



COLORADO
 Department of Revenue
 Specialized Business Group—
 Liquor & Tobacco

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Liquor Advisory Group Marketplace Structure Subgroup

Meeting Minutes

July 20, 2023

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

- I. Welcome and Introductions
- II. Review Subgroup Process and Expectations
 - A. Review the timeline of topics (see pages 2-3 of the [agenda](#)).
 1. The subgroup meetings will be concluded in August. September subgroup meetings will be held only if deemed necessary.

2. Jim Shpall requested to add the topic of what happens to inventory when liquor stores go out of business to the August agenda. He will submit a proposal for the subgroup's review and consideration.
 - B. Volunteer to provide the subgroup updates at the August LAG meeting.
 1. Anne Huffsmith will provide an overview of the subgroup discussion at the August LAG meeting.
- III. Topic Discussion: Wholesaler-to-Retail Issues
 - A. Discussion 1: Merchandising material and marketing support
 1. Overview of Discussion
 - a) This topic was raised with no comment or discussion from the subgroup members.
 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.
 - B. Discussion 2: Equitable pricing and volume purchasing
 1. Overview of Discussion
 - a) This topic was raised with no comment or discussion from the subgroup members.
 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: Damaged product
 1. Overview of Discussion
 - a) This topic was raised with no comment or discussion from the subgroup members.
 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.
- IV. Topic Discussion: Eliminate the "4th tier" import license required for wine and spirits importing and wholesaling in Colorado ([proposal](#) received from Mike Laszlo)
 - A. Review of the proposal (presented by Mike Laszlo).
 - B. Overview of Discussion
 1. There was initial confusion over the intent and purpose of this proposal. Following robust discussion to clarify the proposal, Mr. Laszlo explained that the intent of his proposal was to strike subsection (2) from 44-3-405, C.R.S., which would remove the prohibition on wholesalers obtaining an importers license. Beer wholesalers do not have this prohibition and Mr. Laszlo would like to see the prohibition removed for wine and spirits wholesalers.
 - a) The division supported Mr. Laszlo's proposal with the provided clarification. There was also general support from the subgroup members for this proposal, as clarified.

C. Public Comment

1. Micki Hackenberger, *Wine and Spirits Wholesalers of Colorado*

- a) Ms. Hackenberger remarked that when she first read the proposal, she read it the same way as the division and therefore shared the division's initial concerns (that there would be federal laws involved in discussing the proposal, and the proposal risked treading into an area where it would be in conflict with federal laws). With the clarification around the proposal's intent, Ms. Hackenberger expressed that she was inclined to believe that it would be fine to eliminate the importer as an entity but keep the statutory functions because, as it was pointed out, not all state have an importer license and this would be a function that would "just transfer over."
- b) Ms. Hackenberger stated that she has already sent Mr. Laszlo's [proposal document](#) out to the WSWC members for comment; once she has received input from all the members, she will file a formal response with the division. Overall, Ms. Hackenberger stated that she thinks this would be a streamlining and modernization of the system that would not be problematic.

2. Shawnee Adelson, *Colorado Brewers Guild*

- a) Ms. Adelson asked for clarification on how the importer license currently works for beer; it was her understanding that beer does need an importer license but that it is set up differently than for wine and spirits. Specifically, she wanted to know if this proposal would impact the importing of beer.

(1) The division explained that the importer's license is required for beer; the difference is that beer does not have the statutory prohibition under 44-3-405(2). A beer wholesaler can apply for and be given an importer license. Under the current statute, wine and spirits wholesalers are unable to get an importer license.

3. 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.

D. Motion

1. The subgroup supported a proposal to strike subsection (2) from 44-3-405, C.R.S., to allow wine and spirits wholesalers to receive an importer license.
2. Motion to move this proposal to the LAG for further discussion and a vote made by Joe Durso. Motion seconded by Fuad Jezzini.

E. Vote

1. The motion passed with no dissenting votes recorded.

V. Topic Discussion: Credit terms ([public comment](#) received from Wendy Turk)

- A. Review of the proposal (presented by Wendy Turk).
- B. Overview of Discussion

1. The subgroup members had a robust discussion about the intent of the proposal and its potential impacts on the industry as a whole. Highlights of the conversation are as follows:
 - a) Ms. Turk stated that she has engaged in past conversations with the division around this discrepancy with the hope of modifying statutory language to make the process of facilitating payments easier for liquor-licensed drugstores (LLDS). The way the statute is currently written, the division has no ability to work around or make exceptions, and Ms. Turk felt that this needed to be looked at on a broader level.
 - b) There was some input from the subgroup that the original conversation, which occurred in 2016, was intended to help level the playing field between larger retailers and small, independent retailers. Specifically, there was an expressed opinion that larger retailers are set up to pay right away while the smaller retailers are not, and changing this practice would “upset the apple cart.” Ms. Turk expressed disagreement to this point and stated she it wasn’t fair to give one subset of retailers a set of terms and another subset of retailers another set of terms. Further, Ms. Turk stated that there are no other states operating in this way, apart from a single exception in Tennessee.
 - c) The division asked for clarification on how this would disrupt the system (“upset the apple cart”). The division stated that there have been reports of deliveries wherein product was found to be, for example, broken in transit, and since the invoice was already paid for, this resulted in extra work with invoicing back and forth. The division wanted to know how things would be disrupted if liquor-licensed drugstores (Costco, Target, etc.) have the same payment privileges as retail liquor stores.
 - d) There was some disagreement around if and how larger retailers are currently disadvantaged under the current system versus how small, independent retailers could likewise be disadvantaged with any changes to the system. Following this discussion, a subgroup member proposed amending the definition of Cash On Delivery (COD) to be “upon delivery” and providing a three-day cushion to take care of any crediting and/or administrative issues that arose from the delivery.
 - e) Ms. Turk commented that other states who have COD laws have addressed this by writing an exception in statute that allows for 24 hours (1 business day) from the receipt of electronic payments to upload the invoice and/or initiate payment.
 - (1) This suggestion received general support from the subgroup members and the division. It was clarified that an electronic payment would be considered paid even in situations where the payment isn’t reflected on the books because it’s considered received after banking hours (e.g., after 3:00 pm). This would be in line with how check payments are received. There was an overall agreement to keep the “cushion” at 24 hours.

C. Public Comment

1. Micki Hackenberger, *Wine and Spirits Wholesalers of Colorado*
 - a) Ms. Hackenberger commented that the original issue back in 2016 was not with paying cash on delivery, but the interpretation of what is “cash.” When someone made a delivery and the delivery was paid for via a check, it was considered COD; however, when someone paid via electronic funds transfer after 3:00 p.m. (after East Coast banking hours), the transaction reflected that it was not paid until the next day and therefore was not COD. The division was contacted about this issue at the time, and Ms. Hackenberger stated that at the time, WSWC considered running legislation to clarify that electronic funds transfers met the criteria if given upon delivery.
 - b) Ms. Hackenberger remarked that this issue is overall very controversial, and while she would not want to give rid of the COD requirement, she suggested amending it so that electronic funds transfers could be taken at delivery.
2. Steve Findley, *Colorado Beer Distributors Association*
 - a) Mr. Findley expressed his agreement with some of the concerns raised by members of the subgroup. He commented that this seemed like an administrative issue that could be solved with invoicing and not something that needed a major policy change in the 30-day credit law.
 - b) In regards to a comment made about amending the practice to be solely Cash On Delivery, Mr. Findley stated he would be fine with it but did not outright suggest taking that approach. He felt that this issue could be addressed differently without “upsetting the apple cart” and doing away with credit terms altogether.
3. Micki Hackenberger, *Wine and Spirits Wholesalers of Colorado*
 - a) Ms. Hackenberger’s second comment followed additional conversation held on this proposal, specifically to allow 24 hours to upload the invoice and/or initiate payment for electronic payments. Ms. Hackenberger expressed concern with 24 hours. While she fully supported the COD concept, she felt that payment must be initiated at delivery. The semantics of the electronic payment taking 24 hours to process through a bank is administrative, as long as LED can recognize that the payment occurred at delivery. Even if it’s an electronic funds transfer, the liquor-licensed drugstores are meeting the intent of the deal and it doesn’t matter when the payment posts, just like a check payment.
 - b) If a delivery is noted to have broken, damaged, or missing goods, Ms. Hackenberger felt there was a good chance that the issue is being caught at the time of delivery and the invoice can be adjusted at that time. Ms. Hackenberger stated she would be uncomfortable saying that retailers have 24 hours to make a payment; this is not COD and the payment should be initiated at delivery.

- (1) Ms. Turk replied to this comment, stating there are no distributors who currently have the technology to upload an invoice for electronic payments at the time of delivery. The invoice has to be brought up in an entire file upload, which means it has to be done early in the morning before the trucks leave the warehouse, or at the end of the day when the trucks get back to the warehouse, at which point they can do reconciliations. Someone at the distributorship keys in the credits, runs the credit batches, and then submits the files once they're "netted out."
 - (2) Ms. Hackenberger asked that the subgroup look at other states that have allowed COD and look at the language in order to emulate it in the proposal. She expressed concern about taking an action that appears to compromise retailers.
4. Steve Findley, *Colorado Beer Distributors Association*
 - a) Mr. Findley stated that he generally agreed with the concept of the proposal. He would like the opportunity to take the idea back to the association's members and get feedback, as well as address some of the concerns expressed by Ms. Hackenberger.
 5. 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.

D. Motion

1. Overall, the subgroup members felt it would be best to move this concept to the LAG for further discussion and, potentially, a vote.
2. Ms. Turk stated that she would submit a formal proposal to the division for the group's review and consideration. Members of the subgroup and the public are also encouraged to submit any feedback and additional input to aid in the discussion.
3. Motion to move the concept to the LAG for discussion and a vote made by Fuad Jezzini. Motion seconded by Joe Durso.

E. Vote

1. The motion passed on a vote of 3 in support, 2 against, and 0 members abstaining from a vote.

Liquor Advisory Members	Yes	No	No Position/Abstain from Vote
Anne Huffsmith <i>National Vinous Manufacturer</i>	X		
Robert (Bob) Hunt <i>Brewery (Large)</i>	X		
Dan Diebolt <i>Local Brewery (Small)</i>		X	
Eric Foster	ABSENT		

<i>Hard Cider Industry</i>			
F. Seyoum Tesfaye <i>Off-Premises Retailer (Small)</i>	ABSENT		
Fuad Jezzini <i>Wholesaler (Vinous/Spirituous)</i>	X		
Jim Shpall <i>Off-Premises Retailer (Medium)</i>		X	
Joseph Dimberger <i>Colorado State Patrol</i>	ABSENT		
Joseph Durso <i>National Spirituous Manufacturer</i>	X		
Kris Staaf <i>Off-Premises Retailer (Large)</i>	PROXY		
Stephen Gould <i>Local Spirituous Manufacturer</i>	ABSENT		

VI. Topic Discussion: Permit Distilleries and Distillery Pubs to be alternating proprietorships ([proposal](#) received from Mike Laszlo)

- A. Review of the proposal (presented by Mike Laszlo).
- B. Overview of Discussion

1. The subgroup requested Mr. Laszlo to provide clarification on the intent and purpose behind the proposal. Mr. Laszlo stated the issue behind this proposal is that there's a difference between contract distilling and alternate proprietorship (AP) distilling. Simply put, under contract distilling, the spirits wouldn't qualify as products produced on-premises. This gives distillers the right to sell products to go and all the benefits of the distillery pub license. Under this proposal, distillery pubs would be able to operate as brew pubs and vintner's restaurants currently can. Additionally, this would allow for greater entrepreneurship in the distilling industry. More individuals would be able to obtain distillery pub licenses and then, through the alternate proprietorship, produce more products off-site and have more on-site restaurant functionality, similar to brew pubs.
2. The division expressed some concerns with this proposal.
 - a) First, the division wanted to be sure that this proposal would keep the distillery limits (e.g., 875-liter production limit) within the retail tier bounds; pushing back those bounds was not something the division felt would be supported by the manufacturer tier. Mr. Laszlo stated that this proposal wasn't going to touch production limits that are already in place.
 - b) Second, the division asked if the proposal allowed for both distilleries and distillery pubs to receive the alternate proprietorship privilege, while

emphasizing that retail sales do not occur at an alternate proprietorship location. Mr. Laszlo confirmed this.

C. Public Comment

1. Steve Findley, *Colorado Beer Distributors Association*

a) Mr. Findley commented that he was in the room when the distillery pub bill was drafted. The limits were set to mirror what brew pubs can do. Mr. Findley expressed concern that the distillery pub license is a retail license; he acknowledged that the current production limits are high, but if distillery pubs can't operate within the retail license, he doesn't want them to turn into "defacto distillers" producing high amounts of product. The license is for the retail tier, not for distillery pubs to become larger distillers and manufacturers. Overall, Mr. Findley stated that he has issues with the proposal.

(1) The division asked if Mr. Findley would support the proposal if it didn't include distillery pubs but allowed spirits manufacturers to have this privilege. Mr. Findley felt this was a separate discussion but that he wouldn't have an issue with it.

(2) The division acknowledged that it shared Mr. Findley's concerns, namely that the distillery pub license is a retail tier license. The division is aware that other manufacturers have expressed that the spirits industry should have the ability to utilize alternate proprietorships and wondered if this proposal could be split accordingly.

(3) Mr. Laszlo expressed a willingness to separate the proposal as suggested by the division.

2. 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.

D. Motion

1. The subgroup members did not put forward a motion to further this proposal to the LAG for discussion and a vote.

VII. Other Discussion Items

A. Mr. Diebolt addressed a previous discussion topic around the franchise laws. He commented that the way the LAG is set up overall, with multiple meetings, makes it difficult to gather all interested parties for a robust conversation; however, at this time, the trade associations are going to continue pursuing this discussion with the distribution companies. Mr. Diebolt stated that these conversation will likely remain outside of the LAG and he does not foresee the topic coming back to the subgroup for discussion. He did state that if this changes, he will submit any drafted proposal well in advance of the August subgroup meeting.

VIII. Action Items

A. Mr. Laszlo will amend his proposal on removing the statutory prohibition under 44-3-405(b)(2) based on the subgroup conversation and submit it to the division for

transmission to the LAG members. The proposal will be considered and discussed during the August 3rd LAG meeting.

- B. Wendy Turk will draft and submit a proposal for a statutory amendment to 44-3-410, C.R.S., and submit it to the division for transmission to the LAG members. The proposal will be considered and discussed during the August 3rd LAG meeting.
- C. Jim Shpall will draft and submit a proposal on the topic of what happens to inventory when liquor stores go out of business. This proposal will be reviewed and discussed during the August 17th subgroup meeting.

The next Marketplace Structure subgroup meeting will be held virtually on August 17, 2023, from 8:30 a.m. to 10:30 a.m.