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HOUSE COMMITTEE ON GENERAL GOVERNMENT
TESTIMONY IN OPPOSITION TO HB 3194 – COCKTAILS IN A CAN
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MARCH 2, 2021

BACKGROUND

Hood River Distillers was established in 1934. We are the oldest distillery in Oregon and have been in operation under OLCC longer than any other distillery in Oregon. From the fruit wines and brandy of Hood River Distillers' beginnings to the recent success of Pendleton Whisky, Hood River Distillers has thrived under the OLCC control state system.

Currently when you see a bottle with an HRD label it is a Hood River Distillers product. Currently, one out of every four bottles sold in Oregon is an HRD brand bottle. In addition, Hood River Distillers also markets under approximately forty labels of Monarch products. HRD vodka is the number one selling vodka in Oregon by volume and we account for 70% of in state sales among Oregon distillers.

Oregon's control state system is a critical component to the company's success and ability. This system ensures that small, local brands receive the same consideration as large national and international brands; this provides a level playing field for local companies to compete with out-of-market brands. As a result, this helps ensure that residents will have jobs and income while protecting local liquor storeowners and small Oregon-based companies like Hood River Distillers. OLCC's system allows businesses, such as Hood River Distillers, a local independent company with a long history in Oregon, to operate in a rural area of the state and which benefits the state's economy.

HB 3194 MOVES OREGON TOWARD ALCOHOL PRIVATIZATION

HB 3194 weakens the control state system by creating an exception which allows the distribution of distilled spirits outside of the control state system. Oregon and the federal government distinguish distilled spirits from other beverage alcohols based on the method of manufacture. HB 3194 creates an exception for distilled spirits defined as Low Proof Spirit Beverages (LPSB) that allows them to be treated similarly to wine. HB 3194 defines LPSB as distilled spirits that are no more than 14% alc./vol. and packaged in containers no more than 375ml. This exception blurs the line between types of alcoholic beverages and the way they are taxed, distributed, and regulated. Of utmost concern to HRD, HB 3194 strengthens the argument for privatization in Oregon. Our success in Oregon has been largely attributable to Oregon's control state system. When Washington state voters approved privatization the effects on HRD were immediate and dramatic. As a result, we strongly oppose legislation that threaten Oregon's current system.

The control state system directly ties to the state's goals of attracting, keeping, and fostering business in Oregon. This system provides consumers with better choices and protection. It gives local companies, such as Hood River Distillers, more opportunities to compete and provide local jobs. **The OLCC system allows for fair competition – local Oregon products can compete against national and international distillers.** It fills the essential role of regulation and revenue collection for the state. We believe that free enterprise and alcohol do not mix. That is why, for the good of business, the local economy, and consumers, **Hood River Distillers supports the control state system. This bill moves away from that system and towards privatization.**

Wine vs Spirits Taxes

Distilleries sell their distilled spirits to the OLCC. The OLCC calculates the retail price of a bottle through application of their markup formula. The markup formula includes a case charge, freight cost, and the temporary surcharge. Often the bottle's retail markup is over 100% of the price OLCC paid the distillery. The liquor store selling the bottle earns a commission on the sale while the majority of the margin is remitted to the OLCC.

Wineries pay a privilege tax of 65 cents per gallon to the OLCC for wine containing no more than 14% alcohol by volume. An extra 2 cents per gallon is added on top that goes into the account established by the Oregon Wine Board.

HB 3194 creates an exception that blurs the tax treatment between distilled spirits and wine. Low proof spirit beverages are distilled spirits that would be taxed as wine. These products would no longer undergo OLCC's markup formula. Instead, the much lower 65 cents per gallon wine privilege tax applies. Low proof spirit beverages would enjoy preferential treatment even when compared to wine because the additional 2 cents per gallon that goes to the account established by the Oregon Wine Board is not applied.

HB 3194 Reduction in Taxes Owed to the State

With the forecasted budget shortfall, Oregon should not create an exemption that severely reduces the revenue margin for the state when these products are sold. Under the distilled spirit markup formula, a can of flavored vodka tonic acquired by OLCC for $1.82 would be sold at retail for $4.95. After the payment of the highest commissions to the retail agents the state will still earn $2.03 from that one transaction. Under HB 3194 that same transaction would generate $.06 for the state.

In 2020, approximately $965,622 in revenue was generated from the sale of distilled spirits qualifying as low proof spirit beverages. Under the provisions of HB 3194 the application of the privilege tax would generate only $35,205—nearly 30 times less than the current amount of revenue. The State of Oregon should not subsidize distilleries through an exception of the traditional markup to enable LPSB to better compete with wine or malt beverage products. The state should have no interest in generating significantly less revenue from this new and growing market.

HB 3194 Allows Manufacturers to Game the System

The definition of low proof spirit beverages is not limited solely by the category of cocktails in a can. As long as the distilled spirit is no more than 14% alc./vol. and sold in a factory sealed container no more than 375ml, these products will be treated similar to wine and available in all places wine and beer are sold. The qualification that the product contains a nonalcoholic liquid is irrelevant because the simple action of adding a drop of water satisfies this requirement.

Cordials, liqueurs, and other specialty spirits that may not qualify currently are attractive products for manufacturers to reformulate or repackage to qualify as a low proof spirit beverage. Many of these products are normally lower proof. Modifying these products allows manufacturers to increase the accessibility of their products to be sold wherever there is beer or wine while escaping the high markup other spirits are subjected to.

For example, HRD's Monarch Triple Sec is 15% alc./vol. and sold in a 750ml bottle. In 2020, HRD sold 107,150 bottles of Monarch Triple Sec that earned OLCC an estimated $491,604. HRD could easily drop the alc./vol. by 1% and bottle it in a 375ml container. This product would now qualify as a low proof spirit beverage. It would be available in all locations that sell wine and beer and, under the provisions of HB 3194, would contribute considerably less revenue to the state. To demonstrate the contrast, the same sales that provided the state $491,604 would provide the state $13,799 instead, if taxed as a low proof spirit beverage.

Another example is Aperol, a popular premium bitter type of distilled spirit. This product is 11% alc./vol., but it is sold in 750ml bottles. If the product is offered in a 375ml bottle it will qualify as a low proof spirit beverage. In 2020 it is calculated that 36,658 bottles were sold and $470,184 was earned by the OLCC. The state would have received approximately $4,720 instead as treated as a low proof spirit beverage under HB 3194.

The passage of HB 3194 will motivate manufacturers to slightly alter their products to enjoy the benefits of low proof spirit beverages. Liquor stores will struggle to compete selling similar products because private companies selling beer and wine can purchase these products from an array of wholesalers and the products are not forced to undergo the markup formula. As a result, these modified products will contribute substantially less tax revenue to the state.

HB 3194 Increases the Proliferation of Alcohol

Currently, customers searching for distilled spirits in Oregon must actively do so through a liquor store. HB 3194 creates an exception for qualifying distilled spirits to be sold by licenses selling wine or beer. From neighborhood grocery stores to corner gas stations, to boutique shops, HB 3194 permits low proof spirit beverages to be sold anywhere beer and wine is currently sold. Venues prohibited from selling a pour of whiskey, but can sell beer or wine, can sell qualify ing cocktails in a can under HB 3194. Also, HB 3194 allows for these products to be delivered direct to consumer residences by business that can deliver wine.

As groups like Oregon Recovers struggles to help those with addiction issues, HB 3194 will do nothing but increase the accessibility of distilled spirits. Young Oregonians and those suffering from addiction will face greater exposure to distilled spirits because the products will be stocked alongside beer and wine. As discussed in the above section, the state would generate less revenue from these products. Less revenue results in less funds to combat addiction issues.

HB 3194's Apparent Benefits to Oregon Distillers Does Not Justify Its Passage

Today all distilled spirits in Oregon are purchased and sold by the OLCC. Oregon distilleries concentrate their efforts and develop relationships with the state commission to market their products in retailers focused on selling distilled spirits. Oregon distilleries set their price, ensure the price is uniform across the state, and can adjust the price as needed.

HB 3194 increases the accessibility of LPSBs, but not to the proportionate benefit of Oregon distilleries. Instead of selling to only the OLCC, Oregon distilleries must compete with large national wholesalers representing large national brands. The marketing support, volume discounts and existing relationships of these larger entities make getting shelf space a struggle. Not only are the Oregon LPSB manufacturers competing with other national and international LPSB manufacturers, but they are also competing against wine, beer, and the various other non-alcoholic products requiring shelf space.

Thank you for the opportunity to submit testimony in opposition to HB 3194. We urge the committee to reject this measure.