

<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p> <hr/> <p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p> <hr/> <p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiatives 2015-2016 #60 ("Food Store License")</p> <p>Petitioner: Jeanne M. McEvoy v. Respondents: Blake Harrison and John Grayson Robinson</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DAVID BLAKE; and SHARON EUBANKS</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner:</p> <p>Mark G. Grueskin, #14621 Megan M. Downing, #36855 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rklawpc.com megan@rklawpc.com</p>	<p>Case No. _____</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015- 2016 #60 ("FOOD STORE LICENSE")</p>	

Jeanne M. McEvoy (“Petitioner”), registered elector of the State of Colorado, through undersigned counsel, respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the actions of the Title Setting Board with respect to the title, ballot title, and submission clause set for Initiative 2015-2016 #60 (“Food Store License”).

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #60

Blake Harrison and John Grayson Robinson (hereafter “Proponents”) proposed Initiative 2015-2016 #60 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted final versions of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board, of which the Secretary or his designee is a member.

A Title Board hearing was held on January 6, 2016 to establish the single subjects of the Proposed Initiative and set their titles. On January 13, 2016, Petitioner filed a Motion for Rehearing, alleging that the titles set were prejudicial, incomplete, and misleading and failed to reflect the complete intent of the Proponents and the central features of the Proposed Initiative. The rehearing was

held on January 20, 2016, at which time the Title Board denied portions of the Motion for Rehearing as it pertains to this appeal.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motions for Rehearing with the Title Board. *See* C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motions for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) the draft, amended, and final versions of the initiatives filed by the Proponents; (2) the original ballot titles set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the rulings on the Motion for Rehearing as reflected by the titles and ballot title and submission clauses set by the Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motions for Rehearing. Consequently, this matter is properly before this Court.

GROUND'S FOR APPEAL

In violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading, does not fairly and correctly express the true meaning of the Proposed Initiatives. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. The title describes the single subject of the measure as authorizing the sale of "full strength beer and wine" in food stores, even though that phrase appears nowhere in the initiative itself and thus does not accurately or fairly describe the text to be considered by voters.
2. The title's use of "full strength beer and wine" is a political catch phrase, used by the proponents at campaign events and now in the title for the sole purpose of attracting support to their measure.
3. The title fails to inform voters that applicants for a food store license who already hold a different license (sale of 3.2% beer for off-premises consumption) are not subject to the commonly understood, mandatory showing that the new license approval meets the needs and desires of the inhabitants of the neighborhood in which the new license is to be located.

PRAYER FOR RELIEF

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the titles set for the Proposed Initiative are neither fair nor accurate and remand the Proposed Initiative to the Title Board with instructions to redraft the title to accurately and fairly represent the text of the Proposed Initiatives.

Respectfully submitted this 27th day of January, 2016.

/s/ Mark Grueskin

Mark G. Grueskin, #14621

Megan M. Downing, #36855

RECHT KORNFELD, P.C.

1600 Stout Street, Suite 1000

Denver, CO 80202

Phone: 303-573-1900

Facsimile: 303-446-9400

Email: mark@rklawpc.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Erin Holweger, hereby affirm that a true and accurate copy of the **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2015-2016 #60 ("FOOD STORE LICENSE")** was sent this day, January 27, 2016, via first class U.S. mail, postage pre-paid to the proponents and their counsel and to counsel for the Title Board at:

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203

Thomas Rogers III, Esq.
Hermine Kallman, Esq.
Lewis Roca Rothgerber
1200 Seventeenth Street
Suite 3000
Denver, CO 80202





DATE FILED: January 27, 2016 1:46 PM

STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

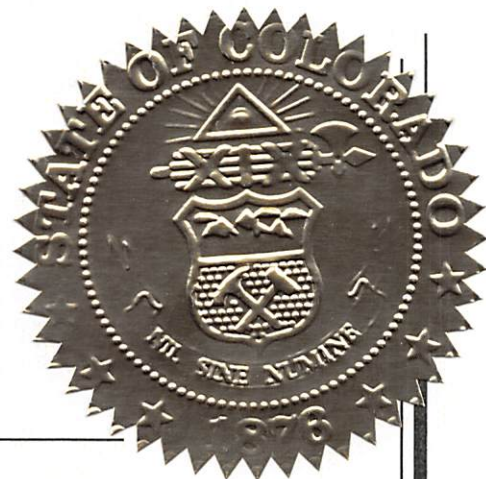
I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #60 'Food Store License'"

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 21st day of January, 2016.



SECRETARY OF STATE



Ballot Title Setting Board

Proposed Initiative 2015-2016 #60¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the sale of full-strength beer and wine by food stores, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income, excluding income from fuel products and lottery ticket sales, from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; and prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the sale of full-strength beer and wine by food stores, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income, excluding income from fuel products and lottery ticket sales, from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; and prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age?

Hearing January 6, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:15 p.m.

Hearing reopened 2:20 p.m.; Board made additional changes to titles.

Hearing adjourned 2:21 p.m.

¹ Unofficially captioned “Food Store License” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Rehearing January 20, 2016:

Motion for rehearing denied except to the extent that the Board made changes to the titles.

Hearing adjourned 9:54 a.m.

S. WARD
1:20 P.M.

RECEIVED

JAN 13 2016

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Colorado Secretary of State

Jeanne M. McEvoy, Objector

vs.

Blake Harrison & John Grayson Robinson, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2015-2016 #60

Jeanne M. McEvoy, through legal counsel, Recht Kornfeld P.C., objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-16 #60 ("Food Store License").

I. The Title Board set a title for Initiative 2015-16 #60 on January 6, 2016.

At the hearing held in connection with this proposed initiative, the Board designated and fixed the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes concerning the sale of full-strength beer and wine by food stores, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; and prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age?

II. The title set for #60 is misleading and prejudicial.

A. The title should not include the phrase, "full-strength beer and wine."

1. "Full-strength beer and wine" is a contrived phrase.

For the title setting process, the Proponents invented the phrase "full-strength beer and wine." The Board erred in agreeing to use of this phrase anywhere in the titles.

This phrase has no specific meaning. It is not used in the initiative itself. The titles' statement that full-strength beer and wine "commonly refer[]" to malt and vinous liquors is without foundation. As such, it undermines voter understanding and should be excluded from the title.

2. *"Full-strength beer and wine" is a political catch phrase.*

"Full-strength beer and wine" is a political catch phrase and is thus prohibited from being included in the title. A catch phrase consists of "words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated constitutional amendment." *In the Matter of the Proposed Initiative on Casino Gaming*, 649 P.2d 303, 308 (Colo.1982). Evaluating whether particular words constitute a slogan or catch phrase must be made "in the context of contemporary public debate." *In the Matter of the Proposed Initiative on Workers Compensation*, 850 P.2d 144, 147 (Colo.1993).

When Proponents announced this measure last year, their speakers appeared before two oversized campaign banners that read:

- "42 States Sell Full-Strength Beer or Wine in Grocery Stores. Why Not Colorado?" (see Exhibit A) (emphasis added); and
- "Want to Buy Wine and Full-Strength Beer?" (see Exhibit B) (emphasis added).

The two were placed so that they could be displayed in news stories, and they were. (See Exhibit C.) There can be no question that Proponents seek to make "full-strength beer and wine" a prominent part of contemporary political discourse over this issue.

Literally and figuratively, this invented phrase is the backdrop of the Proponents' campaign, and now they seek to intertwine their political rhetoric with the ballot title. As the Supreme Court found in connection with other phrases deemed to be prohibited political catch phrases in ballot titles, "We have little difficulty concluding that [the challenged wording] could form the basis of a slogan for use by those campaigning in favor of the Initiative." *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to an Initiative Designated "Governmental Business,"* 875 P.2d 761, 876 (Colo. 1994). Clearly, "full-strength beer and wine" is *already* the "basis of a slogan" to be used by those who are conducting *this campaign*. A phrase that does not even exist in the initiative itself, "full-strength beer and wine" should not be part of the ballot title because it functions as a political catch phrase for Proponents.

In *Coors Brewing Co. v. Rubin, supra*, the Court addressed whether several phrases – including "full-strength" – could be used for purposes of marketing beer. 514 U.S. at 481 (citing 27 C.F.R. § 7.29(f) (1994)). The use of such phrases in advertising was deemed to be even "more influential" than its use on product labels placed on products at the point of sale. *Id.* at 488. Likewise, the use of this phrase in the ballot title is intended to influence voters without regard for its contribution to substantive understanding of the initiative. Thus, it violates the prohibition on the inclusion of political catch phrases in ballot titles.

3. *The Board is inconsistent in using non-textual references in the titles.*

The Board approved the use of the phrase "full-strength beer and wine" but does not provide the clarity needed to explain "food stores," other than to state the minimum percentage of food sales for such an entity to qualify for this status. If it was consistent in using non-textual

descriptors, the Board would include in the 25% food sales clause, “which includes but is not limited to all grocery stores and most convenience stores.” Both types of stores qualify for a food store license, based on the express statements of the Proponents’ counsel during Title Board hearings on Initiatives #51 and #52. If the Board is, in fact, going to substantively deviate from the text of the measure, it should at least be consistent in doing so, as long as such non-textual references reflect the announced intent of the Proponents.

B. The phrase “allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses” is confusing and misleading.

A variety of licenses granted under the Colorado Liquor Code are referred to as “retail” establishments. For instance, brew pubs, distillery pubs, gaming taverns, liquor stores, and vintner’s restaurants are all “retail” operations as a matter of law. C.R.S. §§ 12-47-103(4) (“‘brew pub’ means a retail establishment...”), (7.3)(“‘distillery pub’ means a retail establishment...”), (31)(“‘Retail liquor store’ means an establishment...”), (39.5)(“‘vintner’s restaurant’ means a retail establishment...”); -414(“A retail gaming tavern license shall be issued to persons who are licensed pursuant to section 12-47.1-501(1)(c)...”). Yet, none of these “retail” licenses is covered by the provisions in this initiative.

Instead, this measure applies solely to multiple ownership interests in “retail businesses licensed pursuant to this section.” Proposed C.R.S. § 12-47-425(3). The vagueness of the title’s terminology by referring to “certain retail liquor licenses” does not communicate the specific exception for multiple ownership interests only by commonly owned operations such as Walmart, Costco, King Soopers, Safeway, 7-11, or any of a variety of oil company owned or other multi-outlet convenience stores.

C. The title fails to state that food store licensees must establish needs and desires of local inhabitants only if local licensing authorities require it.

Petitioning to determine whether a community wants the licensed premises to offer regulated products is the most commonly understood aspect of the liquor licensing process. To affected neighborhoods often sign petitions to indicate their support of or opposition to the proposed license. *See, e.g., Kornfeld v. Yost*, 519 P.2d 219, 220 (Colo. App. 1976) (1,300 signatures on petitions in favor of and opposed to license), *rev’d on other grounds*, 567 P.2d 383 (Colo. 1977); *Bd. of Cty. Com’rs v. Whale*, 154 Colo. 271, 272 (1964) (969 signatures on petitions in favor of and opposed to license); *Schooley v. Steinberg*, 365 P.2d 245, 246 (Colo. 1961) (1,210 signatures on petitions in favor and opposed to license).

Such a showing of the needs and desires of the neighborhood can be sufficient to make a *prima facie* case for the granting of a liquor license. *Bd. of Cty. Com’rs of Adams Cty. v. Nat’l Tea Co.*, 367 P.2d 909, 910 (Colo. 1961) (granting of license was warranted where 1,230 residents, business owners, and employees of the neighborhood signed petitions in support of the license, as did 227 non-residents; one competitor opposed the license). Thus, the recognized legal impact of such a demonstration establishes that the ability of a local licensing authority to bypass such requirement is a central feature that must be addressed in the title.

Voters would likely be surprised to discover that a routine requirement for new licenses, applicable across the various categories of licenses to be granted, will become optional for this new class of license. Given the wide breadth of licensing activity (all grocery stores and all convenience stores are eligible licensees, as stated by proponents at the December 2, 2015 hearing), the significance of this change is statewide, affecting every neighborhood that has such a retail outlet in its midst. As a result, the citizens' voice in the licensing process could be silenced if permitted at the local level. Where a ballot initiative deprives citizens of the right to engage in a central democratic right such as the petitioning of government, it is certainly a notable aspect of the measure that requires voter awareness. *See Evans v. Romer*, 854 P.2d 1270, 1282 (Colo.1993).

This conclusion is supported by the Supreme Court's decision on a comparable measure. There, where grocery stores were to operate under the same requirement for a demonstration of needs and wants of the neighborhood as applied to other liquor licensees, the ballot title stated that the new class of license was subject to those requirements. *Table Wine in Grocery Stores*, *supra*, 646 P.2d at 922. However, here, there is a deviation from those requirements, and the title is silent on the issue. That silence is error that can be corrected by a plain statement that food store licensees may not be required to make such showings, based on the decision of the local licensing authority.

D. The title fails to state that the measure sets a presumptive and conclusive test for a licensee's reputation/character/record if the applicant has an unexpired fermented malt beverage retailer license.

For the reasons stated above, the initiative creates a new – and lesser – standard for establishing a licensee's reputation, character, and record, namely by referring only to its existing fermented malt beverage retailer license and the absence of an administrative or criminal prosecution against the applicant. This change in the law deserves mention in the ballot title.

Currently, there is no such limitation in the law. C.R.S. § 12-47-307(1(a)(II)-(V)). The law requires that an applicant be "of good character and reputation satisfactory to the respective licensing authorities." *Id.* The ability of local officials to exercise discretion in determining whether to license persons who acquire and resell alcoholic beverages is an important element of current law. That discretion is eliminated by the provision in question. A title that informs voters that their licensing officials will be unable to make character and reputation assessments themselves is a central feature of the measure and should be disclosed in the titles.

For instance, the failure to be truthful in an application is sufficient reason for a licensing authority to deny a license on this ground. *See Fueston v. City of Colo. Springs*, 713 P.2d 1323, 1326 (Colo. App. 1985) (misstatements made to licensing officials in other states were adequate grounds for license denial); *see also MacLarty v. Whiteford*, 496 P.2d 1071, 1072-73 (Colo. App. 1972) (police chief made inquiries for licensing authority about applicant's character and reputation). The local authority's total inability to consider the veracity and licensing record of companies that seek licenses in various jurisdictions is central to this measure. The Board should correct the title to reflect this aspect of the measure.

E. The title should reflect the imposition of a fee for this license.

Where a new license is created, it is appropriate to inform voters of the fee associated with such license. Where the Supreme Court has rewritten ballot titles regarding licensed activities, it included specific reference to such fees and did so of its own accord. *Dye v. Baker*, 354 P.2d 498, 460-61 (Colo. 1960) (to titles for measure legalizing certain gambling activities and licensing in connection therewith, adding language about “fees for the licenses provided for and disposition of the fees realized from licensed operations”). The Board should follow the Court’s lead on this issue and add language to reflect the imposition of the fee on food store licensees.

F. The title’s reference to “annual gross income” in the definition of “food store” is incomplete and incorrect.

The title states that a food store is defined “as an establishment that earns at least 25% of its annual gross income from the sale of food.” The measure states that an establishment is a “food store” if it derives “a minimum of 25% of the gross annual income from its total sales, **excluding fuel products as defined at section 8-20-201(2) and lottery ticket sales from such total.**” Proposed C.R.S. § 12-47-103(8.5) (emphasis added). These statements are inconsistent and misleading.

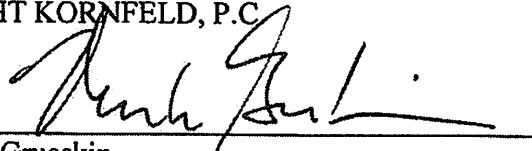
The most recent industry statistics indicate that fuel sales account for 69.2% of convenience store income. Of the remaining 30.8% of sales, tobacco accounted for 35.9% and various forms of “food” accounted for 45.4%.¹

Thus, once fuel sales are excluded, food sales are about 14% of convenience store gross revenue (30.8% x 45.4% = 13.98%). However, the relatively minor nature of food sales to a convenience store (i.e., a potential food store licensee) is hidden from voters, due to the existing inaccurate wording of the title, which therefore must be corrected.

WHEREFORE, the titles set January 6, 2016 should be reversed or modified to account for the legal insufficiencies highlighted in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 13th day of January, 2016.

RECHT KORNFELD, P.C.



Mark Grueskin
Megan Downing
1600 Stout Street, Suite 1000
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com; megan@rklawpc.com

¹ <http://tinyurl.com/2014cstore> (last viewed Jan. 13, 2016).

Objector's Address:

Jeanne M. McEvoy
10451 Truckee, Unit #E
Commerce City, CO 80022


CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2015-2016 #60** was sent this day, January 13, 2016 via first class U.S. mail, postage pre-paid to the proponents and their counsel at:

Blake Harrison
8243 E. 24th Drive
Denver, CO 80238

John Grayson Robinson
23752 E. Hinsdale Place
Aurora, CO 80016

Thomas Rogers III, Esq.
Hermine Kallman, Esq.
Lewis Roca Rothgerber
1200 Seventeenth Street
Suite 3000
Denver, CO 80202

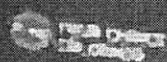

Erin Holweger

42 STATES SELL
FULL-STRENGTH
BEER OR WINE
IN GROCERY STORES



WHY NOT

LEARN WHY AT



YourChoiceColorado.org

EXHIBIT

A



EXHIBIT
B

Ballot Title Setting Board

Proposed Initiative 2015-2016 #60¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning the sale of full-strength beer and wine by food stores, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; and prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning the sale of full-strength beer and wine by food stores, and, in connection therewith, creating a license allowing food stores to sell malt and vinous liquors, commonly referred to as full-strength beer and wine, for off-premises consumption; defining a food store as an establishment that earns at least 25% of its annual gross income from the sale of food; allowing a food store that holds a valid license to sell fermented malt beverages, commonly referred to as 3.2% beer, to apply to become a food store licensee; allowing the ownership of multiple food store licenses, including by the owners of certain retail liquor licenses; and prohibiting the sale of full-strength beer or wine by a food store employee who is under twenty-one years of age?

Hearing January 6, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 2:15 p.m.

Hearing reopened 2:20 p.m.; Board made additional changes to titles.

Hearing adjourned 2:21 p.m.

¹ Unofficially captioned “Food Store License” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

RECEIVED

Proposed Initiative 2015-16 #60 (final)

DEC 22 2015

S. WARD
2:14 P.M.

ELECTIONS
SECRETARY OF STATE
Change to Colorado Revised Statutes Permitting Sale of Beer and Wine by Food Stores

Text of Measure:

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

SECTION 1. In Colorado Revised Statutes, **add** 12-47-425 as follows:

12-47-425. FOOD STORE LICENSE. (1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE, A FOOD STORE LICENSE MAY BE ISSUED TO FOOD STORES SELLING ONLY MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY FOOD STORE LICENSED UNDER THIS SECTION TO SELL MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE.

(3) NOTWITHSTANDING ANY PROVISIONS OF THIS ARTICLE TO THE CONTRARY, NO OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS ARTICLE SHALL BE PROHIBITED FROM CONDUCTING, OWNING EITHER IN WHOLE OR IN PART, OR FROM BEING DIRECTLY OR INDIRECTLY INTERESTED IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS SECTION.

(4) A LICENSEE UNDER SECTION 12-46-104(1)(c) WITH A VALID FERMENTED MALT BEVERAGE LICENSE IN EFFECT ON JULY 1, 2017, MAY APPLY TO A LOCAL LICENSING AUTHORITY FOR A FOOD STORE LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4) FOR A FOOD STORE LICENSE, THE LOCAL LICENSING AUTHORITY MAY CONSIDER AS PROVEN THE SATISFACTORY NATURE OF THE CHARACTER, RECORD, OR REPUTATION OF THE APPLICANT IF, AT THE TIME OF THE FILING OF THE APPLICATION, THE APPLICANT MAINTAINS A VALID UNEXPIRED FERMENTED MALT BEVERAGE RETAILER LICENSE, AND NO ADMINISTRATIVE OR CRIMINAL PROSECUTION IS PENDING AGAINST THE APPLICANT. IN CONSIDERING ANY APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD AND THE DESIRES OF ITS ADULT INHABITANTS PURSUANT TO SECTION 12-47-312 IN MAKING A DETERMINATION ON THE ISSUANCE OF A FOOD STORE LICENSE.

(5) THE STATE LICENSING AUTHORITY SHALL MAKE GENERAL RULES AND REGULATIONS AND SPECIAL RULINGS AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 12-47-103, **add** (8.5) as follows:

(8.5) "FOOD STORE" MEANS AN ESTABLISHMENT, OTHER THAN A RESTAURANT AS DEFINED IN SUBSECTION (30) OF THIS SECTION, THAT OFFERS FOR SALE FOOD ITEMS AT A RETAIL PREMISES, PROVIDED THAT A MINIMUM OF 25% OF THE GROSS ANNUAL INCOME FROM ITS TOTAL SALES,

Proposed Initiative 2015-16 #60 (final)

EXCLUDING FUEL PRODUCTS AS DEFINED AT SECTION 8-20-201(2) AND LOTTERY TICKET SALES FROM SUCH TOTAL, IS DERIVED FROM THE SALE OF FOOD ITEMS. "FOOD ITEMS", AS USED IN THIS SUBSECTION (8.5), MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE AND BEVERAGE, OTHER THAN ANY BEVERAGE CONTAINING ALCOHOL, INTENDED FOR USE OR FOR SALE IN WHOLE OR IN PART FOR HUMAN CONSUMPTION.

SECTION 3. In Colorado Revised Statutes, 12-47-309, **add** (1) (n) as follows:

12-47-309. Local licensing authority--applications--optional premises licenses. (1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

(n) FOOD STORE LICENSE.

SECTION 4. In Colorado Revised Statutes, 12-47-401, **add** (1) (w) as follows:

12-47-401. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license or permit from any of the following classes, subject to the provisions and restrictions provided by this article:

(w) FOOD STORE LICENSE.

SECTION 5. In Colorado Revised Statutes, 12-47-501, **add** (1) (f.5) as follows:

12-47-501. State fees. (1) The following license and permit fees shall be paid to the department of revenue annually in advance:

(f.5) FOR EACH FOOD STORE LICENSE, ONE HUNDRED DOLLARS.

SECTION 6. In Colorado Revised Statutes, 12-47-505, **add** (1) (b.5) as follows:

12-47-505. Local license fees. The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(b.5)(I) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

SECTION 7. In Colorado Revised Statutes, 12-47-901, **amend** (1) (f) and (5) (a) (I) as follows:

12-47-901. Unlawful acts – exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

Proposed Initiative 2015-16 #60 (final)

(f) To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, OR TO SELL MALT AND VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A FOOD STORE LICENSE, except as permitted by section 12-47-301(6)(b) or any other provision of this article;

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a)(I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103(20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age. AN EMPLOYEE OF A FOOD STORE LICENSED PURSUANT TO SECTION 12-47-425 SHALL NOT SELL MALT OR VINOUS LIQUORS UNLESS THE EMPLOYEE IS AT LEAST TWENTY-ONE YEARS OF AGE.

SECTION 8. Effective date. This act takes effect July 1, 2017.

RECEIVED

Proposed Initiative 2015-16 #60 (amended)

DEC 22 2015

S. WARD

2:14 P.M.

ELECTIONS
SECRETARY OF STATE

Change to Colorado Revised Statutes Permitting Sale of Beer and Wine by Food Stores

Text of Measure:

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

SECTION 1. In Colorado Revised Statutes, **add** 12-47-425 as follows:

12-47-425. FOOD STORE LICENSE. (1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE, A FOOD STORE LICENSE MAY BE ISSUED TO FOOD STORES SELLING ONLY MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY FOOD STORE ~~SELLING LICENSED UNDER THIS SECTION TO SELL~~ MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE.

(3) NOTWITHSTANDING ANY PROVISIONS OF THIS ARTICLE TO THE CONTRARY, NO OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS ARTICLE SHALL BE PROHIBITED FROM CONDUCTING, OWNING EITHER IN WHOLE OR IN PART, OR FROM BEING DIRECTLY OR INDIRECTLY INTERESTED IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS SECTION.

(4) A LICENSEE UNDER SECTION 12-46-104(1)(c) WITH A VALID FERMENTED MALT BEVERAGE LICENSE IN EFFECT ON JULY 1, 2017, MAY APPLY TO A LOCAL LICENSING AUTHORITY FOR A FOOD STORE LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4) FOR A FOOD STORE LICENSE, THE LOCAL LICENSING AUTHORITY MAY CONSIDER AS PROVEN THE SATISFACTORY NATURE OF THE CHARACTER, RECORD, OR REPUTATION OF THE APPLICANT IF, AT THE TIME OF THE FILING OF THE APPLICATION, THE APPLICANT MAINTAINS A VALID UNEXPIRED FERMENTED MALT BEVERAGE RETAILER LICENSE, AND NO ADMINISTRATIVE OR CRIMINAL PROSECUTION IS PENDING AGAINST THE APPLICANT. IN CONSIDERING ANY APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD AND THE DESIRES OF ITS ADULT INHABITANTS PURSUANT TO SECTION 12-47-312 IN MAKING A DETERMINATION ON THE ISSUANCE OF A FOOD STORE LICENSE.

(5) THE STATE LICENSING AUTHORITY SHALL MAKE GENERAL RULES AND REGULATIONS AND SPECIAL RULINGS AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 12-47-103, **add** (8.5) as follows:

(8.5) "FOOD STORE" MEANS AN ESTABLISHMENT, OTHER THAN A RESTAURANT AS DEFINED ~~AT IN~~ ~~SUBSECTION 12-47-103(30) OF THIS SECTION~~, THAT OFFERS FOR SALE FOOD ITEMS AT A RETAIL PREMISES, PROVIDED THAT A MINIMUM OF 25% OF THE GROSS ANNUAL INCOME FROM ITS

Proposed Initiative 2015-16 #60 (amended)

TOTAL SALES, EXCLUDING FUEL PRODUCTS AS DEFINED AT SECTION 8-20-201(2) AND LOTTERY TICKET SALES FROM SUCH TOTAL, IS DERIVED FROM THE SALE OF FOOD ITEMS. "FOOD ITEMS", AS USED IN THIS SUBSECTION (8.5), MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE AND BEVERAGE, OTHER THAN ANY BEVERAGE CONTAINING ALCOHOL, INTENDED FOR USE OR FOR SALE IN WHOLE OR IN PART FOR HUMAN CONSUMPTION.

SECTION 3. In Colorado Revised Statutes, 12-47-309, **add** (1) (n) as follows:

12-47-309. Local licensing authority--applications--optional premises licenses. (1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

(n) FOOD STORE LICENSE.

SECTION 4. In Colorado Revised Statutes, 12-47-401, **add** (1) (w) as follows:

12-47-401. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license or permit from any of the following classes, subject to the provisions and restrictions provided by this article:

(w) FOOD STORE LICENSE.

SECTION 5. In Colorado Revised Statutes, 12-47-501, **add** (1) (f.5) as follows:

12-47-501. State fees. (1) The following license and permit fees shall be paid to the department of revenue annually in advance:

(f.5) FOR EACH FOOD STORE LICENSE, ONE HUNDRED DOLLARS.

SECTION 6. In Colorado Revised Statutes, 12-47-505, **add** (1) (b.5) as follows:

12-47-505. Local license fees. The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(b.5)(I) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

SECTION 7. In Colorado Revised Statutes, 12-47-901, **amend** (1) (f) and (5) (a) (I) as follows:

12-47-901. Unlawful acts – exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

Proposed Initiative 2015-16 #60 (amended)

(f) To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, OR TO SELL MALT AND VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A FOOD STORE LICENSE, except as permitted by section 12-47-301(6)(b) or any other provision of this article;

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a)(I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103(20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age. AN EMPLOYEE OF A FOOD STORE LICENSED PURSUANT TO SECTION 12-47-425 SHALL NOT SELL MALT OR VINOUS LIQUORS UNLESS THE EMPLOYEE IS AT LEAST TWENTY-ONE YEARS OF AGE.

SECTION 8. Effective date. This act takes effect July 1, 2017.

RECEIVED

Proposed Initiative 2015-16 #60 (original)

DEC 22 2015

S. WARD
2:14 P. M.

ELECTIONS
SECRETARY OF STATE

Change to Colorado Revised Statutes Permitting Sale of Beer and Wine by Food Stores

Text of Measure:

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

SECTION 1. In Colorado Revised Statutes, **add** 12-47-425 as follows:

12-47-425. FOOD STORE LICENSE. (1) NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS ARTICLE, A FOOD STORE LICENSE MAY BE ISSUED TO FOOD STORES SELLING ONLY MALT AND VINOUS LIQUORS IN SEALED CONTAINERS NOT TO BE CONSUMED AT THE PLACE WHERE THE MALT AND VINOUS LIQUORS ARE SOLD.

(2) EVERY FOOD STORE SELLING MALT AND VINOUS LIQUORS SHALL PURCHASE SUCH MALT AND VINOUS LIQUORS ONLY FROM A WHOLESALER LICENSED PURSUANT TO THIS ARTICLE.

(3) NOTWITHSTANDING ANY PROVISIONS OF THIS ARTICLE TO THE CONTRARY, NO OWNER, PART OWNER, SHAREHOLDER, OR PERSON INTERESTED DIRECTLY OR INDIRECTLY IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS ARTICLE SHALL BE PROHIBITED FROM CONDUCTING, OWNING EITHER IN WHOLE OR IN PART, OR FROM BEING DIRECTLY OR INDIRECTLY INTERESTED IN ONE OR MORE RETAIL BUSINESSES LICENSED PURSUANT TO THIS SECTION.

(4) A LICENSEE UNDER SECTION 12-46-104(1)(c) WITH A VALID FERMENTED MALT BEVERAGE LICENSE IN EFFECT ON JULY 1, 2017 MAY APPLY TO A LOCAL LICENSING AUTHORITY FOR A FOOD STORE LICENSE ISSUED UNDER THE PROVISIONS OF THIS SECTION IF IT OTHERWISE COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. IN MAKING A DETERMINATION ON THE APPLICATION UNDER THIS SUBSECTION (4) FOR A FOOD STORE LICENSE, THE LOCAL LICENSING AUTHORITY MAY CONSIDER AS PROVEN THE SATISFACTORY NATURE OF THE CHARACTER, RECORD, OR REPUTATION OF THE APPLICANT IF, AT THE TIME OF THE FILING OF THE APPLICATION, THE APPLICANT MAINTAINS A VALID UNEXPIRED FERMENTED MALT BEVERAGE RETAILER LICENSE, AND NO ADMINISTRATIVE OR CRIMINAL PROSECUTION IS PENDING AGAINST THE APPLICANT. IN CONSIDERING ANY APPLICATION UNDER THIS SUBSECTION (4), THE LOCAL LICENSING AUTHORITY MAY CONSIDER THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD AND THE DESIRES OF ITS ADULT INHABITANTS PURSUANT TO SECTION 12-47-312 IN MAKING A DETERMINATION ON THE ISSUANCE OF A FOOD STORE LICENSE.

(5) THE STATE LICENSING AUTHORITY SHALL MAKE GENERAL RULES AND REGULATIONS AND SPECIAL RULINGS AND FINDINGS AS NECESSARY FOR THE PROPER REGULATION AND IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 12-47-103, **add** (8.5) as follows:

(8.5) "FOOD STORE" MEANS AN ESTABLISHMENT, OTHER THAN A RESTAURANT AS DEFINED AT SECTION 12-47-103(30), THAT OFFERS FOR SALE FOOD ITEMS AT A RETAIL PREMISES, PROVIDED THAT A MINIMUM OF 25% OF THE GROSS ANNUAL INCOME FROM ITS TOTAL SALES, EXCLUDING FUEL PRODUCTS AS DEFINED AT SECTION 8-20-201(2) AND LOTTERY TICKET SALES FROM SUCH

Proposed Initiative 2015-16 #60 (original)

TOTAL, IS DERIVED FROM THE SALE OF FOOD ITEMS. "FOOD ITEMS", AS USED IN THIS SUBSECTION (8.5), MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE AND BEVERAGE, OTHER THAN ANY BEVERAGE CONTAINING ALCOHOL, INTENDED FOR USE OR FOR SALE IN WHOLE OR IN PART FOR HUMAN CONSUMPTION.

SECTION 3. In Colorado Revised Statutes, 12-47-309, **add** (1) (n) as follows:

12-47-309. Local licensing authority--applications--optional premises licenses. (1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

(n) FOOD STORE LICENSE.

SECTION 4. In Colorado Revised Statutes, 12-47-401, **add** (1) (w) as follows:

12-47-401. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license or permit from any of the following classes, subject to the provisions and restrictions provided by this article:

(w) FOOD STORE LICENSE.

SECTION 5. In Colorado Revised Statutes, 12-47-501, **add** (1) (f.5) as follows:

12-47-501. State fees. (1) The following license and permit fees shall be paid to the department of revenue annually in advance:

(f.5) FOR EACH FOOD STORE LICENSE, ONE HUNDRED DOLLARS.

SECTION 6. In Colorado Revised Statutes, 12-47-505, **add** (1) (b.5) as follows:

12-47-505. Local license fees. The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(b.5)(I) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED WITHIN ANY MUNICIPALITY OR CITY AND COUNTY, ONE HUNDRED FIFTY DOLLARS;

(II) FOR EACH FOOD STORE LICENSE FOR PREMISES LOCATED OUTSIDE THE MUNICIPAL LIMITS OF ANY MUNICIPALITY OR CITY AND COUNTY, TWO HUNDRED FIFTY DOLLARS.

SECTION 7. In Colorado Revised Statutes, 12-47-901, **amend** (1) (f) and (5) (a) (I) as follows:

12-47-901. Unlawful acts – exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

Proposed Initiative 2015-16 #60 (original)

(f) To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, OR TO SELL MALT AND VINOUS LIQUORS IN SEALED CONTAINERS WITHOUT HOLDING A FOOD STORE LICENSE, except as permitted by section 12-47-301(6)(b) or any other provision of this article;

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a)(I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103(20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age. AN EMPLOYEE OF A FOOD STORE LICENSED PURSUANT TO SECTION 12-47-425 SHALL NOT SELL MALT OR VINOUS LIQUORS UNLESS THE EMPLOYEE IS AT LEAST TWENTY-ONE YEARS OF AGE.

SECTION 8. Effective date. This act takes effect July 1, 2017.