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Testimony

of

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Before the Joint Standing Committee on Veterans and Legal Affairs

LD 307 – An Act to Expand the Market for Maine Liquor Manufacturers

February 22, 2021

Senator Luchini, Representative Caiazzo and members of the Joint Standing Committee on Veterans and Legal Affairs, my name is Gregg Mineo and I am the Director of the Bureau of Alcoholic Beverages and Lottery Operations. I am providing the following written testimony neither for nor against LD 307.

This bill provides for the direct to consumer shipping of beer, wine, spirits, cider – any beverage alcohol as long as the state to which product is shipped allows for this activity. Based on our research, only 4 states currently allow direct to consumer shipping both by in-state and out of state manufacturers for beer, wine and spirits; 5 states allow direct to consumer shipping of beer and wine; and all require a license or permit for this activity.

Areas of concern by the Bureau:

1. Constitutionality. *Granholm v. Heald*, 544 U.S. 460 (2005). The SCOTUS held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if the state mandates “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter”.

In this case, Michigan and New York laws allowed in-state wineries to directly ship wine to consumers but restricted the ability of out-of-state wineries to do so. The SCOTUS in a 5-4 opinion delivered by Justice Anthony Kennedy, the Court held that both states' laws violated the commerce clause by favoring in-state wineries at the expense of out-of-state wineries and did so without the authorization of the 21st Amendment.

This bill would arguably do the same thing – favor in-state manufacturers to the disadvantage of out-of-state manufacturers.

2. Oversight.

- a. Tracking and Reporting. While the bill qualifies “...as long as the sale and shipment are both authorized by and conducted in accordance with the requirements of the law of the state where the shipment is delivered,” there isn’t a mechanism in the bill for tracking shipments by manufacturers as there is for the direct shipment of wine under section [1403-A\(11\)](#). This is a needed feature to ensure compliance and to provide oversight.
- b. Staffing. Direct to consumer shipping is a significant change in Maine’s liquor laws. As crafted, the bill would authorize 24 distilleries, 12 large breweries and 134 small breweries (as noted above, Maine wineries already have this ability) in Maine to direct ship their products outside of Maine. The Bureau is already stretched to its maximum ability to manage what Maine’s liquor laws already require including the oversight of 615 direct shippers of wine. At the time of renewal of these 615 licenses, staff must reconcile the direct-shipped sales to determine the amount of excise taxes to be paid and review data on sales to determine compliance with statutory requirements.

Without more staffing, especially with more legislation forthcoming in this session, the situation will become unmanageable. This is a critical juncture for the Bureau.

3. Collection of taxes

- a. For spirits sales, our question has to do with where the sale takes place – in Maine or where the shipment is headed. If the former, then there must be reporting to the Bureau by the distillery consistent with [1355-A\(5\)\(H\)](#).
 - b. For beer and wine sales, the same issue about place of sale and whether excise tax needs to be collected by the Bureau for those shipments to consumers outside of Maine.
4. Overlap of two sections of law potentially. This bill includes the ability for manufacturers of wine to direct ship. Maine wineries already have that ability under 1403-A so this bill will create a conflict with existing law.
 5. Consistency. This bill should be modeled after 1403-A for reporting requirements and tax payments. As noted above, the bill doesn’t provide any mechanism by which the Bureau is notified of shipments. Under section 1403-A, even Maine wineries are required to provide a report of their shipping activities because they must be licensed as a direct shipper of wine; their manufacturing license doesn’t provide authority to direct ship, they must be separately licensed to do so.

Thank you for allowing me to testify before the Committee today. I am happy to respond to any questions, and of course will be available for the work session.