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Craft Beer Wars: The Impact of Senate Bill 197 and the Expansion of Colorado Liquor Licenses

CRAFT BEER WARS: THE IMPACT OF SENATE BILL 197 AND THE EXPANSION OF COLORADO LIQUOR LICENSES

I. INTRODUCTION

Colorado is known for many things, including world-class skiing, the Super Bowl Champion Denver Broncos, and pioneering marijuana laws. But as any good Coloradan or lucky visitor knows, the state is also home to one of the most vibrant craft beer scenes in the country. Many Colorado residents look forward to enjoying their favorite local brews almost as much as they look forward to the start of ski season, and for years small independently owned liquor stores have been the only place to go in Colorado (with a few exceptions) to purchase craft beers and other alcoholic beverages.¹

But on June 10, 2016, Colorado Governor John Hickenlooper signed into law a controversial bill that will gradually phase out the limitations placed on the ability of large grocery and drugstore chains (collectively “grocery stores”) to acquire liquor licenses to sell full strength beer, wine, and spirits. The new law, introduced by the Colorado legislature as Senate Bill 197, represents a compromise between the interests of large grocery store chains who want in on the revenue from alcohol sales and the interests of small independent liquor store owners who fear the expanded availability of liquor licenses in Colorado will drive them out of business.²

Although the decision to pass the law remains hotly debated, Senate Bill 197 will benefit Colorado businesses and Colorado consumers in the long run while ameliorating the negative impact that independent liquor stores would face if grocery stores were allowed to begin selling alcohol at numerous locations overnight. With the start of 2017, the first of many changes imposed by Senate Bill 197 have taken effect, and Coloradans are eagerly waiting to see how things play out.³

II. LIQUOR LAWS IN COLORADO PRIOR TO SENATE BILL 197

Prior to the enactment of Senate Bill 197 there had not been any substantial changes to Colorado liquor laws governing the distribution of

1. Jane Firstenfeld, *Colorado Gets Liberal With Liquor Law*, WINES & VINES (June 17, 2016), <https://www.winesandvines.com/template.cfm?section=news&content=170288> (stating “Current law permits grocery and drug store chains a single liquor license for the entire state. That means that in all of Colorado, only one Walmart, Safeway, Rite Aid or Target location was permitted to sell alcoholic beverages”).

2. *Id.*

3. Lisa Wirthman, *5 Things You Need to Know About the New Alcohol Sales Law*, 5280 MAGAZINE (July 1, 2016, 1:30 PM), <http://www.5280.com/news/digital/2016/07/5-things-you-need-know-about-new-alcohol-sales-law>.

liquor licenses since the repeal of Prohibition in 1933.⁴ Colorado law allowed grocery store chains to retain only one drugstore liquor license in the entire state.⁵ This meant that in all of Colorado, only one store location of companies such as King Soopers and Safeway was allowed to sell full-strength beer, wine, and spirits.⁶ All store locations of such companies other than the lone licensed store were relegated to carrying and selling what is commonly known as “near beer,” or beer with an alcohol content of 3.2% or lower.

III. LIQUOR LAWS IN COLORADO AFTER SENATE BILL 197

The implementation of Senate Bill 197 initiated a chain of events that over the course of the next 20 years expands the number of drugstore liquor licenses available to grocery stores and sets specific requirements for the acquisition of each additional liquor license.⁷ As of January 1, 2017, and continuing until January 1, 2022, grocery stores can now apply for up to four additional drugstore liquor licenses—bringing the maximum number available to such entities to five throughout the state of Colorado.⁸ By January 1, 2027, grocery stores will be allowed up to eight total drugstore liquor licenses.⁹ The maximum number of drugstore liquor licenses allowed then increases again to a total of thirteen by January 1, 2032, and becomes unlimited after January 1, 2037.¹⁰

In addition to capping the number of drugstore liquor licenses available to grocery store chains, the new law also places restrictions on a grocery store’s ability to obtain the additional licenses.¹¹ Under the new law, grocery store locations seeking a drugstore liquor license must buy out the liquor license of any store with a *retail* liquor license located within 1,500 feet of the store.¹² For municipalities with a population of 10,000 people or fewer, that distance extends to any retail liquor licensed establishment within 3,000 feet of the applying store.¹³ For traditional liquor stores, convenience stores, and grocery stores without pharmacies (non-drugstores), such as Trader Joe’s, the law is different and requires such businesses to apply for a retail liquor license as opposed to a drugstore liquor license.¹⁴ These retail liquor licenses carry the same buy-out

4. Ellis Arnold, *Hickenlooper Signs into Law Biggest Change to Alcohol Sales in Colorado Since Prohibition*, DENVER POST (June 10, 2016, 2:30PM), <http://www.denverpost.com/2016/06/10/governor-bill-to-allow-grocery-stores-to-sell-wine-beer-liquor/>.

5. Firstenfeld, *supra* note 1.

6. Firstenfeld, *supra* note 1.

7. Colo. Rev. Stat. §12-47-408 (2016).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Colo. Rev. Stat. §12-47-408(1)(a)(I)(A) (2016).

13. Colo. Rev. Stat. §12-47-408(1)(a)(I)(A)(B) (2016).

14. Colo. Rev. Stat. §12-47-407 (West 2016); Nick Coltrain, *4 Things to Know About Colorado’s New Liquor Laws*, COLORADOAN (Jan. 6, 2017 9:20AM).

provisions as those required for drugstore liquor licenses, but allow for fewer total licenses to be held by a single entity.¹⁵ With the passing of the new law, individual non-drugstore entities may now own up to two retail liquor licenses statewide, and that number increases to three total by 2022 and four total by 2027.¹⁶

IV. IMPACT OF SENATE BILL 197 ON COLORADO BUSINESSES

The decision to allow large grocery store chains to obtain additional drugstore liquor licenses has been hotly contested and is often portrayed as a battle between large corporations and Colorado small business owners. This comes as no surprise given the immense demand for craft beer in Colorado and the economic benefits that come with it. When compared with the rest of the United States, Colorado's craft beer industry "ranks first for state economic contribution per capita, second in the average amount of beer consumed by drinking-age adults (13.6 gallons annually), and third in barrels of craft beer produced (1.7 million annually)."¹⁷

With revenue from craft beer sales and other alcohol on the line, it is easy to see why the passing of Senate Bill 197 has drawn such controversy. Those who want to see Colorado's craft beer and other alcohol on the shelves at large grocery stores claim that allowing such organizations to sell alcohol will give consumers more access to Colorado's craft beer, drive down prices, create more exposure for craft brewers, and create an overall positive impact for Colorado's economy.¹⁸ On the flip side, many independent liquor store owners and proponents of small business claim that the sale of alcohol at large grocery stores will hurt craft breweries because large grocery store chains would only stock better known craft beers to the detriment of smaller brewers.¹⁹ In addition, opponents of allowing grocery stores to sell alcohol assert that the expansion of drugstore liquor licenses will ultimately drive many small independently owned retail liquor stores out of business.²⁰

A recent study²¹ conducted by Jack Strauss, an economics professor at the University of Denver's Daniels School of Business supports the

<http://www.coloradoan.com/story/news/2017/01/06/4-things-know-colorados-new-liquor-laws/96154700/>.

15. Coltrain, *supra* note 14.

16. Colo. Rev. Stat. §12-47-407; Coltrain, *supra* note 14.

17. Alan Gathright, *Ad Says Beer and Wine in Grocery Stores is "Good for Everybody,"* POLITIFACT COLORADO (April 1, 2016 4:52PM) <http://www.politifact.com/colorado/statements/2016/apr/01/your-choice-colorado/ad-says-beer-and-wine-grocery-stores-good-everybod/> (citing Brewers Association, State Craft Beer Stats, <https://www.brewersassociation.org/statistics/by-state/>).

18. *Id.*

19. *Id.*

20. *Id.*

21. Disclaimer: King Soopers, Walmart, and Safeway funded the study prior to the enactment of Senate Bill 197. At the time the study was conducted, the above named corporations were consid-

notion that craft beer in grocery stores is a positive development for Colorado's economy.²² According to Strauss, the limited competition created by Colorado's laws favoring small retail liquor stores causes consumers to overpay for beer and wine and hurts overall sales of Colorado craft beer.²³ Putting aside the provisions of Senate Bill 197 and its incremental rollout of drugstore liquor licenses, Strauss estimates that if large grocery stores were allowed to sell alcohol freely in Colorado the economic implications would be overwhelmingly positive. Strauss claims the availability of alcohol in grocery stores would reduce beer and wine prices by 18%, facilitate the creation of 200 new grocery stores that can provide up to 17,000 new jobs, and boost craft beer sales by \$125 million in Colorado.²⁴

Furthermore, Strauss claims that Colorado's independent liquor store owners will not suffer drastically from the expansion of alcohol sales into grocery stores as some have speculated.²⁵ To support this finding, Strauss points to the continued success of retail liquor stores in states such as Oregon and Washington that allow grocery stores to sell alcohol. As an example, Strauss provides data that shows how retail liquor stores in Seattle, a city with similar demographics to Denver, have 14% more sales per capita when compared to retail liquor stores located in Denver despite the open sale of alcohol in grocery stores in Seattle.²⁶

But opponents of the expansion of craft beer and other alcohol into grocery stores disagree with the findings of Strauss's study, which was funded by King Soopers, Walmart, and Safeway.²⁷ Instead, these opponents cite to a 2011 study²⁸ conducted by Summit Economics that found the ability of grocery store chains to sell alcohol would have dire consequences for Colorado's small independently owned retail liquor stores.²⁹ According to the study, if grocery stores were allowed to sell alcohol freely in Colorado, within five years 700 (42%) of Colorado's roughly 1,650 liquor stores would close and 10,000 liquor store jobs would be lost.³⁰

Both the study conducted by Professor Strauss and the study conducted by Summit Economics reflect estimates based upon circumstanc-

ering placing a ballot measure in the upcoming 2016 Colorado elections that would legalize the sale of alcohol in Colorado grocery stores.

22. JACK STRAUSS, *THE ECONOMIC IMPACT OF ALLOWING ALCOHOL IN RETAIL STORES* 1, (2015).

23. *Id.*

24. *Id.* at 2–3.

25. *Id.* at 3–4.

26. *Id.*

27. Gathright, *supra* note 17.

28. Disclaimer: The study was funded by the Colorado Licensed Beverage Association and other groups representing independent liquor stores.

29. Gathright, *supra* note 17.

30. Gathright, *supra* note 17.

es in which grocery stores are free to acquire numerous liquor licenses with limited restrictions. However, Senate Bill 197 substantially limits the number of drugstore liquor licenses available to Colorado grocery store chains and places certain proximity restrictions on the acquisition of those licenses. Given this reality, it is impossible to determine whether either study is more accurate than the other.

V. CONCLUSION

The limited number of drugstore liquor licenses that can be legally owned by a single entity, combined with the proximity restrictions placed on the acquisition of those new liquor licenses suggest that the compromise reached by lawmakers in Senate Bill 197 will benefit Colorado businesses and Coloradans in the long run. Senate Bill 197 controls the expansion of alcohol sales in Colorado in a manner that expands consumer choice of craft beer and other alcohol while still protecting the interests of many independent Colorado liquor store owners.

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