

§ 12-47-901. Unlawful acts - exceptions.

**Colorado Statutes**

**Title 12. PROFESSIONS AND OCCUPATIONS**

**GENERAL - Continued**

**Article 47. Alcohol Beverages**

**Part 9. UNLAWFUL ACTS - ENFORCEMENT**

*Current through Chapter 420 of the 2014 Legislative Session*

**§ 12-47-901. Unlawful acts - exceptions**

- (1) Except as provided in section 18-13-122 , C.R.S., it is unlawful for any person:
  - (a) To sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of, any alcohol beverage to a visibly intoxicated person or to a known habitual drunkard;
  - (a.5 )
    - (I) To sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to or for any person under the age of twenty-one years.
    - (II) If a person is convicted of an offense pursuant to subparagraph (I) of this paragraph (a.5) for serving, giving away, disposing of, exchanging, or delivering or permitting the serving, giving, or procuring of any alcohol beverage to a person under the age of twenty-one years, the court shall consider the following in mitigation:
      - (A) After consuming the alcohol, the underage person was in need of medical assistance as a result of consuming alcohol; and
      - (B) Within six hours after the underage person consumed the alcohol, the defendant contacted the police or emergency medical personnel to report that the underage person was in need of medical assistance as a result of consuming alcohol.
  - (b) To obtain or attempt to obtain any alcohol beverage by misrepresentation of age or by any other method in any place where alcohol beverages are sold when such person is under twenty-one years of age;
  - (c) To possess alcohol beverages in any store, in any public place, including public streets, alleys, roads, or highways, or upon property owned by the state of Colorado or any subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways when such person is under twenty-one years of age;
  - (d) To knowingly, or under conditions that an average parent or guardian should have knowledge of, suffer or permit any person under twenty-one years of age, of whom such person may be a parent or guardian, to violate the provisions of paragraph (b)

or (c) of this subsection (1);

- (e) To buy any vinous or spirituous liquor from any person not licensed to sell at retail as provided by this article except as otherwise provided in this article;
- (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, except as permitted by section 12-47-301(6) (b) or any other provision of this article;
- (g) To manufacture, sell, or possess for sale any alcohol beverage unless licensed to do so as provided by this article or article 46 or 48 of this title and unless all licenses required are in full force and effect;
- (h)
  - (I) To consume malt, vinous, or spirituous liquor in any public place except on any licensed premises permitted under this article to sell such liquor by the drink for consumption thereon; to consume any alcohol beverage upon any premises licensed to sell liquor for consumption on the licensed premises, the sale of which is not authorized by the state licensing authority; to consume alcohol beverages at any time on such premises other than such alcohol beverage as is purchased from such establishment; or to consume alcohol beverages in any public room on such premises during such hours as the sale of such beverage is prohibited under this article.
  - (II) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for a person who is at least twenty-one years of age to consume malt, vinous, or spirituous liquors while the person is a passenger aboard a luxury limousine or a charter bus, as those terms are defined in section 40-10.1-301 , C.R.S. Nothing in this subparagraph (II) authorizes an owner or operator of a luxury limousine or charter bus to sell or distribute alcohol beverages without obtaining a public transportation system license pursuant to section 12-47-419 .
  - (III) Notwithstanding subparagraph (I) of this paragraph (h), it shall not be unlawful for adult patrons of a retail liquor store or liquor-licensed drugstore licensee to consume malt, vinous, or spirituous liquors on the licensed premises when the consumption is conducted within the limitations of the licensee's license and is part of a tasting if authorization for the tasting has been granted pursuant to section 12-47-301 .
  - (IV) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of an art gallery permittee to consume alcohol beverages on the premises when the consumption is conducted within the limitations of a valid permit granted pursuant to section 12-47-422 .

(V) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of the Colorado state fair to consume malt, vinous, or spirituous liquor upon unlicensed areas within the designated fairgrounds of the Colorado state fair authority or at a licensed premises on the fairgrounds when not purchased at the licensed premises, but this subparagraph (V) does not authorize a patron to remove an alcohol beverage from the fairgrounds.

(VI) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of a licensed premises that is attached to a common consumption area to consume alcohol beverages upon unlicensed areas within a common consumption area, but this subparagraph (VI) does not authorize a patron to remove an alcohol beverage from the common consumption area.

- (i) To regularly provide premises, or any portion thereof, together with soft drinks or other mix, ice, glasses, or containers at a direct or indirect cost or charge to any person who brings alcohol beverages upon such premises for the purpose of consuming such beverages on said premises during the hours in which the sale of such beverages is prohibited or to consume such beverages upon premises operated in the manner described in this paragraph (i);
- (j) To possess any package, parcel, or container on which the excise tax has not been paid;
- (k) With knowledge, to permit or fail to prevent the use of his or her identification, including a driver's license, by a person who is under twenty-one years of age, for the unlawful purchase of any alcohol beverage;
- (l) Who is a common carrier regulated under article 10 or 11 of title 40 , C.R.S., or is an agent or employee of such common carrier, to deliver alcohol beverages for any person who has not been issued a license or permit pursuant to this article;
- (m) To remove an alcohol beverage from a licensed premises where the liquor license for the licensed premises allows only on-premises consumption of alcohol beverages, except as permitted under subparagraph (VI) of paragraph (h) of this subsection (1).

(1.5) An underage person shall be immune from criminal prosecution under paragraph (b) or (c) of subsection (1) of this section if he or she establishes the following:

- (a) The underage person called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;
- (b) The underage person who called 911 provided his or her name to the 911

operator;

- (c) The underage person was the first person to make the 911 report; and
  - (d) The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.
- (2) It is unlawful for any person licensed as a manufacturer, limited winery, or brew pub pursuant to this article or article 46 of this title to manufacture alcohol beverages except in the permanent location specifically designated in the license for such manufacture, except as allowed pursuant to section 12-46-104(1) (a), 12-47-402 (2.5), 12-47-403 (2) (a), or 12-47-415 (1) (b).
- (3)
- (a) It is unlawful for any person to import or sell any imported alcohol beverage in this state unless such person is the primary source of supply in the United States for the brand of such liquor to be imported into or sold within this state and unless such person holds a valid importer's license issued under the provisions of this article.
  - (b) If it is determined by the state licensing authority, in its discretion, as not constituting unfair competition or unfair practice, any importer may be authorized by said state licensing authority to import and sell under and subject to the provisions of such importer's license any brand of alcohol beverage for which he or she is not the primary source of supply in the United States if such licensee is the sole source of supply of that brand of alcohol beverage in the state of Colorado and such authorization is determined by the state licensing authority as not constituting a violation of section 12-47-308 .
  - (c) Any such manufacturer or importer shall, at least thirty days before the importation or sale of any such alcohol beverage in this state, file with the state licensing authority notice of intent to import one or more specified brands of such beverage, together with a statement that such manufacturer or importer is the primary source of supply in the United States for any such brand, unless exempted pursuant to paragraph (b) of this subsection (3), in which case, a statement that such manufacturer or importer is the sole source of supply of that brand of beverage in the state of Colorado, and, upon the request of the state licensing authority, a copy of the manufacturer's federal brand label approval form as required by the federal bureau of alcohol, tobacco, and firearms or any of its successor agencies. Thereafter, said licensee shall file with the state licensing authority a copy of each sales invoice with a monthly sales report as required by section 12-47-503(4) and (5) .
  - (d) As used in this subsection (3), the term "primary source of supply in the United

States" means the manufacturer, the producer, the owner of such alcohol beverage at the time it becomes a marketable product, the bottler in the United States, or the exclusive agent within the United States, or any of the states, of any such manufacturer, producer, owner, or bottler outside the United States. To be the "primary source of supply in the United States", the said manufacturer or importer must be the first source, such as the manufacturer or the source closest to the manufacturer, in the channel of commerce from which the product can be secured by Colorado alcohol beverage wholesalers.

- (e) It is unlawful for any person licensed as an importer of alcohol beverages pursuant to this article to deliver any such beverages to any person not in possession of a valid wholesaler's license.
- (4) It is unlawful for any person licensed to sell at wholesale pursuant to this article or article 46 of this title:
- (a) To peddle malt, vinous, or spirituous liquor at wholesale or by means of a truck or other vehicle if the sale is consummated and delivery made concurrently, but nothing in this paragraph (a) shall prevent delivery from a truck or other vehicle of orders previously taken;
  - (b) To deliver fermented malt beverages or malt liquors to any retail licensee located outside the geographic territory designated on the license application filed with the state licensing authority if such person holds a wholesaler's beer license;
  - (c) To purchase or receive any alcohol beverage from any person not licensed pursuant to this article or article 46 of this title, unless otherwise provided in this article;
  - (d) To sell or serve any alcohol beverage to consumers for consumption on or off the licensed premises during any hours retailers are prohibited from selling or serving such liquors pursuant to subsection (5) of this section.
- (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.

- (II) (A) If a licensee or a licensee's employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcohol beverage, the licensee or employee shall be authorized to confiscate such fraudulent proof of age, if possible, and shall, within seventy-two hours after the confiscation, turn it over to a state or local law enforcement agency. The failure to confiscate such fraudulent proof of age or to turn it over to a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense, notwithstanding section 12-47-903(1) (a).
  - (B) If a licensee or a licensee's employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcohol beverage, the licensee or the licensee's employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or a licensee's employee or a peace or police officer does not render the licensee, the licensee's employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.
  - (III) Each licensee shall display a printed card that contains notice of the provisions of this paragraph (a).
  - (IV) Any licensee or licensee's employee acting in good faith in accordance with the provisions of subparagraph (II) of this paragraph (a) shall be immune from any liability, civil or criminal; except that a licensee or employee acting willfully or wantonly shall not be immune from liability pursuant to subparagraph (II) of this paragraph (a).
- (b) To sell, serve, or distribute any malt, vinous, or spirituous liquors at any time other than the following:

- (I) For consumption on the premises on any day of the week, except between the hours of 2 a.m. and 7 a.m.;
- (II) In sealed containers, beginning at 8 a.m. until 12 midnight each day; except that no malt, vinous, or spirituous liquors shall be sold, served, or distributed in a sealed container on Christmas day;
- (c) Except as provided in section 18-13-122 , C.R.S., for any person to sell fermented malt beverages to any person under the age of twenty-one years or to any person between the hours of 12 midnight and 5 a.m.;
- (d) To offer for sale or solicit any order for vinous or spirituous liquors in person at retail except within the licensed premises;
- (e) To have in possession or upon the licensed premises any alcohol beverage, the sale of which is not permitted by said license;
- (f) To buy any alcohol beverages from any person not licensed to sell at wholesale as provided by this article except as otherwise provided in this article;
- (g) To sell at retail alcohol beverages except in the permanent location specifically designated in the license for such sale;
- (h) To fail to display at all times in a prominent place a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

**WARNING**

IT IS ILLEGAL TO SELL WHISKEY, WINE, OR BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME.

IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY. IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OF AGE OR OLDER FOR YOU TO PURCHASE WHISKEY, WINE, OR BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

- (i) (I) To sell malt, vinous, or spirituous liquors or fermented malt beverages in a place where the alcohol beverages are to be consumed, unless the place is a hotel, restaurant, tavern, racetrack, club, retail gaming tavern, or arts licensed premises or unless the place is a dining, club, or parlor car; plane;

bus; or other conveyance or facility of a public transportation system.

- (II) Notwithstanding subparagraph (I) of this paragraph (i), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 12-47-301 .
  
- (j) To display or cause to be displayed, on the licensed premises, any exterior sign advertising any particular brand of malt liquors or fermented malt beverages unless the particular brand so designated in the sign is dispensed on draft or in sealed containers within the licensed premises wherein the sign is displayed;
  
- (k)
  - (I) To have on the licensed premises, if licensed as a retail liquor store or liquor-licensed drugstore, any container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label of such container; except that a person holding a retail liquor store or liquor-licensed drugstore license may have upon the licensed premises malt, vinous, or spirituous liquors in open containers, when the open containers were brought on the licensed premises by and remain solely in the possession of the sales personnel of a person licensed to sell at wholesale pursuant to this article for the purpose of sampling malt, vinous, or spirituous liquors by the retail licensee only. Nothing in this paragraph (k) shall apply to any liquor-licensed drugstore where the contents, or a portion thereof, have been used in compounding prescriptions.
  
  - (II) Notwithstanding subparagraph (I) of this paragraph (k), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 12-47-301 .
  
- (l) To employ or permit, if such person is licensed to sell alcohol beverages for on-premises consumption or is the agent or manager of said licensee, any employee, waiter, waitress, entertainer, host, hostess, or agent of said licensee to solicit from patrons in any manner, for himself or herself or for any other employee, the purchase of any food, beverage, or any other thing of value;
  
- (m) To require a wholesaler to make delivery to any premises other than the specific hotel and restaurant premises where the alcohol beverage is to be sold and consumed if the person is a hotel and restaurant licensee or the registered manager of a hotel and restaurant license requires the delivery;
  
- (n)
  - (I) To authorize or permit any gambling, or the use of any gambling machine or device, except as provided by the "Bingo and Raffles Law", article 9 of this



title. The provisions of this paragraph (n) shall not apply to those activities, equipment, and devices authorized and legally operated pursuant to articles 47.1 and 60 of this title.

(II) Any person who violates any provision of this paragraph (n) is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401 , C.R.S.

(o) To authorize or permit toughperson fighting as defined in section 12-10-103 .

(6) It is unlawful for any importer, manufacturer, or brewer to sell or to bring into this state for purposes of sale any fermented malt beverage or any malt liquor without causing the same to be unloaded and placed in the physical possession of a licensed wholesaler at the wholesaler's licensed premises in this state and to be inventoried for purposes of tax collection prior to delivery to a retailer or consumer.

(7) (a) It is unlawful for any person licensed pursuant to this article or article 46 of this title to give away fermented malt beverages for the purpose of influencing the sale of any particular kind, make, or brand of any malt beverage and to furnish or supply any commodity or article at less than its market price for said purpose, except advertising material and signs.

(b) Notwithstanding paragraph (a) of this subsection (7), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant section 12-47-301 .

(8) It is unlawful for any manufacturer or wholesaler licensed pursuant to article 46 of this title to sell, deliver, or cause to be delivered to any person licensed pursuant to section 12-47-407 or 12-47-408 any beverage containing alcohol in excess of three and two-tenths percent by weight or four percent by volume, or for any fermented malt beverage retailer licensed pursuant to article 46 of this title to sell, possess, or permit the consumption on the premises of any of the beverages containing alcohol in excess of three and two-tenths percent by weight or four percent by volume, or for any fermented malt beverage retail licensee licensed pursuant to article 46 of this title to hold or operate under any license for the sale of any beverages containing alcohol in excess of three and two-tenths percent by weight or four percent by volume for the same premises. Any violation of this subsection (8) by any fermented malt beverage licensee licensed pursuant to article 46 of this title immediately invalidates the license granted under article 46 of this title.

(9) (a) (I) Except as provided in paragraph (c) of this subsection (9), it is unlawful for a person who is licensed to sell alcohol beverages for consumption on the licensed premises to knowingly permit the removal of an alcohol beverage

from the licensed premises.

- (II) (A) Except as provided in sub-subparagraph (C) of this subparagraph (II), the licensee shall not be charged with permitting the removal of an alcohol beverage from the licensed premises when the licensee has posted a sign at least ten inches wide and six inches high by each exit used by the public that contains the following notice in type that is at least one-half inch in height:

WARNING

DO NOT LEAVE THE PREMISES OF THIS ESTABLISHMENT WITH AN ALCOHOL BEVERAGE.

IT IS ILLEGAL TO CONSUME AN ALCOHOL BEVERAGE IN A PUBLIC PLACE.

A FINE OF UP TO \$250 MAY BE IMPOSED BY THE COURTS FOR A VIOLATION OF THIS PROVISION.

- (B) A person licensed pursuant to section 12-47-414 must post a sign with the specified notice and in the minimum type size required by sub-subparagraph (A) of this subparagraph (II) that is at least twelve inches wide and eighteen inches high.
- (C) Regardless of whether a licensee posts a sign as specified in this subparagraph (II), the licensee may be charged with knowingly permitting the removal of an alcohol beverage from the licensed premises if the licensee shows reckless disregard for the prohibition against alcohol beverage removal from the licensed premises, which may include permitting the removal of an alcohol beverage from the licensed premises three times within a twelve-month period, regardless of whether the three incidents occur on the same day or separate days. A licensee may be charged with knowingly permitting the removal of an alcohol beverage from the licensed premises upon the third occurrence of alcohol beverage removal from the licensed premises.

- (III) In addition to posting a sign as described in subparagraph (II) of this paragraph (a), a licensee may also station personnel at each exit used by the public in order to prevent the removal of an alcohol beverage from the licensed premises.

- (b) This subsection (9) applies to persons licensed to sell alcohol beverages for consumption on the licensed premises pursuant to section 12-47-403 , 12-47-409 , 12-47-410 , 12-47-411 , 12-47-412 , 12-47-413 , 12-47-414 , 12-47-415, 12-47-416 , 12-47-417 , 12-47-418 , 12-47-419 , 12-47-420 , or 12-47-422 .

- (c) This subsection (9) does not preclude a licensee described in section 12-47-421(2) from permitting a customer to remove from the licensed premises one opened container of partially consumed vinous liquor that was purchased on the licensed premises and has been resealed, as permitted by section 12-47-421(1) .

**Cite as C.R.S. § 12-47-901**

**History.** Amended by 2013 Ch. 175, §1, eff. 5/10/2013.

L. 97: Entire article amended with relocations, p. 285, § 3, effective July 1; (1)(h) amended, p. 306, § 1, effective August 6. L. 98: (1)(h)(II) amended, p. 1057, § 4, effective July 1; (1)(h)(II) amended, p. 818, § 11, effective August 5. L. 2001: (9) added, p. 313, § 1, effective July 1. L. 2002: (5)(a)(I) amended, p. 1014, § 14, effective June 1; (1)(m) added and (9) amended, p. 120, §§ 1, 2, effective August 7; (5)(n)(II) amended, p. 1482, § 92, effective October 1. L. 2004: (5)(o) added, p. 1072, § 3, effective May 21; (1)(h), (5)(i), (5)(k), and (7) amended, p. 787, § 11, effective July 1; (5)(b)(II) amended, p. 741, § 9, effective August 4. L. 2005: (1)(a) amended and (1)(a.5) added, p. 603, § 2, effective July 1; (1)(a) amended and (1)(a.5) and (1.5) added, pp. 1242, 1243, §§ 2, 3, effective July 1. L. 2007: (3)(c) amended, p. 2022, § 19, effective June 1. L. 2008: (1)(h)(IV) added, p. 1557, § 5, effective July 1; (5)(b)(II) amended, p. 403, § 1, effective July 1; (2) amended, p. 2167, § 8, effective August 5. L. 2009: (2) amended, (SB09-254), ch. 272, p. 1233, §10, effective May 18; (1)(h)(IV) amended, (SB09-292), ch. 369, p. 1947, §24, effective August 5. L. 2010: (1)(f) amended, (HB10-1170), ch. 81, p. 274, §2, effective April 12; (1)(h)(V) added, (HB10-1099), ch. 318, p. 1481, §2, effective August 11; (5)(c) amended, (HB10-1422), ch. 419, p. 2068, §19, effective August 11. L. 2011: (1)(h)(II), (1)(h)(IV), (5)(i)(I), (5)(j), (5)(m), and (8) amended, (SB11-060), ch. 171, p. 604, §14, effective May 13; (1)(h)(II) amended, (HB11-1198), ch. 127, p. 417, § 7, effective August 10; (1)(h)(VI) added, (SB11-273), ch. 233, p. 1006, § 3, effective August 10. L. 2012: IP(1.5), (1.5)(a), (1.5)(b), and (1.5)(d) amended, (SB12-020), ch. 225, p. 989, §9, effective May 29.

**Editor's Note:**

*(1) This section is similar to former § 12-47-128, and subsections (5)(c), (7), and (8) are similar to former § 12-46-112 (1)(a), (2)(a), and (3), as they existed prior to 1997.*

*(2) Amendments to subsection (1)(h) by House Bill 97-1078 and House Bill 97-1076 were harmonized.*

*(3) Amendments to subsection (1)(h)(II) by Senate Bill 98-200 and Senate Bill 98-190 were harmonized.*

*(4) Amendments to subsections (1)(a) and (1)(a.5) by House Bill 05-1306 and House Bill 05-1183 were harmonized.*

*(5) Amendments to subsection (1)(h)(II) by Senate Bill 11-060 and House Bill 11-1198 were harmonized.*

**Case Notes:**

**ANNOTATION**

**Annotator's note.** Since § 12-47-901 is similar to §§ 12-46-112 and 12-47-128 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

**Subsection (1)(a) requires a showing of constructive knowledge.** It is not a strict liability offense. Constructive knowledge means "knowledge that one using reasonable care or diligence should have and, therefore, that is attributed by law to a given person". The holder of a liquor license and the licensee's agents have an affirmative responsibility to reasonably conduct the business with a view to compliance with the law. *Full Moon Saloon, Inc. v. City of Loveland*, 111 P.3d 568 (Colo. App. 2005) (decided under former law); *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

The word "permit" requires a showing of actual or constructive knowledge. *Full Moon Saloon, Inc. v. City of Loveland*, 111 P.3d 568 (Colo. App. 2005); *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010). **"Habitual drunkard" has a common meaning.** Whether a person is a habitual drunkard is an issue of fact based upon the circumstances of each case. The knowledge of the vendor may be shown by direct or circumstantial evidence and does not require a formal notice or prior court adjudication. *K & S Corp. v. Greeley Liquor Licensing Auth.*, 183 P.3d 710 (Colo. App. 2008).

**Affirmative defense set forth in subsection (5) only available when minor presents a currently valid form of identification.** A license shall not be revoked or suspended for the sale of alcohol to a person under the age of 21 if the person presents a fraudulent proof of age. Nevertheless, the department may revoke or suspend a license if the fraudulent proof of age is not currently valid. "Currently valid identification" includes being facially valid, not expired, and valid as to form. *Minh Le v. Colo. Dept. of Rev.*, 198 P.3d 1247 (Colo. App. 2008).

**Paper tickets that contain a coupon on one side and a cash prize game on the other and the machine that dispenses them are gambling devices** that are illegal under this section. Accordingly, the trial court did not err in declaring that the machine, tickets, and money were subject to confiscation and forfeiture. *Snizek v. Dept. of Rev.*, 113 P.3d 1280 (Colo. App. 2005).

#### **Cases Decided Under Former § 12-46-112 .**

**Law reviews.** For article, "One Year Review of Agency, Partnerships, Corporations, and Municipal Corporations", see 41 Den. L. Ctr. J. 61 (1964). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

**No legislative intent to assume exclusive control of hours.** A resolution adopted by the board of county commissioners prohibiting the sale of malt or vinous liquors and fermented malt beverages between the hours of 12:00 midnight on Saturday and 8:00 A.M. on Monday is valid as there is not evident a legislative intent in this section to assume exclusive control of the hours of establishment dispensing alcoholic beverages. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

**This section merely prohibits the sale of 3.2 fermented malt beverages between the specified hours** and does not by implication create any right under the statute to sell such at all other times. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

**For actions arising prior to legislation enacted in 1985 and 1986**, if it is ascertained that a tavern owner violated this section and that the violation proximately caused injury, this section may be the basis for a claim of negligence per se. *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989).

**Tavern owner has both a statutory and common-law duty to exercise due care** not to serve alcoholic beverages to a visibly intoxicated patron and a tavern owner who breaches that duty will be liable in tort to third persons who are harmed as a result of the owner's breach of duty. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

**It was incumbent upon plaintiff to establish a legal duty on the part of the tavern** to protect him from the bodily harm caused to him by the act of a tavern patron. The foreseeability element of legal duty required the plaintiff to establish that the employees of the tavern had some notice, either actual or constructive, that the tavern patron posed an unreasonable risk of harm to the plaintiff or other persons legitimately on the tavern premises. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

**A city cannot enlarge on the state-provided hours of sale.** *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

**However, where local conditions have been found to require reasonably fewer hours of dispensing fermented malt beverage**, such action does not infringe upon the state's legislative prerogative or objectives. *Kelly v. City of Fort*

Collins, 163 Colo. 520, 431 P.2d 785 (1967).

**It is not necessary for the holder of a 3.2 beer license to surrender the same before making application for a broader license** to dispense alcoholic beverages. Bacher v. Bd. of County Comm'rs, 136 Colo. 67, 314 P.2d 607 (1957).

**Where at the time a party applies for a three-way license he holds a 3.2 beer license**, he cannot hold two licenses for the same establishment at the same time, but it would only be necessary for him to surrender the limited license in order to hold the broader three-way privilege, should it be granted. Bacher v. Bd. of County Comm'rs, 136 Colo. 67, 314 P.2d 607 (1957).

**Insufficient evidence to sustain suspension of license.** Dennis, Inc. v. Office of Dir. of Excise & Licenses, 620 P.2d 53 (Colo. App. 1980).

**Applied** in People v. Sherman, 197 Colo. 442, 593 P.2d 971 (1979).

**Cases Decided Under Former § 12-47-128 .**

## **I. GENERAL CONSIDERATION.**

**Legal sale activities.** Sales activities which are not restricted, limited, or otherwise regulated by art. 47 of title 12 are not illegal. People v. Kagan, 195 Colo. 76, 575 P.2d 416 (1978).

**Paragraph (d) of subsection (1) (now paragraphs (b) and (c) of subsection (5)) of this section is constitutional.** McClain v. People, 111 Colo. 271, 141 P.2d 685 (1943).

**Subsection (5)(I)**, which prohibited any liquor licensee's employee from soliciting patrons to purchase "any alcoholic beverage or any other thing of value" for the soliciting employee or other employee, was not unconstitutionally vague or overbroad and was rationally related to a legitimate state interest. People v. Becker, 759 P.2d 26 (Colo. 1988) (decided under law in effect prior to 1986 amendment).

**Licensee's affirmative responsibility to see business not conducted in violation of law.** The holder of a license for the sale of alcoholic beverages has an affirmative responsibility to see that his business is not conducted by his employees or by his employees in concert with other persons in violation of the law. Clown's Den, Inc. v. Canjar, 33 Colo. App. 212, 518 P.2d 957 (1974).

**The prohibition against selling without a license being first secured is one of the conditions imposed by this article.** Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

**A contract to buy or sell liquor in violation of this condition is illegal and unenforceable**, and, upon breach of the contract by the seller, the buyer may not recover a part payment made on the purchase price. Potter v. Swinehart, 117 Colo. 23, 184 P.2d 149 (1947).

**Where the statute makes the character of beverages sold the substance of the offense, such character must be proved by the state.** Woods v. People, 156 Colo. 212, 397 P.2d 871 (1964).

**Consumption at social club not violative.** Where members of a social club would purchase liquor at a licensed establishment, and then would bring the liquor to the club premises to be consumed by all members, the consumption was permissible even though the club had no liquor license, because there is no prohibition against consuming liquor where no sale is involved. City & County of Denver v. Protocrats, Inc., 136 Colo. 384, 318 P.2d 600 (1957).

**Section as basis for defense to antitrust action.** See Adolph Coors Co. v. A & S Whsles., Inc., 561 F.2d 807 (10th Cir. 1977).

**Applied** in People v. Kagan, 195 Colo. 76, 575 P.2d 416 (1978); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

## **II. UNLAWFUL TO SELL TO DRUNKARD OR PERSON UNDER TWENTY-ONE.**

**Law reviews.** For comment, "Crespin v. Largo Corporation and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado", see 57 U. Colo. L. Rev. 419 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

**The prohibition under this section is primarily directed against the employer or owner.** Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

**The employer or owner cannot escape guilt by attempting to shift the crime to his employee,** and he is liable for an unlawful sale made by his agent or servant within the scope of his authority. Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

**A licensed liquor dealer must see that his customer is not within a proscribed class,** proceeding otherwise, he does so at his peril. People v. Wilson, 106 Colo. 437, 106 P.2d 352 (1940).

**To make unlawful the sale of intoxicants to minors and inebriates, regardless of intent, is a reasonable legislative regulation** of the liquor traffic, so long as the proscribed act amounts only to a misdemeanor. Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

**This section is a penal law and bears no relationship to liability** under statutes commonly known as "civil damage acts" or "dramshop acts". Hull v. Rund, 150 Colo. 425, 374 P.2d 351 (1962).

**Where plaintiffs claimed damages from tavern owner for assault from intoxicated person, their remedy is under the common law** and not under the statutes. Hull v. Rund, 150 Colo. 425, 374 P.2d 351 (1962).

**Violation of this section** may constitute negligence per se and, thus, may be a breach of the duty of due care. Whether it was foreseeable that the breach by defendant would cause damage to plaintiff's legally protected interest is one of fact and must be submitted to a fact-finder. Bartley v. Floyd, 695 P.2d 781 (Colo. App. 1984), aff'd, 727 P.2d 1109 (Colo. 1986); Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986).

While this section is not a civil damage act or dram shop act, a violation of this section may be used as evidence of negligence under the common law. Crespin v. Largo Corp., 698 P.2d 826 (Colo. App. 1984), aff'd, 727 P.2d 1098 (Colo. 1986); Thomas v. Pete's Satire, Inc., 717 P.2d 509 (Colo. App. 1985) (decided prior to 1986 enactment of § 12-47-128.5).

Criminal statute may be relied upon to establish negligence per se, even though statute is silent on issue of civil liability. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

Intentionally tortious or criminal act of third party does not break causal chain of defendant's negligence, where third party's act is reasonably foreseeable by defendant. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

This section's prohibition of the sale of liquor to intoxicated persons was designed to protect widow from type of injury she suffered when husband was struck by intoxicated motorist, so that bar owner's violation of statute could be relied upon by widow to conclusively establish bar owner's negligence in wrongful death action arising out of collusion. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

Finding that commercial seller of alcohol had not exercised reasonable care to avoid selling alcoholic beverages to intoxicated patron was sufficiently supported by evidence that seller's employees continued to serve ten to thirteen beers to patron over four to five-hour period, even though patron stumbled over chairs and tables and periodically blacked out. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

**Tavern owner has both a statutory and common-law duty to exercise due care** not to serve alcoholic beverages to a visibly intoxicated patron, and a tavern owner who breaches that duty will be liable in tort to third persons who are harmed as a result of the owner's breach of duty. Observatory Corp. v. Daly, 780 P.2d 462 (Colo. 1989).

**It was incumbent upon plaintiff to establish a legal duty on the part of the tavern** to protect him from the bodily harm caused to him by the act of a tavern patron. The foreseeability element of legal duty required the plaintiff to establish that the employees of the tavern had some notice, either actual or constructive, that the tavern patron posed an unreasonable risk of harm to the plaintiff or other persons legitimately on the tavern premises. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

**Foreseeability of harm is a prominent, but not exclusive, element** in determining a tavern proprietor's legal duty to patrons and other persons legitimately on the tavern premises. A court must also consider, in addition to the foreseeability of harm, the social utility of the proprietor's conduct, the magnitude of the burden of guarding against the injury, the consequences of placing that burden upon the defendant, and any other relevant factors implicated by the facts of the case. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

**While the foreseeability element of legal duty** does not require a tavern proprietor to foresee the specific type of harm which a tavern patron will perpetrate against another or the manner in which that harm will likely be caused, it does require that the proprietor have actual or constructive notice that the patron poses an unreasonable risk of physical harm to other persons legitimately on the premises. Only then, when the tavern proprietor has such notice, is the proprietor under a duty to exercise reasonable measures to protect others legitimately on the premises from harm. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

**For actions arising prior to legislation enacted in 1985 and 1986**, if it is ascertained that a tavern owner violated this section and that the violation proximately caused injury, this section may be the basis for a claim of negligence per se. *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989).

**This section is not a bar to the defense of contributory negligence.** *Thomas v. Pete's Satire, Inc.*, 717 P.2d 509 (Colo. App. 1985).

**License suspended for sale of wine to minor.** *DiManna v. Kalbin*, 646 P.2d 403 (Colo. App. 1982).

**Ignorance or mistake as to minor's age is no defense** in a criminal prosecution for the sale of liquor to a minor. *Hershorn v. People*, 108 Colo. 43, 113 P.2d 680 (1941).

**Minor who transfers intoxicants to other minor qualifies as "person", for purpose of statute** making it unlawful for any "person" to deliver intoxicants to minor, though transfer is made without consideration and in furtherance of joint undertaking to obtain alcoholic beverages. *Floyd v. Bartley*, 727 P.2d 1109 (Colo. 1986).

**Where accused manager of a night club was charged with selling liquor to an intoxicated minor, an instruction** that a corporation can only act through its agents, officers, or employees, and that if the accused was president and general manager, having control of its employees and policies, he would be responsible for the violation of this section by a waiter acting as agent or employee of the corporation within the general scope of his employment, correctly stated the law. *Hershorn v. People*, 108 Colo. 43, 113 P.2d 680 (1941).

**General assembly's reenactment of criminal code provisions** do not supersede provisions of the liquor code, and person violating liquor code must be prosecuted for those violations and not provisions of the criminal code. *People v. O'Donnell*, 926 P.2d 114 (Colo. App. 1996).

### **III. SALE ONLY AT PERMANENT LOCATION.**

**Law reviews.** For comment on *Page v. Blunt*, appearing below, see 25 *Rocky Mt. L. Rev.* 259 (1953).

**Personal license right restricted to certain place.** A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

**There is no vested right in a licensee to move the location of his license**, and, upon application so to do, the court may, and should, consider the same as in case of application for a new license because the statute requires it be given like consideration. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

**The requirements for change of license location are the same as those for obtaining a license**, and the duties and authority of the licensing official are the same. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

**A city council is required to consider two things under this section:** (1) The requirement of the neighborhood; and (2) the desires of the inhabitants. *Page v. Blunt*, 126 Colo. 324, 248 P.2d 1074 (1952).

**Before there can be any issuance of a liquor license, or a transfer thereof at the local level, the state authority must approve** the action of the local authority. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

**Since the concurrent action of the two authorities is mandatory, if the local authority denies a license**, appeal therefrom to the district court under §24-4-106 would lie because the state alone cannot authorize the issuance, but, where there is approval at the local level, it is of no force and effect without also the state approval, for absent the latter administrative procedure, the entire administrative process is not complete. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

**This section permits removal to another location of a hotel and restaurant license upon a proper showing.** *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

**Contract to the contrary is not violative.** While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is not an agreement for the transfer of the license. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

**Refusal of application for permission to transfer location of liquor license** from 3015 East Colfax Avenue to 3018 East Colfax Avenue, Denver, held not arbitrary. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

#### **IV. GAMBLING.**

**Application of "gambling" definitions** in §§18-10-102, 18-10-103, 18-10-105, and 18-10-107 by hearing officer to determine a violation of subsection (5)(n) of this section was not in excess of his authority. *Brownlee v. Dept. of Rev.*, 686 P.2d 1372 (Colo. App. 1984).

**Nonprofit corporation's fund-raising on hotel premises** which involved casino-type gambling with play money violated this section because participants were risking a thing of value for gain contingent in whole or in part upon chance and the gambling, although incidental to a social relationship, was participated in by persons other than natural persons and was conducted under circumstances in which persons participated in professional gambling as intended by the statute. *Charnes v. Central City Opera House*, 773 P.2d 546 (Colo. 1989).

**To determine whether a game is incidental to a bona fide social relationship and thus excluded from the definition of gambling, the critical inquiry is whether the participants came together for any shared purpose other than gambling;** where a basketball pool was entered into only by devoted patrons of a neighborhood bar and liquor authority inspectors, it was incidental to a bona fide social relationship. *Leichliter v. State Liquor Licensing Auth.*, 9 P.3d 1153 (Colo. 1999).

#### **Cross References:**

For the legislative declaration contained in the 2002 act amending subsection (5)(n)(II), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act amending subsection (1)(a)



and enacting subsections (1)(a.5) and (1.5), see section 1 of chapter 282, Session Laws of Colorado 2005. For the legislative declaration in the 2012 act amending the introductory portion to subsection (1.5) and subsections (1.5)(a), (1.5)(b), and (1.5)(d), see section 1 of chapter 225, Session Laws of Colorado 2012.