

**HAWAII LIQUOR WHOLESALERS ASSOCIATION
FIVE WATERFRONT PLAZA
500 ALA MOANA BLVD STE 400
HONOLULU, Hawaii 96813**

March 22, 2021

Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 824 H.D.2 Relating to Intoxicating Liquor
Hearing Date: March 23, 2021

Dear Chair Johanson, Vice Chair Kitagawa and Committee Members:

The Hawaii Liquor Wholesalers Association (“HLWA”) respectfully submits the following written testimony in **support** of HB 824 H.D.2 Relating to Intoxicating Liquor.

Direct shipment of wine from wine producers outside each county to consumers within the county has been allowed by HRS Section 281-33.6, under the pretext that small local wineries were not able to find licensed wholesalers to distribute their wine for them outside of their county. A consequence of this direct shipment law is that wine producers outside the state can direct ship to consumers within the state.

Other states that allow direct shipment have found, through carrier reporting, that large amounts of liquor have been shipped into their states without payment of liquor, excise and income taxes, resulting in loss of tax revenue to the states.

This bill would require the carriers of liquor to report the amount of statewide liquor being shipped and shipper information to the liquor commissions or liquor control adjudication board who can determine and analyze the shipments made to each county and confirm whether the shipper has complied with the requirements to obtain a direct shipper permit, including payment of all taxes.

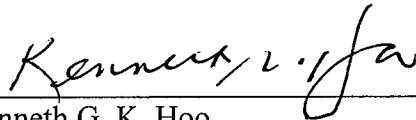
Attached are two reports from the Wine & Spirits Wholesalers of America dated March 2020. The first report explains why carrier reporting is so important to prevent illegal shipments and loss of revenue to the states. The second report summarizes findings of numerous violations from states that utilized carrier reports and lists the states that have carrier reporting and recordkeeping.

Illegal shipments of liquor hurt Hawaii's economy and result in loss of income and jobs to local residents. It is unlawful and unfair competition.

Based on the above, we respectfully support HB 824 H.D.2. Thank you for your consideration of the foregoing.

Very truly yours,

HAWAII LIQUOR WHOLESALERS ASSOCIATION

By: 

Kenneth G. K. Hoo
Its Secretary



Common Carrier Reporting of beverage alcohol shipments

Identifying Illegal Shippers to Prevent Them From Undercutting Legal Businesses

As consumers seek more convenience in their purchases, interstate direct shipment of beverage alcohol (predominantly wine) has become increasingly common. Unfortunately, the same mechanism that provides this practice offers an avenue for unlicensed, unscrupulous actors to dodge state laws, avoiding license and tax requirements (excise, retail, and local taxes).

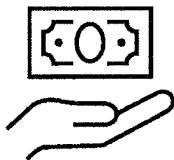
The impact to state budgets is significant – and often totals in the tens of millions of lost revenue dollars. By operating outside state systems, these illegal actors do not only avoid taxes, but undercut law-abiding industry members, local businesses, and compromise the state’s regulatory authority and public safety mechanisms.

A thriving marketplace benefits all, but a marketplace where legal businesses are forced to compete with illegal actors is detrimental to consumers and the entire industry.

Fortunately, there are ways that state laws can be strengthened and modernized to eliminate bad actors who seek to undermine and exploit the system, and to encourage the preservation of the orderly marketplace by weeding out illegal activity.

One viable solution to alleviate some of the lost revenue due to interstate direct shipment is institution of Common Carrier Reporting, which provides a means to differentiate between legal and illegal sales/shipments by requiring carriers like FedEx and UPS to report to state regulators all alcohol shipments.

Benefits of Carrier Reporting



HELPS STOP LOSSES IN STATE TAX REVENUE

- Allows states to identify illegal shippers who circumvent state tax collection



PROMOTES MARKETPLACE STABILITY

- Levels the playing field between businesses and ensures stability for consumers



WEEDS OUT ILLEGAL ACTIVITY

- Identifies bad actors who compromise the state’s regulatory authority and public safety

Common Carrier Reporting of beverage alcohol shipments

Common carrier reporting of beverage alcohol shipments prevents bad actors from undercutting legal businesses and dodging state laws, including remitting taxes.

WHY SHOULD ALCOHOL SHIPMENTS BE SUBJECT TO REPORTING REQUIREMENTS?

Regulators and public safety officials in many states lack the tools to accurately identify the participants in the illegal alcohol market. Ignoring the realities of illegal direct-to-consumer alcohol shipping and the challenges they pose to a stable marketplace will cost the public in the long run. Businesses that play by the rules and follow the law will lose. Should state law not account for these realities, law-abiding locally owned businesses will suffer while unscrupulous merchants exploit loopholes and evade taxes to undercut competitors. By requiring common carriers to submit information – which their systems already gather – regarding shipments of alcohol to the relevant regulatory agencies, officials will have in their possession the data necessary to differentiate between legal and illegal sales and shipments. These requirements not only serve public safety goals, but account for the evolution of the modern marketplace and preserve ease of access to quality products by the consumer.

When a seller (without a license in the state where the recipient resides) ships directly to a consumer via a common carrier (such as UPS or FedEx) the seller avoids the regulatory structure that prevents illegal sales. Because states lack the necessary tools for enforcement, these sellers can often do so with no repercussions. Bad actors, of course, will never self-report their shipments to the appropriate authorities. Therefore, an alternative means of identifying illegal activity must be employed to curtail harmful and illegal transactions.

BACKGROUND

Along with the repeal of prohibition, the 21st Amendment gave authority to the states to regulate alcohol sales. To prevent the widespread abuses that led to prohibition, states created the three-tier system: a highly effective, regulated distribution arrangement that consists of suppliers, wholesalers, and retailers as distinct entities. The balance provided by the three-tier system has worked for over eighty years to improve the consumer experience and safety in the marketplace. Within this system, each entity is held accountable for the responsible and legal handling of alcohol on its way to the consumer, and each is shielded from the undue influence of the others. Ultimately, this benefits consumers and protects public interests. The system promotes accurate tax collection, prevents illegal distribution, prevents underage drinking, eliminates counterfeit products, and ensures the integrity and safety of those products supplied for consumer enjoyment.

Enforcement Results: Carrier Reporting

A summary of findings from states that utilized carrier reports

As consumers seek more convenience in their purchases, interstate direct shipment of beverage alcohol (predominantly wine) has become increasingly common. Unfortunately, unlicensed, unscrupulous actors tend to dodge state laws that regulate shipments, in order to avoid license fees, local laws and regulations, and important tax requirements (excise, retail, and local taxes).

To move forward effectively with any enforcement, states need a mechanism to differentiate between legal shipments and illegal shipments, and adoption of Carrier Reporting by state legislatures can give states more visibility into the marketplace by requiring carriers (FedEx, UPS, etc) to report alcohol shipments to regulators.

States across the country have begun to use carrier reports to identify illegal shipments and launch enforcement efforts to stop businesses from continuing to illegally shipping into their state.

Illinois

- The Wine and Spirits Distributors of Illinois (WSDI) examined carrier reporting data from December 2013 and found the following:
 - 84,811 unlicensed direct to consumer shipments from two carrier companies in a single month
 - 460,961 unlicensed 750ml bottles shipped
 - 91,329 unlicensed gallons shipped
 - WSDI projects tax loss estimates as high as \$20 million per year
- Enforcement Actions: The Regulatory agency issued 160 cease and desist letters, which resulted in an additional 150 winery shipper permits being issued.

Michigan

- In the second quarter of 2018, 496,376 bottles of alcohol were shipped into the state of Michigan. **Of those bottles, 50.5% or 251,087 bottles were spirits or illegally shipped wine.** It is estimated that 60-70% of alcohol purchased online is wine, meaning that approximately 150,600-175,700 of illegal bottles were wine and the remaining 75,400-100,500 were spirits. Find the full press release [here](#).
- The Michigan Beer & Wine Wholesalers Association examined carrier reporting data from the 4th quarter of 2018 which consisted of 528,310 bottles of alcohol. Of those bottles, 25% or 185,408 bottles were spirits or illegally shipped wine. It is estimated that 60-70% of alcohol purchased online is wine, meaning that approximately 111,000-130,000 of illegal bottles were wine and the remaining 55,00-74,000 were spirits. The shipment of spirits is illegal in the state of Michigan.
- Enforcement Actions: In 2019 the Michigan Liquor Control Commission (MLCC) and the Michigan Office of Attorney General used carrier reports to send 129 cease and desist letters to unlicensed sellers for illegally shipping alcohol directly to Michigan consumers. Additionally, the Michigan Attorney General Dana Nessel filed lawsuits against two out-of-state entities that continue to defy state liquor laws by illegally shipping wine and beer directly to consumers, these lawsuits are the second use of the 21st Amendment Enforcement Act. Read more [here](#).

Ohio

- Utilizing Ohio carrier reporting data, the Bruning Law Group, in conjunction with the Wine & Spirits Wholesalers of America found 16 businesses potentially violating Ohio law. Of the 16 potential violators, Wine.com and Winc were responsible for 3,278 of the 9,630 shipments, or 34%. Of the 16 potential violators, 3 sell spirits online and may be shipping spirits into Ohio which is illegal in the state.

- Enforcement Actions: As part of one of the first-ever lawsuits centering on the 21st Amendment, Ohio Attorney General Dave Yost filed for a preliminary injunction against Wine.com and Winc to immediately stop the flow of illegal shipments into the state. Read more [here](#).

Tennessee

- In the first 7 months of mandatory carrier reporting, Tennessee saw 185,000 shipments weighting 3.9 million pounds. That averages to 40 pounds per case, meaning that approximately 1.2 million bottles of wine or spirits were shipped into the state in 7 months.
- Enforcement Actions: After examining carrier reports, the Tennessee Alcohol Beverage Commission (TABC) ordered 7 out-of-state businesses to cease and desist shipping alcohol into the state. In just a few months these businesses were responsible for approximate 1,000 illegal direct-to-consumer shipments. Some of these shipments may have contained spirits, which is illegal to ship into the state. Enforcement actions continue, and updates are posted at the TABC website [here](#).

Virginia

- The Virginia Alcoholic Beverage Control Authority examined carrier reports from June to September of 2018. They found that there were 69,478 shipping transactions in this time frame. Of those transactions, 26,963 or 39% were unlicensed transactions. Due to these unlicensed shipments the state lost an estimated \$62,770 in unpaid excise taxes during the 4-month period in 2018. This study did not account for lost retail taxes, which would also have been a significant number.
- From this analysis the Virginia ABC contacted over 650 unlicensed shippers. Since the ABC started outreach to these unlicensed shippers, shipper license applications increased by 50% when compared to previous data.

Carrier Reporting States

Florida

Carrier Reporting Requirement: "All common carriers of freight operating in the state shall file monthly reports with the division on forms to be prepared by the division which shall show in detail all shipments of alcoholic beverages transported by them to or from any point within the state."

Frequency: Monthly

Penalties: (Not Express for carriers, general penalty for violating the statute) Misdemeanor of the second degree (1st offense) to felony of the third degree (subsequent offenses).

Source: [Link](#)

Iowa

Carrier Reporting Requirement: Iowa requires that alcohol carrier licensees maintain records of wine shipped including the license number and name of the manufacturer, quantity shipped, recipient name and address, and an electronic or paper copy of the recipient's signature. This information must be submitted to the Alcoholic Beverages Division monthly.

Frequency: Monthly

Penalties: Simple misdemeanor

Source: [Link](#)

Illinois

Carrier Reporting Requirement: Illinois requires that common carriers file a monthly report with the Department of Revenue stating the name of the company making the report, the period of time covered, the name and business address of each consignor of alcoholic liquor, the name and address of each consignee and the date or dates of delivery.

Frequency: Monthly

Penalties: Class C misdemeanor

Source: [Link](#)

Kansas

Carrier Reporting Requirement: "The report shall contain: The name of the express company or other common carrier that delivers the alcoholic liquors; the period of time covered by the report; the name and business address of the consignor of such alcoholic liquors; the weight of the package delivered to each consignee; a unique tracking number; and the date of delivery."

Frequency: Monthly

Penalties: Civil penalty of not more than \$500

Source: [Link](#)

Louisiana

Carrier Reporting Requirement: All transporters of still or sparkling wine must submit a report monthly to the ATC that contains the date of all shipments, name of the shipper, shipper address, name of recipient, address of recipient, tracking identification number, date of delivery, total package weight, quantity of each shipment and the volume of wine shipped.

Frequency: Monthly

Penalties: \$25,000 civil penalty

Source: [Link](#)

Maryland

Carrier Reporting Requirement: Common carriers must report quarterly to the Comptroller the date of each delivery of wine in the state, the name and address of the direct wine shipper, and receiving consumer of each delivery.

Frequency: Quarterly

Penalties: No punishment noted.

Source: [Link](#)

Michigan

Carrier Reporting Requirement: Common carriers that transport alcoholic liquor into Michigan must submit quarterly reports to the Liquor Control Commission. The report must include the name and business address of the shipper, the name and address of the recipient, the weight of alcoholic liquor delivered and the date of delivery. Such records must be retained for three years unless otherwise notified by the Commission.

Frequency: Quarterly

Penalties: No penalty noted (penalty section seems to exclude common carriers).

Source: [Link](#)

North Dakota

Carrier Reporting Requirement: Licensed alcohol carriers must report monthly to the tax commissioner on forms prescribed by the commission. They must maintain records of alcoholic beverages shipped into the state including the name of the direct shipper, the name of any licensed logistics shipper, the date of each shipment, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages.

Frequency: Monthly

Penalties: For a first violation, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation and shall assess a civil penalty of one hundred dollars for each illegal shipment. For a second violation, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. For any subsequent violation, the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment

Source: [Link](#) (C.C. 5-01-16-6-b)

New Hampshire

Carrier Reporting Requirement: Licensed common carriers must report deliveries of alcoholic beverages to the Liquor Commission monthly and retain adult signature records for at least 6 months from the date of delivery.

Frequency: Monthly

Penalties: A fine of \$100 and a commission order detailing the correcting action required.

Source: [Link](#) (1105.02)

Ohio

Carrier Reporting Requirement: Ohio requires that all transporters of beer or intoxicating liquor into the state to an individual prepare a monthly report that is submitted to the Division of Liquor Control. The report must contain name of person preparing and submitting the report, period of time covered, name and business address of each consignor of the beer or intoxicating liquor, name and address of each consignee, weight and tracking number assigned to each delivery and the date of delivery. These records must be maintained for two years after submission unless otherwise directed by the Division.

Frequency: Monthly

Penalties: Permit suspension or revocation

Source: [Link](#)

Oklahoma

Carrier Reporting Requirement: Oklahoma requires that all common or contract carriers that bring beer, wine or spirits for delivery into the state prepare and file a quarterly report with the Tax Commission indicating the name of company, period of time covered by the report, name and business address of each shipper (of the beverage alcohol- winery, etc), weight of the package shipped, unique tracking number, and the date of the delivery. quantity of alcoholic beverages delivered, and date of the delivery.

Frequency: Quarterly

Penalties: Written reprimand (1st offense) then fines of \$2,500 (2nd offense), \$5,000 (3rd offense), or \$10,000 (all subsequent offenses).

Source: [Link](#) (37A-3-106)

Other: Reports not accessible to public.

South Dakota

Carrier Reporting Requirement: South Dakota requires that wine carriers file quarterly reports with the Department of Revenue that include the business name and address of the direct shipper for each shipment, the date of shipment, the name and address of shipment recipients in South Dakota, the weight of each package shipped and the tracking number of each shipment. A report must be filed even if no business was transacted during the reporting period.

Frequency: Quarterly

Penalties: No penalties noted.

Source: [Link](#)

Tennessee

Carrier Reporting Requirement: Tennessee requires that all common carriers contracting with a direct (wine) shipper) for delivery into Tennessee prepare and submit a monthly report to the Department of Revenue including the name of the common carrier making the report, the period of time covered by the report, the name and business address of the consignor, the name and address of each consignee, the weight of the package delivered to each consignee, a unique tracking number, and the date of delivery.

Frequency: Monthly

Penalties: Fine up to \$500 for each unreported delivery.

Source: [Link](#)

Texas

Carrier Reporting Requirement: Texas requires that each holder of a common carrier permit make a monthly report to the Alcoholic Beverage Commission that includes an accurate account of all alcohol transported by the carrier in interstate commerce during the reporting period. It must also include the date of shipment, consignor, point of origin, consignee, destination, freight bill number, number of packages, kind of commodity shipped and date of delivery. If no shipments were made, a report indicating this must be filed.

Frequency: Monthly

Penalties: No penalties noted.

Source: [Link](#)

Virginia

Carrier Reporting Requirement: Virginia requires that common carriers that have obtained approval from the Department of Alcoholic Beverage Control (ABC) to ship wine for wine shipper licensees or internet wine retailers must file quarterly reports for the previous calendar quarter. The report must include date of shipment and delivery, number of item shipped and delivered, weight of items shipped and delivered, acknowledgement signed by recipient, and names and addresses of shippers and recipients.

Frequency: Quarterly

Penalties: Administrative procedures, including suspension/revocation of a license

Source: [Link](#)

Carrier Recordkeeping States

Some states do not require carriers to file reports of alcohol shipments at mandated intervals but do require that these records are accessible to state alcohol or tax regulators should they request them.

Arizona

Carrier Recordkeeping Requirement: Arizona requires common carriers transporting wine into Arizona to keep records of the wine shipped. The records must include: the name of the licensee making the shipment, the address of the licensee making the shipment, the license number, the date of shipment, the address at which delivery is to be made, and the amount shipped. Common carriers must make the information available to the Department on request.

Penalties: None listed (just remit on request requirement)

Source: [Link](#)

Georgia

Carrier Reporting Requirement: Carriers transporting alcoholic beverages into the state are required to submit monthly bills of lading. Bills of lading do not include license number or business names and are not useful when trying to identify illegal shipments.

Frequency: Monthly

Penalties: No penalties noted

Source: [Link](#)

Idaho

Carrier Recordkeeping Requirement: While not a specific reporting requirement, "delivery persons" delivering wine to Idaho residents on behalf of a winery with a wine direct shipper permit must keep the consumer's signature record for a minimum of one year.

Penalties: I don't think it fully applies but subsection five says the director may enforce the requirements of the section by admin. proceedings, suspend/revoke permits, and accept payment of offer in compromise.

Source: [Link](#) (Title 23, Chapter 13, Section 23-1309A(9))

Missouri

Carrier Recordkeeping Requirement: Alcohol carriers must keep records of wine shipped including the license number and name of the winery or retailer, quantity of wine shipped, recipient's name and address, and an electronic or paper form of signature from the recipient of the wine.

Penalties: No penalties noted.

Source: [Link](#)

Montana

Carrier Recordkeeping Requirement: All motor carriers transporting table wine into Montana must, if requested by the Department of Revenue, provide monthly reports of the amount of table wine transported and delivered in the prior month. The report must include the name and address of consignor and consignee, the date of delivery and the amount delivered.

Penalties: Misdemeanor: punishable with up to 6 months in county jail, a fine up to \$500 dollars, or both.

Source: [Link](#)

Nevada

Carrier Recordkeeping Requirement: Statute requires common carriers and regularly operating contract carriers to make available to the Department a statement or freight bill for every shipment of liquor into Nevada. The bill must include the names of the consignor, consignee and carrier of the shipment; the date when and place where the shipment was received; and the destination of the shipment.

Penalties: Misdemeanor and any unauthorized shipments shall be auctioned off to the highest bidder or destroyed.

Source: [Link](#) (369.450)