

MEASURE: HB 2702  
EXHIBIT: 3  
H BUSINESS & LABOR  
DATE: 3-8-2013 PAGES: 4  
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## Testimony before the House Business & Labor Committee

March 8, 2013

### in Opposition to HB 2702

Members of the House Business & Labor Committee thank you for the opportunity to testify before you today. For the record my name is Katie Jacoy, Western Counsel for Wine Institute and I am here today in opposition to HB 2702. Wine Institute ("WI"), a public policy organization representing 926 California wineries and associated businesses, opposes HB 2702 which permits any city or county in Oregon to ask the Oregon Liquor Control Commission ("OLCC") to recognize by rule an alcohol impact area ("AIA"). Previously, only the City of Portland was eligible to petition for an AIA under existing OLCC rules. WI does not believe that creating numerous AIAs across Oregon, with various product restrictions, is an effective way to address the problems associated with chronic public inebriation ("CPI"), or an effective way to achieve the goal of safer and more livable cities. **WI does not support legislative efforts to ban the sale of legal products.** The OLCC should utilize its current tools to help cities address CPI and problem liquor licensees.

AIAs are a means to ban legal alcohol beverage products and effectively push problem drinkers outside the AIA boundaries to purchase the banned products. Such bans also negatively impact the vast majority of wine consumers, who purchase wine products and consume them responsibly at home. Wine is not a significant contributor to the problems associated with CPI. Based on our analysis of the Portland Patrol, Inc. ("PPI") and Portland Police Bureau ("PPB") reports provided by the City of Portland to the OLCC, **wine only accounted for 55 of the 720 specific drinking-in-public incidents, or 7.6%.** For this reason, if AIA authority is granted, we respectfully request that wine products be exempt.

**In the alternative, if AIA authority is granted and wine is not exempt, we urge you to adopt the product-specific approach that has worked in Washington, resulting in banning at most eight (8) fortified wine products in any AIA.** Oregon does not need to reinvent the wheel, the product specific approach has worked in Washington state by targeting the products consumed by the problem drinkers and lessening the unintended consequences. As it should

be, the bans in Washington have little or no adverse impact on those who are consuming wine responsibly while living within AIAs covering downtown Seattle, Tacoma & Spokane.

### **CITY OF PORTLAND – SURVIVAL OF PENDING AIA PETITION**

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Currently, no AIA is functional in Oregon, so there is no basis to evaluate the effectiveness of product bans. The OLCC has had an administrative rule in place for over 10 years that permits the designation of an AIA in Portland. (OAR 845-005-0303) The OLCC began rulemaking proceedings on a petition from Portland to establish an AIA in its downtown core in the fall of 2010. The rulemaking process was halted when the Attorney General's Office informed the OLCC that they did not have statutory authority for their general AIA rule when it was promulgated.

The City of Portland crafted HB 2702 in an attempt to allow rulemaking on its petition, pending before the OLCC, to continue from the point at which it was halted. As we pointed out throughout the entire rulemaking process – beginning with the City Council hearing and throughout the OLCC proceedings - the City's data and documentation to support its proposed product bans was incomplete and in some cases inaccurate. Now, the data is also out-of-date, gathered almost three years ago by PPI officers from April to August of 2009 and January to April 2010.

During the OLCC's Advisory Council Meetings, the City consistently pushed for broad product bans. For wine products, they wanted to ban:

- 1) all wine over 14% ABV;
- 2) all bag-in-box wines, and;
- 3) all wines in containers of 2 liters or more.

This approach would have banned almost 200 wine products available in the Safeway located within the proposed AIA. All tiers of the alcohol beverage industry (manufacturers, wholesalers & retailers) argued that these broad bans were unworkable and pushed for a product-specific approach that has been effective in Washington. The OLCC halted rulemaking before adopting either of these approaches.

### **HB 2702 LEAVES SOLE DISCRETION WITH OLCC**

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HB 2702 proposes to give the OLCC blanket authority, upon the petition of a city or county, to establish the boundaries and the basis of product restrictions in an AIA. The result may be the adoption of AIAs in numerous municipalities with a myriad of restrictions, including product bans based on various differing criteria. The decision to ban any alcoholic beverages should not be taken lightly and should not be delegated to the OLCC without specific, stringent standards and requirements.

In fact, the structure proposed in this bill makes adoption of an AIA fraught with difficulty. The bill does not alter the structure that had been in place under the OLCC rule. It was clear from the rulemaking process to date on the City of Portland's petition that leaving the determination of so many elements of an AIA in the hands of the OLCC doesn't work. The City gathered data and documented their petition to support an AIA structured with broad bans on alcoholic beverages. Without gathering significant additional data (which the City resists doing), it will be virtually impossible for the OLCC to adopt any other approach, like product-specific restrictions.

We, therefore, believe that any bill proposing to grant AIA authority should contain specific, stringent standards and requirements, so that the OLCC can consistently and efficiently implement the law. We believe that legislation that allows the adoption of an AIA should provide at a minimum the following:

- Authorize a single AIA in the City of Portland to study its effectiveness;
- Permit OLCC to adopt an AIA only upon findings of fact that demonstrate the adverse impact on the quality of life or the welfare, health, peace or safety of occupants due to chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed AIA;
- Establish what findings of fact and documentation is necessary to include in a petition;
- Permit specific product restrictions upon demonstration that the specific product is reasonably linked to problems associated with chronic public inebriation or illegal activity and establish what is necessary to document this reasonable linkage;
- With regard to wine products, provide that only specific fortified wine products may be restricted.

HB 2702 is vague and lacks specific standards. For example to support product prohibitions, a city is only required to “explain why the proposed limitation and prohibitions are **expected to** alleviate or eliminate the documented problems in the area.” With such a standard, any and all alcoholic beverages could be banned.

#### **WASHINGTON METHODOLOGY**

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The Office of Neighborhood Involvement’s (ONI) Summary Report produced to support the City of Portland’s AIA proposal points positively to the experience in Washington; however, ONI did not adopt the approach Washington took with regard to product restrictions. In Washington, a request for mandatory product restrictions requires evidence that the **specific products** are reasonably linked to problems associated with chronic public inebriation or illegal activity in the area. The jurisdiction requesting the bans develops a list of specific products that contribute to the documented problem. This approach may take more work and has not been perfect, but has avoided banning legal alcohol beverage products that have no relationship to the specific issues within an AIA boundary.

There are six (6) mandatory AIAs in Washington located in three cities - Seattle, Tacoma and Spokane. At most, the banned product lists included eight (8) fortified wine products:

- Seattle (two AIAs) – 8 fortified wine products listed
- Tacoma (two AIAs) – 5 fortified wine products listed (all these are on the Seattle list)
- Spokane (two AIA) – No wine products listed.

In contrast, the City of Portland requested that the OLCC adopt bans that would cover about 200 wine products available in the Safeway located in the AIA. In addition, none of the Washington AIAs ban bag-in-box wines or large format bottles of table wines as requested by Portland. These products typically have ABV of 13.5% or lower. In addition, boxed wines generally have a high per unit price – typically between \$13 and \$27. It is counterintuitive that a chronic public inebriate would wait to amass \$13 to purchase lower alcohol content wine, when stronger cheaper alternatives are readily available. In fact, it was noted by the police officer who participated in the OLCC Advisory Council Meetings that there had been a theft issue of

box wines from the Rite Aid in the proposed AIA. This may help explain why these products ended up on the streets, but theft of a product and its subsequent misuse shouldn't be the basis of a ban.

While WI does not believe that the banning of products is the correct route to dealing with the problems of CPI, at least the method used in Washington has been more directed to the problem drinkers and has had less of an impact on those who are consuming wine responsibly while living within the impacted areas.

In summary, the proposed legislation is flawed in its design and WI opposes HB 2702. Thank you for the opportunity to appear before you today. If you have any questions, please do not hesitate to contact me at (360) 790-5729 or Hasina Squires, WI's Oregon lobbyist, at 503-708-8079.