



Steve Gross
Vice President, State Relations

December 6, 2020

To whom it may concern:

Since learning in November of 2019 that the Uniform Law Commission had moved away from a proposed project focused on direct to consumer (DTC) spirits and/or beer shipping to a project focused on winery shipping, we have expressed our concerns with the project. Our General Counsel, Tracy Genesen and I flew to Milwaukee last December to discuss those concerns with Steve Frost and Aaron Gary. In that meeting we expressed concerns with the scope of the project as well as the focus simply on winery shipping versus shipments by other producers and the retailer tier. We expressed concerns that the beginning draft document had been created with input primarily from opponents of winery DTC shipping, including the various wholesaler organizations that had taken the lead in both legislative efforts to curtail shipping as well as litigation efforts to shut it down, while taking no input from the winery organizations across the country, of which Wine Institute is the largest player. We expressed our concerns that opening up the 45 existing winery DTC statutes (now 46 with the Kentucky statute now passed in 2020) could lead to opportunities for groups opposed to winery DTC shipping to cause mischief that would curtail existing shipping privileges.

Despite our concerns, we were informed that the project was going to move forward, and we were offered “observer” status to provide input. We have taken advantage of that status over the past year to provide input and feedback on the various drafts as they became available. While we acknowledge that the newer drafts removed some of the scope and language that we had strongly opposed, our contention that this is not an appropriate project for the ULC to pursue at this time remains. The current draft focuses on licensing and reporting requirements for common carriers and fulfillment houses, but the statutes into which these are being inserted would remain the winery DTC shipping statutes which we have worked to pass over the past 34 years.

Over the course of 2020 DTC shipping has been the lifeblood of the wineries across the US as their other routes to market such as restaurant sales and winery tasting room operations have been curtailed. At the same time, beer and spirits manufacturers have increased their calls for similar DTC models for their industries as they seek similar access to consumers. Also this year, retailers continue to push for inclusion in DTC shipping, with at least a dozen states embroiled in retailer-generated DTC shipping litigation, the US Supreme Court awaiting announcement as soon as next month as to whether they will take up the Michigan DTC case out of the 6th Circuit, and the AG in Ohio bringing suit against alleged violations by out-of-state retailers. Add to this turmoil the legalization of drinks delivery by restaurants and bars, both as permanent measures and as emergency measures in response to the pandemic. All of these pressures are leading states to try and regulate “delivery” and/or “shipping” in ways that can address both common carriers and app-based companies such as Drizly, DoorDash, Uber Eats and Instacart, as well as deliveries made by restaurant and retailer employees directly.

The current ULC proposal ignores the reality of the complexity of these issues, the negotiations already taking place in states like Oregon which just spent months hashing out these issues with all of the stakeholders, and the need for solutions that include all impacted sectors. In consultation with other wine industry associations across the country, Wine Institute has come to the conclusion that we can no longer work to support and “improve” the current ULC proposal, but



Steve Gross
Vice President, State Relations

rather are asking that the ULC Commissioners drop the proposal. We do not want to be in a position where winery associations are required to go before their state legislatures to oppose a legislative plan put forward by the ULC, but at this point it is our belief that such opposition is necessary in order to protect our existing statutes. We believe the solutions needed by the states to address the broader issues outlined above, with holistic solutions, are not suited to the work of the ULC which has no history of working in the alcohol space and which require much more discussion amongst all stakeholder groups, the majority of which have been absent from this process.

Respectfully,

Steve J Gross
Vice President, State Relations
Wine Institute
sgross@wineinstitute.org
(415) 806-4835