



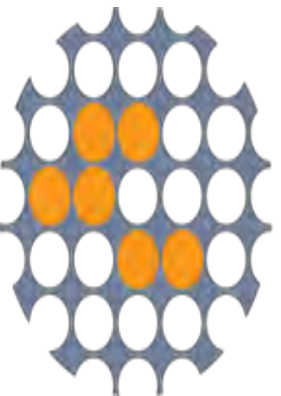
www.centerforalcoholpolicy.org

What's Happening in the World of Alcohol Regulation

Brannon Denning – CAP Advisory Council

Thursday, May 3, 2012

Radisson Hotel Lansing

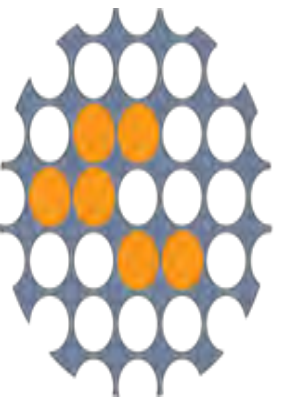


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ALCOHOL POLICY

What is the Center for Alcohol Policy?

- The purpose of the Center is to educate policymakers, regulators and the public about alcohol, its uniqueness and its regulation.
- Launched in 2007, the Center has accomplished a great deal in just five years of operation.



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CAP Accomplishments

- The Center conducts an annual national survey to learn about Americans' attitudes toward alcohol regulation.

Nearly three-quarters of adults nationwide believe that alcohol is different than other products and needs state regulation.

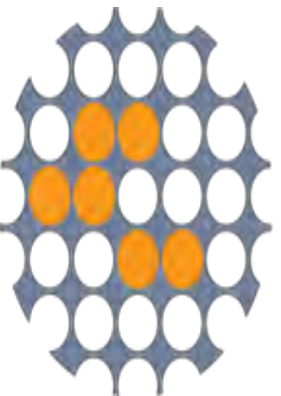
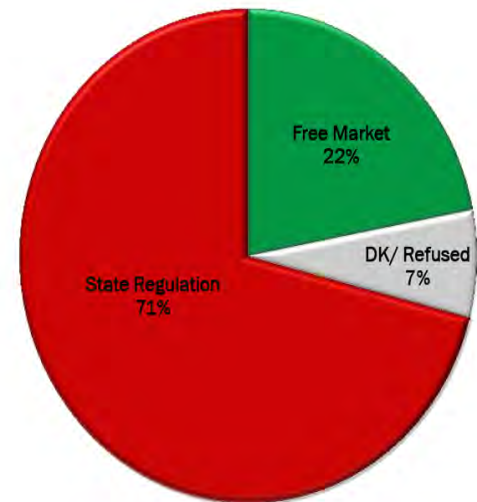
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Thinking specifically about the way states regulate alcohol, which ONE of these positions on alcohol regulations best summarizes your own opinion?

The free market is the best option to regulate any industry including the alcohol industry

Or

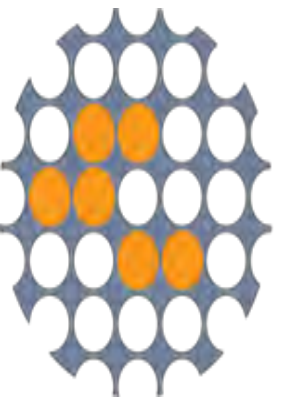
Since alcohol is different than other consumer products, it needs a different set of rules and the state should be regulating this industry



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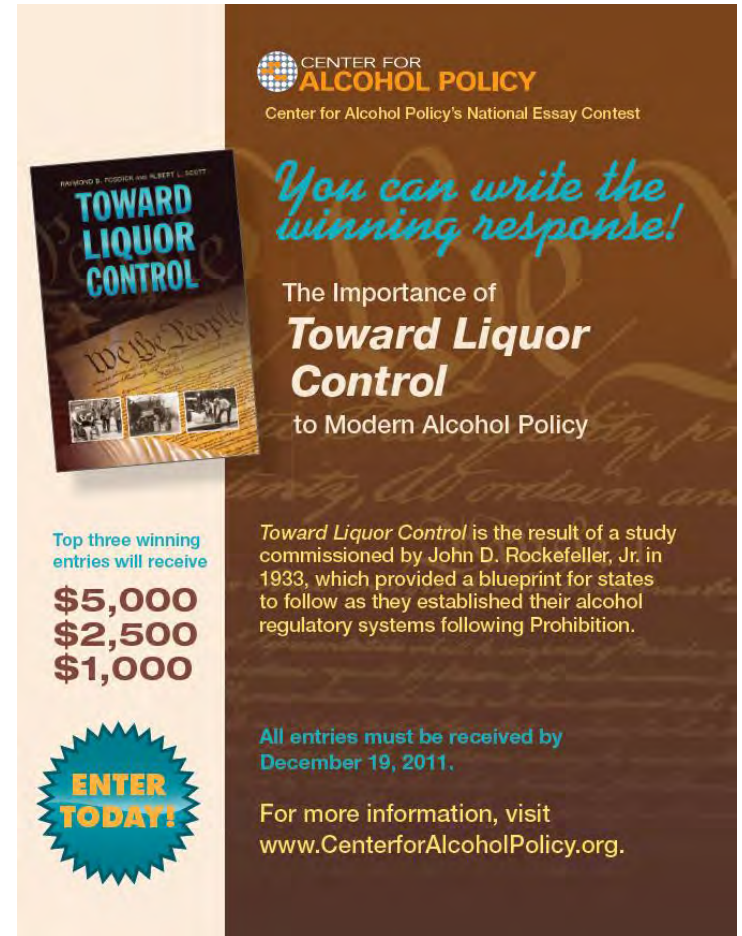
- The Center conducts an annual Law Symposium bringing together a wide array of alcohol interests to discuss appropriate regulation.
- September 9-11, Dallas




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- The Center holds an annual essay contest on alcohol regulation bringing the issue before students, scholars and professionals.



 **CENTER FOR ALCOHOL POLICY**
Center for Alcohol Policy's National Essay Contest

You can write the winning response!

The Importance of
Toward Liquor Control
to Modern Alcohol Policy

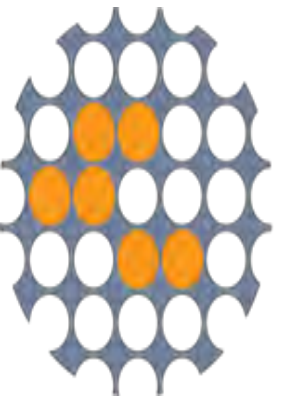
Toward Liquor Control is the result of a study commissioned by John D. Rockefeller, Jr. in 1933, which provided a blueprint for states to follow as they established their alcohol regulatory systems following Prohibition.

All entries must be received by December 19, 2011.

For more information, visit www.CenterforAlcoholPolicy.org.

Top three winning entries will receive
\$5,000
\$2,500
\$1,000

ENTER TODAY!

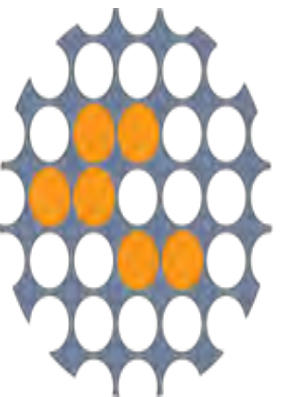
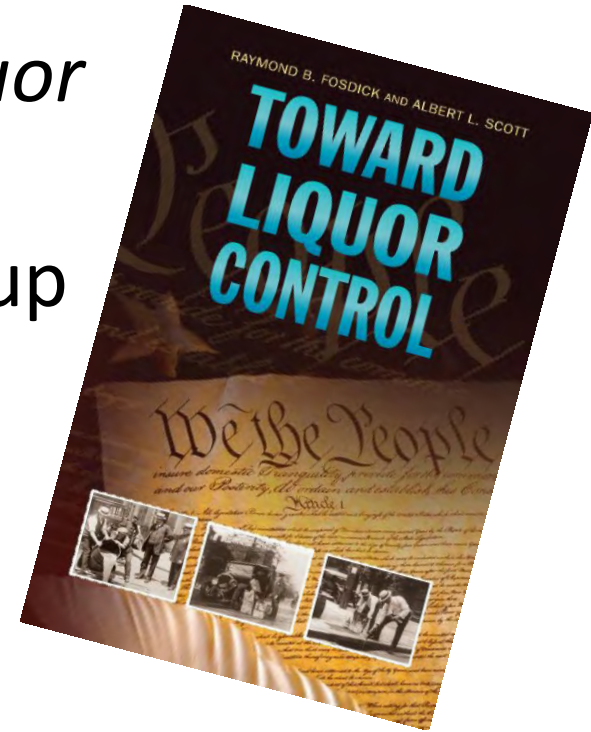


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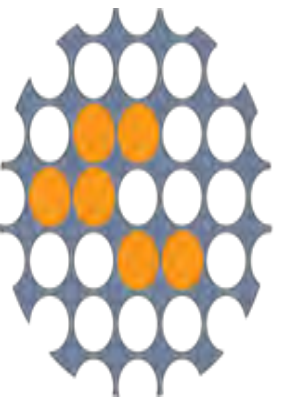
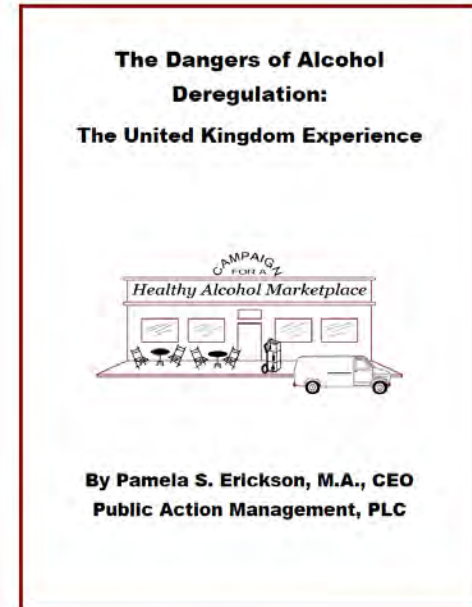
- In 2011, the Center re-published the influential book, *Toward Liquor Control*, which established the blueprint for many states to set up their regulatory systems post-Prohibition.



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- The Center has led the way in contrasting the problems a deregulated alcohol market has caused in the United Kingdom versus a regulated market in the United States.

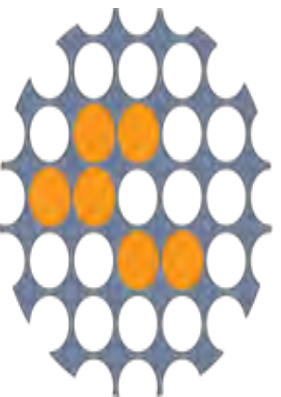


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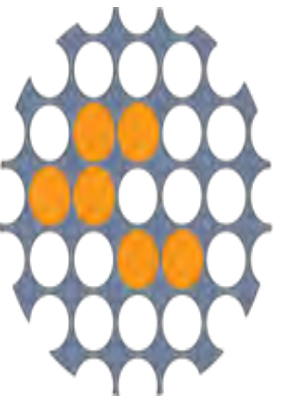
- The Center also served as the Washington, D.C. sponsor of the highly regarded Ken Burns documentary, *Prohibition*.



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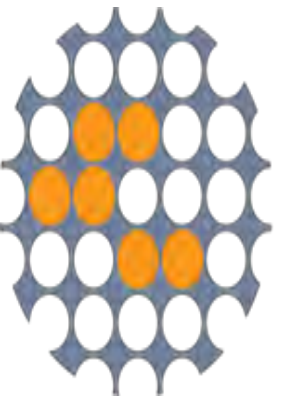
CAP Accomplishments



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Two Previous CAP Forums

- Session #1 showed the tremendous economic vitality of Michigan's alcohol industry.
 - MI punches above its weight class in jobs and economic impact.
- Session #2 discussed the importance of public health and safety in the alcohol debate.
 - Often public safety measures are forgotten in alcohol policy debates.
- Today's panel broadens the focus on regulation.

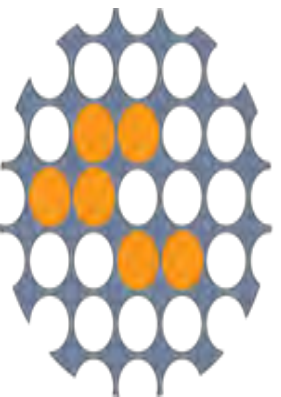


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Around the World

- Alcohol is illegal in 11 countries (including Iran, Afghanistan, Pakistan)
- Drinking ages varied (16 countries with no legal drinking age, many at 18)
- USA at 21 years old at the high range



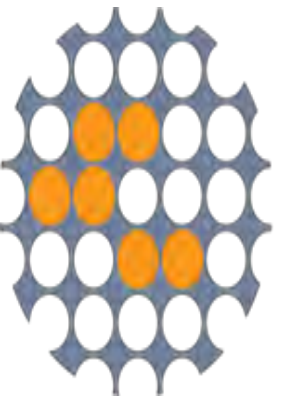
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However, No Two Countries Alike

Many Factors Influence Alcohol Laws:

- Religion
- Ethnicity
- Climate
- History



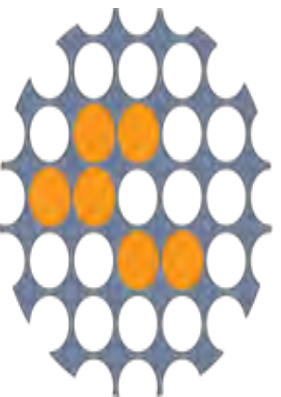
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The American Experience

There were significant abuses with alcohol in the late 19th Century.

- Industry Abuses
- Religious Organizations
- The growing voice for women
- Passage of the 18th Amendment

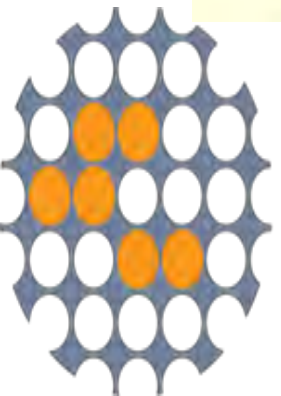


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Politics - History

- These slogans helped pass Prohibition:



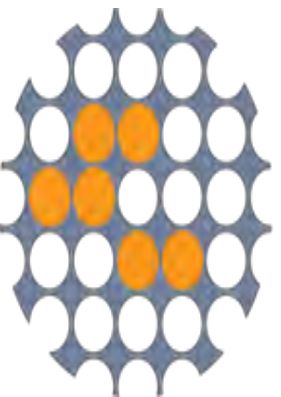
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Alcohol - 2 Constitutional Amendments

Alcohol is the only product in our Constitution with two amendments.

The grand compromise of the alcohol issue was the section of the 21st Amendment to let states – e.g. the people here in Lansing, Michigan – to set alcohol policy.



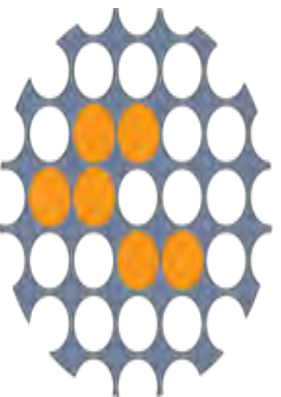
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Today

According to polling from the Center for Alcohol Policy, the overwhelming majority of Americans (71%) understand alcohol is different and needs different rules.

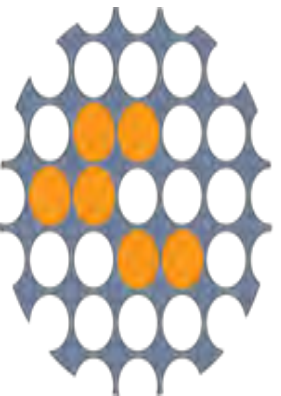
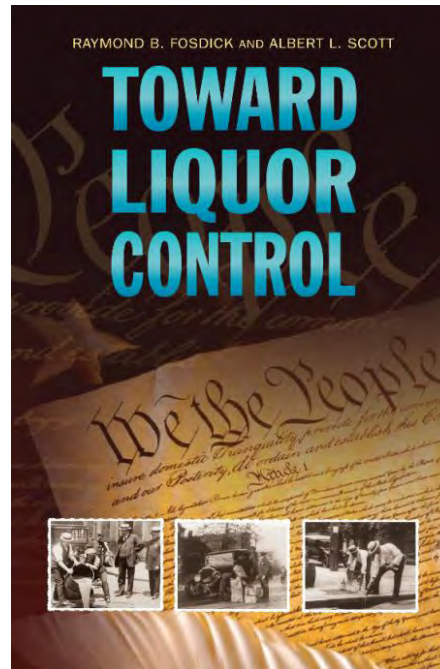
Many groups – industry, public health, law enforcement, religious groups, government – have a stake in this debate.



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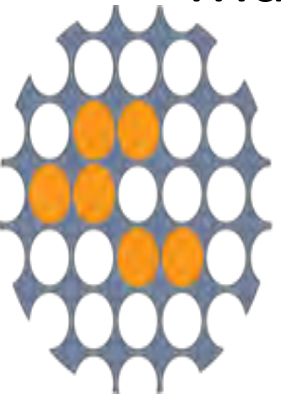
One Approach



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Meet Today's Panel

- **Steven Schmidt**, Sr. VP, Public Policy and Communications, National Alcohol Beverage Control Association
- **Andrew Deloney**, Michigan Liquor Control Commission Chairman
- **Howard Goldberg**, Willingham & Cote, P.C.
- **Pamela Erickson**, former Executive Director of Oregon Liquor Control and current CEO, Public Action Management



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“What’s Happening in the World of Alcohol Regulation”

May 3, 2012

Presented by : Steve Schmidt

Pressures On Alcohol Regulation

- Anti-Government Sentiment
- State Budgets
- Big Retailers
- Alcohol Abuse Apathy
- Consumer & Media Perceptions

Pressures

Anti-Government Sentiment



Pressures

State Budgets

↑ POLITICS OPINIONS LOCAL SPORTS National World Busin

The Washington Post Make us your start page
POSTLOCAL

Virginia's budget impasse tests local jurisdictions

TIMESDAILY.COM

Bentley orders 10.6 percent cut in current state budgets

The Seattle Times

Winner of Eight Pulitzer Prizes

Originally published Friday, March 16, 2012 at 3:05 PM

No more foot-dragging on the state budget

KearneyHub.com
Kearney, Nebraska

Lawmakers continue battle over state budget 0

Posted: March 17, 2012 at 2:47 am



Pressures Big Retailers



Pressures

Alcohol Abuse Apathy

35% of 13-year-olds 'binge drink'

(UKPA) – Mar 11, 2012   1

Around a third of teenagers in Scotland are "binge drinking" by the age of 13, according to research.

Some 35% of school pupils drink to excess by their early teenage years, a study has found.



Centers for Disease Control and Prevention
CDC 24/7: Saving Lives. Protecting People. Saving Money through Prevention.

Binge drinking is bigger problem than previously thought

U. S. adults binge drink more frequently and consume more drinks when they do



Fake ID Seized By Police In Chesterfield

Police visited pubs and clubs in Chesterfield and seized four driving licences as part of a clampdown on under 18s using fake or borrowed ID.

Pressures

Consumer & Media Perceptions



Thank You!

Steven L. Schmidt

Sr. VP of Public Policy and Communications

Tel: 703-578-4200

Email: steve.schmidt@nabca.org



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Siesta Village Argument

Howard E. Goldberg

May 3, 2012

NO DISCRIMINATION

- There is no commerce clause violation here because there is no discrimination.
- A Florida retailer is not similarly situated to a Michigan wine retailer.
- Siesta Village Markets is not comparable to any Michigan retailer. Michigan wine retailers must comply with all of Michigan's three-tier regulatory system – Siesta Village wants to entirely avoid it!
- A retailer is the point of contact with the ultimate consumer.
- LCC rules give Michigan wine retailers the option of delivering directly to their customers because they are subject to state regulation and enforcement procedures. Out-of-state wine retailers would not be subject to such regulation!

EXAMPLES

- Decoy operations to determine which retailers are selling alcohol to underage minors.
- LCC investigators conducted 1,916 decoy operations on Michigan retailers in 2005 – resulting in 331 violations.
- Because LCC does not have resources to cover the entire state, it returns 55% of local retail licensing fees within their jurisdiction to the responsible law enforcement agencies to enforce the Liquor Control Code and Commission rules.
- MSP, county sheriffs, and local police departments submitted 776 sale to minor violations in 2005.

EXAMPLES CONTINUED

- Commission investigators and other law enforcement agencies also conduct inspections of licensed premises under the authority of the Liquor Control Code [MCL 436.1217(2) authorizes a commission investigator or law enforcement officer empowered to enforce the Code and Commission rules to inspect and search licensed premises for violations.
- Even if the State had the resources (it does not), Michigan authorities obviously have **No** jurisdiction in other States!

SIESTA VILLAGE IS NOT *HEALD*

- Plaintiff's argue that the same arguments were rejected in *Granholm v Heald*, but this case is not *Heald* re-visited.
- When it was discussing the inter-play between the commerce clause and the 21st Amendment, the Court repeatedly referred to out-of-state products and producers.
- The Court also reaffirmed at 544 US 488, 489 that “the 21st Amendment grants the states virtually complete control over . . . how to structure the liquor distribution system,” and that “states . . . may funnel sales through the three-tier system” which the Court had previously recognized is “unquestionably legitimate.”
- Finally, the Court pointed out that a state (North Dakota) may “require that all liquor sold for use in the state be purchased from a licensed in-state wholesaler.”

CLAIM THAT ALL WINE INDIVIDUAL PLAINTIFFS DESIRE IS NOT “READILY AVAILABLE”

- The Supreme Court did not say that the commerce clause requires Michigan to dismantle its entire regulatory system so that Plaintiffs Chess and Fowler can more readily obtain the occasional rare bottle of wine – vast majority of wine sold in Michigan is from out-of-state. If a product is truly not available from a Michigan retailer, Plaintiffs can apply to the LCC under § 203(1) of the Code for an order that would permit them to bring the wine into Michigan.
- In addition, potentially all products being produced by out-of-state wineries are now available if the winery has applied for and obtained a direct shipper’s permit from the LCC.

DIRECT SHIPPERS PERMIT IS CONCEPTUALLY DIFFERENT THAN LICENSING OUT-OF-STATE RETAILERS

- If Michigan licenses out-of-state retailers – State has no regulatory hammer such as exists for out-of-state wine manufacturers.
- Out-of-state wineries are required to obtain a federal (basic) permit which can be revoked if they **violate state law.**”
- Winery is also required to show LCC its federal basic permit so that the state can verify that company is a bona-fide winery. There is no federal basic permit requirement for retailers!

MICHIGAN'S "PHYSICAL PRESENCE" REQUIREMENT FOR RETAILERS

- The Supreme Court in *Granholm v Heald* said New York's "bricks & mortar" requirement for **wineries** is unconstitutional.
- A retailer is not a producer – *Granholm* dealt with a preference available to in-state wine **producers** and their products. Also – facts in *Granholm* revealed that no wine producer had ever met New York's requirement.
- In this case, numerous retailers headquartered out-of-state maintain a physical presence in Michigan.

FACT THAT SIESTA MARKET'S WINE COMES THROUGH FLORIDA'S THREE-TIER SYSTEM IS NOT DISPOSITIVE

- Michigan has the right under *Granholm*, and cases cited by the Court in that opinion, to structure its own three-tier alcohol distribution system.
- Michigan cannot be compelled to rely on Florida's regulatory structure which may not be as rigorous!

EXAMPLES

- Michigan retailers are **prohibited from selling wine below cost** – loss leaders.
- MLCC can make this determination because Michigan wholesalers are required to file the price of wine sold to Michigan retailers with the Commission on a quarterly basis.
- Michigan (LCC) has no authority to impose such a requirement on Florida wholesalers and thus, could not determine whether a Florida retailer selling wine below its cost.



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The alcohol deregulation trend and the cost of getting it wrong

*Pamela S. Erickson, President/CEO
Public Action Management
Former Executive Director, Oregon Liquor Control
Commission
Michigan Policy Forum Series, Lansing, Michigan
May 3, 2012*

Alcohol deregulation is happening!



- * Costco-sponsored ballot measure privatizes Washington state liquor stores and deregulates wine.
- * Privatization is an issue in most “control” states.
- * Deregulation measures are in alive in many “license states”, sometimes promoted by the governor.

Pressure to deregulate: Hyper-competitive grocery market and governments needing revenue

- * Supermarket chains have become a dominant force in the alcohol market.
- * Many new entrants increase competition and availability.
- * Supermarkets want to sell all forms of alcohol in lightly regulated environments.



Supermarkets rely on high volume, not mark-up, to generate profits



- ▶ Net profit for food retailers is less than two pennies on each dollar of food sales.

How can a supermarket survive?

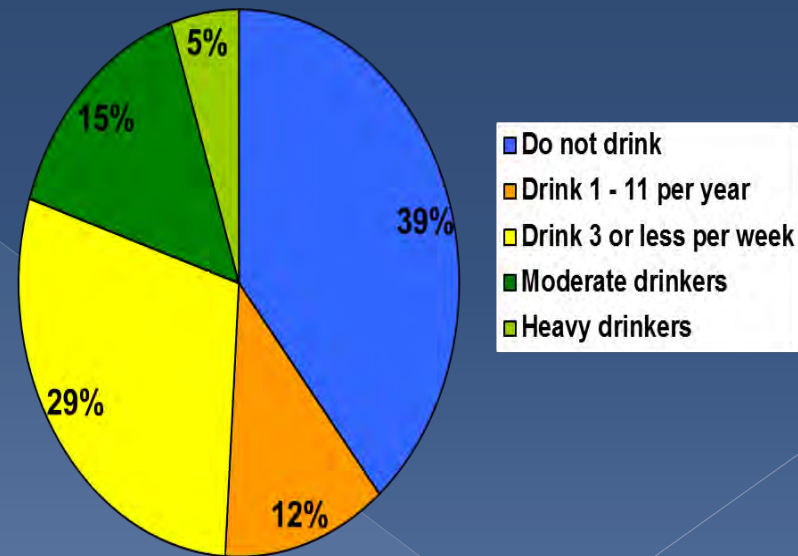
“To earn a dollar, supermarkets would rather sell a \$1 item 100 times, making a penny on each sale, than 10 times with a dime markup.”

Source: Food Marketing Institute

Governments seek revenue through deregulation

- * Big box stores promise economic benefits: more revenue, jobs, and cheaper alcohol for consumers.
- * Economic “studies” often use poor methodology to project revenue.
- * Most Americans are **not** frequent alcohol consumers. (CDC Survey)

American Alcohol Consumption



High cost of getting it wrong: the UK example



“Binge drinking isn’t some fringe issue, it accounts for half of all alcohol consumed in this country. The crime and violence it causes drains resources in our hospitals, generates mayhem on our streets and spreads fear in our communities.” **David Cameron, Prime Minister, 2012**

In the early 2000's, the UK tried to create a "café society" but got an alcohol epidemic instead!



- * Ignored public health advice and allowed all forms of alcohol to be sold most anywhere 24 hours a day.
- * Aggressive promotions and price wars promoted heavy drinking.
- * Cheap alcohol in supermarkets is widely blamed for the epidemic.
- * No one really knows how to change a "culture."

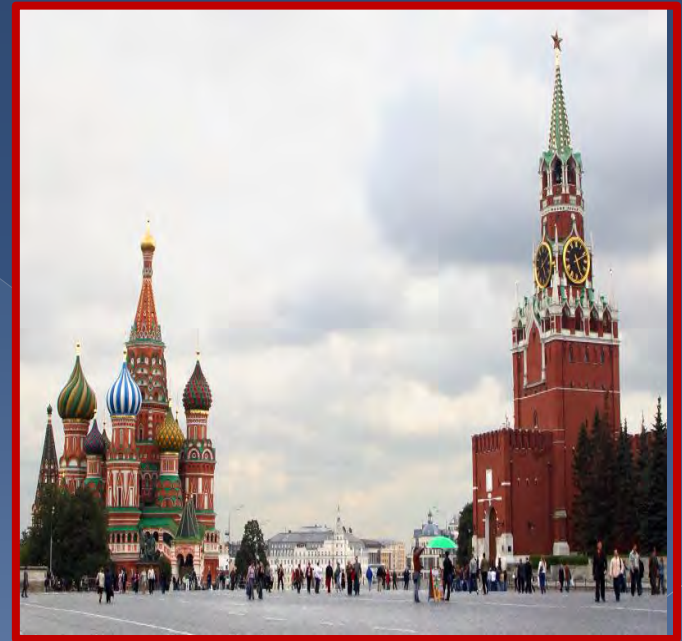
Hospital admissions for alcohol-related problems have doubled in just 10 years and death rates have doubled since 1991.



- * Underage drinking rates are about twice as high as the US.
- * Town Centers need field hospital, “booze buses”, on weekends.
- * Low prices continue as supermarkets use alcohol as a loss leader.
- * Pubs are closing at a high rate as patrons “preload” on cheap alcohol before going out.

Re-regulation in the UK is moving with glacial speed as problems fester

- * Democracies require slow deliberation for wise decision-making. (In contrast, Russia solved problems with casinos in 2009 by closing them all down!)
- * Industry has considerable lobbying power while public health is often silent due to grant prohibitions on “lobbying.”
- * It pays to be very careful when considering deregulation as it will be difficult to revert back.



Consequences of a wrong decision

1. Increases in alcohol sales, consumption and availability will likely **increase public health and safety problems** based on credible research from the Centers for Disease Control.
2. Cheaper alcohol for “consumers” will primarily **“benefit” underage and heavy drinkers.**
3. Cheaper alcohol in stores can foster “preloading” **thus increasing impaired driving.**
3. Deregulation will most likely benefit large out-of-state corporate chains and **disadvantage in-state small businesses.**
4. Additional **revenue may not materialize.**
5. In the long run, the **cost of additional alcohol problems will likely outstrip any gains in revenue.**

*Task Force on Community Preventive Services **recommends against the further privatization of alcohol sales** in settings with current government control of retail sales, based on strong evidence that privatization results in increased per capita alcohol consumption, a well-established proxy for excessive consumption.”*

Centers for Disease Control and Prevention

For more information: contact Pamela Erickson, pam@pamaction.com or visit website healthyalcoholmarket.com.



- 1. Website has educational tools: Monthly newsletter, educational pieces, PowerPoint presentations from conferences.**
- 2. Full report, "The Dangers of Alcohol Deregulation: the United Kingdom Experience," can be downloaded from website.**
- 3. Issue Briefs for 2012 has simple explanations of alcohol regulatory issues as well as citations for research and more information.**



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