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Liquor Advisory Group Marketplace Structure Subgroup
 Meeting Minutes
 March 16, 2023

Seat	Representative	Attendance
State Licensing Authority	Executive Director Mark Ferrandino <i>Department of Revenue</i>	Absent
Colorado State Patrol	Joseph Dirnberger <i>Colorado State Patrol</i>	Present
Hard Cider Industry	Eric Foster <i>Colorado Cider Guild</i>	Present
Brewery (Large)	Bob Hunt <i>Molson Coors</i>	Present
Local Brewery (Small)	Karen Hertz <i>Holidaily Brewing Company</i>	Present
Off-Premises Retailer (Large)	Kris Staaf <i>Albertsons Safeway</i>	Absent
Off-Premises Retailer (Medium)	Jim Shpall <i>Applejack Wine & Spirits</i>	Present
Off-Premises Retailer (Small)	F. Seyoum Tesfaye <i>Franktown Liquors</i>	Absent by Proxy Chris Fine
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>	Present

- I. Welcome and Introductions
- II. Subgroup Process and Expectations Overview
 - A. Review of Timeline of Discussion Topics (from page 3 of the [March meeting agenda](#))
 - 1. No amendments or objections from subgroup members.

- B. Volunteer to Report Subgroup Proposals at April LAG Meeting
 - 1. Fuad Jezzini volunteered to be the spokesperson for the Marketplace Structure subgroup at the full April LAG meeting.
- III. Topic Discussion: Beer and spirits direct sales to consumers
 - A. High Level Discussion Points:
 - 1. There is some confusion about counterfeiting as it applies to direct to consumer shipping. Clarification was provided that this concern typically involves premium brands being sold on the gray market or sold through secondhand dealers.
 - a) It was brought up that this concern may be more appropriately addressed as an enforcement/penalties issue and/or is a more significant issue for international shipments of rare bottles versus an average direct to consumer shipment.
 - 2. Concerns were raised about the Marketplace Structure subgroup focusing on direct to consumer shipping instead of other topics, viewing DTC as an issue that needs to be addressed on the national level. There was disagreement on this point, with other members feeling alcohol laws were handled on a state-specific level after Prohibition and that it does not make sense to wait for national-level change to address DTC shipping.
 - 3. Members addressed the perceived impacts that could result from expanding DTC shipping, including wholesale and retail job creation, as well as meeting consumer preference for receiving goods at home on the positive side, and circumventing retailers and wholesalers on the negative side. There was disagreement on many of these points.
 - a) Members expressed that an expansion of DTC shipping would focus primarily on smaller, rare products that might not be otherwise available in a given market. Members also expressed that the current system can facilitate the distribution of those products, though the decision of what to sell/stock is made in part based on velocity of sales. There was disagreement over the difficulty of selling limited-release products outside of a manufacturer's sales room.
 - (1) Members expressed that retailers might want to buy smaller-batch products on consignment. Division staff noted that consignment sale arrangements could be in violation of federal law.
 - 4. Keystone facilitators proposed focusing the discussion on things that would need to happen to ensure adequate enforcement of DTC shipping. Ideas proposed by subgroup members included:
 - a) Stricter penalties for violations so an associated fine is not a "slap on the wrist."
 - b) Collection of taxes - anyone selling in state should register, like out of state wineries are required to do.
 - (1) Division staff asked that the Tax Division be present for any further conversations regarding tax collection.

- c) Adequate funding for the Liquor Enforcement Division and potentially looking at changing how the Division is funded.
 - d) Creation of a courier license that could hold an entity like FedEx or UPS responsible for delivering to someone underage, intoxicated, etc.
 - (1) This could include standardization of shipping labels for alcoholic beverages.
 - e) Drivers licenses should be provided at the point of sale.
 - f) Industry-wide training that ensures retailers, couriers, and other industry members understand the consequences of delivering to underage consumers, intoxicated parties, etc. and creating a culture of accountability.
 - (1) There was some concern that this would need to be nationwide in order to be truly effective.
 - g) Reciprocity for shipping to/from other states.
 - (1) It was noted there could be some associated Commerce Clause issues.
5. Guardrails could also include limitations on volume and/or bottle limits.
- a) Members expressed similar limitations had been contemplated in California and offered to send along documentation from those discussions.
 - b) There was disagreement over the necessity of volume limits, with other members expressing that winery direct to consumer shipping demonstrated self-regulation of the system - people are not necessarily going to buy inexpensive products to ship because the shipping cost outweighs the ease of access.
 - c) Guardrails could also be added to the amount being produced.
 - (1) It was noted that part of the discussion in California gave large producers a tighter production limit versus a looser production limit for smaller, craft manufacturers.

IV. Topic Discussion: Wholesaler Trade Shows

- A. There is nothing in law that allows a wholesaler to hold trade show events to allow liquor licensed retailers to sample products on their licensed premises in an area room designated for trade show events such as a conference room or kitchen area. Right now, they have to go to an on-premises licensed establishment and this requires a lot of invoices and other paperwork going back and forth.
- B. It was proposed to give wholesalers the ability to hold such events, with the caveat that these events cannot be a public event or otherwise open to the general public.
 - 1. Members were largely in support of this proposal, with some noting that these types of events were something that took place historically.

V. Topic Discussion: Tastings

- A. Current law states all costs of a product tasting held on a retailer's premises fall to the retailer. Members proposed allowing a wholesaler or supplier to supply the alcohol beverage to the retailer at no cost to the retailer.

1. As a general topic of discussion, members were largely in support of this change. Members will bring a specific proposal to the next subgroup meeting for discussion prior to bringing the proposal to the larger LAG.

VI. Public Comment

A. Micki Hackenberger - Wine and Spirit Wholesalers of Colorado.

1. Wine and spirits wholesalers are very concerned about direct to consumer shipping. Comments of support during the subgroup meeting today have come from manufacturers and there has been little discussion from consumers and public safety participants other than discussing what is legal.
2. Direct to consumer shipping operates outside the three tier system, bypassing local wholesalers and retailers.
3. We want to note on the record that this does lead to a higher risk of minors obtaining alcohol, missing state tax revenue and a disruption of the chain of custody that allows counterfeit products to find their way into the marketplaces.
4. We do not agree that craft brands cannot grow their business without direct to consumer shipping; wholesalers help craft producers access local, regional and national retailers and access a wide variety of venues.
5. We believe it is a myth that minors are unlikely to use direct to consumer shipping to obtain alcohol; numerous studies support this view.
6. Local license delivery by retail liquor stores is the most convenient and safest e-commerce alcohol model versus direct to consumer shipping. Under a local delivery model, alcohol orders are delivered within hours from locally licensed retailers via their employees or a licensed third party who are trained in age verification to ensure these deliveries are made to consumers 21 or older.
7. We believe that direct to consumer shipping costs the states revenue and negatively impacts state budgets. In Illinois, they said they lost approximately 20 million per year in tax loss; Virginia has also shown similar issues.
8. Only 5 states currently allow direct to consumer shipping of spirits; there are numerous reasons and arguments why multiple bills introduced in 2022 to allow direct to consumer shipping of spirits and beer did not pass.
9. We had a ballot issue in November, and while it addressed local delivery we would submit that the general public made a very strong statement that they were concerned about alcohol delivery, particularly with access to minors.

B. Steve Finley - Colorado Beer Distributors Association

1. Our position is aligned with the Wine and Spirit Wholesalers.
2. We agree that while the ballot issue voted on last November is not an apples to apples comparison with direct to consumer shipping; we think the voters have spoken on this. This is a manufacturer driven issue and not a consumer driven issue.
3. We oppose expanding direct to consumer shipping and bypassing the three tier system.
4. We support the idea of trade show events for wholesalers, but would like to see additional information on that.

5. Regarding cost sharings on tastings in retail liquor stores, this is something we would be happy to discuss but need to see additional detail before we can take a position on that.
- C. Lee Wood - Colorado Distillers Guild
1. As a rural producer, we have a difficult time getting to market. We're a tourism driven town, but getting products in the hands of all our customers becomes a major challenge. The issues of interstate shipping can be managed through regulatory environments. It would be really helpful for us to have direct to consumer shipping.
- D. Ainsley Giuliano - Distilled Spirits Council of the United States
1. I have a unique perspective, as someone who moved to Colorado from a state that allowed direct to consumer shipping. I make decisions about where I go and visit distilleries based off of if I can actually get the bottles home. I've had bottles explode in my bag on the airplane on the way home. Direct to consumer shipping is a matter of convenience.
 2. From a consumer perspective, I do speak about this a lot with my friends, but not a single person has ever heard this and said "No, I would absolutely not want to have the convenience of having this product shipped to my home". I think it is disingenuous to say that consumers wouldn't want this.
 3. I do understand that the delivery ballot issue was voted on in November; I believe this is a very different situation.
 4. Regarding concerns about underage drinking, underage drinking is decreasing. This is despite the proliferation of wine direct to consumer shipping.
 5. We do have 11 states allowing direct to consumer shipping of spirits. Some of these are restricted, but I'm happy to provide those for the committee.
 6. There is also continual reference to a Journal of Pediatrics and Adolescent Medicine survey/study that I believe is more than 10 years old, with a very small sample size of eight people. We need to look at larger data sets and see where underage drinking is at this point in time to really understand what is happening.
- E. Dominic LeJoy - Small Retailer
1. Small breweries and distilleries looking for more distribution should look at Telluride Brewing and their success in getting out of small western Colorado to cover the whole state. We have to look at the small retailers who are the ones in the trenches and really marketing your product. We are the ones that hand sell your product, not the grocery stores or chain stores. Certainly not online retailers because you can't taste it. You have to remember that we take the risk of buying your product and the liability or financial burden of trying to sell your product for you. You cut us out and eventually you'll lose market share because we saw a loss of volume.
 2. Regarding limited release - being a rural town here, there's seven liquor stores in the town of Montrose. I've asked for the limited releases, but we see that very rarely out here because as a whole western Colorado doesn't generate the volume that Denver and Colorado Springs generate to get the allocated bourbons and whiskeys.

F. P.T. Wood - Past President, Colorado Distillers Guild and current Chaffee County Commissioner

1. I would like to reiterate what a number of my colleagues from the spirits industry have said earlier. Direct to consumer shipping is critical for our industry moving forward. Currently, there are around 2,700 distilleries in the country that we would consider craft, 116 of those are in Colorado. Of those, 90% produce less than 1009 liter cases a year. Distribution for those manufacturers is virtually impossible, as they simply don't have the product volume. Their only avenue to access markets beyond their door is through direct to consumer shipping.
2. I would also reiterate that the American Craft Spirits Association along with the Distilled Spirits Council of the US are out there broadly working to make sure direct to consumer shipping becomes available nationwide and that there is reciprocity with other states.

The next Marketplace Structure Subgroup meeting will be on April 20, 2023 from 8:30 a.m. to 10:30 a.m.