

ALCOHOL BEVERAGE CONTROL: THE BASICS FOR NEW STATE ALCOHOL REGULATORS



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Welcome to the world of state alcohol regulation! This is an area of great importance to society and is rich in history.

The U.S. alcohol industry is highly regulated. This is for good reason. According to the Centers for Disease Control, more than 88,000 Americans die annually due to alcohol. Alcohol is the only product specifically addressed in the U.S. Constitution – the supreme law of the land – not once, but twice (18th and 21st Amendments). This much is clear – authority to regulate alcohol's sale and consumption is conferred to the individual states. Unlike the other amendments, these "rights" are not given to the individual nor to the federal government.

Thus, every state has its own set of alcohol beverage laws that address the particular issues and needs of the individual state. In addition, public policy in this area often is influenced by a host of competing stakeholders (e.g., distillers, wineries, brewers, public health groups, law enforcement, retailers, wholesalers, etc.), resulting in a wide variety of, and often confusing, legislation. As a result, some individual state laws can be summarized as "20 pages of laws, 200 pages of exceptions."

There is no national alcohol market. There are 50 different alcohol markets by constitutional design. Each state's alcohol industry regulation evolved differently, although they all share concepts from the important work *Toward Liquor Control* by Raymond Fosdick and Albert Scott. As a regulator, you are much like a referee at an athletic event – the one charged with knowing and enforcing the rules, so that all "players" participate on a level playing field and that one group does not harm the general public or other industry groups. You will have to "blow the whistle" and penalize industry members on violations.

Some areas of alcohol beverage control and industry regulation universal to the states include:

TIED-HOUSE LAWS: "Tied-house" is a term that describes the control exercised by one person or company over the business activity of another, generally influenced by one tier of the industry over another separate tier (i.e., suppliers controlling outlets at the retail level – tying retail "house" to supplier).

"Tied-house" also could be termed "commercial bribery," because through this means, wholesalers, by offering "special" deals, prices, equipment, advertising or other "bribes," serve as an inducement by the brewer/wholesaler to gain control of the retailer's sales, to the exclusion in whole or in part of a competitor's similar product.

Related issues are "exclusive outlet" and "consignment sale," both of which relate to the illegal providing of benefits between the tiers to harm fair competition. Federal law in the Federal Alcohol Administration Act has similar provisions. Those provisions are enforced by the Treasury Department's Alcohol Tax and Trade Bureau (TTB).

One result of such control by supplier and wholesalers would be the creation of a monopoly for certain brands as well as dictating prices. The various state laws are generally designed to separate the tiers and to stop manufacturers and wholesalers from owning and controlling businesses at the retail level.

PUBLIC SAFETY ENFORCEMENT - UNDERAGE/OVER-SERVICE OF ALCOHOL

BEVERAGES: Though a legal product, alcohol beverages when abused (underage sales/consumption, over-service, over-consumption by patrons, etc.) foster many related crimes and injuries across the United States. It is for this reason that states were endowed with something more than the normal police power in regulating the sale of alcohol beverages in the interests of public health, safety, morals and general welfare.

The courts recognize this and have reiterated the justifications for the near-plenary police power that the states have in regulating alcohol beverage sales. This police power is conferred upon the individual state Alcohol Beverage Control (ABC) bodies for the protection of society.

As stated in a Wisconsin Supreme Court case, "The justification for the exercise of police power in restraining the sale of intoxicating liquors has been stated and restated by the courts time and again. It may be summed up as resting upon the fundamental principle that society has the inherent right to protect itself; that the preservation of law and order is paramount to the rights of individuals or property in the manufacturing or selling intoxicating liquors; that the sobriety, health, peace, comfort and happiness of society demand reasonable regulation...Unrestricted, it leads to drunkenness, poverty, lawlessness, vice and crime of almost every description. Against this result society has the inherent right to protect itself...a right which needs no other justification for its existence or exercise than it is reasonably necessary in order to promote the general welfare of the state." *Odelberg v. City of Kenosha* (1963)

Likewise, the sale of alcohol through the states' regulated distribution systems (licensed manufacturers, wholesalers and retailers) protects against tainted, counterfeit and potentially dangerous products that could pose a public health threat. It is part of your job to root out bootleggers, counterfeits, adulterated products and unlicensed sellers.

TAXATION: Whether or not a state's alcohol law enforcement unit rests within the state ABC, Department of Public Safety, Department of Revenue/Taxation or some other entity, each play a vital role in protecting the state's revenues generated by the sale and distribution of alcohol beverages within their respective state.

Untaxed Internet or mail order alcohol, illicit distilleries (moonshine), bootlegging from low tax states, etc. all deprive the state of its much needed tax revenues. As a regulator, you help ensure the strength of the unique regulatory system that has allowed the collection of excise, sales and income taxes on these products, while at the same time protecting your state's legitimate industry members, by conducting inspections of licensed premises, border patrols

and the like. The record keeping and “desk audits” of the three-tier system are a great way for the state to preserve the tax collection goals of your agency.

EDUCATION AND TRAINING: State alcohol beverage laws may appear to be a confusing and convoluted mix; they are numerous and complex. As a state alcohol beverage control regulator, industry, municipal officials, local law enforcement, advocacy groups, media and the general public look to you to guide them through this sometimes confusing set of laws.

Members of the industry cannot comply if they don't know what the rules are, and local law enforcement is generally not familiar with the intricacies of these state regulations, such as the legalities for conducting underage compliance checks, identifying false IDs, etc. It is often your role to provide this training – both to industry and government – to help ensure compliance.

Likewise, many advocacy groups and municipal officials look to state alcohol regulators for guidance in helping to learn about the legalities, their rights and responsibilities to ensure compliance with state alcohol beverage law.

FREE MARKET ECONOMY: The general principle of state alcohol beverage law is to promote “temperance,” not necessarily intense competition or jobs. State alcohol industry regulation is designed to restrict and restrain, not promote, the sale and consumption of alcohol beverages.

Against this backdrop, there always has been change. The way the alcohol industry is regulated is different in your state today than it was 40 years ago. And it will probably change and look different 40 years from now. Market forces impact laws, but the system is marked by gradual shifts reflecting public policy consensus. Within this existing regulatory system, the alcohol industry and the consumer have greatly benefited.

The alcohol industry has seen many changes in recent years, and it is an evolving industry at all levels. The increasing power of publically traded alcohol suppliers and retailers is significant. There are emerging markets and new “players” in the game, such as brewpubs, micro-breweries, boutique wineries, micro-distilleries, mega retailers, Internet and mail order sales, home delivery, wine tasting/marketing events, wine walks, brew-on-premise, etc. The country also is now faced with the emergence of many non-traditional outlets that go far beyond the local pub – alcohol sales in jewelry stores, barber shops, health clubs, pet grooming studios, flower shops and a host of other businesses that want to traffic in alcohol.

Alcohol laws are often disparagingly referred to as “Prohibition-era” by special interests seeking drastic change to the status quo. However, one seldom hears of “Colonial-era laws” when they refer to such things as freedom of press, speech, assembly or religion.

In today's climate, legislators are being pressured to change long-standing, effective laws (without regard to the historical perspective that the alcohol laws serve three main functions: tax collection, to provide for an orderly market and to promote temperance). In a rush to open new markets for special interests, promote sales, stimulate the economy and create jobs, they must proceed with caution, lest they end up with unintended, negative consequences.

At the same time, government is being told constantly to "do more with less" with shrinking budgets and fewer resources to accomplish these additional tasks. But it is impossible to do "everything with nothing" (or next to nothing). The need to meet these new demands, as well as to continue the basic functions of alcohol regulation, often puts an additional strain on the agency. This hampers the ability of the agency to collect revenue, promote public safety and monitor the industry. The result: deregulation by defunding.

SUMMARY: America learned that "Prohibition" did not work; neither does "no regulation" of the alcohol beverage industry. Laws unenforced are laws unobserved. One can pass all the laws to regulate the various segments of the industry effectively but, without adequate staffing to administer and enforce them, the end result is "no regulation." And "no regulation" results in chaos for the public and the alcohol industry. The industry needs, and the public expects, "reasonable regulation" to maintain the health and safety of society.

As a state ABC regulator, your challenges are to effectively and efficiently meet these often competing demands. Remember, you are not part of the alcohol industry! Your job is to regulate it. Good luck, and welcome to the world of alcohol beverage control!

RESOURCES

Center for Alcohol Policy: www.centerforalcoholpolicy.org

National Alcohol Beverage Control Association: www.nabca.org

National Conference of State Liquor Administrators: www.ncsla.org

National Liquor Law Enforcement Association: <http://www.nllea.org>

ABOUT THE AUTHOR

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