COLORADO
Department of Revenue
Specialized Business Group—
Liquor & Tobacco

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Liquor Advisory Group Marketplace Structure Subgroup

Meeting Minutes
June 15, 2023

Seat	Representative	Attendance
National Vinous Manufacturer	Anne Huffsmith *Nakedwines.com, Inc.*	Present
Brewery (Large)	Robert (Bob) Hunt *Molson Coors*	Present
Local Brewery (Small)	Dan Diebolt *Diebolt Brewing Company*	Present
Hard Cider Industry	Eric Foster *Stem Ciders*	Present
Off-Premises Retailer (Small)	F. Seyoum Tesfaye *Franktown Liquors*	Absent
Wholesaler (Vinous/Spirituous)	Fuad Jezzini *Maverick Wine Co of Colorado*	Present
Off-Premises Retailer (Medium)	Jim Shpall *Applejack Wine & Spirits*	Present
Colorado State Patrol	Joseph Dirnberger *Colorado State Patrol*	Absent
National Spirituous Manufacturer	Joseph Durso *Pernod Ricard USA*	Present
Off-Premises Retailer (Large)	Kris Staaf *Albertsons Safeway*	Present
Local Spirituous Manufacturer	Stephen Gould *Golden Moon Distillery*	Present

I. Welcome and Introductions
II. Review Subgroup Process and Expectations
   A. Review the timeline of topics (see page 3 of the agenda).
   B. Volunteer to provide the subgroup updates at the July LAG meeting.
      1. Kris Staaf will provide an overview of the subgroup's discussion at the July LAG meeting.
III. Topic Discussion: Modifications to the 3-tier System

A. Discussion 1: Consideration of tax equity and collection
   1. Josh Pens (Director of Tax Policy) from the DOR Tax Division was present to assist with taxation questions.
      a) To see the full presentation from Josh Pens, please view the subgroup meeting recording.
      b) The Tax Division collects and enforces all the state's taxes and fees (estimated number of 50 different types, including Liquor Excise Tax). For the liquor industry, taxes are generally limited to the Liquor Excise Tax.
         (1) The excise tax statute can be found in section 44-3-503(1)(a), C.R.S.
      c) The current excise tax rates in the state of Colorado are as follows:

	Malt Liquors & Hard Cider	**Vinous Liquor (except hard cider)**	**Spirituous Liquors**
Tax Rate	$0.08 per gallon	$0.0733 per liter	$0.6026 per liter
Tax Rate per Liter	$0.0211	$0.0733	$0.6026
Tax Rate per Gallon	$0.0800	$0.2774	$2.2808

      d) Additional taxes and fees related to the liquor industry in Colorado are as follows:
         (1) Wine Industry Development Fund
            (a) Grape & Produce Excise: $10.00 per ton
            (b) Wine Development Fee: $0.01 per liter
            (c) Winery Surcharge:
               (i) $0.05 per liter for the first 9,000 liters
               (ii) $0.03 per liter for the next 36,000 liters
               (iii) $0.01 per liter for all additional amounts
         (2) State and Local Sales Tax (on retail sale)
      e) The Tax Division publishes an annual liquor excise tax report, which can be accessed by visiting https://cdor.colorado.gov/data-and-reports/liquor-data/liquor-excise-tax-report.
         (1) For the fiscal year 2021-2022, the liquor tax and surcharges totaled about 56 million dollars.
         (2) The state's primary source of tax revenue is the individual income tax. For the 21-22 fiscal year, this generated 11.53 billion dollars. Other excise tax totals for the fiscal year included retail marijuana ($98 million), cigarettes ($265 million), tobacco ($62 million), and nicotine/vaping products ($42 million).
         (3) The liquor excise tax is a generally small portion of the general fund tax revenues.

f) It was noted that all fifty states and the District of Columbia impose a tax on at least one form of malt liquor, and 48 states and the District of Columbia impose a tax on wine.
    (1) Generally, Colorado is towards the bottom with both malt liquor and wine, ranking 45th of 49.

g) For spirits, 43 states plus the District of Columbia imposed a distilled spirits tax. The rate structure varies more than malt liquor and wine, with 7 states taxing at a percentage of the wholesale or retail price, and 5 states charging higher rates based on the potency (ABV, proof, etc.)
    (1) Colorado ranked 28th of 37 with the state's distilled spirits tax.

h) Currently, no state imposes the same rate on all categories.

2. Overview of Discussion
    a) One of the subgroup's main concerns is that the division does not currently have proper resources to keep pace with what is needed, in terms of education, enforcement, et cetera, to help the liquor industry in Colorado grow and thrive.
    b) There was robust discussion around this topic, with a particular focus on how and/or if excise tax revenue could be used to increase funding for the Liquor and Tobacco Enforcement Division, as many members of the subgroup feel that the division is not adequately funded. A few points of interest from the conversation are as follows:
        (1) The division is funded by new application fees and renewal fees, the latter of which was instituted a few years ago and helped stabilize the fund balance, as well as minimized the unpredictable increases and decreases associated with new application fees. The division's budget is very complicated, primarily because of the role that the Constitution and Tabor Law plays in determining how much of the budget the division can maintain. Currently, the division cannot maintain more than 16.5% of its budget.
            (a) It was also noted that while the division is funded by new applications, there are additional statutory restrictions in place with certain fee types. Some fee types fall under an 85/15 rule, meaning that 85% is given to the general fund and 15% can be maintained by the division.
            (b) The division also receives grant funding for the tobacco program, which allows the division to work with SYNAR and the FDEA.
            (c) The division regularly works with the budget team to determine how the 85/15 with certain fees will impact the division. At the beginning of each fiscal year, the division tries to predict where the budget might be next year; as a result, this is the time of year when the

industry might see an increase or decrease in fee amounts, depending on the budget predictions.

(d) The division stated that the LAG could take a look at this, as other divisions do not appear to be restricted on the same level. However, it was noted that any proposal to change the 16.5% would be a delicate balancing act, as the division's needs would be set against other broadly funded state matters.

(2) The division expressed an interest in hearing some ideas from the LAG members about regulatory processes and adequate funding for the division's enforcement team. The division also shared some statistics on current employment within the division:

(a) Initially, the division was 32.5 FTE when it regulated only alcohol; since adding tobacco products, the FTE was increased to 63.7. However, appropriation only allows the division to spend 56.7 FTE; seven FTE have to be left vacant because the division doesn't have the spending authority. Because of this, fiscal notes always have to be done at the minimum state wage.

(b) Mr. Pens also noted how the Tabor cap impacts and limits the growth in revenue. The state doesn't retain all of this.

(3) One member of the subgroup referenced a practice in Texas, wherein the liquor industry is analyzed every twelve years. This prompted a discussion from the other subgroup members about whether there are current Colorado laws that are antiquated, outdated, and/or not easily enforceable, and if addressing these might assist with the division's enforcement abilities.

(a) As an example, one member of the subgroup referenced their frustration with alcohol products being shipped into Colorado via direct-to-consumer shipping. In regards to this example, the division commented that it does not regulate such parties in other states, and avenues to address this issue are limited. The division can partner with the Attorney General's Office for a cease-and-desist letter, or the division can contact the other state's regulatory agency and notify them that alcohol product is being shipped into Colorado, which is not currently allowed. Usually, the division has success with a letter from the other state's regulatory authority.

(b) With much of the discussion focused on increasing the division's enforcement abilities, the division clarified that its focus is not solely on enforcement. Through the various teams in the division (e.g., the Policy Team, Licensing, Enforcement, etc.), the division has a heavy focus on customer service and education for licensees (currently, there are about 14,000 liquor licenses and 6,000 tobacco licenses). The division prefers to educate licensees before going straight to administrative action, especially when new legislation changes or creates new license types, such as the new Fermented Malt Beverage + Wine Retailer license.

(4) The facilitator inferred from the conversation that, if the group wanted to continue discussing ways to change funding for the LED, it would be best to bring it to the large Liquor Advisory Group meetings to discuss as a full group. If it was to be discussed further, the facilitator felt that additional information about the capabilities, history, and funding streams for the division, along with common frustrations the division encounters when trying to enforce the law, would be helpful to add context to the conversation. The subgroup members were in agreement with this, and the division agreed that this information could be provided via experts. The division requested, if this conversation were to be brought to the large LAG meeting, it be pushed out to August to provide ample time to gather information and experts.

c) Following the discussion of adequate funding for the division, the subgroup members had an equally robust conversation on parity in the industry. Several different items under this issue were discussed, including the following:

(1) The division mentioned that when the law was originally created, it was never imagined that the practice of undue influence would be conducted by retailers. At the time, the primary concern was manufacturers influencing retailers; however, retailers are now becoming very large and influencing “up the tier chain.” The division proposed that the law be amended such that all three tiers are held accountable for undue influence. This received general support from the subgroup members.

(2) The subgroup members asked Mr. Pens how ready-to-drink (RTD) beverages are currently taxed in Colorado. Mr. Pens stated that the product categories are currently based on how the liquor is produced and what it’s produced from, and are generally taxed at the malt liquor rate. Mr. Pens also noted that there are currently conversations being had across the country as to whether RTD products truly fall in the malt category when they more closely resemble mixed drinks. Additionally, there have been discussions about whether the existing three-category system of taxing should be revisited and revised to tax products

based on the alcohol concentration, rather than how the product is produced. These conversations follow similar discussions around nicotine and vaping, that perhaps it should be a volume-based tax, based on the volume of vaping liquid, rather than a percentage tax. At this time, no state has made a decision on revisiting or revising the wholesale tax system.

(3) A suggestion was put forward about starting any changes by implementing a proper definition for "Ready-to-Drink" alcohol products, as it is currently an industry term only. This received overall support from the subgroup, and the division recommended that the subgroup members reference states that have already put forward legislation on this issue (Arkansas, Arizona, Hawaii, Louisiana, Maryland, Nebraska, New Jersey, Vermont, and Washington), as there may be an existing definition that could work in Colorado.

(a) From a tax perspective, a subgroup member recommended a separate tax rate for RTDs, and these products would be taxed the same across the different manufacturers.

d) The subgroup members did not reach a set decision as to the next steps following this discussion. The facilitator stated that if any member of the subgroup would like to put forward a proposal with regards to tax parity, a set definition for ready-to-drink alcohol products, and/or a change in funding for the division, these should be submitted to the division by emailing dor_led_rulemaking@state.co.us.

(1) If any member of the subgroup specifically puts forth a proposal on how to define RTD products, the facilitator requested that these be submitted one week in advance to the July Marketplace Structure subgroup meeting, so that it may be fully reviewed by the group before the discussion.

3. Public Comment

a) Bill Young, *Beer Institute*

(1) As craft brewers in the state have tried to figure out how to get their products to market and have tried to compete, Mr. Young appreciates where the craft distillers are, in terms of some of the comments he's heard recently and throughout this subgroup conversation. However, he hopes that this group understands that beer and liquor are very different. They are made and consumed differently, and as a result, are taxed and regulated differently. This is true in every state, and most states model their tax structure after the federal government, which dates back to prohibition. For economic and public health reasons, this is why the state of Colorado and the federal government tax the products differently. Mr. Young expressed that this needs to be

seriously considered by the subgroup members as these proposals, possibly, move forward.

(2) Mr. Young also wanted to make sure that the subgroup members are aware that in 2021, Michigan and Nebraska both enacted substantial tax cuts for canned cocktails. They are two of thirteen states that have done so in the last couple of years, and in the last two years, eleven state legislatures have rejected these proposals. One of the reasons for the rejection in Maryland, specifically, is that as they were looking at legislation to provide a tax break for its canned cocktails, they commissioned a study to find out what happened in Michigan and Nebraska when the legislation was enacted. The study found that, in those two states, the sales and low consumer prices after passing the legislation never happened; those prices were never handed over to the consumer and did not increase sales. The average price of canned cocktails actually increased. In March of this year [2023], the Beer Institute filed a letter with the division that has since been posted as a public record on the LED website. Mr. Young expressed his opinion that this is not something for the legislation nor for the voters of Colorado to consider.

b) Sam DeWitt, *Brewers Association*

(1) Mr. DeWitt thanked Mr. Young for mentioning the Maryland report, as he feels this is "instructive." According to Mr. DeWitt, the report estimated that it was a 2 million dollar loss in Michigan and a 1.8 million dollar loss in Nebraska over the course of a year. This is a significant downfall in revenue, and Mr. DeWitt feels that Colorado needs to look very hard at what other states are doing with these bills, including when they don't pass these sorts of proposals.

(2) Mr. DeWitt also mentioned that both Michigan and Nebraska are being watched by the industry as a whole, especially to see what their experience has been. For reference, both Michigan and Nebraska drafted bills this year proposing to repeal those tax breaks for canned cocktails in the RTD space. In Nebraska, the bill was introduced but didn't pass; in Michigan, the bill has been drafted but not yet introduced.

(3) Mr. DeWitt agreed that canned cocktails are the "hottest product" in the market, which, according to Mr. DeWitt, is true. As of 2021, Mr. DeWitt stated that tequila RTDs are up 138%, rum RTDs are up 132%, and vodka RTDs are up 110%. Claiming that there's no opportunity for growth for distillers to make these products seems incorrect.

(4) Mr. DeWitt stated that these canned cocktail producers are mostly out of state and do not have a footprint in the state of

Colorado. They use a "marketing halo" of using real vodka, real rum, and real tequila to show their product is premium, but they don't want to pay the premium product tax. They know how to use malt base, they've been using it for years, but they choose to use these products to give the appearance of being premium, but they don't want to pay the higher tax rate. As Mr. Young mentioned in his comment, there is a reason that spirits are taxed at a higher rate, and the Brewers Association would respectfully ask that the group not consider this.

c) Shawnee Adelson, *Colorado Brewers Guild*

(1) Ms. Adelson stated that she wanted to address the Colorado perspective, rather than the national perspective, in her comments. It does appear that when the subgroup discussed RTDs, they spoke about canned cocktails specifically. When defining RTD products, Ms. Adelson pointed out that the subgroup would be defining canned cocktails, and therefore the points made by Mr. Young and Mr. DeWitt are, to Ms. Adelson, quite relevant.

(2) Ms. Adelson also referenced another discussion point about how and who tax reductions could impact. It would not decrease the cost to the consumer or retailer, as has been seen in other states. In regards to competitiveness, Ms. Adelson pointed out that, according to the Colorado state excise tax report, production since 2019 (when full-strength beer went into grocery stores) has gone down by 1.3 million gallons at the end of 2022. Spirits is up 4.4 million gallons. When discussing competitiveness, Ms. Adelson knows that there is a big change with wine going into grocery stores, but brewers are losing market share and this is something that needs to be kept in mind. This is a Colorado-specific issue, not a nationwide one.

(3) With the introduction of wine in grocery stores, craft brewers are being hurt, independent retailers are being hurt, and this is impacting small independent craft brewers. When discussing competitiveness, Ms. Adelson feels it should be noted that all craft brewers are being hurt by this and competitiveness should be considered for all craft manufacturers, not just distilled spirits manufacturers.

d) Jake Weien, *1350 Distilling*

(1) Mr. Weien expressed full support for the points made by the distilled spirits manufacturer representative during this meeting. As a small craft distiller, Mr. Weien has noticed a great difference with wine going into grocery stores; his overall wholesales have dropped considerably. The notion of an equal playing field is another point that Mr. Weien agrees with.

e) Joan Green Turner, *J. Andrew Green & Associates*
   (1) Ms. Green Turner wanted to speak to the earlier taxation issue that was discussed by the subgroup. If the LED is not getting adequate money from the Joint Budget Committee (JBC), perhaps the answer is, instead of trying to put anything on the ballot or set up an enterprise, for the industry to go to the JBC and work with LED to see what adequate money they should have, and also to find out from the JBC why they haven't funded LED fully.

f) No additional public comment was offered on this discussion. If the public wishes to put forward additional comments or input, they may email the division at dor_led_rulemaking@state.co.us.

4. Next Steps
   a) If members of the subgroup would like to submit a proposal on the definition of "Ready to Drink" products and/or any taxation of RTDs, this is an opportunity.
   b) Also, if any members would like to submit a proposal to change the current excise tax rates, this could be written and discussed.

B. Discussion 2: Should manufacturers be allowed to sell directly to retailers?
   1. Overview of Discussion
      a) Overall, the subgroup members felt that this is already an existing privilege for Colorado manufacturers via a limited wholesale license. At this time, no interest was expressed in addressing this topic further.
   2. Public Comment
      a) No public comment was offered on this discussion. If the public wishes to put forward additional comments or input, they may email the division at dor_led_rulemaking@state.co.us.

C. Discussion 3: [Colorado Manufacturer Sales Room Proposal]() (submitted by Stephen Gould)
   1. Overview of discussion for part 1 of the proposal
      a) There was discussion among the subgroup members to clarify some of the points in the proposal, specifically that the purchased modifier would be used solely for the purpose of preparing mixed drinks with the products manufactured by the manufacturer. Additionally, these would be served as full cocktails, as is currently permitted in statute, not as tasting samples.
         (1) The division expressed some concern with the proposal. Currently, all the manufacturing categories, except for wine, are limited with the products that can be sold in their sales rooms to those that have been manufactured on their premises. For example, vermouth can sometimes be classified as a wine, which is why it wouldn't be present in a distillery. The issue is that these sales rooms are intended for the products that have been manufactured within the sales room by the licensed

manufacturer. Wineries can sell other Colorado wines within their sales rooms; the other sales rooms are not allowed this privilege.

2. Public comment for part 1 of the proposal
    a) Jake Weien, *1350 Distilling*
        (1) Mr. Weien expressed full support for part one of this proposal. This has been a dilemma for just making a simple cocktail, even like an elderflower liqueur, unless he needs to make it himself. This refers to small quantities for the most part, so the ability to acquire those spirits, just as modifiers, would be a great benefit for his taste room.
    b) No additional public comment was offered on this discussion. If the public wishes to put forward additional comments or input, they may email the division at dor_led_rulemaking@state.co.us.
3. Vote for part 1 of the proposal
    a) A motion to move part one of the proposal to the LAG was made by Stephen Gould. The motion was seconded by Joe Durso.
    b) The motion passed on a vote of 7 in support and 0 against. 1 member did not submit a vote.
4. Overview of discussion for part 2 of the proposal
    a) There was a brief discussion to clarify elements of this part of the proposal. Overall, the second part of Mr. Gould's proposal received support from the subgroup members.
5. Public comment for part 2 of the proposal
    a) Shawnee Adelson, *Colorado Brewers Guild*
        (1) Ms. Adelson asked Mr. Gould to clarify if this proposal included selling bottles to-go or if this was limited to on-premises consumption. Mr. Gould confirmed that, as this proposal seeks to achieve parity with privileges that wineries already have in Colorado, manufacturers would be allowed to sell full bottles of distilled spirits in the sales room; this would include both their own produced spirits and spirits produced by another Colorado manufacturer. Mr. Gould also stated that this proposal would extend this privilege to breweries.
        (2) Ms. Adelson had no further comment.
    b) Jake Weien, *1350 Distilling*
        (1) Mr. Weien expressed that this could be a great benefit for small craft distilleries like *1350 Distilling*, who aren't fully distributing throughout the state. To have a distillery in Fort Collins, for example, and to have more exposure in that area would be great, especially with the dwindling liquor store options as a result of the change in the law, allowing beer and wine sales in grocery stores. This would be a way to expand his market to other areas that he isn't able to at this time.
        (2) Mr. Weien expressed that, in his own taste room, he will want to push his own product; however, he expressed the opinion that the clientele has an interest in Colorado spirits, and Colorado distilled spirits manufacturers, as a group, tend to work well

together. He would have no issues supporting fellow craft distilleries in his own shop.

6. Vote for part 2 of the proposal
   a) A motion to move part two of the proposal to the LAG was made by Stephen Gould. The motion was seconded by Joe Durso.
   b) The motion passed on a vote of 8 in support and 0 against.

IV. Other Discussion Items
   A. A member of the subgroup briefly asked to address an earlier subgroup discussion regarding perceived issues with wholesaler contracts; it was previously decided that the craft brewers and wholesalers would meet and collaborate to create a proposal for addressing and/or resolving these issues. The facilitator clarified that the subgroup is still planning to discuss this matter in August and the subgroup looks forward to receiving the proposal.

V. Action Items
   A. Any member of the subgroup who would like to put forward a proposal with regard to tax parity, a set definition for Ready-to-Drink alcohol products, and/or a change in funding for the division, should submit their proposal to the division by emailing dor_led_rulemaking@state.co.us.
      1. If any member of the subgroup specifically puts forth a proposal on how to define RTD products, it should be submitted one week in advance to the July Marketplace Structure subgroup meeting, so that it may be fully reviewed by the group before the discussion.

The next Marketplace Structure subgroup meeting will be held virtually on July 20, 2023, from 8:30 a.m. to 10:30 a.m.