



VIA EMAIL

TO: Members of the Colorado Liquor Advisory Group
FROM: Tyler Rudd, Central States Counsel, Wine Institute
RE: Proposals 34 and 35 and Illegal Shipments of Alcoholic Beverages

Introduction

Wine Institute is a trade association comprised of roughly 1,000 California wineries and affiliated businesses. We are the only U.S. organization advocating for wine at the state, federal, and international levels. Our mission is to advocate public policy that enhances the ability to responsibly produce, promote, and enjoy wine. On behalf of Wine Institute, I am writing regarding Jim Shpall's proposal regarding the illegal shipments of alcoholic beverages as well as Proposals 34 and 35 as set forth in the agenda for the full Liquor Advisory Group (LAG) meeting on September 14, 2023.

Background – Illegal Shipments of Alcoholic Beverages

As background for LAG members not present at the Marketplace Structure Subgroup meeting on August 7, 2023, Jim Shpall of Applejack Wine & Spirits submitted a proposal to cut down and/or eliminate illegal shipments of alcoholic beverages directly to Colorado consumers. Currently, the Colorado state law allows for the direct shipment of wine by licensed and/or permitted wineries within the state and from other states. The wine shipped must be “produced or bottled by the permittee.”¹ As Mr. Shpall wrote, “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.” However, Mr. Shpall contends that “out-of-state retailers, including wine clubs, who sell alcohol beverages are selling products to consumers in Colorado in violation of State laws,” and “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.”

Wine Institute completely agrees with Mr. Shpall's assertion that states such as Colorado have experienced unlicensed entities directly shipping alcoholic beverages in violation of the state's laws and also that certain “wineries” are shipping wines to consumers that the “winery” does not produce or bottle. I relayed as much as a public participant during the Marketplace Structure Subgroup meeting on August 17, 2023, and further noted Wine Institute's agreement, not with

¹ C.R.S. §44-3-104(1)(a)

Mr. Sphall’s written proposal per se, but with his contention that Colorado can do more to cut down on illegal shipments of alcoholic beverages directly to Colorado consumers.

As Ann Huffsmith adeptly pointed out in the Marketplace Structure Subgroup meeting on August 17, evidence of such illegal shipments into certain states have been litigated in Ohio and Michigan.² The Attorneys General (AG) in those states have prosecuted entities that the AGs discovered were directly shipping wine to consumers in violation of their state’s law. Such prosecutions stemmed from the power granted the AGs by the federal government in the Twenty-First Amendment Enforcement Act, 27 U.S.C. 122A (the “Act”). This Act states:

“If the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of a State law regulating the importation or transportation of any intoxicating liquor, the attorney general may bring a civil action in accordance with this section for injunctive relief (including a preliminary or permanent injunction) against the person, as the attorney general determines to be necessary to—

“(1) restrain the person from engaging, or continuing to engage, in the violation; and

“(2) enforce compliance with the State law.

As one can see from the Act, the Colorado AG has the ability to enforce Colorado law that allows only *permitted* wineries to ship wine they *produce or bottle*. In furtherance of that, Wine Institute believes that all options should be explored to determine what entities are illegally shipping and how best to enforce the laws without hindering actual wineries permitted to directly ship wine to continue to do so lawfully without fear of overly harsh penalties, including felonies. Several states around the country have found avenues to determine and eliminate those entities that are illegally shipping alcoholic beverages into their state. Particularly, several states have licensed/permitted common carriers, registered fulfillment houses both in-state and out-of-state, and required reporting by those licensed/permitted carriers and registered fulfillment houses.

Proposals 34 and 35

The LAG Marketplace Structure Subgroup recently voted to put forward to the full LAG two proposals that could assist the Colorado Liquor Enforcement Division (LED) in cutting down and/or eliminating illegal shipments of alcoholic beverages. Proposal 34 would create a permit for common carriers that deliver wine directly to consumers. Proposal 35 would give more authority to the LED to address illegal out-of-state shipments of alcoholic products.

Regarding Proposal 34 – to create a permit for common carriers that deliver wine directly to consumers – Wine Institute is not opposed to the creation of such permit as this permit is in other

² For Ohio, see

<https://www.alcoholawreview.com/ohio-attorney-general-files-groundbreaking-lawsuit-utilizing-the-21st-amendment-enforcement-act-for-the-first-time/>. And for Michigan, see

<https://www.michigan.gov/ag/news/press-releases/2023/02/09/nessel-and-liquor-control-commission-obtain-25k-default-judgment-against-distiller> and

<https://www.michigan.gov/ag/news/press-releases/2020/10/07/ag-nessel-michigan-liquor-control-commission-crack-down-on-illegal-wine-shipments-in-michigan>

states' laws. However, as I remarked in my public testimony during the Marketplace Structure Subgroup meeting on August 17, 2023, I believe it is absolutely necessary to hear from the common carriers about this proposal. I am glad to have seen Greg Fulton's comments on September 8, 2023, on behalf of the Colorado Motor Carriers Association, and I hope that the LAG will take his comments – and the views of the individual common carrier companies – into consideration.

Regarding Proposal 35 – giving the LED more authority – Wine Institute supports giving the LED more authority to further eliminate illegal shipments of alcoholic beverages so long as that authority is reasonable and not overly burdensome to both in-state and out-of-state wineries, and the associated businesses with which they do business, when legally directly shipping wine to consumers. In addition to the above-mentioned federal authority given to state Attorneys General, Wine Institute welcomes the opportunity to explore further avenues to ensure that the LED and the Colorado AG can cut down – or cut out – illegal shipments of alcoholic beverages into Colorado.

Thank you very much for your consideration. I look forward to continuing to work with the LED as well as members of the LAG as this process continues.