



Legislative Council Staff
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Memorandum

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TO: Interested Persons

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SUBJECT: Overview of the Transition from 3.2 to Full-Strength Beer

Summary

This memorandum responds to your request for background information related to the January 1, 2019, transition to full-strength beer.

Senate Bill 16-197

Senate Bill 16-197 made significant changes to state law regulating the retail sale of fermented malt beverages (FMB), malt liquor, wine, and spirits. Among other changes, SB 16-197 removed the distinction between FMB and malt liquor, beginning on January 1, 2019. As a result:

- prior to January 1, 2019, FMB are defined as beer with up to 3.2 percent alcohol by weight, and malt liquor is defined as full-strength beer; and
- beginning January 1, 2019, both FMB and malt liquor are defined as full-strength beer.

SB 16-197 also established an industry working group to examine the impact of and recommend an implementation process for removing the distinction between FMB and malt liquor. This working group reported its findings to the General Assembly on January 1, 2018.

For more background on SB 16-197, please see this [August 2016 issue brief](#). Please note that legislative changes have been made to some provisions of SB 16-197 since the publication of the issue brief.

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Working Group

The Senate Bill 16-197 liquor industry working group, coordinated by the Liquor Enforcement Division, considered several proposals for the transition to full-strength beer. Among the recommendations considered by the working group was a proposal to consolidate beer license types in order to allow manufacturers, wholesalers, and importers to have a single license that includes FMB and malt liquor. The complete report to the General Assembly can be found [here](#).

Senate Bill 18-243

To address concerns related to the retail sale of full-strength beer by FMB licensees, the General Assembly passed Senate Bill 18-243. The bill:

- changed the requirements for fermented malt beverage (FMB) off-premises retail licenses;
- standardized employee age requirements for FMB, retail liquor store, and liquor-licensed drugstore off-premises retail licenses;
- clarified provisions related to radius requirements for new retail licenses, public consumption, alcohol delivery, tastings, and multiple licenses by one entity.

The bill did not address the manufacturing or distribution of FMB and malt liquor after January 1, 2019.

Current Law Regarding Licensing of Beer Manufacturers, Wholesalers, and Retailers

Regulation of alcohol beverages in Colorado is divided into three tiers: manufacturing, wholesale distribution, and retail sale. Generally, a business with a financial interest in a license may not have a financial interest in a license from another tier, with a few exceptions. For a complete discussion of liquor licenses, please see the [Overview of Liquor Licensing Law memorandum](#).

Manufacturer's licenses. Breweries must hold a beer manufacturer's license in order to produce beer in Colorado. Licenses include FMB manufacturer's licenses (may produce 3.2 beer until January and full-strength beer thereafter) and malt liquor manufacturer's licenses (may produce full-strength beer now and in January).

Wholesaler's licenses. A wholesaler's license is required in order to distribute beer to retailers. Licensed beer manufacturers may hold a wholesale license in addition to their manufacturing license. Wholesale licenses include FMB wholesale licenses (may distribute 3.2 beer until January, and full-strength beer thereafter) and malt liquor wholesale licenses (may distribute full-strength beer now and in January).

Breweries may hold both FMB and malt liquor manufacturer and wholesale licenses. This allows them to manufacture or distribute both FMB and malt liquor. As of October 2, 2018, approximately 25 entities hold both FMB and malt liquor wholesale licenses, and approximately 9 entities hold both

FMB and malt liquor manufacturer licenses. In addition, breweries may also hold multiple manufacturer or wholesale licenses. Multiple manufacturer licenses allows a brewery to manufacture both 3.2 and full-strength beer, to manufacture at multiple locations, and/or to import product to be sold to a wholesaler.

Retail licenses. Currently, licensed retail liquor stores and liquor-licensed drugstores may sell full-strength beer, wine, and spirits. Some grocery stores hold one of these licenses and thus, may continue to sell full-strength beer after January 1, 2019. FMB retailers, which include many grocery and convenience stores, may sell 3.2 beer until January 1, 2019, and full-strength beer after that date.

Interaction between tiers. Under current law, licensees may only manufacture, distribute, or sell the product that their license allows. As a result, FMB retailers may only purchase their product from licensed FMB wholesalers; FMB wholesalers may only distribute product from licensed FMB manufacturers. Likewise, entities licensed to sell malt liquor at retail may only purchase product from malt liquor wholesalers; malt liquor wholesalers may only distribute product from licensed malt liquor manufacturers.

Section 44-3-901(1)(h), C.R.S., specifies that it is illegal to manufacture, sell, or possess for sale any alcohol beverages unless licensed to do so. In addition, Section 44-3-301 (3)(a), C.R.S., specifies that each license issued is separate and distinct; it is unlawful for any person to exercise the privileges granted by a license other than that which the person holds, with a few exceptions.

Recent Issue

In September 2018, the Liquor Enforcement Division issued *Bulletin 18-08* in response to industry questions about the transition to full-strength beer beginning January 1, 2019. Specifically, the bulletin addressed whether FMB manufacturers could make full-strength beer for wholesalers prior to the January 1 implementation date; whether full-strength beer could be delivered to FMB retailers prior to the January 1 implementation date; and whether FMB and malt liquors may be commingled at wholesaler warehouses and during transport.

Manufacturing full strength beer. The division has provided some temporary accommodation for FMB manufacturers to allow the production of full-strength beer in anticipation of the January 1 implementation date. Beginning November 1, 2018:

- licensed FMB manufacturers may begin production of full-strength beer as long as the full-strength beer is not provided to consumers prior to January 1;
- licensed FMB manufacturers may begin selling full-strength beer to retailers as long as the full-strength beer is not available to consumers prior to January 1; and
- licensed FMB wholesalers may pre-stage full-strength beer in warehouses and delivery vehicles so long as the full-strength beer is not available to consumers or retailers prior to January 1.

Delivering or pre-staging full-strength beer. The division will not permit FMB wholesalers to deliver or pre-stage full-strength beer at FMB licensed retailers prior to January 1, 2019. Neither FMB manufacturers nor FMB wholesalers may lawfully “sell, deliver, or cause to be delivered” any

full-strength beer to an FMB retailer and a FMB retailer may not lawfully possess full-strength beer prior to that date.

Segregating FMB and full-strength beer. Senate Bill 16-197 did not alter the current separate licensing privileges, including storage, distribution, or sales of fermented malt beverages and malt liquors, regardless of the alcohol content of the two products. The division's bulletin specifies that, while they will no longer be distinct products, Colorado law continues to require that FMB and malt liquors maintain separate and distinct regulatory structures, licensing privileges, and channels for manufacturing, distributing, and selling the product. Further, manufacturers and wholesalers must not allow the products to be comingled on the licensed premises or in distribution trucks.

Under current law, a FMB manufacturer license does not permit the sale of FMB to a malt liquor wholesaler or retailer, and a malt liquor manufacturer or wholesaler license similarly does not allow the sale of malt liquors to FMB wholesalers or FMB-licensed retailers.