



## Liquor, Tobacco/Nicotine, & Marijuana

In the 2020 session, the Colorado General Assembly considered the following measures related to the regulation of liquor, tobacco/nicotine, and marijuana.

### Liquor

Liquor licenses are issued by either one or both the state and local licensing authorities – manufacturers, wholesalers, and importers apply directly to the state for a license, while retail licenses are issued by both the state and local licensing authorities. The Liquor Enforcement Division (LED) in the Colorado Department of Revenue acts as the state liquor licensing authority.

Under current law, applicants for a new liquor license are charged an application fee, which is set by the LED, and a licensing fee, which is set in statute and varies by license type. *Senate Bill 20-086* allows the LED to also set an application fee for the renewal of a liquor license or permit.

Under current law, the state or local licensing authority may suspend or revoke any liquor license or permit for violations of the state's liquor laws or regulations. Licensees may petition to pay a fine instead of having their license suspended or revoked. These fines were previously required to be equivalent to 20 percent of a licensee's estimated gross revenues from alcohol and range from \$200 to \$5,000. *Senate Bill 20-110* instead requires the LED to adopt rules that establish categories of violations based on severity, and associated ranges of penalties, including mitigating and aggravating factors to be considered in determining fines. The bill also increases the range of potential fines to

between \$500 and \$100,000, except that the fine for a first violation in the least severe category cannot exceed \$5,000.

Under current law, employees of liquor-licensed drugstores are required to be at least 18 years of age to handle alcohol. *Senate Bill 20-032* clarifies that employees of liquor-licensed drugstores who are between 18 and 21 years of age may not deliver alcohol beverages, but may sell and otherwise have contact with alcohol.

Vintner's restaurants are establishments that are allowed to manufacture no more than 250,000 gallons of wine per year and also sell alcohol beverages and food for consumption on-site. Wine manufactured by a vintner's restaurant may be sold to consumers for consumption on the licensed premises, to independent wholesalers for distribution to licensed retailers, and to the public in sealed containers for off-premises consumption. *House Bill 20-1055* allows vintner's restaurants to be authorized as an alternating proprietor premises, which allows another licensed vintner's restaurant to manufacture and store wine in a designated area on the premises. Licensed breweries, wineries, distilleries, limited wineries, and brew pubs were already allowed to be authorized as an alternating proprietor premises.

Brew pubs are establishments that are allowed to manufacture no more than 1.86 million gallons of beer each year and sell alcohol beverages and food for consumption on-site. Beer manufactured by a brew pub may be sold to consumers for consumption on the premises, to independent wholesalers for distribution to retailers, and to

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the public in sealed containers for off-premises consumption. *Senate Bill 20-194* allows a brew pub to sell beer that is manufactured at another brew pub under the same ownership to the public in sealed containers for off-premises consumption.

On March 20, 2020, Governor Polis issued *Executive Order D 2020-011*, which temporarily allowed bars, restaurants, breweries, wineries, distilleries, and other liquor licensees that sell alcohol for on-premises consumption to sell alcohol in sealed containers as part of takeout and delivery orders to consumers aged 21 years or older. *Senate Bill 20-213* codifies this allowance through July 1, 2021. When the state is not under a declared disaster emergency, licensees are required to obtain a permit that allows for the takeout and delivery of alcohol.

### Tobacco/Nicotine

*House Bill 20-1001* makes several changes to the regulation of cigarettes, tobacco products, and nicotine products in the state. The bill:

- raises the minimum age to purchase these products from 18 years old to 21 years old, in alignment with federal law;
- requires all retailers that sell these products to be licensed by the state by July 1, 2021;
- allows counties to license or otherwise regulate the sale of these products;
- prohibits store employees under the age of 18 from handling or selling these products;
- requires that each retailer of these products generally be subject to a compliance check at least two times each year;
- prohibits new retailers of these products from being located within 500 feet of a school, unless otherwise allowed by the local authority;
- allows only licensed retailers to deliver these products to individuals 21 years of age or older, and prohibits any products, other than cigars and pipe tobacco, from being shipped directly to consumers;
- prohibits retailers of these products from advertising electronic smoking device products in a manner that is visible from outside the retail location;

- establishes a new fine schedule for violations; and
- designates the LED as the state licensing authority for these products.

*House Bill 20-1427* referred Proposition EE to the November 2020 ballot, which passed with 68 percent of the vote. The measure increases taxes on cigarettes and tobacco products, and creates a new tax on nicotine products, including vaping products. The tax increases begin in 2021 and are phased in through 2027 as follows:

- taxes on a pack of cigarettes increase from the current tax rate of \$0.84 to \$2.64 in 2027;
- taxes on tobacco products increase from the current tax rate of 40 percent of the manufacturer's list price to 62 percent in 2027; and
- taxes on nicotine products, including nicotine vaping products, are initially set at 30 percent of the manufacturer's list price in 2021 and increase to 62 percent in 2027.

The measure also:

- sets the minimum after-tax price of cigarettes for consumers at \$7 per pack beginning in January 2021, and \$7.50 per pack in July 2024;
- set new tax rates for modified-risk tobacco products;
- establishes a minimum tax for moist snuff products;
- makes online sales from out-of-state retailers to Colorado consumers subject to the new taxes; and
- reduces vendor fee that distributors may keep as compensation for the work associated with filing taxes.

The measure directs revenues from the increased and new taxes to preschool programs, rural schools, K-12 education, housing development programs, eviction legal assistance, health care programs, tobacco education programs, and general state spending.

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### Marijuana

Under current law, all owners, managers, operators, employees, contractors, and other support staff who are employed by, work in, or have access to restricted areas of licensed medical and retail marijuana businesses in Colorado are required to be licensed or registered. *House Bill 20-1080* removes the Colorado residency requirement for managers and employees of medical and retail marijuana businesses

Given unclear federal guidance about whether established financial institutions are able to serve businesses in the marijuana industry, the General Assembly passed House Bill 14-1398, which established the Colorado Marijuana Services Cooperative Act with the goal of helping to create a new type of financial services institution that would serve the state's marijuana industry. Under the act, a marijuana financial services cooperative is a cooperative association that is incorporated for the purpose of providing financial services and a source of credit to its members, which may include licensed marijuana businesses, hemp businesses, and entities that provide services to those businesses. However, no entities have applied to the Colorado Commissioner of Financial Services to become a chartered marijuana financial services cooperative since the passage of the bill. Following the *2019 sunset review* of the act, the General Assembly passed *House Bill 20-1217*, which repealed the regulation of marijuana financial services cooperatives as of September 1, 2020.

*Senate Bill 19-224* established the Marijuana Accelerator Program, which allows licensees to host and offer technical assistance and capital support to accelerator licensees who reside in a designated opportunity zone. Under the bill, the program was supposed to begin by July 1, 2020; however, *House Bill 20-1424* delays the implementation of the program until January 1, 2021. The bill also makes several modifications to the program to shift the focus of the program to assisting newly-created social equity licensees. Social equity licenses may be issued to Colorado residents who own at least 51 percent of a regulated marijuana business, either

individually or collectively with other social equity licensees, and:

- reside in a designated opportunity zone or disproportionate impacted area;
- have had an immediate family member arrested for or convicted of a marijuana offense or was subject to civil asset forfeiture related to a marijuana investigation; or
- have a household income level that did not exceed a specified amount.

Social equity licensees may be eligible for incentives available through the Department of Revenue and the Office of Economic Development and International trade, such as a reduction in applicable application and license fees.

HB 20-1424 also allows the Governor to grant pardons to a class of defendants who were convicted of the possession of up to two ounces of marijuana.

Tax revenue collected from the regular state sales tax on medical marijuana and non-marijuana retail product sales and a portion of the tax revenue collected from the special sales tax on retail marijuana sales is deposited into the Marijuana Tax Cash Fund (MTCF). *House Bill 20-1401* repeals the requirement that money in the MTCF must only be appropriated for use in subsequent years after its collection. The bill also transfers \$137 million from the MTCF balance to the General Fund.