

Initiative 2021-2022 #139: Third-Party Delivery of Alcohol Beverages

Received
Legislative Council Staff
3/25/2022, 4:48 PM

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

SECTION 1. In Colorado Revised Statutes, 44-3-103, **add** 11.8 as follows:

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

(11.8) "DELIVERY SERVICE PERMITTEE" MEANS ANY INDIVIDUAL, LIMITED LIABILITY COMPANY, CORPORATION, OR PARTNERSHIP THAT HOLDS A PERMIT TO DELIVER ALCOHOL UNDER SECTION 44-3-911.5.

SECTION 2. In Colorado Revised Statutes, Title 44, Article 3, **add** 911.5 as follows:

44-3-911.5. THIRD-PARTY DELIVERY OF ALCOHOL BEVERAGES

(1) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, A DELIVERY SERVICE PERMITTEE, OR AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF A DELIVERY SERVICE PERMITTEE IN COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44, MAY TRANSPORT AND DELIVER ALCOHOL BEVERAGES FROM AN OFF-PREMISES RETAILER LICENSED PURSUANT TO THIS ARTICLE 3 OR ARTICLE 4 OF THIS TITLE 44, OR FROM A LICENSEE LICENSED FOR ON PREMISES CONSUMPTION PURSUANT TO THIS ARTICLE 3, TO A PERSON IN THE STATE WHO IS AT LEAST 21 YEARS OF AGE. THE HOLDER OF A LICENSE LISTED IN THIS SUBSECTION (1) SHALL BE AUTHORIZED TO APPLY FOR AND TO HOLD A DELIVERY SERVICE PERMIT AS A PRIVILEGE SEPARATE FROM ITS EXISTING LICENSE.

(2) ANY INDIVIDUAL, LIMITED LIABILITY COMPANY, CORPORATION, OR PARTNERSHIP THAT IS REGISTERED TO DO BUSINESS IN THIS STATE, REGARDLESS OF THE RESIDENCY OR DOMICILE OF THE INDIVIDUAL, ENTITY, OR OWNERS OF THE ENTITY, MAY APPLY FOR AND BE ISSUED A DELIVERY SERVICE PERMIT THAT AUTHORIZES THE PERMITTEE TO DELIVER ALCOHOL BEVERAGES FROM A LICENSEE PERMITTED FOR DELIVERY BY 44-3-911.5(1), TO A PERSON IN THE STATE WHO IS AT LEAST 21 YEARS OF AGE.

(3) IN ORDER TO RECEIVE A DELIVERY SERVICE PERMIT, AN APPLICANT SHALL:

(a) PROVIDE TO THE STATE LICENSING AUTHORITY A SAMPLE CONTRACT THAT THE APPLICANT INTENDS TO ENTER INTO WITH A LICENSEE LISTED IN SUBSECTION (1) OF THIS SECTION FOR THE DELIVERY OF ALCOHOL BEVERAGES. COMPLIANCE WITH THIS SUBSECTION (3)(A) SHALL NOT BE REQUIRED IN THE EVENT A LICENSEE LISTED IN SUBSECTION (1) OF THIS SECTION 911.5, OR AN ENTITY UNDER COMMON OWNERSHIP WITH SUCH LICENSEE, IS THE APPLICANT FOR THE DELIVERY SERVICE PERMIT;

(b) SUBMIT TO THE STATE LICENSING AUTHORITY AN OUTLINE OF AN INTERNAL OR EXTERNAL CERTIFICATION PROGRAM FOR DELIVERY SERVICE PERSONNEL OR CONTRACTORS THAT ADDRESSES TOPICS SUCH AS IDENTIFYING UNDERAGE PERSONS, INTOXICATED PERSONS, AND FAKE OR ALTERED IDENTIFICATION;

(c) PROVIDE PROOF OF A GENERAL LIABILITY INSURANCE POLICY IN AN AMOUNT NO LESS THAN ONE MILLION DOLLARS (\$1,000,000) PER OCCURRENCE; AND

(d) PROVIDE PROOF TO THE STATE LICENSING AUTHORITY THAT EACH DELIVERY SERVICE PERMITTEE PROVIDES THE FOLLOWING TO EACH EMPLOYEE AND INDEPENDENT CONTRACTOR WHO TRANSPORTS AND DELIVERS ALCOHOL FOR THE DELIVERY SERVICE PERMITTEE:

(I) ACCIDENT INSURANCE COVERAGE FOR THE VEHICLE USED FOR DELIVERIES;

(II) SHORT AND LONG TERM DISABILITY INSURANCE;

(III) HEALTH INSURANCE OR QUARTERLY HEALTHCARE STIPEND;
(IV) UNEMPLOYMENT INSURANCE COVERAGE; AND
(V) REIMBURSEMENT FOR FUEL COSTS INCURRED WHILE DELIVERING ALCOHOL FOR THE DELIVERY SERVICE PERMITTEE.

(4) A DELIVERY SERVICE PERMITTEE:

(a) MAY, THROUGH ITS EMPLOYEES OR INDEPENDENT CONTRACTORS, DELIVER ALCOHOL BEVERAGES FOR ANY OFF-PREMISES RETAILER PERMITTED FOR DELIVERY BY SUBSECTION 44-3-911.5(1), FOR THE PURPOSE OF DELIVERING ALCOHOL BEVERAGES.

(b) MAY, THROUGH ITS EMPLOYEES OR INDEPENDENT CONTRACTORS, DELIVER ALCOHOL BEVERAGES FOR LICENSEES UNDER THE PROVISIONS OF SECTION 44-3-911, WHICH MAY INCLUDE ALCOHOL BEVERAGES BY THE DRINK. THE COMPLETION OF THE CERTIFICATION PROGRAM REQUIRED BY SUBSECTION (3)(B) OF THIS SECTION SHALL SATISFY THE REQUIREMENTS FOR SUBSECTION 44-3-911(3)(D).

(c) MAY USE ITS OWN EMPLOYEES OR INDEPENDENT CONTRACTORS WHO ARE AT LEAST TWENTY-ONE YEARS OF AGE TO DELIVER SUCH ALCOHOL BEVERAGES, PROVIDED ALL DELIVERY AGENTS COMPLETE A CERTIFICATION PROGRAM THAT MEETS THE STANDARDS ESTABLISHED BY THE STATE LICENSING AUTHORITY.

(d) MAY FACILITATE ORDERS BY TELEPHONE, INTERNET, OR BY OTHER ELECTRONIC MEANS FOR THE SALE AND DELIVERY OF ALCOHOL BEVERAGES UNDER THIS SECTION. THE FULL AMOUNT OF EACH ORDER SHALL BE HANDLED IN A MANNER THAT GIVES THE LICENSEE CONTROL OVER THE ULTIMATE RECEIPT OF THE PAYMENT FROM THE CONSUMER.

(e) MAY DELIVER ALCOHOL BEVERAGES ANY TIME DURING WHICH THE LICENSEE IS LAWFULLY ALLOWED TO SELL ALCOHOL BEVERAGES.

(f) SHALL VERIFY, AT THE TIME OF DELIVERY, IN ACCORDANCE WITH SUBSECTION 44-3-901(11), THAT THE PERSON RECEIVING THE DELIVERY OF MALT, VINOUS, OR SPIRITUOUS LIQUORS IS AT LEAST TWENTY-ONE YEARS OF AGE.

(g) SHALL REFUSE TO DELIVER ALCOHOL BEVERAGES IF THE RECIPIENT IS UNDER TWENTY-ONE YEARS OF AGE, APPEARS INTOXICATED, OR FAILS TO PROVIDE PROOF OF IDENTIFICATION.

(h) MAY NOT DELIVER TO ANY LOCATION LICENSED PURSUANT TO THIS ARTICLE 3, OR ARTICLE 4, OR ARTICLE 5 OF THIS TITLE 44.

(i) SHALL BE DEEMED TO HAVE CONSENTED TO THE JURISDICTION OF THE STATE LICENSING AUTHORITY OR ANY LAW ENFORCEMENT AGENCY AND THE COLORADO COURTS CONCERNING ENFORCEMENT OF THIS SECTION AND ANY RELATED LAWS OR RULES.

(5) A DELIVERY SERVICE PERMITTEE MAY RENEW ITS PERMIT WITH THE STATE LICENSING AUTHORITY BY MAINTAINING ALL QUALIFICATIONS AND PAYING ANNUALLY A RENEWAL FEE ESTABLISHED BY THE STATE LICENSING AUTHORITY.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A TECHNOLOGY SERVICES COMPANY TO OBTAIN A DELIVERY SERVICE PERMIT FOR PROVIDING SOFTWARE OR A DIGITAL NETWORK APPLICATION THAT CONNECTS CONSUMERS AND LICENSED RETAILERS FOR THE DELIVERY OF ALCOHOL BEVERAGES FROM THE LICENSED RETAILER BY EMPLOYEES OR OTHER DELIVERY SERVICE PROVIDERS OF THE LICENSED RETAILER. HOWEVER, THE ACT OF CONNECTING CONSUMERS TO LICENSED RETAILERS SHALL SERVE TO GRANT JURISDICTION TO THE STATE OF COLORADO.

(7) THERE SHALL BE NO LIMIT TO THE PERCENTAGE OF A LICENSEE'S GROSS ANNUAL REVENUES FROM TOTAL SALES OF ALCOHOL BEVERAGES THAT THE LICENSEE MAY DERIVE FROM ALCOHOL BEVERAGE DELIVERIES.

(8) THE STATE LICENSING AUTHORITY MAY ENFORCE THE REQUIREMENTS OF THIS SECTION BY THE SAME ADMINISTRATIVE PROCEEDINGS THAT APPLY TO ALCOHOL BEVERAGE LICENSES OR PERMITS, INCLUDING WITHOUT LIMITATION ANY DISCIPLINARY ACTION APPLICABLE TO THE SELLING LICENSEE, OR THE DELIVERY SERVICE PERMITTEE RESULTING FROM ANY UNLAWFUL SALE.

(9) THE STATE LICENSING AUTHORITY MAY ENFORCE THE REQUIREMENTS OF THIS SECTION AGAINST THE SELLING LICENSEE, DELIVERY SERVICE PERMITTEE, AND ANY EMPLOYEE OR INDEPENDENT CONTRACTOR OF SUCH, IRRESPECTIVE OF THE STATUS OF ANY DELIVERY SERVICE PERSONNEL AS AN INDEPENDENT CONTRACTOR OR EMPLOYEE. IF A LICENSEE IS ALSO A DELIVERY PERMITTEE, A VIOLATION OF THIS ARTICLE 3 OR ARTICLE 4 OR 5 OF THIS TITLE 44 BY ITS EMPLOYEE OR INDEPENDENT CONTRACTOR DURING DELIVERY WILL SUBJECT BOTH THE RETAILER'S PERMIT AND DELIVERY SERVICE PERMIT TO DISCIPLINARY ACTION FOR THE VIOLATION. DELIVERY TO A MINOR SHALL BE TREATED AS FURNISHING TO A MINOR AND SHALL RESULT IN ANY APPLICABLE DISCIPLINARY ACTION.

(10) THE STATE LICENSING AUTHORITY SHALL PROMULGATE RULES AS NECESSARY FOR THE PROPER DELIVERY OF ALCOHOL BEVERAGES AS PERMITTED BY THIS SECTION 911.5.

SECTION 3: In Colorado Revised Statutes, 44-3-409, **repeal** (3)(a)(II) and (IV) as follows:

44-3-409. Retail liquor store license - rules.

~~(II) The delivery is made by an employee of the licensed retail liquor store who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The retail liquor store derives no more than fifty percent of its gross annual revenues from total sales of malt, vinous, and spirituous liquors from the sale of malt, vinous, and spirituous liquors that the retail liquor store delivers.~~

SECTION 4: In Colorado Revised Statutes, 44-3-410, **repeal** (3)(a)(II) and (IV) as follows:

44-3-410. Liquor-licensed drugstore license - multiple licenses permitted - requirements - rules.

~~(II) The delivery is made by an employee of the liquor-licensed drugstore who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The liquor-licensed drugstore derives no more than fifty percent of its gross annual revenues from total sales of malt, vinous, and spirituous liquors from the sale of malt, vinous, and spirituous liquors that the liquor-licensed drugstore delivers.~~

SECTION 5: In Colorado Revised Statutes, 44-3-911, **repeal** (2)(c), (3)(b), and (7) as follows:

44-3-911. Takeout and delivery of alcohol beverages - permit - on-premises consumption licenses - requirements and limitations - rules - definition - repeal.

~~(c) Derive no more than fifty percent of its gross annual revenues from total sales of food and alcohol beverages from the sale of alcohol beverages through takeout orders and that the licensee delivers; except that:~~

~~(I) This subsection (2)(c) does not apply if the governor has declared a disaster emergency under part 7 of article 33.5 of title 24; or~~

~~(II) This subsection (2)(c) does not apply to a sales room at a premises licensed under section 44-3-402 or 44-3-407; and~~

~~(3) (b) Be an employee of the licensee who is twenty one years of age or older;~~

~~(7) This section is repealed, effective July 1, 2025.~~

SECTION 6: In Colorado Revised Statutes, 44-4-107 **repeal** (6)(a)(II) and (IV) as follows:

44-4-107. Local licensing authority - application - fees - definitions - rules.

~~(II) The delivery is made by an employee of the fermented malt beverage retailer who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The fermented malt beverage retailer derives no more than fifty percent of its gross annual revenues from total sales of fermented malt beverages from the sale of fermented malt beverages that the fermented malt beverage retailer delivers.~~

SECTION 7. In Colorado Revised Statutes, 44-4-107 **repeal** (6)(a)(II) and (IV) as follows:

44-4-107. Local licensing authority - application - fees - definitions - rules.

~~(II) The delivery is made by an employee of the fermented malt beverage retailer who is at least twenty one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;~~

~~(IV) The fermented malt beverage retailer derives no more than fifty percent of its gross annual revenues from total sales of fermented malt beverages from the sale of fermented malt beverages that the fermented malt beverage retailer delivers.~~

SECTION 8 Effective date. This measure shall go into effect on January 1, 2023.