

MODERNIZING ALCOHOL REGULATION

A Proposal for New Guiding Principles



NATIONAL ASSOCIATION OF WINE RETAILERS

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INTRODUCTION

Any regulatory structure, particularly one aimed at regulating the sale and consumption of alcohol, will be designed around goals public policymakers seek to support and advance. Because regulatory structures are built to achieve particular goals, over time the systems may see small alternations and tweaks to accommodate pressing social and economic necessities. But when the system's goals are not seriously reevaluated, the substructure and foundations of a regulatory system will not change and reflect systemic changes in the economy, populations, technology, and social structure.

This becomes a problem when the assumptions and experiences that led policymakers to pursue particular goals are no longer relevant. This is the case today with most state alcohol regulatory systems.

This white paper evaluates the old assumptions and goals that motivated post-Prohibition policymakers, outlines a more modern theoretical approach to alcohol regulation, and recommends study groups consisting of regulators and members of all levels of the regulated community to exchange ideas for a revised alcohol regulatory structure that serves contemporary consumers. NAWR is committed to serving a modern alcohol industry that embraces modern technology and addresses existing specific concerns over alcohol's place in society.

The underlying foundations and goals of the majority of today's state alcohol regulatory systems were originally adopted in response to the negative experiences of Prohibition (1919-1933) and the 40 years of excessive consumption leading up to Prohibition (1880 -1919). Problematically, the social, cultural, economic, and technological conditions of this roughly 50-year period bear no resemblance to the social, cultural, economic, and technological conditions of the 2020s. Today's alcohol regulatory system is built to address conditions and problems that existed over 100 years ago. The result is an archaic system of alcohol regulation that demands a fundamental rethinking of its foundations if it is to serve contemporary consumers and the modern alcohol industry responsibly.

Modern alcohol regulatory systems must meet the needs of the current era, rather than the needs of the past. This idea was understood in 1933 when the intellectual foundations of post-Prohibition alcohol regulation were laid out in "*Toward Liquor Control*," the influential pamphlet used to advise policymakers on how to reregulate alcohol after the repeal of Prohibition. In their conclusion, the authors of *Toward Liquor Control* advised:

“We need to be on our guard against any system of control that has outlived its usefulness and that no longer represents the prevalent ideas and attitudes of the community. In the last analysis, there is but one fundamental rule to be followed – and all other rules are corollaries: If the new system is not rooted in what the people of each state sincerely desire at this moment, it makes no difference how logical and complete it may appear as a statute – it cannot succeed.”¹

The current regulatory system is not succeeding. The assumptions and goals that justify current regulations do not address our current culture and economy. They do not address the most pressing challenges of the industry, nor do they accommodate the prevalent ideas and attitudes of consumers. If many of the rules and regulations that govern the sale and delivery of alcohol today are flaunted by consumers or industry, it is precisely because those rules and laws make no sense in the current technological and social milieu. Put another way, It is a “system of control that has outlived its usefulness.”

The National Association of Wine Retailers understands it is the responsibility of lawmakers, alcohol regulators, health professionals, and the alcohol trade to reassess the goals at the foundation of the current regulatory system in the United States. Allowing simple inertia to carry the industry and its regulation forward only leads to frustration over an archaic system that does not have the foundations to serve a modern alcohol industry, nor the expectations and norms of the consumers it serves.

National Association of Wine Retailers
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¹ Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control* (New York: Harper and Brothers), 1933

ORIGINS OF THE CURRENT ALCOHOL REGULATORY SYSTEM

The foundation of the current American alcohol regulatory system dates to the first two decades of the 20th century. Under a different set of priorities, state alcohol regulatory systems allowed promiscuous distribution and sale of alcohol. In particular, the “Tied House System” operated in most states and allowed the control and coercion of alcohol sales outlets (primarily Taverns or Saloons). The result was a near epidemic of excessive consumption that produced harmful outcomes for individuals, families communities, and, ultimately, society.

The “Tied House System was imported to the United States from England. In its American incarnation, we saw producers of alcohol (largely breweries) either own saloons outright or provide would-be tavern owners with free fixtures, low-cost leases, loans, and numerous other things of value in exchange for exclusively selling the producer's beer. The saloon was the primary means by which alcohol was distributed in the immediate pre-Prohibition era. This led brewers to compete by expanding saloon outlets tit-for-tat. If a brewer wanted to expand sales, it had to increase the number of saloons in a region or urban area that was tied to it and exclusively sold its products. The competition became so stiff between brewers that it was not unusual to see a saloon on each corner of a big city intersection.

More importantly, the brewers’ focus on profit and beating the competition led them to put pressure on the taverns tied to them. Saloon owners and operators were encouraged and coerced to provide incentives for patrons to overconsume: Free lunches with every “bucket” of beer sold; Access to illegal activities in the saloon; Two-for-one drink specials. Open 24/7. The result was massive overconsumption and all the social, health, and familial problems that came with it.

But the saloon during the first two decades of the 20th century was more than a place to spend money and get drunk. As America experienced a great wave of immigration, urban areas teamed with new arrivals, saw populations explode and saloons became the community centers for several groups. They became “Workingmen’s Clubs”.²

² Madelon Powers, *Faces Along the Bar: Lore and Order in the Workingman’s Saloon, 1870-1920* (Chicago: The University of Chicago Press, 1998),

In the first two decades of the 20th century, there was no television, no radio, no streaming video, no movie theaters, no professional sports to watch from afar, little in the way of air conditioning, and no telephone. Taverns became the communication and community hubs.

Saloons were the place one went to discover what jobs were available, to organize politically, to form political parties, to join and organize unions, to get the news of the day, and to commune with one's peers. The saloon, tied or not to a particular brewery, was often an important civic institution.

Thus, the saloon also became the symbol of evil for the Temperance and Prohibition movements that would eventually lead to the passage of the Eighteenth Amendment and national Prohibition. Once the repeal of the Eighteenth Amendment appeared to become a foregone conclusion in the first years of the 1930s, policymakers began to imagine a new kind of alcohol regulatory regime.

At the foundation of this new alcohol regulatory regime was a desire to accomplish two primary goals: 1) Do away with the violent and organized crime that epitomized the Prohibition Era and 2) prevent the return of the Tied House with its tavern culture, and all the overconsumption and civic problems that were perceived to result from it.³

This second foundational goal to prevent the return of the Tied House in a post-Prohibition era was explained succinctly by in the influential pamphlet, "Toward Liquor Control". *Toward Liquor Control* was published in 1933 by John Rockefeller to help guide lawmakers in their creation of a new set of state alcohol regulatory systems. Its authors, Raymond B. Fosdick and Albert Scott were explicit that the law ought to do all it can to prevent the return of the Tied House:

"The 'tied house,' and every device calculated to place the retail establishment under obligation to a particular distiller or brewer, should be prevented by all available means. 'Tied houses,' that is, establishments under contract to sell exclusively the product of one manufacturer, were, in many cases, responsible for the bad name of the saloon. The "tied house" system had all the vices of absentee ownership. The manufacturer knew nothing and cared nothing about the community. All he wanted was increased sales. He saw none of the abuses, and as a non-resident he was beyond local social influence....'Tied houses' should, therefore, be prohibited, and every opportunity for the evasion of this system should, if possible, be foreseen and blocked"

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³ Fosdick, *Toward Liquor Control*

⁴ Ibid

The goal of preventing the return of the Tied House was embraced by anti-prohibition activists, industry, the federal government, and the state governments where the bulk of alcohol control laws were to be written and implemented. Prohibiting producer ownership of retail outlets in part or completely was one key method of preventing the return of the Tied House. Equally, if not more, important was the adoption of a “Three-Tier System” of licensing and alcohol distribution.

The three-tier system was first suggested by the United States Brewer Association once they saw Repeal was coming. They proposed it as a voluntary effort to prevent tied houses.⁵ However, after 1933 and Repeal, the Federal Government and state governments encoded the three-tier system into both state and federal law. At the federal level, this meant separate licensing of wholesalers and producers and restrictions on ownership of retail outlets by both. At the state level, a slightly different innovation was put into law: States required producers (particularly out-of-state producers) to only sell to wholesalers, who in turn were to be the only source from which the state’s retailers could purchase inventory to sell to the public.

By requiring this extreme form of the separation of the tiers, lawmakers assured the prevention of tied houses. Along with this restriction on producers selling directly to retailers, lawmakers also instituted a variety of other measures meant to accomplish the same goal, including prohibitions on exclusive sales contracts between producers and retailers, prohibiting producers and wholesalers from providing any things of value (credit fixtures, advertising reimbursement, etc.) to retailers, requiring uniform pricing by wholesalers, requirements that wholesalers post the price of a product and hold it for a given amount of time, bans on central warehousing of products by retailers, restrictions on quantity discounts by wholesalers, and franchise protections for wholesalers.

Yet given all these mechanisms put in place to prevent a return of the tied house, not a single rule or law accomplished this with more effectiveness than the requirement that producers only sell to wholesalers, who were to be the only source of inventory for retailers.

⁵ K. Austin Kerr, The Rebirth of Brewing and Distilling in the United States in 1933: Government Policy and Industry Structure, in 3 BUSINESS AND ECONOMIC HISTORY 3 n.5 (2005).

Over time it has not gone unnoticed by members of the alcohol industry as well as by regulators that the legally mandated use of a wholesaler imposed upon both producers and retailers has the effect of putting the wholesaler in the position of replacing the pre-Prohibition brewer as the new coercive element within the alcohol industry. Writing in its 2010 paper “Principles of State-Based Alcohol Regulation”, the National Conference of State Liquor Administrators (the largest association for those working in the area of state alcohol regulation) observed the following:

“Under the typical three-tier system, retail establishments must purchase beverage alcohol products from wholesalers, not from manufacturers. It is now the wholesaler, as the seller of product to the retailer, who has every bit as much incentive as the manufacturer to seek to induce preferential treatment by the retailer for the wholesaler’s products.”⁶

Save for a small handful of states, the three-tier system with its legal mandate that producers sell to wholesalers and retailers buy from wholesalers remains the predominant form of alcohol control and regulation in the United States. Put another way, today’s alcohol regulatory system is designed around and predicated upon the goal of preventing the return of late 19th/early 20th-century saloon culture with its Tied House System.

This archaic approach to alcohol regulation requires us to ask if the three-tier system, more than 90 years after its original implementation, remains the best model for regulating the distribution and sale of alcohol in the 21st century.

⁶ Principles of State-Based Alcohol Regulation, National Conference of State Liquor Administrators, 2010. https://www.ncsla.org/GetSecureFile.html?file=reports/Principles_of_State-Based_Alcohol_Regulation.pdf

THE DIFFERENCE BETWEEN NOW & THEN

The problems associated with the Tied House System that was at its height from the beginning of the 20th Century and through to Prohibition was not that producers controlled or owned the taverns where alcohol was consumed and sold for home consumption. The problems resulted from the fact that the entire distribution system for alcohol revolved around the tied house. This is an important distinction because as we have seen from the proliferation of brewery-owned pubs and winery tasting rooms today, overconsumption and its attendant problems do not follow from such establishments' existence.

However, when an entire alcohol distribution system and competition within that system is predicated on producer-owned and controlled retail outlets, the inevitable result is a proliferation of outlets to increase a producer's distribution footprint, a race to the bottom on pricing to best the competition, and the temptation to engage in otherwise nefarious or illegal activities in order to increase profitability.

The point is that while it is easy to understand why 1930s lawmakers saw the elimination of the Tied House as the most pressing issue facing a post-Prohibition regulatory regime, that goal may not be the most important foundation upon which to base the entire alcohol regulatory system in the third decade of the 21st century.

Crucial to understanding this proposition is recognizing the social, cultural, economic, and technological differences between 1910, when the Tied House System was at its height, and today.

First, it is important to recall that in the early 20th century, the tavern not only proliferated as a result of the Tied House System governing alcohol sales but also because it played a key civic role. In "The Birth of American Alcohol Control" (*Contemporary Drug Problems*, 1985)⁷ Harry G. Levine notes that before Prohibition the saloon or tavern served as "the center of working-class social life—the 'workingman's club'" and "the center of (male) working-class social life"; "the primary meeting place for union organizers and leftists, and mainstream politicians"; and the place to "get a job or help from a politician.

John Grinspan, writing in the *New York Times* in 2016 on "The Saloon, America's Forgotten Democratic Institution," wrote:

⁷ Harry G. Levine "The Birth of American Alcohol Control: Prohibition, the Power Elite and the Problem of Lawlessness" *Contemporary Drug Problems*, Spring, 1985

“Saloons were once everywhere in America, from urban alleys to rural crossroads. They were about more than drinking; from the 1860s through 1920, they dominated social life for the laboring majority building a new industrial nation...More than the beer, saloons provided a gathering place in a nation with little public space for working-class men to argue the issues or meet the candidates. Parties set up headquarters in saloons, and saloonkeepers often ran political machines, trading on their intimate knowledge of the drinkers in their districts. Many politicians got their start as boys eavesdropping in partisan barrooms...Politicos offered free drinks, or found jobs for unemployed bar- goers, while the institutions themselves allowed workers to feel connected to their political system.”⁸

The saloon also served as a source of entertainment prior to prohibition. In 1910 there existed no widespread electricity, let alone radio, television, movie theaters, Internet, or streaming video. Rather, the saloon or tavern was often the primary source of entertainment.

None of this is true today. The American bar/saloon does not serve as a central gathering place and is in no way the place folks go to get a job, talk politics, organize, unionize, or entertain themselves. All of this happens on the Internet and via electronic and digital communications. Today Americans occupy themselves with podcasts, movie theaters, streaming video, news distributed via email, enormous time spent interacting on social media platforms, and watching sports live and occurring around the world on their phones.

Today, even if the law allowed tied houses to proliferate, their utility and function as civic hubs could not return to their pre-Prohibition form. There is simply no call for these services to be rendered by drinking establishments, whether those establishments are tied to one brewer or serve several brands of beer, wine, and spirits. Society, culture, economics, and technology today do not begin to resemble the post-Prohibition 1930s, let alone the pre-Prohibition 1910s.

Meanwhile, the alcohol consumer of the 1930s would be shocked at the brand proliferation that today’s consumers enjoy. For decades following the end of Prohibition, the number of alcohol brands available to consumers was relatively few compared to what’s available today.

⁸ John Grinspan, The Saloon, America’s Forgotten Democratic Institution, New York Times, November 26, 2016-<https://www.nytimes.com/2016/11/26/opinion/sunday/the-saloon-americas-forgotten-democratic-institution.html>

For example, according to the NY Times report, in 1963 there were fewer than 450 wineries in the United States. Today, there are more than 12,000 wineries located in the U.S.⁹

In 1990 there were fewer than 500 breweries in the U.S. The Brewers Association reports more than 9,700 breweries in 2022.¹⁰ And none of the above takes into account the thousands of imported brands that are currently sold in the United States. Were they transported to the average wine store in 2023, the pre-Prohibition alcohol consumer would be shocked at the diversity of products available. The very idea of serving the diverse demands of consumers with thousands of different brands originating in the various U.S. states, South America, Europe, Africa, Australia, and the Far East did not occur. Today, American consumers take this as a given.

We also take note of the sales, logistics, and economic revolution that occurred between 1930 and today. According to the U.S. Census Bureau, total e-commerce sales amounted to \$1.1 Trillion and accounted for 15% of all retail sales in the United States. At the end of Prohibition e-commerce sales were \$0.00.¹¹

Prior to Prohibition and after, the closest thing to e-commerce was the Sears & Roebuck catalog, which folded in 1993. In the early 1970s, Sears & Roebuck's annual brick-and-mortar and catalog sales combined reached \$10 Billion, the equivalent of \$75 Billion today. On a single day in 2024, Amazon.com's sales revenue alone was \$1.29 Billion.¹²

American consumers today expect to be able to purchase goods and services of every kind, including alcohol, via the Internet. It is a daily occurrence. Before Prohibition alcohol was ordered by mail, but it was rare.

The digital revolution has gone hand in hand with the logistics revolution that has witnessed UPS alone delivering 27 million packages per day and 25 billion per year in the United States. A

⁹ New York Times, July 5, 2013, <https://archive.nytimes.com/www.nytimes.com/interactive/2013/07/07/business/a-nation-of-wineries.html>

¹⁰ Brewers Association, National Beer Sales & Production Data. <https://www.brewersassociation.org/statistics-and-data/national-beer-stats/>

¹¹ U.S. Census Bureau, Quarterly Retail Ecommerce Sales, February 20, 2024. <https://www.census.gov/retail/ecommerce.html>

¹² Sarah Pruitt, History.com, When Sears Catalog Sold Everything From Hubcaps to Houses, October 16, 2018. <https://www.history.com/news/sears-catalog-houses-hubcaps>

large percentage of these deliveries happen within 4 days of the order being placed. Nothing like this kind of logistical sophistication existed at the end of Prohibition when automobile travel was still in its infancy and the interstate highway system was far from coming into existence.

The digital sales revolution, combined with the logistics revolution and alongside the use of credit for common purchases has created an economy that was unimaginable to the consumers who frequented saloons when the Tied House System controlled the U.S. Alcohol marketplace.

This leads us to ask if a complete revision of the alcohol regulatory system were to occur today as it did in the early 1930s at the end of Prohibition, would preventing the rise of Tied House saloons be the primary goal of a new system? Should it be?

On the whole, neither lawmakers nor alcohol regulators have seriously contemplated foundational questions about the state alcohol regulatory systems. While there have been nibblings of reform around the edges over the past 90 years, nothing like a re-evaluation of the needs of the alcohol industry, consumers, or society has been contemplated.

As we saw above, the social, economic, and cultural conditions that supported the existence of Saloon culture under the Tied House system no longer exist and likely could never come back into existence. Yet the three-tier system, with its mandated use of a wholesaler by producers and retailers, remains in place. Should it? Does it serve any useful purpose?

With the proliferation of brands, most of which are very small, are the Franchise Laws that protect wholesalers by practically forbidding producers from switching to another wholesaler a better choice than letting standard business contracts regulate conditions of separation between two parties?

With nearly every American utilizing online sales and near immediate delivery via common carrier, do prohibitions on interstate direct sales and shipments to consumers by producers, retailers, and importers support the desires of consumers today?

Moreover, with Saloon Culture no longer a factor today and with the promiscuous purchasing patterns of consumers across various brands the norm, do tied houses really need to be prohibited?

The stark changes across culture and economy that have transpired in the 90 years since the end of Prohibition demand a re-evaluation of the foundational goals and aspirations of alcohol

regulation. Without this re-evaluation, the risk is that the system of control will no longer make sense to consumers or the industry. This risk was understood 90 years ago when the authors of “Toward Liquor Control” presciently observed:

“We need to be on our guard against any system of control that has outlived its usefulness and that no longer represents the prevalent ideas and attitudes of the community. In the last analysis, there is but one fundamental rule to be followed – and all other rules are corollaries: If the new system is not rooted in what the people of each state sincerely desire at this moment, it makes no difference how logical and complete it may appear as a statute – it cannot succeed.”¹³

¹³ Fosdick, Toward Liquor Control

PROPER GOALS FOR A MODERN ALCOHOL REGULATORY SYSTEM

In 1933, as lawmakers combed through “Toward Liquor Control”, spoke to industry, and brought supporters of both Prohibition and Repeal to the table to create new state alcohol regulatory systems, the overriding goals were five-fold:

1. Remove the criminal element from alcohol that had arisen during Prohibition
2. Create systems that would be supported and obeyed by industry and consumers
3. Prevent the reemergence of the Tied House System
4. Leave most alcohol control to the states, rather than the federal government
5. Fund government and control systems via a system of excise taxes.

The 21st Amendment effectively took care of numbers 1 and 4. Number 5 was uncontroversial as alcohol excise taxes had always been an accepted element of federal and state funding. The only concern was that if taxes were too high, they would encourage bootlegging. That excise taxes would be imposed upon alcohol sales in the post-Prohibition period wasn't a question of “if” but only “at what amount?” This remains an important question today.

Creating an alcohol regulatory system that would be supported and obeyed by industry and citizens was closely related to the goal of removing the criminal element from alcohol. But simply making alcohol legal again would not necessarily do the trick. It was understood by most anti-Prohibition campaigners that the new system must serve the desires of both consumers and industry if it was to be both effective and respected enough that it would be obeyed. The overreach of Prohibition taught lawmakers that when government overreached, it could not expect the support of the governed. This remains true today.

Notably missing from this list is the imperative of preventing overconsumption and keeping alcohol out of the hands of minors. Yet when you consider the single most common discussion policymakers have today when the question of alcohol is debated, these two concerns are paramount. They were not paramount in 1933 when new alcohol control systems were under consideration.

However, the starkest difference between 1933 and 2024, is the absence today of social, cultural, technological, and economic conditions that could support a return to a Tied House System and the irresponsible marketing and overconsumption that resulted from it prior to Prohibition. Yet as we have seen, the foundation of today's alcohol regulatory system is aimed at preventing that which is no longer a possibility or in danger of reoccurring.

This incongruent focus on preventing the reemergence of that which can't return to its historic form presents an important set of problems. The primary defense against the Tied House System, the three-tier system with its mandate that producers sell to wholesalers and retailers only procure inventory from wholesalers, significantly restricts paths to market for the thousands of producers that form the basis for the domestic alcohol economy as well as for imported wines. The maintenance of the three-tier system likewise serves as a barrier to consumers obtaining the majority of these products as state wholesalers are not required to serve as the gateway for any producer, domestic or imported, to enter a state's market. Finally, the three-tier system is commonly cited as the reason why states must restrict consumer access to products via direct-to-consumer shipment from out-of-state producers and retailers.

Though the anti-tied house regulatory system may have outlived its original usefulness, it continues to serve one purpose: commercial protection of the middle wholesale tier, the foundation for anti-consumer restrictions, and an unjustified burden on producers seeking a legitimate path to market.¹⁴

It has been pointed out in recent years, particularly by wholesalers and state regulators, that unsanctioned shipments of alcohol to consumers are commonplace. If this is true, it's not unsurprising and would not be a surprise to the founders of the new state alcohol regulatory systems following Prohibition. They understood that alcohol control laws that *"no longer represent the prevalent ideas and attitudes of the community...cannot succeed."*

This understanding must help identify any set of principles that would be at the heart of a new kind of state alcohol regulatory systems.

All of this is to underscore the critical point that any modern system of alcohol control must 1) acknowledge the common desires and economic and cultural practices of the community it serves and 2) reflect the economic and technological realities of the time.

If these two principles are followed, then we can identify the following four points as the proper goals for a 21st-century alcohol regulatory system

- 1. Encourage responsible alcohol consumption**

- 2. Fund government through the efficient collection of alcohol excise taxes**

¹⁴ "Yes, The Three Tier System Still Has Legs", WSWA, 2003: <https://www.wswa.org/news/yes-three-tier-system-still-has-legs>

3. Encourage a competitive and non-discriminatory marketplace for alcohol sales and distribution

4. Provide consumers with equitable access to the marketplace for alcohol products.

These four proposed goals of a modern alcohol regulatory system deserve fleshing out as they are significantly different than the goals and motivations that serve as the current foundation of an alcohol regulatory system that has now been in place for ninety years.

Encourage Responsible Alcohol Consumption

No one observing American culture over the past few decades can deny that this goal will be considered paramount for American citizens and the lawmakers who represent them. When abused, alcohol causes harm. The goal is not to discourage alcohol consumption but rather to encourage consumers and industry with laws and regulations to promote responsible consumption. In fact, this kind of goal would undoubtedly be the primary issue if American citizens were polled and asked what priority should lie at the heart of a state's alcohol laws. **The most efficient way to pursue this goal includes at least the following general provisions within a state alcohol code:**

1. States may apply time and place restrictions on alcohol sales and consumption
2. States may restrict alcohol sales based on age
3. States may discipline licensees that violate time, place and age restrictions

Fund Government with the Efficient Imposition and Collection of Alcohol Excise Taxes

Alcohol taxes are among the oldest in the United States. The first federal alcohol excise tax was passed by Congress before the Bill of Rights. Citizens accept excise taxes as a legitimate means of funding not merely the states' alcohol control systems, but general funds also. Efficiently setting and collecting alcohol excise taxes must be at the heart of any alcohol regulatory system. **The most efficient way to pursue this goal includes at least the following general provisions within a state alcohol code:**

1. States may apply excise taxes on alcohol sales within their borders
2. States must provide excise taxpayers with an efficient electronic means of payment
3. State should have the discretion to levy excise taxes differently on different types of alcohol

Encourage a Competitive and Non-Discriminatory Marketplace for Alcohol Sales and Distribution

We saw when the Tied House System was in place that a single path to market led to corruption, gatekeeping, and predatory competition. We have also seen how excessively restrictive market pathways such as the three-tier system have become forms of gatekeeping that are unsupportive of producers and retailers, while restricting consumer access to desired products. While any successful alcohol regulatory system must pursue an orderly market that deters corruption and encourages compliance, it must also encourage the maintenance of a competitive and non-discriminatory marketplace with multiple paths to market for producers and importers. **The most efficient way to pursue this goal includes at least the following general provisions within a state alcohol code:**

1. A licensing system for participants in the alcohol marketplace providing separate privileges
2. No restrictions on tied houses so that retailers may sell one producer's or wholesaler's products, but may not receive pricing benefits to the exclusion of other retailers
3. All licensed producers and importers may sell directly to consumers, retailers, or wholesalers, regardless of their production size
4. All licensed retailers may purchase directly from producers, importers and wholesalers
5. Standard business contracts will govern relationships between Producers/Importers and wholesalers rather than "Franchise" laws
6. Producers, importers, and wholesalers may provide retailers with things or services of value. However, any thing or service of value provided to one retailer must be provided to any other retailers upon request

Assure Consumers Have Equitable Access to the Marketplace for Alcohol Products.

In the early 1990s, a consumer movement emerged that sought greater access to the growing selection of wines produced across the country and imported into the country. Though this movement took the form of lawsuits and grassroots efforts, the point was not only to overturn unconstitutionally discriminatory wine shipment laws but rather to open channels to allow

consumers to acquire the products they want. That desire and the support for economic and technological tools to pursue this desire has only increased over the subsequent 30 years. Assuring that consumers have well-regulated access to the alcohol products they want, particularly via interstate direct shipment, must be at the heart of any alcohol regulatory system that recognizes the priorities of the American consumer. **The most efficient way to pursue this goal includes at least the following general provisions within a state alcohol code:**

1. Consumers must be allowed to receive shipment or delivery directly from in-state or out-of-state producers, importers and retailers, regardless of the shipper's production size and without limitations that are not imposed upon brick and mortar sales.
2. States may require permits, jurisdictional oversight, tax remittance and reporting by producers, retailers and importers that ship directly to consumers.

These goals for a modern alcohol regulatory system possess the benefit of at once embracing the reality of the modern economy and consumer, while also recognizing the primary concerns of alcohol's potential harms. Additionally, these four goals do not pursue solutions to early 20th-century problems that no longer exist or threaten to reemerge.

CONCLUSIONS

It is true that systems, traditions, and customs that stand the test of time generally do so because they deliver some sort of benefit to individuals and society. Yet it is also true that long-standing systems may continue to exist due to inertia, the comfort of familiarity, and the coercive machinations of the beneficiaries of the system. The continued existence of the three-tier system as the governing paradigm of alcohol regulatory system appears to be largely a case of the latter explanation.

The evidence tells us that the three-tier system and much of the regulatory scaffolding that upholds it date to the 1930s and was put in place to prevent the return of the Tied House System of alcohol distribution and sales. The Tied House System, which dominated the alcohol industry from the late 19th century to the onset of Prohibition in 1919, undoubtedly played an important role in encouraging immoderate consumption that eventually led many to embrace national Prohibition.

It is also true that the economic, cultural, social, and technological conditions that allowed “Saloon Culture” to flourish no longer exist. Moreover, given the evolution of our economy, culture, and technology, it is unimaginable that this culture along with its destructive forces could reemerge any more than locomotives could return as the most favored means of cross country travel.

As a result, the current alcohol regulatory regime is founded on principles that seek to prevent the return of a century-old system that will never exist again, with or without the current regulatory system. Without a new evaluation of the principles that ought to govern a modern alcohol regulatory system, industry, consumers, and society are worse off.

We also understand that when the system of alcohol control does not match the needs of society, industry, and consumers, there is likely to be a continued rise in the disrespect the archaic three-tier system generates at all levels. We repeat here the admonition of the founders of the current alcohol regulatory system succinctly explained over 90 years ago: *“Any system of control that has outlived its usefulness and that no longer represents the prevalent ideas and attitudes of the community...cannot succeed.”*

With the necessity to match the prevailing ideas concerning alcohol’s place in American society and the needs of both consumers and industry, the view of the National Association of Wine Retailers is that real alcohol regulatory reform is required. Furthermore, we are convinced that

encouraging responsible consumption of alcohol, the efficient collection of excise taxes, the necessity of a competitive and non-discriminatory marketplace, and consumers' equitable access to products are the principles that must serve as the foundations of that reform.

The 21st Amendment dictates that any effort to reform the current archaic system of alcohol control happen at the state rather than the national level. The extent to which a reform effort will be undertaken depends on the commitment of regulators, industry, consumers, and lawmakers to speak up and overcome the inertia and political coercion that advocates for a status quo.

ABOUT THE NATIONAL ASSOCIATION OF WINE RETAILERS

Founded in 2007, the National Association of Wine Retailers represents progressive and reform-minded wine and spirit merchants located across the country. In addition to providing benefits to its members, the Association works to encourage and create a modern alcohol regulatory system that emphasizes a level playing field for all industry participants and well-regulated access to legal alcohol products for consumers. For more information on the Association see www.nawr.org.

