

STATE OF COLORADO

DEPARTMENT OF REVENUE
Liquor Enforcement Division

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Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

Laura K. Harris
Division Director

Regarding Permanent Adoption of the Following New Regulation:

Regulation 47-323. Lawful Extension of Credit

Pursuant to Section 24-4-103, C.R.S. and Section 12-47-202, C.R.S., effective this date, the State Licensing Authority hereby permanently adopts the new alcohol beverage regulation, including their statement of basis and purpose, which is incorporated herein as Exhibit 2.

Ordered this 6th day of January 2011.

By the State Licensing Authority

A handwritten signature in cursive script that reads "Roxanne Huber".

Roxanne Huber
Executive Director
Department of Revenue
State Licensing Authority

**Statement of Authority, Basis, Purpose, and Fiscal Impact
Of New Regulation 47-323
Lawful Extension of Credit**

Statutory Authority: 12-47-202(1)(b)
12-47-202(2)(b), C.R.S
12-47-308, C.R.S.

Basis and Purpose: To create a new regulation that conforms to the requirements of Senate Bill 10-083, which requires the state licensing authority to enforce the prohibition of a licensed supplier extending credit for more than 30 days on the sale of alcohol beverages to a retailer, pursuant to 27 CFR Part 6; and, to allow the authority to adopt rules regulating or prohibiting the sale of alcohol beverages on credit, where the credit is offered or extended for more than thirty days, consistent with the federal regulations. Senate Bill 10-083 became effective on August 11, 2010. The regulation establishes restrictions, standards, and guidelines for applicable licensees, to ensure compliance with the statutory prohibition.

Fiscal Impact: This new rule has no fiscal impact.

DEPARTMENT OF REVENUE

Division of Liquor Enforcement

LIQUOR CODE

1 CCR 203-2

Regulation 47-323. Lawful Extension of Credit

A. Definitions: For purposes of this regulation, the following definitions are applicable:

1. "Supplying licensee" means those persons authorized pursuant to articles 46 and 47 of title 12, C.R.S. to sell fermented malt beverage, malt liquor, vinous liquor, and spirituous liquors to licensed retailers.
2. "Retailer" means those persons licensed pursuant to Sections 12-47-401(1)(h) – (t) and 12-46-104(1)(c) to sell alcohol beverages to the end consumer.
3. "Cash" means United States currency.
4. "Cash equivalent" means a financial transaction or negotiable instrument other than cash, including: bank drafts (business or personal check, cashier's check, certified check) money order, any other type of completed electronic funds transfer, or a supplying licensee's lawfully-issued credit to a retailer's account. Nothing in this regulation shall require a supplying licensee to make available all of the aforementioned types of cash equivalent.
5. "Alcohol beverage purchase" means the date upon which the alcohol beverage is delivered to the retailer and the retailer takes possession.

B. Transaction Requirements and Restrictions:

1. Regarding retailers' alcohol beverage purchases on credit, supplying licensees are prohibited from extending credit to any retailer for a period in excess of thirty (30) days.
2. A supplying licensee's delivery of alcohol beverages to a retailer must be accompanied by a sales invoice that shows the name of the retailer, the place of delivery (address of the licensed location), the invoice date, the date of delivery, a full description of the alcohol beverages delivered and accepted, a full description of any items on backorder to be delivered on a different date, and the price and terms of sale.
3. If there are discrepancies between the product described in the original sales invoice and the actual delivery, handwritten amendments shall be made to the invoice to reflect any corrections and shall be initialed by an authorized representative of the retailer or supplying licensee. Invoiced product that will be delivered on another date must be re-invoiced by the supplying licensee to reflect the date upon which the actual delivery took place.
4. Where there is lawful ownership of multiple, separately-licensed retail locations, each location must be considered separate and distinct with respect to alcohol beverage purchases. Therefore, a supplying licensee shall consider each location as separate and distinct for the purpose of extending credit. For retailers holding a resort complex class of hotel and

restaurant license, all areas within the resort complex must be considered as a single location for the purpose of extending credit.

C. Calculation of Lawful Credit Period:

1. The lawful credit period is thirty (30) calendar days.
2. For the purpose of determining compliance with this regulation, the credit period shall commence on the alcohol beverage purchase and conclude on the date of full legal discharge from all indebtedness arising from the sales transaction related to the delivery, except as otherwise provided in paragraph G of this regulation.
3. If the final day of the lawful credit period falls on a Saturday, Sunday, or legal holiday, the final day shall be the next business day.
4. For the purpose of calculating the lawful credit period only, a retailer's acceptance of an alcohol beverage delivery and sales invoice verifying the delivery is a per se acceptance of the delivery and sales terms.
5. Errors and refusals of delivered product must be noted on either licensee's copy of the sales invoice by an authorized representative of either licensee.

D. Required Payment During Lawful Credit Period:

1. A retailer's payment on a supplying licensee's credit sale shall be recognized as the earlier of:
 - a. The date the payment is deposited by the supplying licensee, or
 - b. The date the transaction is recorded in the licensee's accounting records, or
 - c. The date the supplying licensee or its authorized representative receives the retailer's payment in person, or
 - d. The date a retailer can reasonably verify, through its own books and records, tender of payment to a supplying licensee. In order to ensure compliance with this regulation, retailers must make available to the supplying licensee, upon their request, those records that verify the date of tender.
2. The following shall not be considered a lawful discharge of indebtedness for the purpose of advancing any additional credit to a retailer:
 - a. Business or personal checks that are returned to the supplying licensee as unpaid if replacement funds are not tendered within the lawful credit period.
 - b. Dispute claims filed by a retailer to a credit card provider for credit card advances it had previously authorized for product delivery, except as otherwise provided in paragraph G of this regulation.
 - c. A compromise of indebtedness between supplying licensee and retailer that is commercially unreasonable.
 - d. An assignment of a supplying licensee's accounts receivable for third party collection, when the discharge of indebtedness is dependent upon collection from the retailer.

- e. The supplying licensee's temporary credit to a retailer's account, thereby providing the appearance that a retailer is eligible for additional credit.

E. Indebtedness Beyond the Lawful Credit Period:

1. Any supplying licensee that has not received full payment on a sales invoice on or before the conclusion of the 30 day lawful credit period, as calculated pursuant to paragraph D of this regulation, has not engaged in a per se violation of this regulation, but is prohibited from extending additional credit to the indebted retailer.
2. A supplying licensee shall not advance any additional credit to the indebted retailer until the past due indebtedness is fully discharged.
3. A supplying licensee may continue to sell alcohol beverage products to the indebted retailer only if cash or cash equivalent is provided at the time of each additional delivery.
4. A supplying licensee's normal and customary business practice related to the assessment of finance charges on credit balances that exceed 30 days is not a per se violation of this regulation.

F. Record Keeping Requirements for Supplying Licensees:

1. Pursuant to Section 12-47-701, C.R.S., licensees shall keep and maintain business records necessary to fully show the business transactions of such licensee. The following additional minimum requirements shall be met in order to demonstrate compliance with this regulation.
 - a. Before a supplying licensee extends credit to a retailer, it shall review the credit status of the retailer's account to determine whether any unpaid balance remains on a credit sale that is beyond the lawful credit period for such sale. The supplying licensee shall develop a procedure that documents this credit verification process, and shall be obligated to demonstrate compliance upon any review by the state licensing authority.
 - b. The supplying licensee shall maintain sufficient records that verify the commencement of the lawful credit period.
 - c. A supplying licensee that extends credit to retailers shall develop a method of verifying and documenting the date(s) of payment, and the final discharge of indebtedness of each sales invoice if it recognizes a payment date sooner than the date of its final accounting entry. This may include the retention of postmarked envelopes, hand written receipt ledgers, hand written acknowledgement of receipt on the supplying licensee's copy of a sales invoice, or other accounting records developed by the supplying licensee.
 - d. A supplying licensee that extends credit to retailers shall keep a record of those retailers that did not discharge indebtedness within the lawful credit period, and evidence that subsequent sales were cash or cash equivalent on delivery until the indebtedness was discharged.
2. A retailer's records may supplement the supplying licensee's records in determining compliance with record keeping requirements, but shall not mitigate a supplying licensee's lack of compliance.

G. Dispute Resolution: The purpose of this section shall be solely for the purpose of determining if a supplying licensee may continue to extend credit to a retailer when transaction amounts in dispute cannot be resolved within the lawful credit period. Nothing herein shall restrict the licensees from exercising their contractual rights in civil disputes.

1. If there is a good faith dispute by a retailer as to the validity or reasonableness of the amount owed or the payment made to the supplying licensee, then the retailer shall give written notice to the supplying licensee prior to the close of the lawful credit period. The retailer shall include the disputed amount due or payment tendered, the invoice number, and a detailed reason for the dispute.
2. Upon receipt of written notification, the supplying licensee shall determine its position and respond within 15 days of the retailer's written notification. The supplying licensee may continue to extend 30 days credit on new purchases pending the resolution of the dispute, so long as the retailer has provided written notice as described in paragraph G.1., and has tendered payment for all amounts not in dispute.
3. For purposes of this regulation, the amount of a qualifying price dispute shall be calculated as the disputed price differential times the number of cases purchased. For example, if the supplying licensee invoices a case of alcohol beverage at \$11.00 per case, and the retailer's records reflect a negotiated case deal of \$10.00, then the amount in dispute for purposes of this regulation is calculated as \$1.00 times the number of cases purchased.
4. The supplying licensee is prohibited from extending 30 days credit on new purchases if the retailer fails to claim disputes in the manner described in this section or fails to make full payment of undisputed amounts on or before the end of the lawful credit period. A retailer's action to stop or delay payment on any financial transaction does not qualify as proper written notice to a supplying licensee of a good faith dispute.
5. Once a dispute is resolved, a retailer will have 30 days to pay any amount due and/or a supplying licensee will have the same period of time to adjust its records to reflect the outcome. If the dispute resolution process is unsuccessful after good faith efforts by both parties, and any amount due would otherwise be placed for collection, the supplying licensee must cease the extension of credit to the retailer and shall conduct any future sale of alcohol beverages for cash or cash equivalent on delivery.
6. Supplying licensees and retailers shall keep sufficient records to document those disputes that are used as justification for the continued extension of credit, which would otherwise be prohibited.

H. Unlawful Financial Assistance:

1. Except as provided for in paragraph G of this regulation, a supplying licensee who continues to extend credit to a retailer who has not fully discharged indebtedness through the lawful means described in this regulation, or who fails to exercise due diligence with the requirements of this regulation, may be sanctioned by the state licensing authority for providing unlawful financial assistance to a retailer, as provided for in Section 12-47-308(1)(a), C.R.S. and related regulations.
2. Except as provided for in paragraph G of this regulation, a retailer who fails to pay the amounts due to the supplying licensee after the conclusion of the lawful credit period, and who receives further sales on credit from that supplying licensee, may be sanctioned by the state licensing authority for receipt of unlawful financial assistance from the supplying licensee, as provided for in Section 12-47-308(3)(a), C.R.S. and related regulations. Unlawful financial assistance shall inure to the retailer after the supplying licensee has

made final demand for payment through written correspondence or other means of commercial debt collection and has made subsequent sales on credit.