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**To:** Senate Judiciary Committee  
**From:** Katie Jacoy, Western Counsel  
Wine Institute  
**Date:** April 6, 2019

**Re: Opposition to Senate Bill 591 and the -2 Amendment**

Wine Institute (WI) is a public policy organization representing almost 1,000 California wineries of all sizes and associated businesses. (Copper Cane is not a WI member.) WI strongly opposes Senate Bill 591 -2, applying Unfair Trade Practices Act (UTPA) actions and penalties to specific regulatory violations relating to minimum standards for wine as well as branding or labeling requirements. The array of potentially damaging actions and penalties under the UTPA include private rights of action, class actions, punitive damages, and the payment of attorneys' fees and costs. No other state applies such harsh penalties to violations of wine regulations. The wine industry nationwide has relied on the judgment of experienced regulators instead of plaintiffs' lawyers and the courts to determine, correct and cite violations of regulations. This deviation from standard industry practice, being introduced as a response to Copper Cane's questionable labeling and marketing practices last year, will have far reaching detrimental impacts on Oregon wineries, distributors and retailers as well as all wineries from other states and countries selling products in Oregon.

We respectfully ask you to consider the following when evaluating the merits of SB 591 -2:

- The problem that OWA and WVWA have been purportedly trying to address is the harm to the Oregon industry arising from the production of wines labeled "Oregon" that misuse references to geographical areas in Oregon and Oregon AVAs. However, SB 591 -2 goes far beyond addressing this limited issue. This bill would subject wineries, distributors and retailers to UTPA actions and penalties regarding wines produced in Oregon as well as those produced in other states and around the world and sold in Oregon.
- UTPA was enacted to protect consumers. This dispute is not about consumers, it is an argument about unfair competition between business entities. If it were about consumers, then the UTPA could currently and rightfully be employed. OWA acknowledges that the Department of Justice (DOJ) can currently bring action under the UTPA when a person uses "deceptive representation or designations of geographic origin in connection with . . . goods." The OWA, however, is advocating for this bill and amendment to make DOJ action and lawsuits against wineries under the UTPA easier.
- Wineries, in-state and out-of-state have expressed concerns about the onerous requirements in the various amendments of SB 111. The -4 Amendment, made public only yesterday, is the current focus of wineries; however, please be aware that SB 591 -2 exponentially increases all problems expressed with SB 111 -4. The penalties for violations are not only the \$25,000 per occurrence civil penalty contained in SB 111 -4, but are also potentially private rights of action, class actions, punitive damages, payment of attorneys' fees and costs under SB 591 -2.

- SB 591 & SB 111 are intrinsically linked in that SB 111 -4 amends a section of Oregon Statute, ORS 471.446(2), referenced in SB 591 -2 and expands OLCC regulatory authority. Under SB 591 -2, an Oregon or out-of-state winery could face UTPA actions and penalties for a violation of law or rule that is not currently enacted or adopted. Wines being made and labeled now could potentially violate new rules adopted by the OLCC, putting the system of vintage wine being released and sold over the course of time in jeopardy regarding sales in Oregon.
- In a UTPA lawsuit, being in the right would not relieve a winery of the expense and potential negative market impacts of having to defend themselves. Even though the General Counsel for OWA said in testimony: “OWA does not want to expose wineries – most of whom are small businesses - to frivolous lawsuits,” this is exactly what this bill and amendment does. This bill, creating the potential for unscrupulous plaintiff’s lawyers to subject wineries to UTPA lawsuits and penalties, is harmful to the entire wine industry. The correct arena for addressing such issues is a regulatory forum where all parties are familiar with the intricacies of the industry – that is what the OLCC and similar agencies across the country are charged with doing.

The OWA submitted a second complaint against Copper Cane with the Federal Alcohol and Tobacco Tax and Trade Bureau and the OLCC is in the midst of regulatory action against Copper Cane. SB 111 -4 and other pending legislation propose increased requirements, enhanced rulemaking authority and higher monetary penalties around wine labeling, branding, and marketing. We urge you to wait for the Federal and State investigations and regulatory action to be complete and the outcome of pending legislation determined before compounding any negative impacts on Oregon and out-of-state wineries by also imposing UTPA penalties.

We urge you not to move SB 591 with or without the -2 amendment.

Sincerely,

Katie Jacoy