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Liquor Advisory Group Marketplace Structure Work Group
 Meeting Minutes
 February 16, 2023

Seat	Representative	Attendance
State Licensing Authority	Executive Director Mark Ferrandino <i>Department of Revenue</i>	Absent
Colorado State Patrol	Colonel Matthew Packard <i>Colorado State Patrol</i>	Absent
Hard Cider Industry	Eric Foster <i>Colorado Cider Guild</i>	Present
Brewery (Large)	Bob Hunt <i>Molson Coors</i>	Present
Local Brewery (Small)	Paul Kemp <i>South Park Brewing Company</i>	Present by Proxy Shawnee Adelson
Off-Premises Retailer (Large)	Kris Staaf <i>Albertsons Safeway</i>	Present
Off-Premises Retailer (Medium)	Jim Shpall <i>Applejack Wine & Spirits</i>	Present
Off-Premises Retailer (Small)	F. Seyoum Tesfaye <i>Franktown Liquors</i>	Present
Local Spirituous Manufacturer	Stephen Gould <i>Colorado Distillers Guild</i>	Present
National Spirituous Manufacturer	Joseph Durso <i>Pernod Ricard USA</i>	Present
National Vinous Manufacturer	Anne Huffsmith <i>Nakedwines.com, Inc.</i>	Present
Wholesaler (Vinous/Spirituous)	Fuad Jezzini <i>Maverick Wine Company of Colorado</i>	Absent

- I. Welcome and Introductions
- II. Work Group Process and Expectations Overview
 - A. Regular meeting time: 8:30 a.m. to 10:30 a.m. on the third Thursday of every month.
- III. Topic Review for Marketplace Work Group

- A. During the February Liquor Advisory Group meeting, the following topics were proposed as areas for this working group to discuss further:
1. Opening up the “free market”:
 - a) Eliminate the monopoly wholesalers have on specific brands/manufacturers;
 - b) Allow retailers to purchase brands from multiple wholesalers;
 - c) Allow manufacturers to sell directly to retailers;
 - d) Level the playing field across all categories of manufacturers;
 - e) Allow direct to consumer sales.
 2. Excise Tax parity for spirits, beer, and wine.
 3. RTD’s overall regulation, access and tax issues/parity.
 4. Equity in pricing from distributor to retailer.
 5. Fair payment/credit terms.
 6. Review returned/damaged product rules.
 7. Allow wholesalers to provide more merchandising and marketing support to retailers.

IV. Discussion

- A. Identify what is the most important topic, and then we can see if there are sub topics here that will fall out, in terms of priority, in terms of getting things done.
- B. High Level Discussion Points:
1. Direct-to-Consumer Shipping for Spirits and Beer
 - a) Pros:
 - (1) DTC would be a huge asset/bonus for small craft distilleries.
 - (2) For larger manufacturers, having limited DTC (specialty packages, specialty products, holiday gifts, etc.) would open the market up.
 - (a) Select runs/limited amounts and types of products.
 - b) Cons:
 - (1) Concerns around ID checks, making sure it doesn’t get to underage individuals (easy to address with processes and practices).
 - (a) Delivery service should be licensed and follow delivery rules and regulations (e.g., verifying ID of recipient).
 - (2) What if it's illegal to ship direct to consumer to a state outside of Colorado?
 - (a) Kentucky has a reciprocal relationship with 10 states where distilleries are allowed to sell directly to those states, including wineries and breweries, and they are allowed to ship directly to consumers in those ten states. For those states that don’t have a reciprocal agreement with Kentucky, groups like the Whiskey Exchange and other third parties would be able to sell to states that have DTC shipping allowed.
 - (i) *Note:* This law does not relate to retailers.
 - c) Items to Consider:
 - (1) Is there a public need or request for DTC?
 - (2) Who is disadvantaged?
 - (a) Manufacturers could get an automatic advantage.

- (b) Add to the law: to the extent that DTC is allowed, it is allowed into Colorado so long as retailers can ship to the state that's allowing it in.
- 2. What would DTC mean if breweries and distilleries could sell direct to consumers?
 - a) Reciprocal relationship: Colorado would allow DTC so long as the state from which the product is being shipped allows Colorado to ship into that same state. Concern is that the state of Colorado does not currently have the enforcement tools to make this work. If retailers are shipping illegally into Colorado from another state, Liquor Enforcement needs the resources and tools to create and enforce penalties for this.
 - b) Important to remember the Dormant Commerce Clause: we can't give Colorado licensees a privilege that the out-of-state licensees can't have.
 - c) May also want to look at the wine industry data.
 - d) Important to remember that third-party delivery was vetoed by the voters, but shipping is different from delivery so we don't want to confuse the two.
- 3. Equal Market Access for All Beverages:
 - a) Important for there to be a fair and equitable access to market for all categories of spirits, whether they're made in Colorado or elsewhere.
 - (1) Example: you can get full strength beer in a gas station/convenience store, but you can't get a bottle of spirits in the same location.
 - (2) Is selling spirits in grocery stores a possible item for consideration?
 - b) Items to Consider:
 - (1) Competition and access.
- 4. Market modernization:
 - a) Understanding how the marketplace works and has worked.
 - b) There are some elements of the three-tier system that don't reflect current consumer wants and desires. Need to revisit the system and see what's working and how it needs to evolve as the industry evolves.
 - (1) Change the system to allow for voluntary participation, as opposed to a mandatory, legally required process or system?
 - c) Level the playing field in the manufacturer tier.
- 5. Equity in pricing from wholesalers to distributors:
 - a) Small mom and pop shops struggle with financial capability against larger retailers/grocery stores because they can't afford to buy in large volume and/or don't have the space to house large quantities.
- 6. Fair Distribution:
 - a) Facilitating and merchandising the small retailers.
 - b) Allow large retailers to warehouse product overstock.
- 7. Proposed Changes for Small Brewers:
 - a) Direct shipping permits;
 - b) Salesrooms permits (expanding number of available permits);
 - c) Temporary salesrooms;
 - d) Noncontiguous production;
 - e) Franchise law (breweries are the only one subject to franchise law in Colorado);
 - f) Alt proprietorships between alcohol beverage manufacturers (wine, beer, spirits).

8. Business decisions versus regulatory decisions:

- a) Distributor to retailer
- b) Credit terms

C. Additional Items for Work Group Consideration:

- 1. Raising the limits on what restaurants can buy from retailers.
- 2. Ability for consumers to bring wine into restaurants for a corkage fee.

D. Potential Proposals:

- 1. Taking into account interstate commerce constraints, should Colorado allow in-state breweries and distilleries to ship within Colorado and, conversely, breweries and distilleries from out of state to do that same?
 - a) We need to be careful that we're not suggesting doing something in the state that we then wouldn't allow other states to come in and do.
 - b) Kentucky has done a law that allows for reciprocity, so it might be beneficial to review that legislation. As of now, it seems to be functioning very well.

(1) Legislation Links for Reference:

- (a) [HB 415](#) (2020)
- (b) [Updated HB 415](#) (2021)
- c) A solution might be to open up the winery direct shipping permit to breweries and distilleries. We would need to have more discussion on this before we present a soft proposal to the large Liquor Advisory Group.

E. Next Steps:

- 1. Any members of the work group with information on what other states have done in their legislation on this issue can email dor_led@state.co.us with links and any additional information.
- 2. Keystone will work with the Division to put together whatever information is received into a cohesive document that will then be distributed to the work group before the next meeting on March 23, 2023.

V. Public Comment

- A. Wine Institute (wineinstitute.org) has graphics and information on the direct shipment of wine in every state. Also, the Wine Institute requests that any statute on direct shipment of beer and spirits would be separate from the direct shipment of wine.
- B. Wine and Spirit Wholesalers of Colorado has some real concerns with direct shipping to consumers. It's very different from delivery and they will be sending some information about the 18 states that did consider legislation on this and none of them have passed. Concerns about underage access, increased access to counterfeit and illicit products, loss of state revenue, uneven playing field, et cetera. Would like for the group to consider if this is a benefit to consumers or a benefit to the suppliers. Think there are ways to modernize and make small changes that don't "throw the whole system out the door" and create new problems. The group should look at common carrier reporting, which is the only way to ensure the tracking of alcohol delivery, tax revenue, and underage access.