COLORADO
Department of Revenue
Specialized Business Group—
Liquor & Tobacco

Physical Address:
1707 Cole Blvd., Ste. 300
Lakewood, CO 80401

Mailing Address:
Colorado Liquor Enforcement Division
P.O. Box 17087
Denver, CO 80217-0087

Liquor Advisory Group Marketplace Structure Subgroup

Meeting Minutes

April 20, 2023

Seat	Representative	Attendance
State Licensing Authority	Executive Director Mark Ferrandino *Department of Revenue*	Absent
Colorado State Patrol	Joseph Dirnberger *Colorado State Patrol*	Absent
Hard Cider Industry	Eric Foster *Colorado Cider Guild*	Present
Brewery (Large)	Bob Hunt *Molson Coors*	Present
Local Brewery (Small)	Karen Hertz *Holidaily Brewing Company*	Present
Off-Premises Retailer (Large)	Kris Staaf *Albertsons Safeway*	Present
Off-Premises Retailer (Medium)	Jim Shpall *Applejack Wine & Spirits*	Present
Off-Premises Retailer (Small)	F. Seyoum Tesfaye *Franktown Liquors*	Absent
Local Spirituous Manufacturer	Stephen Gould *Colorado Distillers Guild*	Present
National Spirituous Manufacturer	Joseph Durso *Pernod Ricard USA*	Present by Proxy Sarah Mercer (first part of meeting)
National Vinous Manufacturer	Anne Huffsmith *Nakedwines.com, Inc.*	Present
Wholesaler (Vinous/Spirituous)	Fuad Jezzini *Maverick Wine Company of Colorado*	Absent

I. Welcome and Introductions

II. Subgroup Process and Expectations Overview

   A. Review timeline of topics (see page 3 of April agenda).

1. Tastings will be added to the subgroup discussion topics for the May subgroup meeting.
2. Regarding the proposed May discussion topic of manufacturers being allowed to sell directly to retailers, it was brought up that manufacturers, under a wholesaler license, already have the ability to sell directly to retailers. The expressed concern was that this is not a privilege that wholesalers are willing to give up.
3. The LED will have a representative from the Tax Division present at the next Marketplace Structure subgroup meeting to aid in the discussion around tax equity and collection. The Tax Division has agreed to be at the June 15, 2023 meeting.

B. Volunteer to provide subgroup updates at the May LAG meeting.

1. Jim Shpall will present the subgroup discussion at the May LAG meeting.

III. Topic Discussion: Modifications to the 3-tier System

A. Regulatory differences among manufacturers.

1. Background: Beer, wine, cider, and spirits all have different regulations (e.g., number of tasting rooms, ability to ship, etc.); this topic was intended to bring about discussion to see if there could be parity across all manufacturing categories as a way to level the playing field, including market access.
2. Overview of Differences:
    a) Self-distribution: brew pub (300,000 gallons per year), vintner's restaurants (50,000 gallons per year), and distillery pub (2,700 liters per year).
        (1) It was noted that these fall under the retail tier. There was discussion around which elements can be discussed by the Marketplace subgroup and which should be covered in the Licensing subgroup.
        (2) There is ongoing discussion in the Licensing subgroup regarding consolidation of these three license types, if possible and practical.
    b) Franchise law: exists for beer but not for wine or spirits.
    c) Exclusive territory rights: exists for beer only.
    d) Salesroom permits: allowed for brewery (1), manufacturing winery (2), manufacturing distillery (2), limited winery (6).
    e) Temporary salesroom permits: allowed for wineries and distilleries, but not for breweries.
    f) Selling other Colorado manufactured beverages: permitted for beer, wine, distillery pubs, brew pubs, vintners restaurants.
    g) Festival permits: allowed across the board.
    h) Direct shipping: allowed for wine only.
    i) Alternating proprietorships: allowed for beer and wine only.
    j) Production caps: brew pubs (1.8 million gallons per year), vintner's restaurants (925,000 gallons per year), and distillery pubs (875 liters per year).

                (1) It was mentioned that any discussion around raising these production caps might not be the most productive use of the subgroup's time. This was something that consensus was reached on across the industry just last year. General consensus from the other subgroup members was that this topic could be discussed, but it was not the highest priority.
        k) Noncontiguous production: allowed for wine only.
    3. From this list, the subgroup members identified their top priorities as the following:
        a) Franchise law
        b) Temporary salesroom permits
        c) Direct shipping

B. Priority Item Discussion: Franchise Law
    1. Background: The wholesale termination statute (44-3-408, C.R.S.) was added back in 2007 under HB07-1103. This gave all the timelines and events for terminating a wholesaler contract.
    2. What are the advantages/benefits of the current law?
        a) *The subgroup members did not address any specific advantages to or benefits of the current franchise law*.
    3. What are the disadvantages/issues/concerns with the current law?
        a) For small breweries, most distributors won't sign the contract unless the brewery agrees to comply with franchise law. Once the contract is in place, there is no option to escape even if the distributor isn't a good fit for the brand.
            (1) It was noted by the division that the only reason these contracts are shared with the division is in the instance of any violations of territory rights; these rights are divulged in the contract and the division references this to address the violations.
        b) The franchise law feels contrary to creating an equal playing field in the industry.
        c) The franchise law feels like protectionist involvement in capitalism that doesn't need to exist.
    4. Potential proposals:
        a) Eliminate the "in perpetuity" requirement when it comes to beer under franchise law.
            (1) Concern was expressed that this proposal may look good on paper, but it will need additional explanation around why this is being recommended to provide full understanding to all affected parties.
            (2) LED clarified that 44-3-408, C.R.S. does provide mechanisms through which a wholesaler contract can be terminated and the contracts are not required to exist "in perpetuity".

C. Priority Item Discussion: Temporary Salesroom Permits

1. Background: In the existing statute, the manufacturing license for malt beverages to have a salesroom is attached to the wholesale license. Under wine and spirits, they are allowed two (2) salesroom permits. Limited wineries are allowed five (5).
2. What are the advantages/benefits of the current law?
    a) *The subgroup members did not address any specific advantages to or benefits of the current franchise law*.
3. What are the disadvantages/issues/concerns with the current law?
    a) Because beer cannot have the temporary salesroom permits in the same way that wine and spirits can, the equal access is not present. From the division's perspective, a question for the industry is if they are comfortable with and interested in having the same privileges as limited wineries, where they are allowed five permits and the licensee can choose which salesrooms are permanent and which are temporary, meaning they can be moved around.
        (1) There does have to be one salesroom at the manufacturing location; so if the subgroup members are interested in increasing the number across the board to five, they would technically be allowed six salesrooms, with the one at the manufacturing location being permanent.
4. Potential proposals:
    a) There currently exist different laws for beer than for wine and spirits. The proposal from members of the subgroup would be for consistency across beer, wine, and spirits.
    b) All three manufacturer types (malt, vinous, spirituous liquors) would have the ability to have a designated salesroom at their manufacturing location and then an additional five that can be deemed as permanent or temporary, with the understanding that the local licensing authority must be notified and the temporary salesroom must be filed with the state licensing authority within three weeks of the date that the salesroom will be moved.
        (1) It should be noted that this privilege does not extend to the retail tier, only the manufacturing tier. Additionally, the product is limited to only those that are manufactured in the state of Colorado by the licensee.

D. Topic Discussion: Noncontiguous Production
1. Background: Currently, only one salesroom can be on a noncontiguous location.
2. Discussion points:
    a) Several members of the subgroup proposed that Colorado follow the TTB's policies of noncontiguous production within a ten mile radius, with exceptions made on a case by case basis. In other words, rather than managing multiple manufacturing licenses, as long as the manufacturer is within a "reasonable" radius.

            (1) It was noted that some of the larger producers in Kentucky and Tennessee often have noncontiguous locations, sometimes up to thirty miles of each other.
            (2) Because these policies are written in federal rule, the subgroup wondered if the policies could likewise be written in Colorado rule. The division responded that this cannot be enacted in rule and would have to be put in statute.
        b) The subgroup members expressed the desire to grow their business without having to move locations. Because only one salesroom can currently be on a noncontiguous location, a question was posed as to whether the subgroup members would want to include that in the proposal or not.
    3. Potential proposals:
        a) Make noncontiguous laws for beer and spirits manufacturers identical to current noncontiguous laws for wine manufacturers.

E. Topic Discussion: Manufacturers selling other Colorado manufactured beverages in tasting rooms
    1. Discussion points:
        a) The idea behind this discussion is to promote Colorado manufactured products in tasting rooms, for on-premises consumption only, across the state. Wineries can already do this with Colorado wines; distillers would like to be able to sell products made collaboratively.
        b) It was also brought up that a specific location where collaboration products (Colorado manufacturers only) could be sold would be welcome. The general consensus from the subgroup members was that collaboration products could be sold only for on-premises consumption.
        c) Given the earlier discussion around a potential increase in the number of salesrooms, the division asked the subgroup whether Colorado products manufactured by other producers should be allowed for sale in all salesrooms or allowed for sale only at a minimal amount.
            (1) There was some concern expressed that this would create competition with a higher number of locations than retail liquor stores are currently allowed to have.
            (2) It was emphasized that the intent around this proposal was to have these products for on-premises consumption and not to turn into a retail liquor store. Additionally, the subgroup members stated that the goal is not to turn tasting rooms into bars.
            (3) The subgroup felt this was an item for continued discussion around reducing or limiting the number of salesrooms where this action could be performed.
    2. Potential proposals:
        a) Allow Colorado manufactured products to be sold in tasting rooms for on-premises consumption only. Collaboration products with Colorado

manufacturers would also be welcome in the tasting rooms, also for on-premises consumption only.

F. Other discussion points:

1. Territory Rights:

a) There was brief discussion around territory rights, especially for wine and spirits; the general feeling was that this was a non-issue that had already been addressed and resolved.

2. It was emphasized by the division that the LAG group members should send in their respective thoughts on proposed ideas, and through further conversation within the large LAG group, the ideas can be solidified into proposals.

IV. Public Comment

A. Nick Hoover, Colorado Restaurant Association

1. Concerns expressed over a lack of representation among the subgroup members for on-premises licensees, especially with a considerable part of the conversation directed towards on-premises consumption of products. Expanding tasting rooms to allow for on-premises consumption turns them into little bars, the same as allowing off-premises consumption would turn tasting rooms into little liquor stores. Before the proposal is sent to the LAG as a whole, he felt this should be given over to the Regulation of Retail Operations subgroup for further discussion. The proposal, as discussed today, would be adamantly opposed by the on-premises industry; there isn't parity or fairness, especially with regards to licensing. He expressed additional concerns around there being no real local licensing; brick and mortar tasting rooms are going to look like bars after they go through the local licensing process.

a) A member of the subgroup argued that transferring the discussion to the Regulation of Retail Operations subgroup was unnecessary, as the proposal would be taken back to the LAG group for further consideration, and on-premises licensees are represented both in the Marketplace Structure subgroup and in the LAG as a whole.

b) It was also noted that New Mexico's law allows twenty percent (20%) of other New Mexico produced products for on-premises consumption, and the subgroup member would be comfortable mirroring this in Colorado law. This would allow manufacturers to sell their own product and actively collaborate with fellow Colorado manufacturers.

B. Shawnee Adelson, Colorado Brewers Guild

1. Support given for the proposal to remove the termination of wholesalers statute; no other manufacturing groups are subject to that statute and it seems the wine and spirits industries are flourishing in ways that would not be affected by removal of this statute. As was pointed out, most wholesalers will not contract with distributors unless the franchise law is incorporated into the contract.

C. Sam Duwitt, Brewers Association

1. He echoed the support to remove franchise law from the statute. Franchise laws are fundamentally unfair, compounded by the fact that they are really only for one segment of the state. While changes to franchise law could make things

better, it all but ensures that the industry would need to come back and address this issue again. Franchise protections should be eliminated for beer wholesalers; it is outdated, unfair, and unnecessary. With franchise laws in place, beer wholesalers held an ever-green right to the goodwill of their suppliers' brands in the territory they served. In effect, those laws transferred small territorial slices of brewers intellectual property to its wholesaler network, which is a massive transfer of wealth from supplier to wholesaler to businesses. Even a modest-sized beer wholesaler generates millions in revenue and can afford sophisticated financial, business, and legal advice. Do these businesses need special legal privileges or can they protect their businesses through commercial law principles by negotiating enforceable contracts with suppliers? The privileges that wholesalers enjoy under franchise law have little precedent. How many businesses get the automatic and un-waivable right to future business in perpetuity from the moment they make their first sale of another company's product?

D. Steve Findley, Colorado Beer Distributors Association
    1. Regarding the removal of franchise law from the statute, there was no opposition to the bill implementing our current franchise laws from Colorado craft brewers at the time it was enacted. It was put into place in coordination with major manufacturers. Continued discussion around this proposal and the existing franchise law is welcomed by the association; it should be noted that at the time the bill was initially negotiated, the three-hundred-thousand gallon (300,000) exemption was put in place for a reason, and those manufacturers were free to move from distributors under the law, but it did depend on the contracts in place. The association would have concerns over the state getting involved in contracts between private parties. Concerns about removing the law entirely and requests further discussion before a decision is made.

E. *No additional public comments were offered during the public comment section*. Any additional comments can be emailed to dor_led_rulemaking@state.co.us.

V. Action Items

A. Karen Hertz volunteered to prepare a proposal around the franchise law. She will also provide documentation clarifying the licensing differences between spirits, beer, and wine.
    1. Karen Hertz provided the following proposal via email on April 27, 2023.

B. Eric Foster volunteered to prepare general proposal language around the idea of selling Colorado manufactured products in tasting rooms.
    1. Stephen Gould provided the following proposal via email on April 27, 2023.

The next Marketplace Structure Subgroup meeting will be on May 18, 2023 from 8:30 a.m. to 10:30 a.m.