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Applejack Wine & Spirits

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Topic: Illegal Shipments of Alcohol Beverages

It is currently illegal in Colorado for anyone but a winery to ship alcohol products into the State. See C.R.S. 44-3-104. However, this prohibition is being widely violated. First, out-of-state retailers, including wine clubs, who sell alcohol beverages are selling products to consumers in Colorado in violation of State laws. Second, entities who should not be considered as wineries are improperly obtaining permits to ship wines into Colorado while purporting to be wineries in another state. Third, in many instances alcohol products shipped into Colorado illegally are being brought into the State by third-party common carriers and illegally being delivered to consumers. Fourth, in some instances companies that are otherwise licensed to sell alcohol beverages in Colorado are nonetheless violating the law by delivering said alcohol beverages to consumers using a third-party.

Currently, existing Colorado laws are being widely flaunted by unlicensed or improperly licensed individuals. One retail wine company with a large national presence has said that they know it is illegal to ship to Colorado, but since the penalties are minimal and enforcement limited, at best, they consider any such fines they may have to pay as the cost of doing business or simply a slap on the wrist.

Some companies, including wine clubs, improperly use the statutory provisions that allow a winery to sell wine directly in Colorado to circumvent the law by contending that they too are wineries. It was always intended that the winery license exception to the law only applied to sales from the very specific, actual, winery that had a real production at the site where grapes were grown, harvested and then wine was produced and then sold from the site of such production. It was not intended for so-called “wineries” to “enlist” the aid of third parties to collect the wines or otherwise consolidate wines from so-called wineries or buy juice and then sell them into Colorado as a winery.

Finally, these individuals are also transporting alcohol beverages into Colorado using a third-party, including common carriers such as FedEx or UPS. In dramatic contrast, the laws of Colorado specifically require that any retailer of alcohol beverages licensed in Colorado can only deliver alcohol products using that licensed retailer's own vehicles and the licensee's own employees. Not only is the use of a third-party to effectuate a delivery a violation of the law, but it also violates a law meant to protect the safety of Colorado citizens. There are real safety issues as packages from these carriers that contain alcohol beverages are often simply left on door stoops or the required signatures from a person 21 years of age or older are not being obtained. Federal Express, for example, has consistently left packages at doorsteps or to places like Walgreens rather than directly to the ordering consumer. Not being licensed, the LED may have no jurisdiction over these carriers. Any party delivering alcohol beverages in Colorado must be licensed, making them subject to the State's jurisdiction. Any party delivering must comply with the existing laws regarding alcohol beverages.

Colorado needs to implement stricter penalties for violation of the laws that allow alcohol beverages to be illegally shipped into Colorado and when permitting laws are violated. Not only should the penalties

include fines of \$10,000 per individual per occurrence, but everyone who violates the law should be required to pay the costs of all investigations. Violations of the law should also be felony. The fines and all other penalties should apply to everyone who violates the law from the producer to the third-party arranging to shipping the product into the state to the common carrier that delivers the product into Colorado. If necessary, Colorado should have long-arm jurisdiction over each said individual.

In addition, to avoid parties circumventing the law or the intent of the law, we need to specifically define what constitutes a winery who would be permitted to ship wine into Colorado and define how they can ship. Each winery as defined must also have a Colorado permit for each individual wine shipped into Colorado from the winery and provide an affidavit that the winery complies with the law, including the definition of the law. If a properly licensed winery is, in fact, allowed to ship into Colorado using a third party, that third party must comply with the delivery requirements of the State. These third-party carriers also must be licensed by the State of Colorado and be subject to fines and penalties for violation of the delivery requirements. Violation should be \$10,000 per violation and should be subject to revocation of the delivery license.

In summation:

1. Increase penalties for illegal shipments into Colorado. These penalties should include but not be limited to:
 - a. \$10,000 fine per occurrence.
 - b. Allow all Colorado governmental agencies to recover the costs of all investigations.
 - c. The violation would be a felony.
 - d. Give Colorado long-arm jurisdiction over anyone who violates the law, if necessary.
2. Better define winery, winery shipment permits (See C.R.S. 44-3-104) to ensure that only the actual wineries that produce the wine as intended by statute can be considered as a winery able to obtain a license. Increase penalties for violation of C.R.S to include but not limited to:
 - a. \$10,000 fine per occurrence.
 - b. Allow all Colorado governmental agencies to recover the costs of all investigations.
 - c. The violation would be a felony.
3. Prohibit third-party carriers such as FedEx and UPS from shipping wine into Colorado from unlicensed entities to any consumer. This would prohibit such carriers from delivering alcohol beverages from an unlicensed entity to a consumer, directly or indirectly. Penalties for violation should include but not be limited to:
 - a. \$10,000 fine per violation
 - b. Allow all Colorado governmental agencies to recover the costs of all investigations.
 - c. The violation would be a felony.
 - d. These penalties would be in addition to penalties placed on the each individual and entity involved in the shipment into Colorado.
4. Prohibit third-party carriers such as FedEx and UPS from shipping wine within Colorado to any consumer. This would prohibit such carriers from delivering alcohol beverages from a licensed or

unlicensed entity to a consumer, directly or indirectly. Penalties for violation should include but not be limited to:

- a. \$10,000 fine per violation
 - b. Allow all Colorado governmental agencies to recover the costs of all investigations.
 - c. The violation would be a felony.
 - d. These penalties would be in addition to penalties placed on the person initiating the shipment.
5. Create a system of funding that allows the LED to actively investigate violations and impose penalties.
 6. Require all third-party carriers to get a permit for delivery from LED.