Cocktails To Go: How COVID Changed Alcohol Regulation

2021 NCSL Legislative Summit

November 3, 2021 | Tampa, FL
COVID Impact on Beverage Retailers

**Bars & Taverns** - Hardest hit...Shutdowns for up to 100 days;
- Uneven economic recovery; Ongoing operating challenges; Variant surge-related policy changes
- LABOR shortages; Product availability; Debt; Lack of additional federal relief; Future uncertainty;
- **March 2020 → March 2021**: U.S. bar and restaurant sales of beer, wine and spirits declined by $90 billion.

**Package Liquor Stores** - Channel shift to off-premise forced a biz model pivot
- “Essential businesses” during shutdowns; Innovation and ingenuity
- eCommerce opportunities; Sales now back down to earth
- **Now faced with opportunistic and overly-broad deregulatory fights**
The COVID Kiss

• What DID we see during COVID?
  o New policies for local business…Cocktails To-Go; Package sales; Delivery; Curbside; Some shipping.
  o Governors flex power for public health…What are the long-term effects of disregarding laws?
  o Big Retail “Halo’ing”…What power structure (and leverage) will that create? Competition?
  o DTC & Delivery…The DTC push is on from suppliers (beer, spirits); Delivery and e-commerce activity at all levels
The COVID Kiss

• QUESTION: Has everything changed, forever?
  
  o 9/11: “I’m not sure I’ll ever fly again.”

  o 2008 Economic Crisis: “This will fundamentally change the American banking system.”

  o 2020-202(?) COVID-19: “I’ll only shop online, work from home, and never wear pants…forever.”

Human sacrifice! Dogs and cats living together. Mass hysteria!
• **COVID LESSON:** Clearly the pandemic has changed some things, but it is not a license to get rid of thoughtful discourse and deliberative policymaking – especially when it comes to beverage alcohol
The COVID Kiss

Important Questions for Legislators:

• **Do rules & process still matter?**
  o Pandemics aren’t the norm. Some rules suspended; Others ignored; Overreach won’t stop though the rationale will change

• **Can rules survive if there is no enforcement?**
  o Currently there are unprecedented deregulatory pressures on alcohol...but with disregard for appropriate oversight of responsibility, public safety, tax collection, product integrity and reliance interests of current stakeholders in the ecosystem.

• **What do consumers say?**
What do consumers say?

Key findings from April 2021:

• Support remains overwhelming for individual state regulation of alcohol

• Most Americans reject the notion that alcohol is just like other consumer products

• 71% of Americans are satisfied with the alcohol regulations in their state

• 80% of respondents show support for states regulating through a three-tier system (consistent over the past decade)

• A majority agree that states should evaluate the impact of COVID-19 inspired deregulations before making them permanent.

Source: “National Alcohol Regulation Sentiment Survey”; New Bridge Strategy/Center for Alcohol Policy; April 2021
So what’s going on?

- Attempts to **break up stable and competitive alcohol markets**

- **Undermining or delegitimizing the three-tier systems** that states use for alcohol commerce, tax collection, accountability and public safety

- **Imperiling the businesses of independent beverage retailers** who are relied on to build brands and provide customers with service, choice and value

- Pushing drastically **deregulatory model liquor shipping legislative principles** to be used in state legislatures
Common Sense

• **Model Alcohol Legislation Rarely Works Across 50 States**
  • New York City ≠ Johnson City ≠ Salt Lake City

• **Liquor Has Historically Been Treated Differently Than Other Alcohol**
  o Communities place a greater emphasis on control of liquor sales

• **Explain the Need** *(because this is a manufactured crisis.)*
  o Choice of products available to the public is at an all time high.
  
  o The liquor industry has seen supplier gross revenues soar from $18.2 billion in 2007 to $31.2 billion in 2020 and the number of new craft distilleries in the U.S. now numbers more than 2,000.
“Let me check with my attorney.”

- **Tennessee Wine (2019):** State durational residency requirements to hold a liquor license are not OK
  - **Wrong Takeaway from Tennessee Wine:** any state alcohol law that limits unfettered interstate commerce of alcohol is unconstitutional

- **Right Takeaway from Tennessee Wine:** legitimate state alcohol laws that promote public safety should be understood, enforced and defended.

- **SCOTUS:** looking at the “predominant effect” of state alcohol laws and the purposes they serve
  - (Based on lower court cases, turns out that most states are getting it right)

- **REMEMBER:** The more loopholes created, the less legitimate laws become, making it easier for them disappear altogether
Big Picture & U.S. Three Tier

• “Democracy is the worst form of government - except for all the others that have been tried.”
  - Winston Churchill

• WHO: 25% of alcohol consumed worldwide is unrecorded.

• Fake & Counterfeit alcohol headlines plague other countries…why isn’t this an issue in the United States?

International Headlines

- **Kenya**: “NACADA Warns of Counterfeit Alcohol”
- **Cambodia**: “7,000 litres of counterfeit alcohol seized”
- **India**: “Illegal liquor racket busted in Patiala, 3 held”
- **U.K.**: “Kings Norton shop caught selling counterfeit wine after tip off”
- **Dominican Republic**: “Deaths in Dominican Republic linked to tainted alcohol”
- **Cameroon**: “Cameroon Says Deaths from Consuming Fake Alcohol Spike During Pandemic”
- **Spain**: “Spanish Authorities Bust Pirate Rum Ring, Seize $4.2 Million in Booty”
Questions & Discussion

THANK YOU

John Bodnovich
Executive Director
American Beverage Licensees

bodnovich@ablusa.org