



March 10, 2023

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan, General Counsel
Kansas Wine & Spirits Wholesalers Association - NEUTRAL – WRITTEN ONLY
RE: SB 253 Authorizing home delivery by licensed retailers, licensed clubs and drinking establishments and restaurants and third-party delivery services.

Chairman Thompson and Members of the Committee,

The bill before you generates for the legislature a public policy decision. SB 253 proposes to allow the home delivery of packaged wine, beer/CMB and spirits. The KWSWA is an opponent of this bill as drafted. We do have several suggested amendments if you advance this policy to the full Senate.

(1) If the legislature decides to approve delivery, it should be performed only by those who "have skin in the game" -- the licensees. Arkansas enacted the following, for example:

That law provides:

3-4-107. Delivery of alcoholic beverages.

(a) The following permit holders may deliver or cause to be delivered alcoholic beverages directly to the private residence of a consumer twenty²⁷ one (21) years of age or older in a wet county or territorial subdivision during legal operating hours:

- (1) Retail liquor;
- (2) Microbrewery-restaurant; and
- (3) Small brewery.

(b) The permit holder authorized under subsection (a) of this section shall not deliver or cause to be delivered alcoholic beverages to an area outside of the county in which the permitted business is located.

(c) Alcoholic beverages shall be delivered by an employee of the permit holder and shall not be delivered through a third-party delivery system.

(2) If the legislation going forward allows for third-party delivery then the individuals who make the deliveries should be permitted. The bill provides for minimum qualification for drivers, so using those qualifications permits can be issued after the required training. Only with permits can drivers be sanctioned for bad behavior.

See the article attached: ***One-third of liquor deliveries in the state don't comply with rules on delivering booze to underage or intoxicated customers.***

(3) Kansas law currently provides that no one other than the licensee can have a beneficial interest in the sale of alcohol. No percentage of sales can be paid to unlicensed persons. It is our judgment that as a result of that provision no third party could be paid a percentage of the sales and should only be compensated by a flat fee. Typically, that fee would be paid by the consumer. The committee should codify that no percentage fees are permitted.

(4) There are 2365 cereal malt beverage licenses according to Kansas ABC. Is it the intent of the legislature that every bait shop, tavern, and c-store in addition to grocers, big-box and other CMB licensees are to be making deliveries?

Our primary concern is that should the policy of delivery be adopted that there is a level playing field with adequate protections for consumer privacy and ensuring that deliveries are not made to persons under the legal drinking age.

Thank you for your consideration of these matters.

One-third of liquor deliveries in the state don't comply with rules on delivering booze to underage or intoxicated customers.

Liza B. Zimmerman · Tuesday, 07-Feb-2023
by Bruno /Germany from Pixabay | Wine deliveries in Oregon are not always being carried out in accordance with the law.
<https://www.beveragelaw.com/news>

More rural, and less populous, states may have greater issues keeping alcohol out of the hands of minors. A recent report from the Portland-based Oregon Liquor and Cannabis Commission (OLCC), called *Eyes on Oregon*, revealed that more than a third of recent deliveries executed in the state were noncompliant.

The report notes that the OLLC has "no uniform, established procedures or authority for monitoring and enforcing various types of alcohol-sales practices during delivery to private, home settings".

The report looked at the May to September period of 2022 and determined that, during those months, "a total of 106 observations were completed by Oregon young adults in seven counties [and] 37 percent of the home-alcohol deliveries were not compliant with ID-checking requirements, including 2 percent that were delivered with no contact."

What is more, "a large percentage of non-compliance was related to use of scanners or digital photos of IDs uploaded during online ordering; these are tools intended to support age checking, but do not replace the need to check a physical ID".

"Any licensee that is not training their delivery staff to properly qualify customers is playing with fire," shares John Hinman, a partner at the San Francisco law firm of Hinman & Carmichael.

"The OLCC has been working with all parties involved to keep the discussion moving forward on how best to deliver alcohol in Oregon," shared Bryant Haley, alcohol and

bottle bill spokesperson at the agency, in a recent interview.

As a fairly new resident of the state, I have seen as much casual dropping off of wine deliveries – without checking IDs – here in the southern part of Oregon, as I did in San Francisco, Napa and New York City when I lived there. Delivery territories are undoubtedly larger in this rural chunk of a large state and doormen or neighbors who accept packages are few and far between. Oregon is a state where Portland, the largest city, has an approximate population of 650,000 residents. The entire population of the state of Oregon is approximately 4 million, which is half the size of New York City.

Smaller entities, less regulation

The biggest question that comes to mind is if control states – of which Oregon is one, along with 17 other states and part of Maryland – which can be home to smaller retailers are not able to satisfy compliance laws as well as open states that tend to have bigger chains like Total Wine & More. I can say that over close to two decades in San Francisco Total Wine carded me every time wine was delivered, so kudos to them.

In my small mountain town in the south of Oregon, few stores offer home delivery and most of the wine retailers use FedEx and UPS to consign their packages. Both agencies vary between carding me and leaving the wine in question on my doorstep.

Both delivery services declined to answer my specific questions for this story but contributed generic comments such as, "FedEx Express and FedEx Ground use ID scan functionality for any delivery that

requires an adult signature in the US". UPS didn't respond in time for the story.

The Eyes on Oregon report doesn't actually mention any specific delivery services. However, an insider, who declined to be identified, thinks that Instacart and DoorDash are the most likely suspects. Both services have a more complex delivery model than just a wine shop or UPS or FedEx, as both provide groceries and prepared foods, which are much easier – legally – for customers to order and receive, regardless of how old the customer may be.

So, this raises the question of whether delivery services in Oregon are less trained, and more casual, when they drop orders off. Neither DoorDash or Instacart would answer specific questions for this story and provided the following generic comments.

"We are deeply committed to delivering alcohol safely and responsibly and that's why we've recently rolled out industry-leading safety features, including two-step ID verification. We look forward to working with lawmakers and the OLCC to ensure small businesses can continue to utilize this service and maintain access to a critical revenue stream," said a DoorDash spokesperson. At Instacart, another spokesperson said: "We take all alcohol delivery compliance very seriously."

Some Oregonians think that the state liquor board may prioritize profits over the well-being of the state's residents. "Because the OLCC and Oregon legislature have prioritized the profits of alcohol companies over the health and well-being of Oregonians. Hence, the home delivery of a toxic, addictive, carcinogen has been treated as if it were a harmless substance," said the Portland-based Mike Marshall, the director

of Oregon Recovers, a statewide coalition seeking to create treatment programs for in-state addicts.

There seems to be little evidence that control states, who benefit from profits from the sales of alcoholic beverages, suffer from more compliance issues than open states. "There is no difference between control and open states when it comes to delivery issues," confirms Hinman.

"The problem is not that we are a control state: the problem is that we don't act like a control state," concludes Marshall.

A legal take

Some drinks attorneys think the issues within the state may derive from a lack of structured rules.

"Currently there is very little formal regulation of individuals who make home deliveries of alcohol in Oregon and no formal training requirements on checking IDs to ensure the person accepting delivery is over 21," said Susan Johnson, a partner in the Seattle-based Stoel Rives LLP drinks law practice. The firm also has offices in neighboring Oregon.

She adds that sales representatives in stores often get more training than delivery personnel. "Store clerks and servers in restaurants and bars generally receive detailed training in ID checking. There is currently no requirement for alcohol-delivery drivers to receive age-verification training."

The consequences could be high for a rural state without a lot of easy-to-access wine shops.

"If high rates of noncompliance continue, either with or without an enhanced regulatory scheme, Oregon could follow the route that neighboring state Washington has and recommend that home alcohol deliveries be prohibited," shared Johnson.

The future

Legislation is clearly the solution according to a number of people I interviewed. Giving "the OLCC authority to create a regulatory framework to license the companies that provide third-party, alcohol-delivery services along with permit and training requirements for individual delivery drivers is the most likely fix," says Johnson.

She goes on to note: "There is currently draft legislation circulating that, if introduced in the current legislative session and enacted into law, would do just that along with establishing civil and criminal penalties for both third-party delivery companies and delivery drivers for home deliveries to minors or intoxicated individuals."

Marshall says that the bottom line is that "delivery individuals need to be rigorously trained and licensed and the liability for the consequences of non-compliance must rest with the company selling the alcohol, not the individual delivering it."