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## revised proposal for full LAG discussion - modernization of payment types by retailers

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Mon, Jul 31, 2023 at 3:53 PM

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Good afternoon, LAG.

In response to the discussion about "credit term parity" in the Marketplace Structure sub-group, I would like to revise the topic suggestion to "modernization of payment types by retailers".

Allow me to set the conversation by explaining that in the alcohol industry, electronic payments by retailers are simply electronic substitutes for paper checks, and require the same amount of time to settle. The difference is that a paper check, being handed to a delivery driver, satisfies Colorado's current demand for "effecting payment upon delivery" (even though the money does not actually transfer at that time), but there is a clear absence of an instrument to hand over in the case of electronic payments, therefore the current burden of "effecting payment upon delivery" cannot be met.

These are the respective Colorado regulations as they exist today:

In **Regulation 47-323. Lawful Extension of Credit**, under Definitions:

*"Retailer" means those persons licensed pursuant to sections 44-3-401(1)(h) – (t) and (v) – (w) and 44-4-104(1)(c), C.R.S. to sell alcohol beverages to the end consumer. Except the term "retailer" as used in this regulation shall not include a liquor-licensed drugstore that receives a license after January 1, 2017, which shall not purchase alcohol beverage on credit or accept an offer or extension of credit from a licensee and shall effect payment upon delivery of the alcohol beverage pursuant to section 44-3-410(2)(b), C.R.S.*

And in **Regulation 47-407. Liquor-Licensed Drugstore**, section F:

*F. On or after January 1, 2017, a liquor-licensed drugstore licensee shall not purchase malt, vinous or spirituous liquors from a wholesaler on credit and shall effect payment upon delivery of the alcohol beverages. Allowed payments include cash, credit/debit cards, check, money orders, certified check, EFT transfer and any other method of payment approved by the Division.*

And in **44-3-410. Liquor-licensed drugstore license - multiple licenses permitted - requirements – rules**,

*(b) A person licensed under this section on or after January 1, 2017, shall not purchase malt, vinous, or spirituous liquors from a wholesaler on credit and shall effect payment upon delivery of the alcohol beverages.*

The verbiage "*shall effect payment upon delivery*" puts an unjustifiable burden on retailers and wholesalers wishing to use modern forms of electronic payments for invoices. The fact that wholesalers are not able to upload individual invoices for electronic payment "upon delivery", means that, instead, the wholesalers must run a separate batch to upload invoices for payment BEFORE delivery.

A. Effectively, these existing regulations burden the wholesaler with

1. Creating a separate process to upload only select LLDS invoices for electronic payment before the trucks leave the warehouse.
  - a. Normally, wholesalers upload invoices for electronic payment AFTER delivery, and after they have had the time to reconcile the day's deliveries and place the product back into inventory and generate an off-setting credit to the retailer – but this is not possible for Colorado's COD deliveries
2. Creating a separate process to upload credits, in real time, for deliveries that did not get delivered (road closures, traffic delays, weather, flat tire, etc).
  - a. Normally, wholesalers are able to process all credits overnight when their accounting and inventory systems reconcile and create accounting credit batches - but this is not possible for Colorado's COD deliveries

B. Effectively, these rules also burden the retailer with

1. Potential debits to their bank account without receiving the product (for the same reasons listed above)
  - a. Normally, wholesalers are able to net-out any credits due before the invoice payment date even occurs - but this is not possible for Colorado's COD deliveries
2. Potential over-payments for product that was broken, not on truck, wrong flavor/size, mis-pick, etc,
  - a. Normally, wholesalers are able to net-out any credits due before the invoice payment date even occurs - but this is not possible for Colorado's COD deliveries

It is because of these unjustifiable burdens to both wholesalers and retailers, that I would like to suggest an edit/clarification to the existing language in the Code and the Rules. The solution is as simple as adopting clarifying language as the states below have done.

I offer these examples from other COD states for your consideration:

#### **Idaho – in the code**

23-1031. Extension of credit. (1) No sale or delivery of beer shall be made to any licensed retailer, except for cash paid at the time of or prior to delivery thereof, or except as provided by electronic funds transfer in accordance with subsection (3)

(3) The acceptance and use of an electronic funds transfer shall not be deemed an extension or acceptance of credit pursuant to this section, provided such transfer is initiated and completed promptly and in no event completed later than five (5) business days following delivery of such beer.

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#### **Washington – in the code**

RCW 66.28.270, a retail licensee must pay cash for spirits, beer, and wine prior to or at the time of delivery

(f) The electronic funds transfer must be initiated by the retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery

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#### **Maine – in the code**

§705. SALES FOR CASH. .... a wholesale licensee ... may not sell or offer to sell any liquor except for cash or payment by check or electronic funds transfer

(3) Initiation of the electronic funds transfer must occur on the next business day after the delivery of the product;

#### **North Carolina - in the code**

14B NCAC 15C .0604

(a) Each wholesaler shall collect the full amount of the sale price in cash or bona fide check at the time of or prior to delivery of alcoholic beverages

Note: For purposes of this Section, the term "check" shall include the electronic transfer of funds from a retailer to a wholesaler.

The electronic fund transfer must be initiated before the end of the business day following delivery.

**Ohio – in the code**

4301-9-01 (B) ..... purchases of beer, wine, or mixed beverages at wholesale may be paid for by cash, check, credit card, money order, or electronic funds transfer.

(3) Initiation of the electronic transfer of funds must occur on or before the next available business day after the delivery of the product.

**South Carolina – in the code**

61-4-30. Beer or wine sold by wholesalers to the holders of retail licenses in this State must be sold for cash only at the time of delivery or prior to delivery.

The electronic transfer must be initiated by the wholesaler no later than one business day after delivery.

**Virginia – in the code**

**3VAC5-30-30**

(D) 1. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day.

**Kansas – policy memo**

3. Discussion: Kansas law prohibits any purchase or sale of alcoholic liquor on credit. EFTs may be utilized by retailers and distributors to allow delivery of alcoholic liquor or CMB without immediate payment by cash, credit card, or check.

The EFT must be initiated by the Distributor no later one (1) banking business day after the date of delivery of product to the retailer, and it must be for the exact amount invoiced.

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**Louisiana – policy memo**

3. To ensure that no credit terms are imposed on the wholesaler and that the state receives its excise tax revenues in a timely manner, the EFT must be wholesaler initiated.

4. The wholesaler must initiate the EFT no later than the next "banking" business day from the date of delivery for the amount and quantity invoiced.

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**Mississippi – memo**

The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery of beer and light wine. The wholesaler's account shall be credited by the retailer's bank no later than the following banking business day.

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**Michigan – administrative order 2023-01**

2. The EFT payment transmittal to the banking institution must occur no later than the next banking business day from the date of the delivery of the beer, wine, or mixed spirit drink order to the retailer licensee.

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Thank you for your time and consideration!

I am full available for questions and can readily provide additional information if needed.



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