

# **Montana Alcohol Coalition Presentation Summary**

prepared by Darryl James, facilitator for the Coalition

prepared for

**Economic Affairs Interim Committee**

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## **Montana Alcohol Coalition Overview**

Several member organizations involved in the alcohol industry in Montana have been meeting collaboratively for the past several years. The Montana Alcohol Coalition was established in 2014 with the goal of identifying a legislative package mutually agreeable to each Montana-based segment of the alcoholic beverage industry in our state.

In the winter of 2015, the Coalition sought the services of a meeting facilitator to help guide their deliberations, and Darryl James was retained by the Coalition in January of 2016.

Mr. James is an independent consultant in Helena, and has spent the last 20+ years of his career focused on planning, environmental compliance, communications and government affairs for major infrastructure, land use, and natural resource development projects. He was selected to serve as the Alcohol Coalition facilitator based on his collaborative approach to decision-making and because he has no professional ties to any of the three tiers of the alcoholic beverage industry.

Mr. James continues to serve as a facilitator – not a guide or executive director, but more of a referee in the open and deliberative discussions of the group. Decisions of the Coalition occur by vote, which are informed by the direction of the Boards of each individual member organization.

### **Alcohol Coalition Organization:**

The Coalition originally consisted of representatives from major Montana-based membership organizations involved in Montana's alcohol industry. Each of the three tiers (production, distribution and retail sales) in this highly regulated industry have been consistently represented in the Coalition, including (alphabetically):

#### ***Distributors***

Montana Agency Liquor Stores

Montana Beer and Wine Distributors Association

Montana Department of Revenue (ex officio member)

***Manufacturers***

Montana Brewers Association  
Montana Distillers Guild

***Retailers***

Montana Gaming Industry Association  
Montana Restaurant Association  
Montana Tavern Association

At the request of the Economic Affairs Interim Committee (EAIC), the multinational companies who represent a significant share of alcohol sales in Montana were also invited to participate in Coalition meetings. These new members include the industry's largest beer manufacturers, AB InBev and Molson-Coors, as well as the Wine Institute which names over 1,000 members, including the largest family-owned winery in the U.S. – E&J Gallo wineries.

**Alcohol Coalition Goals:**

- Welcome new participants to the industry
- Ensure that everyone plays by the same rules
- Seek parity in any further modification to industry regulations
- Seek transparency in legislative agendas that affect other players or the overall industry

**Industry Opportunities and Constraints:**

- Static volume of sales
- Changing consumer preferences
- Cost of entry

**2019 Legislative Priorities:**

- Support for DUI statute improvements
- Support for additional regulatory / enforcement funding
- Support for enforcement of laws related to fake-IDs
- Oppose any substantive changes in the alcohol industry regulatory structure until a comprehensive review of the licensing and quota system has taken place.
- Coalition members requested a two-year hiatus from any regulatory reform with a commitment to work with the legislature to develop a 2021 legislative strategy to update the regulatory regime.

**Understanding the Dynamics:**

Participants in Montana's alcohol industry operate within a highly-regulated environment. A three-tiered regulatory structure is common in most states, but each one is unique in form and function. The intent of the three-tiered system is to prohibit monopolistic control

of the industry, and to provide some measure of protection of public health and safety with regard to the manufacturing, sale and distribution of alcohol.

The Montana Legislature codified the intent of our alcohol regulations in Title 16 as follows:

**16-1-101. Citation -- declaration of policy -- subject matters of regulation.** (1) Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state subject to the authority of the state acting through the department.

(3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes. The provisions of this code must be broadly construed to accomplish these purposes.

For decades, businesses involved in the alcoholic beverage industry have been operating under two primary structures intended to support these public policy goals: a three tiered-system that draws distinct lines between manufacturers, distributors and retailers to prohibit monopolistic control of alcohol; and a license quota system intended to restrict the quantity and location of alcohol available within individual communities. Participants in the industry have invested livelihoods in that regulated arena with a common understanding of how it works.

One of the problems is, consumer demand doesn't always respect regulatory structures. New and increasing demand for local craft products has created some tension in the industry. The Montana consumer is demanding a broader range of products and they appreciate locally-produced beer, wine and distilled products. Start-up businesses often struggle with the up-front costs of opening a new business, purchasing equipment and raw materials, and marketing their products. Brewers and distillers would like to enhance their ability to reach those discerning Montana customers, and generate higher revenue, through modifications to both the regulated three-tiered system and license quota system.

Retailers are routinely impacted by changes in consumer product preferences, changes in consumer preferences for amenities (ie: neighborhood bar, sports bar, food, etc.), product pricing, and demographics. In Montana's high growth areas, the cost of a license also greatly affects the ability of a prospective small, undercapitalized bar or restaurant owner's ability to get off the ground. Licenses in more rural areas, slower growth areas, and in outlying county areas are easier to come by. Offering easier access or lower cost entry to a direct competitor (who also has the ability to operate and generate revenue from another tier) provides a competitive advantage to that new player in the market. Beyond the competitive business disadvantage, the addition of new licenses or easier access to the

market undermines the quota system and the value of the licenses already purchased and in place across Montana.

At first glance, the distributors may not appear to be adversely affected by minor encroachments into their territory. After all, they've endorsed these encroachments in the past. While manufacturers aren't asking for more self-distribution than currently allowed, the increase in retail sales at a brewpub effectively takes products off their trucks, thus cutting into the bottom line of the distributor. Like every other participant in the three-tiered system, the distributors have built business models and made investments in their facilities and equipment based on the regulations currently in place. Climate-controlled warehouse facilities and refrigerated trucks to deliver products to our growing cities and our remote rural bars requires investments in the tens of millions of dollars per distribution company. Significant changes in sales and distribution have the potential to undermine business models and bank loans for distributors.

The diverse group of interests involved in the Alcohol Coalition – the true experts in the alcohol industry – have come together in an attempt to develop a mutually-agreeable solution. The challenge for them, and for you, will be to strike a deal that allows the Montana entrepreneurial spirit to grow in a regulated industry, while protecting the real and significant investments made in each tier of the industry.

## **Planning for the 2021 Legislative Session**

The Coalition has spent the better part of the last six months developing, analyzing and asking for association member feedback on a number of detailed proposals. These proposals have ranged from minor, incremental changes on things like operating hours and volume of self-distribution, to a buyout of existing licenses to enable establishment of a completely new system.

To give you perspective on the Coalition's discussions, the following represents the framework presented at meetings over the past several months and the results of those discussions:

### ***Problem(s) we're trying to solve:***

- Craft brewers and distillers have limited access to retail
- Undercapitalized restauranteurs experiencing high barriers to entry

### ***Sideboards:***

Understand the public policy issues/concerns behind the Three-Tier and Quota Systems

### **Options:**

Coalition members have conducted detailed examination of no less than a dozen alternatives (some just variations on similar themes) over the past several months. Alternative proposals included the following:

### 1 - Brewpub License Endorsement (MBA proposal)

- Added to Brewer's License for \$5000/annually
- Limit to "small" breweries as defined under current code
- Extended hours to midnight
- Ability/requirement to serve other products (min 15 to 30 percent)
- Self-Distribution (at under 60,000 barrels/yr produced or 10,000 barrels distributed)
- Limit to three (3) per common ownership

Opportunities:

- Provides additional retail opportunities
- Consistency with other states (?)

Concerns:

- What does it open up for Distillers in competition with Liquor Stores? (Appears distillers would have to purchase other products through liquor stores)
- Devaluation of existing licenses
- Undermines the intent of Quota System
- Distillers to come up with figure on what goes into stores and vice-versa.

Discussion:

- MTA says the flat \$5,000 fee does not accurately reflect the market in different locations across the state
- Brewers say this proposal makes sense with a buy-out of the Quota system
- Distillers have a problem with added product from outside sources
- Critics claim less than half the Montana distillers actually "make" their product. Distillers operate within the letter of the law.
- **Vote to Table = 5-2** with three abstentions

### 2 - "Light" Reform - all agreed to commit to this proposal at a minimum at the November meeting

- Immediate family member cross-tier ownership
- Can operate in different tiers but run as separate legal/financial entities

Opportunities:

- 1/4 to 1/3 of breweries are doing this today (23 breweries under 24 licenses at present)
- Consistency with other states (?)

Concerns:

- Doesn't allow cross-capitalization
- Address hockey wall issue
- Address "distribution" question "in-house"
- Signage
- DOR to look at footprint issues to be consistent with federal law.
- TBB has requirements for separation (complete separation for distillers, and secured separation for brewers). Half wall (hockey wall) may not qualify
- Research other states

Discussion:

- Possibility of requesting additional licenses in "congested" areas, but there is a concern about further undermining the quota system
- **Vote to move forward = 10-0** (with the MBA caveat that some individual brewers may oppose based on the continuation of the quota system.)

### 3 - Craft License

- Self-distribution under 1,500 to 5,000 barrels distributed per year
- Must provide optional retail products at no less than 15 percent and up to 30 percent of products offered
- Base auction price set at 75 percent of market for beer license (convertible back to standard beer license?)
- Quota based on 10 percent of beer licenses within quota area and conveyed through auction process – not applicable to County licenses
- Hard close at 2:00 a.m.
- Transferrable license
- No package sales of outside product

Opportunities:

- Need to agree on variables

Concerns:

- Distillers to define proof gallon limits
- Parity – need to calculate proof-gallons to self distribute

- **Vote to Table = 5-1** with four abstentions

### ***Options discussed, but Not currently under consideration:***

#### **Brewpub Endorsement on Brewery License (*Buttrey Bill*)**

- Can operate in all three tiers with some restrictions on distribution
- Quota still in place

Opportunities:

- Political support

Concerns:

- Need to check on obstacles to transferability of product in production/stock
- Limit on production is problem for Brewers
- Distillers will need to work out similar details with Liquor Store Owners

#### **New License Category**

- One individual can operate in two (2) tiers under separate legal/financial entities
- Still subject to tied-house laws
- No new licenses, just build on what is available

Opportunities:

Concerns:

- Cross capitalization issues?
- Significant opposition from Distributors based on experiences in Washington state

***Parking Lot issues for future discussion:***

- Concession Agreements (Hospitality and Development Association of Montana is developing a bill proposal)
- Hard-to-Reach Retailers – Distributors, Retailers and MTA to bring ideas. DOR has an immediate fix but needs long-term solution.
- Dock sales for Beer & Wine – Distributors will bring discussion points to future meeting
- Advisory Council – LSOAM to bring proposed format to future meeting
- Buyout of Existing System – What would “new system” look like?
- Stacked License (limit to 3 per common ownership) – A number of states have them in concert with three-tiers

**Looking towards the 2021 Legislative Session:**

At this stage, members of the Montana Alcohol Coalition respectfully request that the Economic Affairs Interim Committee afford the group with additional time this winter to put further details to this plan with a commitment to bring a comprehensive proposal with the full support of each member organization.

Again, no participant in this Coalition honestly believes this will be the last session for controversial alcohol industry legislation, but this does mark the beginning of a new era for collaborative deliberation amongst industry participants before these issues are brought before the Legislature. For our sake, for legislators and the taxpayers of Montana, we agree that industry battles are best fought amongst ourselves rather than in front of your committee. That said, each industry group and individual business can and should retain their own autonomy and ability to make their own case for changes in public policy as they see fit.

Members of the Montana Alcohol Coalition are encouraged by the success of our recent efforts (Note that the current proposal is the only one in the last six years to gain unanimous support). Building on successes in 2021, industry participants will be committed to working towards industry-derived solutions as we move forward.

