

2010



**MICHIGAN BEER & WINE WHOLESALERS  
ASSOCIATION**

**LEGISLATIVE QUESTIONNAIRE**

Please return to: MB&WWA, 332 Townsend Street, Lansing, Michigan 48933  
Fax: (517) 482-1532

**PLEASE PRINT:**

Your Name: Rich Olson

Legislative District #: State Representative # 55

Address: 525 Judd Road  
Salina MI 48176

Phone Number: 734-944-0794 Date: 5/23/10

Your Signature: Richard Olson

If you were assisted in completing this questionnaire please indicate the name of that person and his/her position: \_\_\_\_\_

**GENERAL BACKGROUND AND PHILOSOPHY OF REGULATION**

Alcohol has traditionally been viewed as a socially sensitive product and is one of the most highly regulated consumer products in our country. Society and voters have mandated the proper regulation of alcohol from the very beginning. Alcohol has been the subject of two amendments to the US Constitution; prohibition (18<sup>th</sup>) and its repeal (21<sup>st</sup>), and the regulation of alcohol is prominently mentioned in the Michigan constitution. In more recent times, some have questioned why alcohol should receive a higher level of regulation than other consumer products. These opposing viewpoints will increasingly dominate the debate about alcohol regulation into the future and it will be the state legislatures that will continue to wrestle with these issues.

The MB&WWA has long stood for balanced and reasonable regulation of the beer and wine our members distribute. The licensed system of alcohol distribution and sale in Michigan has achieved an accountable, yet competitive market place. The background information which follows will provide additional detail about this system and analyze a number of important issues that have or may surface in the public policy arena.

1. Alcohol has been strictly regulated by both the state and federal governments due to the opportunities for abuse of the products. Do you believe it is important for the State of Michigan to hold alcohol beverage commerce to a higher standard of regulation?

Answer: Higher than current level? Probably not,  
as I am not aware of the current level not being  
strict enough.

### THREE-TIER DISTRIBUTION SYSTEM

Since the repeal of prohibition in 1933, Michigan has distributed beer and wine through a licensed three-tier distribution system. Under this system, a supplier licensee (brewery or winery) sells to a wholesaler licensee who in turn sells to a retail licensee (on-premise or off-premise). The law prohibits a person licensed in one of the tiers from having a financial or ownership interest, directly or indirectly, in one of the other two tiers. The three-tier system prevents vertical price fixing, monopolistic ownership combinations, and provides a "check and balance" system for the collection of state tax revenues.

After the failed experiment of prohibition, nearly all states established this type of distribution system. The licensed three-tier distribution system helps to ensure adequate service and product availability to all licensed retail outlets regardless of their size. It is the primary vehicle in the state's efforts to properly control the use and marketing of alcohol beverages. The system insures that monolithic, multi-national companies who have little regard for control and/or regulation must operate under the same reasoned regulations as all other companies, big or small.

The foundation for the licensed three-tier system is contained in several sections of the Michigan Liquor Control Act. However, no single section of the Act specifically spells out the system nor indicates that the system is the will of the Legislature. Therefore, there may be a need to codify the existence of a licensed three-tier distribution system for this state.

2. Do you favor maintaining a licensed three-tier distribution system for wine and beer?

Answer: Yes

3. Would you support continuation of the present law that prohibits a manufacturer or wholesaler from owning an interest in each other's business or in a retail licensee and vice versa?

Answer: Yes

4. Would you support continuation of the present law that prohibits suppliers (brewers and vintners) from selling directly to retailers?

Answer: Yes

5. Would you support legislation to codify the licensed three-tier system?

Answer: Yes, if requested & supported by sound testimony

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**STATUTORY PROVISIONS TO LEVEL THE PLAYING FIELD AND ENSURE AN ORDERLY MARKET**

In addition to controlling the incidence of shared monopolies and predatory pricing, the State also has a strong interest in maintaining a level, yet competitive, playing field when it comes to the retail sale of alcoholic beverages. The State has implemented a number of regulations that permit small independent retailers to compete with the so-called big box retailers. These regulations include the following:

- A. Cash Law – The law requires that all sales and purchases of alcoholic beverages be made for “cash” (payment at the time of delivery). This prevents any licensee in one tier of the distribution system from gaining an unfair economic advantage or control over any other licensee. [It also helps ensure that consumers don’t generate large “bar tabs,” which was a major problem prior to prohibition.]
- B. Price Posting Regulations – Each wholesaler must file with the Commission the price at which it will sell beer and wine to a retail licensee, thereby guaranteeing that each retailer will be able to purchase those products at the same price. This prohibits the “sweetheart” pricing arrangements between large retailers, wholesalers and suppliers that freeze out the small retailer.
- C. Quantity Discounts - Price posting regulations prohibit “quantity discounts” whereby large retailers could purchase large quantities of product at prices unavailable to small retailers. The State has determined that beer and wine are not like potato chips and popcorn and should not be sold and promoted in the same manner.

6. Would you favor continuation of the law that requires beer and wine to be purchased for cash which helps prevent one licensee from using its economic power to control another licensee or to derive a competitive edge over smaller retailers through the use of credit purchases?

Answer: Yes

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7. Would you favor continuation of the ban on quantity discounts?

Answer: Yes

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8. Would you support retention of the Liquor Control Commission’s price posting requirements that are aimed at maintaining equity in pricing and stability in the market, thereby maximizing the Liquor Control Commission’s enforcement capabilities in this area?

Answer: Yes

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## FRANCHISE LAW

In 1984, the Michigan Legislature passed a franchise law for beer and wine wholesalers. Among other provisions, this law requires that a supplier have good cause before canceling or terminating an agreement with a wholesaler. The law was based on the theory that equity requires that a person, who has spent years of time, energy, and financial resources in developing equity in a brand, be granted due process and just cause before being terminated by a supplier. As an extension of this theory, the law requires that a successor to a supplier continue to honor all existing contracts that the previous supplier had with wholesalers. In the early 90's, the law was amended to clarify the "successor to a supplier" provision and made it clear that a person whose rights have been negatively affected may file a lawsuit in Michigan rather than be forced to file in some other state. This law has worked well to safeguard the equity wholesalers build in the brands they distribute and to preserve jobs in our state.

9. Are you supportive of the concept of the franchise law that requires due process and just cause before termination of agreements?

Answer: Yes

10. Should it become necessary to amend the franchise law to preserve its due process and just cause provisions, would you be supportive?

Answer: Yes

## EXCLUSIVE TERRITORIES

Michigan first mandated exclusive territories for beer wholesalers in 1976 the same year the Bottle Bill was approved. Both brewers and wholesalers supported the law. From a regulatory perspective, exclusive territories accomplish four (4) basic purposes:

- 1.) Enhance the ability of the agency charged with enforcing the liquor control act to do its job. The ability to audit for tax payments is made easier as is the enforcement of trade practice violations. The enforcement officials know exactly who is responsible for selling a particular brand to retailers in a given area and can, therefore, determine how much of the brand is being sold, the prices being paid by the retailer, and the terms of sale. In other words, they can determine if the proper amount of taxes are being collected; if the brands are being sold at the posted price to every retailer and whether illegal inducements were made at the time of sale.
- 2.) Protect consumers by enabling the enforcing agency to know exactly who to contact to get a brand removed from retail shelves in the event of a product recall or product tampering situation.
- 3.) Ensure that every retail licensee in a given area will have access to every brand and package type sold in that area, resulting in the best selection of products and competitive pricing for the customers. In fact, Tollison and Ekelund in a study titled *Geographic Restraints in the Malt Beverage Industry*, found that exclusive territories lead to lower retail prices.
- 4.) Lastly, exclusive territories reduce beverage container dislocation problems that can result from a bottle bill. Exclusive territories keep wholesalers from

“dumping” product in another wholesaler’s territory (at \$2.40 per case, the redemption fee could virtually wipe out local wholesalers), and they ensure that wholesalers redeem empty containers from all retailers in the respective territory. This is the primary reason Michigan’s legislature mandated exclusive territories for wine coolers and spirits coolers when a deposit was placed on these containers in 1989. The exclusive territory provision of Michigan law has been a major reason for the successful implementation of Michigan’s Bottle Bill.

*Wine is the only alcoholic liquor being sold in which exclusive territories are not required by law. (Note: All spirits are distributed exclusively by the Michigan Liquor Control Commission through private entities called authorized distribution agents (ADAs).)*

Currently, the law allows a winery to appoint more than one wholesaler for its brands in the same area. Such a situation threatens the underlying purpose of the Wine Wholesaling Franchise Law because the “equity” which the wholesaler has developed in the brands can be reduced or eliminated without any “good cause”, “due process” and without any remuneration. Dual appointments have the potential to undo much of the sound public policy the Legislature has enacted over the years.

As a practical matter, sophisticated suppliers recognize the competitive advantages of inter-brand competition facilitated by exclusivity and, as a matter of practice, do not “dual” wholesalers. Where such a tactic is utilized, the result is poor service to small retailers in that sales area; high spotting and/or cherry picking (i.e. only servicing select retailers, usually the large, high volume retailers); and, reduced consumer choice. Yet many suppliers want to keep such a weapon in their wholesaler relation’s arsenal. Simply having the ability to “dual” can have a chilling effect on a wholesaler’s ability to conduct his or her business in an independent manner as envisioned by the three-tier distribution system.

Any public policy initiative designed to prohibit duals must take the small number of already dualled brands into consideration and preserve the equity that distributors have already built in those brands. In order to accomplish this, the logical step would be to prohibit new duals going forward, while grandfathering the dual appointments currently in existence. Such an initiative would preserve existing equity that distributors have built in brands they already distribute and would ensure that future equity will not be placed a risk by the unfair leverage created by a supplier’s threat to appoint dual distribution rights.

The MB&WWA believes that wine wholesalers should be treated in the same manner as beer, wine cooler and spirit cooler wholesalers. As proven in the nearly 30 years since legislation was passed giving beer wholesalers exclusive territories, such a law promotes inter-brand competition, consumer choice, product integrity and tax accountability.

11. Do you favor maintaining exclusive territories for beer wholesalers?

Answer: Yes

12. Would you support legislation that would provide territorial integrity for wine by prohibiting the appointment of multiple distributors for the same brand in the same territory thereby treating wine in the same manner as beer and spirits?

Answer: Yes

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### KEEPING THE THREE-TIERS SEPARATE AND INDEPENDENT

Since the inception of the Liquor Control Act in 1933, Michigan law has prohibited one licensee from aiding and assisting another licensee. The purpose of the law was to keep a person located in either the supplier or wholesaler tier from gaining an economic stranglehold over a business in the retailer tier and to keep such persons from being able to “dominate” the market as a result of that aid and assistance.

The law has worked very well in keeping unethical practices from occurring in the industry. In recent years, there have been efforts to expand permitted activities in the area of trade practices. Some industry members have suggested legalizing things like supplying free goods (logoed glassware, napkins, coasters, clocks, menu boards, etc.), slotting fees (paying for shelf and floor space for products), depletion allowances (cash payments for meeting certain sales goals), and supplying illuminated signs to retailers. Others in the industry are adamantly opposed to such practices because they create an unfair advantage for the biggest players, with the deepest pockets!

Those suppliers with the financial capability of engaging in “give-aways” would expect a “quid-pro-quo” (we give you what you want and you give us the draft handles, the favored shelf space, extra merchandising opportunities, ad features, etc.). The small supplier, especially microbreweries, would simply not be able to compete and consumer choice would be greatly reduced.

13. Would you oppose efforts that would weaken current law by authorizing such things as slotting fees, depletion allowance and illuminated signs?

Answer: Yes

14. Do you favor maintaining the law that prohibits aid and assistance and thereby protects new and smaller companies from unfair competition?

Answer: Yes

### EXCISE TAXES

Since the end of prohibition, state governments have levied excise taxes on alcoholic beverages. The excise tax imposed by Michigan law on beer (\$6.30 per barrel) is the highest in the Great Lakes region (Indiana, Illinois, Ohio and Wisconsin). The tax on wine (13.5 cents per liter) is second only to Illinois. The beer tax is 28% higher than the next highest among our border states and more than 306% higher than the lowest of Michigan’s border states. Add to this another \$2.40 per case for our state bottle deposit and the cost differential is significant!

These disparities in the amount of excise taxes make Michigan businesses non-competitive with bordering states and drives sales out of state. As evidence, one only needs to cross the state border to the south to see numerous discount liquor, beer and wine stores which are often crowded with Michigan residents. Current economic conditions have resulted in a substantial reduction in state revenues. Some have suggested increasing excise taxes to help balance the budget. This is bad tax policy because the excise taxes cannot be raised high enough on beer and wine to have any major impact on the state budget. (The total beer and wine excises taxes collected in 2009 was approximately \$51 million.) Raising the tax will simply make Michigan less competitive with surrounding states and give individuals further incentives to smuggle beer, wine and spirits across the boarder.

In most states the excise tax is collected by the beer and wine wholesaler upon the sale to a retailer. By having the excise tax collected at the wholesaler level, these states benefit greatly from having to monitor, enforce and collect taxes from a relatively small number of businesses located within their state borders. However, in Michigan the excise tax is collected by the supplier upon the sale to Michigan beer and wine wholesalers. This system adds significant burdens to the State by requiring them to monitor, enforce and collect taxes from thousands of suppliers located throughout the world. By switching the collection point of the excise tax to the wholesaler level, both the State and beer and wine wholesalers will benefit. The State will experience less expensive and more successful enforcement and collection costs and wholesalers will no longer be forced to carry the cost of the excise tax on products in their inventory.

15. In view of our high excise taxes on beer and wine in comparison to our neighboring states, would you oppose any increase in Michigan excise taxes?

Answer: Yes

16. Would you also oppose an increase in the excise tax on beer or wine, even if such an increase were earmarked for a special purpose?

Answer: Yes

17. In view of the high enforcement costs and financial burden that Michigan's current excise tax collection system imposes, would you support legislation that switches the excise tax collection point to the wholesaler level as opposed to the supplier level?

Answer: Unsure. I would need more info, as it would appear that there would be fewer suppliers than wholesalers & therefore more, rather than less, collection spots if collected at wholesaler.

#### **DIRECT SHIPMENTS OF ALCOHOLIC LIQUORS**

In May of 2005, the U.S. Supreme Court ruled that the laws of Michigan and New York regulating the importation of alcoholic liquors were in violation of the Commerce Clause of the U.S. Constitution because they allowed in-state wineries to sell and ship directly to consumers while prohibiting out-of-state wineries from doing so. The Court ruled that the provisions of the 21<sup>st</sup> Amendment, that clearly gives the states the rights to regulate the

importation of alcoholic liquor into their borders, could not save the statutes because of the disparate treatment between instate and out-of-state wineries.

In response to the Court's order, Michigan's legislature amended its importation laws to allow the direct shipment of "wine" by those wine makers, whether instate or out-of-state, who obtained a "direct shippers" license. The person holding such a license must check the I.D. of everyone making a purchase of wine, must properly label the shipping container to indicate it contains alcohol, must ensure that the wine is delivered to a person over 21 years of age, remit the appropriate taxes to Michigan, and report on shipments to the Michigan Liquor Control Commission. No winery can directly ship more than 1,500 cases of wine per year into Michigan. To date, over 700 direct shipper licenses have been issued by the Liquor Control Commission.

Since the Supreme Court decision, a number of additional lawsuits have been filed around the country in an effort to expand the meaning and reach of the court decision. One such legal action in Michigan sought to allow over 500,000 retailers in the country the ability to sell and ship alcohol direct to consumers in all states. The Legislature acted quickly to prohibit direct retail to consumer sales by enacting legislation in late 2008. Unfortunately, new lawsuits seek nothing less than the complete deregulation of alcohol in the U.S.

18. Do you agree that the sale of wine by wineries over the Internet or by mail should continue to be highly regulated so as to avoid easy access by minors, to ensure the proper state taxes are paid and that Michigan businesses are not being placed at a competitive disadvantage?

Answer: *The goals sound reasonable. I would need to hear further proof can to completely understand why alcohol is treated differently than shoes, or cigarettes (another regulated substance), under the Commerce Clause.*

19. Would you oppose efforts in the legislature and courts by interest groups to dismantle Michigan's effective regulatory system and allow practices such as the direct shipment of alcohol by all retailers around the country?

Answer: \_\_\_\_\_

### EXPANSION OF THE BOTTLE BILL

It is estimated that more than 4 billion containers per year are subject to Michigan's Beverage Container Act (the Bottle Bill). With a \$.10 per container refund value, this means that over \$400 million flows through the deposit stream annually.

Bills to expand the types of beverages covered by the bottle bill have been introduced in the last three legislative sessions. We would estimate that these bills add between 250 million to 1 billion containers to the deposit system and would cause a significant impact on the State's economy by requiring wholesalers and retailers to make significant capital investments to cover the additional containers.

The bottle bill has given the false impression to Michigan citizens that the state's solid waste recycling rate is good. But this simply isn't true. Michigan residents want to see Michigan at the top of the recycling effort and not at the bottom. According to published reports, Michigan's recycling rate for municipal solid waste is much less than

that of any surrounding Great Lakes states. Michigan's rate is about 20 percent, with the average among the Great Lakes states being about 30 percent. One reason for Michigan's poor recycling rate is the removal of aluminum containers and the value they represent from the solid waste stream. Mainline recyclers in Michigan don't receive the revenue generated by aluminum containers that, in other states, significantly offset the costs of recycling commodities.

The drafters of Michigan's Bottle Bill did not include a handling fee for any of the parties involved in redeeming containers under this new process (manufacturers, wholesalers or retailers). Bottle Bill advocates reason that the "market" should determine how to pay for the costs of the new system. They believe that market forces would keep the additional cost of redeeming and processing the empty containers to the lowest level possible. We believe that time has proven the drafters to be correct. All parties raised their prices to cover their increased costs but market forces ensured those increases were less than if the law had imposed a mandated handling fee.

One of the concepts being considered by Michigan legislators to fund a more comprehensive recycling program is called the "Penny Plan" which would add 1¢ (one penny) to most retail purchases over \$2.00. This plan would raise an estimated \$40 million. Business groups such as MB&WWA, retailers, brewers, soft drink bottlers and the Michigan Chamber of Commerce support this approach to expanded recycling, rather than expansion of the bottle bill.

20. Would you oppose expansion of the bottle bill in favor of a more comprehensive solution to the recycling problem, including curbside pickup and redemption centers, to increase Michigan's recycling rate?

Answer: Yes. I would go along with the Business Coalition's expertise.

21. Would you oppose the imposition of a handling fee which would allow the market to determine how the costs associated with the bottle bill, or an expansion of that bill, will be covered?

Answer: Yes

22. Would you be willing to support legislation such as the "Penny Plan" that would raise the revenue needed to fund a successful recycling program in Michigan?

Answer: I really don't like any new tax but would be willing to consider it if this is what the industry favors

## ILLEGAL RETURN OF FOREIGN CONTAINERS

Every year the State environmental funds are robbed of millions of dollars by a problem referred to as "can smuggling" or returning beverage containers in Michigan for the 10¢ deposit that were purchased in another state. In 2008, legislation was passed to address the problem by requiring that a new unique mark be placed on all returnable beverage containers sold in Michigan. Only those containers would be accepted for a return at Michigan retailers. As part of the comprehensive solution, the Antifraud Fund

was created. The purpose of the Antifraud Fund is to pay for technology upgrades of reverse vending machines (RVM) to ensure that they can read the new beverage container markings. The State appropriated \$1.5 million to offset the cost of the upgrades, however, the total cost of the upgrades is estimated at \$5 to \$6 million. Future State appropriations will be required as well as other options pursued for raising the additional funds needed to cover the total costs of the upgrades. One idea is to create a public/private initiative that would allow for private individuals or companies to invest in the Antifraud Fund and provide the additional funds needed to upgrade the machines. This could be accomplished at a very minimal cost to the State and at a seemingly quick pace to garner the biggest bang for the State environmental funds.

It is estimated that by fixing this problem, the State could see a net benefit of \$10 to \$14 million per year in the Unclaimed Deposit Fund. The Unclaimed Deposit Fund monies are used for environmental clean-up and Brownfield redevelopment.

23. In order for the State to recoup \$10-\$14 million, would you support additional State appropriations into the fund to offset the cost of the RVM upgrades to retailers?

Answer: Yes

24. Would you support legislation designed to induce private contribution into the Antifraud fund to help offset the cost of the RVM upgrades?

Answer: Sound Dkt, but would need to know more specifics & hear pros & cons.

[End]