

June 11, 2019

Dear Scope and Program Committee of the Uniform Law Commission:

Thank you for the opportunity to provide this input to serve as an addendum to the report that the Study Committee has prepared for submission regarding direct-to-consumer (DTC) shipment of alcohol. The comments contained herein reflect our personal professional views based on our expertise gained in more than 45 combined years working to translate alcohol policy research into public health practice at the local, state and federal levels. These views may not necessarily coincide with the views of the organizations for which we work or partner.

We have serious concerns about the process used by the Study Committee and the resulting report. These concerns – as outlined below – are extremely important because the issue of direct-to-consumer shipment of alcohol has the potential to significantly change the landscape across the country as it relates to alcohol regulation, alcohol control, and the public health of our communities.

Alcohol is no ordinary commodity and should not be regulated or approached using the same economic or consumer-driven approach as would be considered when selling or shipping clothing or soda, for instance. The Study Committee's process and the resulting report appear to have missed the mark.

As fellow observer and former Oregon state liquor regulator and regulatory chair, Pamela Erickson, noted regarding this issue: "Designing a different system that by-passes our in-state licensees increases the risk to public safety, creates greater access for youth, involves non-payment of taxes and increases the potential for counterfeit activity. We can do better than that." (Additional information from Erickson on this topic can be found at <http://healthyalcoholmarket.com/wordpress/>).

a. The Process Used by and the Emphasis of the Study Committee.

From the first call we had with the Study Committee Chair, Steve Frost, in January prior to joining a call with the larger group, we shared our initial (and subsequent) concerns about discussing the issue of increasing access and availability of alcohol through the DTC process before the group had engaged in a due diligence process of thoroughly reviewing the known harms based in the scientific literature. We reiterated these concerns when it became quickly evident that a critical number in the group were not well versed in the three-tier system – neither its regulatory foundation nor its importance in protecting the public's health and safety. However, these concerns were never really addressed.

In an email dated March 20, 2019 from Diane Riibe to Steve Frost: "There seems to be some substantial misunderstanding around the relevance and origin of the three-tier system of alcohol control as established through the 21st Amendment. It would be very helpful, I think, for the group to spend the first ten minutes or so of our next call hearing a critical overview of that piece. Both Ryan Treffers and Elyse Grossman would be quite versed in the information needed to do so succinctly." The request for ten minutes to be spent on providing background to the three-tier system to the full group went unanswered within the group process.

We also emphasized that the ULC should not be discussing the intricacies of how these laws should be drafted until after it had thoroughly discussed if these laws were needed in the first place. Rather than heed this recommendation, the Study Committee chose to instead devote a portion of a one-hour call to hearing some of the public health concerns and to then spend the rest of the calls discussing different aspects of how these laws would be drafted. As such, there was a lack of any real time devoted to discussing the public health issues.

b. The Biased Composition of the Observers to the Study Committee.

In part, the lack of time spent discussing public health issues was due to the biased composition of the observers to the Study Committee. The make-up of the group was heavily, almost exclusively so, weighted to those who were either sensitive to the economic interests of the industry or who directly profited from the sale of alcohol. Missing from the discussion were premier public health scientists known for understanding these issues, liquor enforcement experts, regulatory auditors, and legislators working on these issues from both the public health and economic vantage point, among others. Their lack of participation – whether from not having been asked to participate or from choosing not to participate – greatly shifted the discussions that could, and should, have taken place. Further, and of significant importance, far from being an impartial and balanced initiative, the DTC discussion within the ULC process was spurred directly by industry interests from Kentucky, paving the way for an industry-friendly process, discussion, and outcome.

c. The Lack of Valid Discourse on Critical Issues.

Due to the weighted composition of the observers to the Study Committee, there were few chances to fully discuss the public health ramifications of expanding DTC shipment of alcohol. When these discussions did arise, several members of the alcohol industry were given the chance to advocate for these laws while only one public health professional could counter with any concerns before Frost would end the conversation. When there appeared to be any differences in opinion, Frost would quickly shut down the discussion and move on. Valid scientific concerns received little or no platform within the process.

d. The Lack of Understanding in the Report of the Impact Alcohol Has on Public Health.

The report contains only a few paragraphs on the public health consequences of alcohol consumption in general and on the harms that may occur for both youth and adults if DTC shipment of wine and spirits were expanded. It neglects to address key statistics such as the number of deaths caused by alcohol each year (i.e. 88,000 deaths annually in the U.S., making it the third leading preventable cause of death); the cost of alcohol misuse (i.e. \$249 billion in 2010); or the other harms of alcohol misuse (e.g. crime, violence, injuries, etc.).

When public health data is inserted, it is often placed randomly as if attempting to appease the public health observers without fully understanding the issues raised. For example, when talking about whether spirits should be treated differently than wine, the report states [page 8-9]: “Also, youth tend to drink beer and spirits, not wine, though two-thirds of deaths from alcohol poisoning are middle aged non-Hispanic men.” The second clause of this sentence does not have valid relevance to the first clause and is not a reference within public health literature and science.

However, perhaps most alarming, the report fails to differentiate between opinion and conclusive scientific research. For example, the report states [page 8; emphasis added]:

“Diane Riibe, of the U.S. Alcohol Policy Alliance, indicated that in *in her organization’s view*, any legislation that increases alcohol availability will increase consumption and underaged drinking and is against public policy, *regardless of any other benefits*.” When pressed on why an act that increases compliance, increases collection of taxes, and reduces underage drinking would be bad, Elyse Grossman, of the Johns Hopkins Bloomberg School of Health, indicated that research shows that *all legislation that increases availability* of alcohol has these negative consequences.”

This is not the opinion of Riibe’s organization. Rather, the public health evidence is conclusive that regulations that restrict access to and the availability of alcohol reduce consumption, which in turn reduces the incidence of adverse health consequences and other harmful effects. The point of public health research is not to explain or justify the “benefits” to the economy or to the business community of selling more alcohol but rather to scientifically analyze the benefits or harms from different alcohol laws on the public health of the country. However, even though the evidence is conclusive, this does not mean that “all” legislation has this impact.

e. The Inherent Biases and Inaccuracies in the Report.

There are several inherent biases in the report. When observers raised a point that supports a DTC law, they have been left nameless, and thus it appears that this position is correct and held by most of the observers and ULC members, or at least, the Study Committee chair. For example, note conversational points from “several” legislators/legislative staff with information from only three states [item 12, page 12] wherein the reader has no idea how many individuals were asked and whether these were legislators/staff with a thorough and necessary understanding of the regulatory considerations or public health science. On the other hand, when an individual discussed a point that opposes a DTC law, the individual is specifically called out by name and the information brought forward and then discredited within the document.

There are also several inaccuracies in the report. For example, as mentioned above, the report states that [page 8]:

“When pressed on why an act that increases compliance, increases collection of taxes, and reduces underage drinking would be bad, Elyse Grossman, of the Johns Hopkins Bloomberg School of Health, indicated that research shows that all legislation that increases availability of alcohol has these negative consequences. It will help to understand why past legislative efforts have failed and have had negative consequences, and Elyse agreed to provide this research, but has not done so yet (we will forward this research if we receive it).”

That first sentence confounds two separate points. On one hand, there is the issue of what this new law would do and on the other hand is research showing that increasing access and availability to alcohol has harmful impacts on youth and adults. These are two separate issues. Moreover, at the time of this discussion, the Study Committee was not talking about a law that “increases compliance, increases the collection of taxes, or reduces underage drinking” but rather about a law that would expand DTC shipment of alcohol in general. Furthermore, although Grossman is a public health attorney and researcher who works in the alcohol policy field, she does not have information on why past legislative efforts have failed and therefore did not ever agree to provide such research.

The report also discusses whether states specifically prohibit DTC shipment of alcohol. It states [page 11]:

“This issue is raised by questions posed by Diane Riibe, an observer to our study committee, who indicated 33 states expressly prohibit direct sales of spirits, and Elyse Grossman, another observer to our study committee, who indicated a majority of the states expressly prohibit direct sales of spirits.”

This is an incorrect summary of the data. At that time, the Study Committee was talking about shipping directly both from producers and retailers. Data from the Substance Abuse and Mental Health Services Administration (SAMHSA) has found that 33 states prohibit retailers from shipping beer, wine, and spirits across state lines directly to consumers. Forty-three states prohibit the shipping of spirits specifically from retailers across state lines directly to consumers.

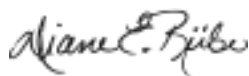
It is important to note that, as Frost pointed out to us, the direction of the Study Committee has changed over the course of its investigation into DTC shipments of alcohol; we recognize this fact. For example, rather than the ULC pushing to allow all DTC shipments of spirits and wine, the recommendations now focus more heavily on compliance for states that already permit the distribution. This change does not negate the issues we have outlined above with either the process used by the Study Committee or the resulting report.

Reference was made to the book, *Toward Liquor Control* (Fosdick and Scott), with a selective quote inserted into the report, inaccurately depicting the brush of this piece of work as tipping a hat to today’s discussion around DTC: [page 3 – in part] – “[n]o recommendations which we or anyone else could make carry with them an element of finality.” But what this report failed to share is that Fosdick and Scott *did* make recommendations – those recommendations strongly favored the three-tier system of liquor control, based in the overarching needs and mores of local communities and states to protect the health and well-being of a state’s residents over the economic interest of an ever-thirsty industry motivated by profits.

Finally, and perhaps more apt for this endeavor, a better quote from *Toward Liquor Control* may help us take a critical pause: “But toleration, unless rigidly guarded, means the inevitable return of evils which those of us whose memories run back a quarter of a century do not like to recall. It was only twenty years ago that the saloon, backed by the brewers and the distillers, had a throttle grip on local and state government alike, a grip which it maintained by systematic corruption.”

We urge the Uniform Law Commission to reject the Study Committee’s request to establish a drafting committee on a uniform direct-to-consumer shipment of alcohol act.

Sincerely and respectfully,



Diane Riibe



Elyse Grossman, J.D., Ph.D.