EVIDENCED BY A PURCHASE RECEIPT SHOWING THE NAME OF THE RETAIL LIQUOR STORE, THE DATE OF PURCHASE, A DESCRIPTION OF THE LIQUOR PURCHASED, AND THE PRICE PAID FOR SUCH PURCHASE. SUCH RECEIPT SHALL BE RETAINED AND MADE AVAILABLE TO STATE AND LOCAL LICENSING AUTHORITIES AT ALL TIMES DURING BUSINESS HOURS.

(4) A BREW PUB LICENSEE SHALL SELL MALT, VINOUS, AND SPIRITUOUS LIQUORS FOR ON-PREMISES CONSUMPTION ONLY IF AT LEAST FIFTEEN PERCENT OF THE GROSS ON-PREMISES FOOD AND DRINK INCOME OF THE BUSINESS OF THE LICENSED PREMISES IS FROM THE SALE OF FOOD. FOR PURPOSES OF THIS SUBSECTION (4), "FOOD" MEANS A QUANTITY OF FOODSTUFFS OF SUCH NATURE AS IS ORDINARILY CONSUMED BY AN INDIVIDUAL AT REGULAR INTERVALS FOR THE PURPOSE OF SUSTENANCE.

SECTION 5. 12-47-123 (1) (a) (I), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-47-123 (1), as amended, is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-47-123. State fees. (1) The following license fees shall be paid to the department of revenue annually in advance:

(a) For each resident and nonresident manufacturer's license, the fee shall be:

(I) ~~For each brewery, two hundred seventy-five dollars;~~

(h.4) FOR EACH BREW PUB LICENSE, THREE HUNDRED DOLLARS;

SECTION 6. 12-47-127 (1) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-47-127. Excise tax - records. (1) (a) An excise tax at the rate of eight cents per gallon, or the same per unit volume tax applied to metric measure, on all malt liquors, 7.33 cents per liter on all vinous liquors, and 60.26 cents per liter on all spirituous liquors is imposed, and such taxes shall be collected on all such respective liquors, not otherwise exempt from the tax, sold, offered for sale, or used in this state; except that, upon the same liquors, only one such tax shall be paid in this state. The manufacturer thereof, or the first licensee receiving alcoholic liquors in this state if shipped from without the state, shall be primarily liable for the payment of any tax or tax surcharge imposed pursuant to this section; but, if such liquor is transported by a manufacturer or wholesaler to a point outside of the state and there disposed of, then such manufacturer or wholesaler, upon the filing with the state licensing authority of a duplicate bill of lading, invoice, or affidavit showing such transaction, shall not be subject to the tax provided in this section on such liquors, and, if such tax has already

been paid, it shall be refunded to said manufacturer or wholesaler. FOR PURPOSES OF THIS SECTION, "MANUFACTURER" INCLUDES BREW PUB LICENSEES.

SECTION 7. 12-47-128 (5) (c) (II), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-47-128. Unlawful acts - gambling - exceptions. (5) (c) (II) Notwithstanding the provisions of sub-subparagraph (B) of subparagraph (I) of this paragraph (c), hotel and restaurant licensees, beer and wine licensees, tavern licensees, club licensees, BREW PUB LICENSEES, and arts licensees, upon the payment of an additional annual fee of two hundred dollars to the local licensing authority, may obtain a special license to sell, serve, or distribute malt, vinous, and spirituous liquors by the drink after the hour of 8 p.m. and until 12 midnight on any Sunday other than a Sunday which falls on a December 31, and Christmas.

SECTION 8. 12-47-128 (4), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-47-128. Unlawful acts - gambling - exceptions. (4) It is unlawful for any person licensed to sell at wholesale pursuant to this article:

(e) TO SELL OR SERVE ANY MALT, VINOUS, OR SPIRITUOUS LIQUORS TO CONSUMERS FOR CONSUMPTION ON OR OFF THE LICENSED PREMISES DURING ANY HOURS RETAILERS ARE PROHIBITED FROM SELLING OR SERVING SUCH LIQUORS PURSUANT TO SUBSECTION (5) OF THIS SECTION.

SECTION 9. 12-47-129 (1), (3), (4) (a), (4) (c), (5) (a), and (10), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

12-47-129. Unlawful financial assistance. (1) It is unlawful for any manufacturer, limited winery licensee, or wholesaler or any person, partnership, association, organization, or corporation interested financially in or with any of said licensees to be interested financially, directly or indirectly, in the business of any person licensed to sell at retail pursuant to this article or for any person licensed to sell at retail pursuant to this article to be interested financially, directly or indirectly, in the business of any manufacturer, limited winery licensee, or wholesaler or any person, partnership, association, organization, or corporation interested in or with any of the said manufacturers, limited winery licensees, or wholesalers licensed pursuant to this article. ~~The provisions of this subsection (1) shall not apply to any brewery licensed pursuant to the provisions of this article, which has also been issued a hotel and restaurant license, with respect to transactions between said brewery and its licensed hotel and restaurant business.~~

(3) (a) It is unlawful for any of the persons or parties described and referred to in subsections (1) and (2) of this section to furnish, supply, or loan, in any manner, directly or indirectly, to any person licensed to sell at retail pursuant to the provisions of this article any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcoholic beverages within the premises or for making any structural alterations or improvements in or on the building on which such premises are located. This section shall not apply to signs or displays within such premises. ~~The provisions of this~~

~~subsection (3) shall not apply to any brewery licensed pursuant to the provisions of this article, which has also been issued a hotel and restaurant license, with respect to transactions between said brewery and its licensed hotel and restaurant business.~~

(4) (a) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any retail liquor store, retail license, liquor-licensed drugstore, or retail dispensary of any kind licensed pursuant to this article to conduct, own either in whole or in part, or be directly or indirectly interested in any other retail gaming tavern license, retail liquor store, retail license, or retail dispensary of any kind licensed pursuant to this article in this state; except that it is not unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any hotel and restaurant license to conduct, own either in whole or in part, or be directly or indirectly interested in any other hotel and restaurant OR BREW PUB license or establishment. It is not unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any retail gaming tavern license to conduct, own either in whole or in part, or be directly or indirectly interested in any other retail gaming tavern license or establishment. IT IS NOT UNLAWFUL FOR AN OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN A BREW PUB LICENSE TO CONDUCT, OWN IN WHOLE OR IN PART, OR BE DIRECTLY OR INDIRECTLY INTERESTED IN ANY OTHER BREW PUB OR HOTEL AND RESTAURANT LICENSE OR ESTABLISHMENT, BUT IT IS UNLAWFUL FOR SUCH A PERSON TO CONDUCT, OWN IN WHOLE OR IN PART, OR BE DIRECTLY OR INDIRECTLY INTERESTED IN A WHOLESALER'S LICENSE ISSUED UNDER THIS ARTICLE. It is not unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any license issued pursuant to this article to conduct, own either in whole or in part, or be directly or indirectly interested in any airline public transportation system license. The state licensing authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant license and each retail gaming tavern license issued under this article. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license or in a retail gaming tavern license shall be grounds for suspension or revocation of such license by the state licensing authority. The invalidity of any provision of this paragraph (a) concerning interest in more than one hotel and restaurant license or retail gaming tavern license shall invalidate all interests in more than one hotel and restaurant license or retail gaming tavern license, and such invalidity shall make any such interest unlawful financial assistance as described by this paragraph (a).

(c) No owner, part owner, shareholder, or person interested directly or indirectly in a licensed ~~brewery~~ BREW PUB may be interested directly or indirectly in any retail gaming tavern license.

(5) (a) It is unlawful for any person licensed to sell at retail pursuant to this article to receive and obtain from the persons or parties described and referred to in subsections (1) and (2) of this section, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcoholic beverages within the premises or from making any structural alterations or improvements in or on the building on which such premises are located. This subsection (5) shall not apply to signs or displays within such premises or to advertising materials which are intended primarily to

advertise the product of the wholesaler or manufacturer and which have only negligible value in themselves or to the inspection and servicing of malt or vinous liquor-dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health. ~~The provisions of this subsection (5) shall not apply to any brewery licensed pursuant to the provisions of this article, which has also been issued a hotel and restaurant license, with respect to transactions between said brewery and its licensed hotel and restaurant business.~~

(10) (a) ~~Any other provision of law to the contrary notwithstanding~~ EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (10), it is lawful for any corporation, all of whose members or shareholders are persons licensed to sell at retail pursuant to this article, to obtain a wholesaler's license, pursuant to this article, whereunder it shall purchase vinous and spirituous liquors solely from other wholesalers licensed pursuant to this article; except that no such member or shareholder of such corporation shall own directly or indirectly more than a two-percent interest in such corporation.

(b) IT IS UNLAWFUL FOR AN OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN ANY BREW PUB LICENSE TO CONDUCT, OWN IN WHOLE OR IN PART, OR BE DIRECTLY OR INDIRECTLY INTERESTED IN A WHOLESALER'S LICENSE ISSUED UNDER THIS ARTICLE.

SECTION 10. 12-47-135 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-47-135. Local licensing authority - application for license - filing of optional premises with state and local licensing authorities. (1) A local licensing authority may issue only the following licenses upon payment of the fee specified in section 12-47-139:

(d.2) BREW PUB LICENSE;

SECTION 11. 12-47-139 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-47-139. Local license fees. (1) The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(d.5) FOR EACH BREW PUB LICENSE, THREE HUNDRED TWENTY-FIVE DOLLARS;

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 23, 1996