

PUTTING PUBLIC HEALTH FIRST!

**A Counter-Report
on Upholding Accountability, Responsibility and Community Safety
in Michigan's Alcohol Regulations and Laws**

EXECUTIVE SUMMARY

This public health and safety counter-report is signed by Michigan groups, organizations and individuals from diverse backgrounds. We respectfully submit this counter-report in response to recommendations regarding Michigan's system of alcohol laws, rules and safeguards made by the Liquor Control Advisory Rules Committee (LCARC) and the Office of Regulatory Reinvention (ORR) and submitted to Governor Rick Snyder for consideration.

This public health and safety counter-report, "Putting Public Health First!" highlights the flawed nature of the LCARC process and many of its recommendations as well as the recently released ORR report by demonstrating that many of the recommendations :

1. Put public health and safety at risk;
2. Go against the best interests of Michigan small businesses in the beer and wine sectors – from craft brewers and winemakers to independent retailers to family owned wholesalers;
3. Run contrary to the concerns of Michigan's citizens; and
4. Exceed the parameters of the Executive Order that created the LCARC.

Taken together, many of the LCARC and ORR recommendations undermine Michigan's effective, pro-growth and responsible system of alcohol laws, regulations and safeguards, and have the potential of putting Michigan citizens' health and well-being at risk.

This counter report was written with extensive input from diverse groups, including those representing public health advocates, substance abuse and prevention, businesses, law enforcement, religious organizations and educational professionals. Many of these voices were not included in or adequately represented on the LCARC. In fact, some of these groups were denied access to the LCARC meetings, thereby preventing their concerns from being heard by official regulatory decision makers.¹

It is the belief of the signatories to this report that Michigan policymakers should strive to update, streamline and modernize regulations, procedures and rules but must do so only if they continue to protect public health and safety.

These core principles were not always upheld during the LCARC and ORR process. A review of the proposals offered by and the voting record of the LCARC members demonstrate that many industry interests were put ahead of public health and safety.

Michigan already has a robust alcohol sector that encourages business growth and meets consumer demands. The evidence is clear:

- Michigan has 16,000 retailers selling alcohol, making it a Top 10 state for alcohol outlets.²
- 94 percent of likely voters report having easy access to alcohol in their local communities.³

¹ Crain's Detroit Business, 8/25/2011

² Source, Michigan Liquor Control Commission

³ Public Opinion Strategies & Greenberg Quinlan Rosner Research statewide poll of likely Michigan voters 1/31-2/2/2012.

At the same time, this counter-report will also outline ways in which the ORR's recommendations expose the public to potential health and safety dangers: Its proposal to weaken background investigations on new licensees increases the risk that convicted criminals and financially unstable individuals will receive liquor licenses.

Our concerns form the foundation for "Putting Public Health First!" which we submit as a counter-report to the LCARC's and the ORR's recommended changes to Michigan's alcohol safeguards. We, individually and as a group, intend to be a part of the dialogue moving forward and ask that legislators and regulators include public health and safety, religious, community, educational and law enforcement voices as they review Michigan's alcohol industry.

For the reasons outlined in this counter-report, we the undersigned urge Gov. Snyder, the Legislature, the Michigan Liquor Control Commission and policymakers to reject many of the recommendations of the ORR and the LCARC, and uphold Michigan's regulations, laws and safeguards on alcohol in our state.

INTRODUCTION

From the early stages of Gov. Rick Snyder's term, it became apparent that he and many legislators shared in the belief that Michigan businesses are over-regulated and that there is a need to review the State of Michigan's regulatory structure in a wide range of industries.

While the signers of this report do not disagree with efforts to improve our economy, we do agree that public health and safety must be the No. 1 priority and consideration in any attempt to change regulations and safeguards affecting Michigan's alcohol industry.

Unfortunately, due to the lack of significant public health and law enforcement voices during the review process that began in 2011, the LCARC deviated away from what we and the public agree is the core mission: to ensure that public health and safety remain the top considerations in our system of alcohol safeguards. Instead, the economic interests of participants on the LCARC were pursued despite potentially devastating consequences to the well-being of our communities.

In addition, the agency overseeing the LCARC, the Office of Regulatory Reinvention, implemented a review that not only exceeded the limits of review outlined in Executive Order 2011-5 (Gov. Snyder's EO) but also ignored the factors that the EO established for the review.

These missteps have led to a flawed report containing many recommendations that, if implemented, will negatively impact public health and safety, Michigan's emerging craft beer and small winemaker industry, small independent retailers, wholesalers, product selection and competition.

Of greater concern for policymakers and the public they serve is the attempt to undo safeguards involving alcohol – safeguards that have worked very well at ensuring that the general public's safety and health are protected, even as it promotes growth, entrepreneurialism and investments in beer and wine production in Michigan. [*The data for public health and business growth are outlined in Appendix A and Appendix B.*]

Composition of the Liquor Control Advisory Rules Committee

Section III B of the EO lays out the Governor's expectations regarding the makeup of advisory rules committees such as the LCARC. It states: "Membership in all Advisory Rules Committees shall be established by the Office of Regulatory Reinvention with the expectation that a broad spectrum of stakeholders, including members of the regulated community and the general public, will be included in their membership."

In addition, Section V 2 of the EO also lays out the Governor's expectations with regard to the makeup of advisory groups as it relates to implementing "best regulatory management practices". It states: "Establish broadly representative stakeholder advisory groups"

While the ORR continuously claims that the LCARC was made up of representatives from all sides of the alcohol industry as well as law enforcement and public health, this claim is misleading. The LCARC was an unbalanced committee that allowed the ORR to claim that all segments of the industry were represented when in reality representation was weighted in a manner that, together with the procedures implemented by the ORR, ensured that specific groups were placed in an extreme minority.

The makeup of the committee was so unbalanced that it virtually ensured that the minority voices in the room would not be heard.

Simply put, the composition of the 21-member LCARC was fatally flawed because public health, law enforcement, medical, educational and local government voices were grossly under-represented and – despite the directive in the Governor’s EO – no members on the LCARC represented the general public. Instead, the LCARC had 17 alcohol industry representatives. *[For a detailed breakdown of the LCARC members, see Appendix C]*

We wish to be clear: The absence of representatives from these groups did NOT result from a lack of interest. In fact, numerous public health and law enforcement representatives applied to serve on the LCARC but were not appointed. For example an assistant attorney general in charge of the Michigan alcohol and gambling division, the president and CEO of Michigan Council of Alcohol Problems, the vice president of the Michigan Association of Substance Abuse Coordinating Agencies and the current executive director of Michigan Alcohol Policy Promoting Health and Safety applied. These applicants, along with numerous others, were denied.

The failure to find balance between alcohol industry representatives and other interested stakeholders , resulted in the LCARC overly focusing on profit-driven and economic factors, NOT an actual review of Michigan’s regulatory structure, rules and safeguards.

This counter-report will provide greater details of egregious examples of this dynamic at play, where public health and safety were sacrificed for purely economic reasons, many of which are flawed.

The signatories of this report do not believe that it was Governor Snyder’s intent to have unbalanced advisory rules committees. For that reason, this report is not a criticism of Governor Snyder and his desire to reinvent Michigan’s regulatory structure. We strongly believe the Governor’s plan was to have a balanced review and debate intended to result in recommendations that benefited all of Michigan. We believe that the language and spirit in the EO called for diverse stakeholders that would reach solutions through compromise.

Unfortunately, the ORR created an unbalanced committee, thwarting the Governor’s intent as expressed in his EO, and ensured that the voices representing law enforcement, public health, communities and health care were so far in the minority (if present at all) that they were not heard.

The end result of this failure is a flawed report that is based on the almost exclusive recommendations of one segment of the alcohol industry.

As a result, many of the recommendations it produced are unreliable, cannot be trusted and do not reflect the views, beliefs, concerns and priorities of the public, public health professionals, law enforcement and other industry stakeholders.

In fact, many of the recommendations go AGAINST the priorities and concerns of the majority of Michigan citizens. A statewide bipartisan poll of likely Michigan voters released March 16 showed that by a 2-to-1 margin – 62 to 29 percent – voters say that it is more important to “ensure that Michigan has strong safeguards on the sale of alcohol to ensure public safety” rather than “to reform Michigan’s outdated regulations that tie up local producers and small businesses.” *[See Appendix E for more details about this benchmark statewide bipartisan poll.]*

EXECUTIVE ORDER 2011-5

In Executive Order 2011-5, Governor Snyder pronounced that “it is in the best interest of the people of the State of Michigan to have a regulatory environment and regulatory processes that are fair, efficient, transparent, and conducive to business growth and job creation” and that “the elimination or amendment of duplicative, obsolete, unnecessary, or unduly restrictive rules will lead to the creation of more businesses and job opportunities for Michigan citizens.” These are principles that all sides can agree on. However, these principles must be balanced with public health and safety concerns.

Scope of Review

In Section I of the Executive Order, the Governor created the Office of Regulatory Reinvention (ORR) and tasked it with the responsibility of “creating a regulatory environment and regulatory processes that are fair, efficient, and conducive to business growth and job creation through its oversight and review of current rules and regulations and proposed rule making and regulatory activities by all department and agencies.”

Section II of the Executive Order outlines the authority of the Office of Regulatory Reinvention.

The Office of Regulatory Reinvention shall possess all authority, powers, duties, functions, responsibilities, and rule making authority previously transferred to the State Office of Administrative Hearings and Rules under Section V of Executive Order 2005-1 and under Executive Order 2005-26 relative to the review, approval, processing, compilation, publication and coordination of administrative rules, in addition to all authority, powers, duties, responsibilities, and rule making authority described below.

Section III of the Executive Order further described the authority of the ORR and granted it the authority to:

- Complete a systematic review of all existing and proposed rules and the rule making processes (Section III A); and
- Make a written report to the Governor with respect to its recommendations concerning existing rules and regulations, and proposed rulemaking and regulatory activities (Section III B).

Despite a clear directive to review rules and non-rule regulatory actions (a directive that is reiterated a minimum of three separate times in the EO), the ORR immediately expanded the scope of the review to include statutes, or more specifically the Michigan Liquor Control Code. In fact, out of the 78 items reviewed and voted on by the LCARC, 43 focused on statutory changes to Michigan’s alcoholic beverage laws.⁴ Only 35 proposals were related to rules and non-rule regulatory actions.

This is important because one of the major beliefs regarding Michigan’s regulatory structure is that administrative agencies, such as the Michigan Liquor Control Commission, have not followed statutory

⁴ On Page 5 of the LCARC report it is reported that “nearly over 100” proposals were reviewed. However, 78 votes are tallied in the report. The discrepancy appears to be a result of some proposals being grouped together in single votes. In addition it should be noted that the ORR claims that there were 67 recommendations but a review of the actual votes listed in the LCARC report indicates that 70 recommendations were made.

directives. By focusing on the statutory desires of individual members of the LCARC, the Committee failed to adequately analyze approximately 95 percent of Michigan’s alcohol rules⁵ and virtually ignored non-rule regulatory actions (with the exception of the licensing process) which have overtaken the Michigan Liquor Control Code.

Therefore, the LCARC and the ORR failed in its No. 1 duty under the EO. Neither entity adequately reviewed the rules and regulations to determine if they meet the criteria laid out in the EO, including whether they are consistent with statute.

In addition, the ORR dictated the results of the LCARC review in an attempt to only get recommendations for change or repeal of rules and regulations. In fact, the LCARC went so far as to limit stakeholder comments to suggestions for changes and repeal of existing rules and regulations only. This was contrary to Section III C of the Governor’s EO, which stated:

“The Office of Regulatory Reinvention shall post the names of the Advisory Rules Committees and the names of their members on an internet site with information regarding the anticipated scope of the rules and regulations to be reviewed by each Advisory Rules Committee. The internet site shall include an opportunity for the public to offer comments and suggestions on rules being reviewed.”

There is no directive or authorization in the EO that orders the ORR to only issue recommendations to change or repeal rules or to limit the stakeholder comments to suggestions for changing or repealing rules.

However, as Appendix D demonstrates, that is exactly what the ORR did. As indicated earlier in this report, the ORR only solicited comments from stakeholders that either sought changes to or repeal of current rules and regulations. There was no avenue presented for comments in support of existing regulations. In essence the ORR did everything it could to ensure that the review of Michigan’s alcohol safeguards would be biased against the current regulatory framework, regardless of the fact that the current framework has produced tremendous economic and public health successes.

Application of EO Standards of Review

Section III D of the EO spells out the factors that Advisory Committees and the ORR are required to use when evaluating promulgated (existing) and proposed rules. We stress that the EO itself required that the following factors, spelled out in the EO, be used as the criteria to evaluate existing and proposed rules:

- 1. The health or safety benefits of the rules; (*emphasis added*)**
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements, and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;

⁵ There are approximately 214 rules under Michigan’s liquor control code and based on the LCARC recommendations the committee reviewed approximately 11 rules.

5. The extent to which the rules exceed national or regional compliance requirements or other standards;
6. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by these rules since the last evaluation;
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules;
8. The recommendations of any Advisory Rules Committees formed pursuant to this Order, **which shall consider the factors set forth in paragraphs 1-7 of this Section III D; (emphasis added)**
9. The recommendations of any departments or agencies that are or will be charged with the implementation or enforcement of the rules. **Those departments or agencies shall also review the rules and shall consider the factors set forth in paragraphs 1-7 of this Section III D; (emphasis added)**
10. Comments received from the public under Section III of this order;
11. The nature of any complaints or comments the Office of Regulatory Reinvention receives, or any department or agencies receive, from the public concerning the rules; and
12. Other factors the Office of Regulatory Reinvention considers necessary or appropriate.

Despite the requirement that these factors be used as a means to evaluate both existing and proposed rules, the LCARC did not apply these factors to the rules they reviewed or the statutes that they spent the majority of their time reviewing. In addition, there is no evidence that either the ORR or the agencies and departments that reviewed the rules ever applied the factors required by the EO.

Considering the fact that the Governor directed three different entities – the ORR, Advisory Rules Committees and Department/Agencies – to apply these factors to the rules, it is astonishing that no documentation of any such review has been presented!

Of greatest concern to the signatories of this counter-report is standard No. 1: “The health or safety benefits of the rules.” Not only was this standard not applied to many of the recommendations of the LCARC or the ORR, the lack of a significant public health and law enforcement voice on the LCARC virtually ensured that public health and safety would not be adequately considered.

It is reasonable, appropriate and expected that members of the regulated industry would focus on ways to grow economically. However, absent significant public health, law enforcement, education and health care voices, it was foreseeable that a committee made up of these industry interests would give little thought to public health and local communities.⁶ The fact that the ORR did not foresee or chose to ignore the potential for this result is inexcusable.

We the signatories strongly believe that had the ORR appointed a committee that included a more robust public health and law enforcement presence, the recommendations would have been more mindful of public health, safety and community impacts even as it addressed reforms to Michigan’s regulatory structure on alcohol.

⁶ Public health groups raised this concern and attempted to attend LCARC meetings, but were turned away, further ensuring that their voices and concerns would not be heard during these closed LCARC meetings. (*Crain’s Detroit Business*, 8/25/2011)

RECOMMENDATIONS THAT PLACE PUBLIC HEALTH AND SAFETY AT RISK

By failing to apply the standards laid out in the EO, the LCARC and the ORR made several recommendations that, if implemented, will negatively impact public health and safety, Michigan's emerging craft beer and small winemaker industry, small independent retailers, wholesalers, product selection and competition. This counter-report outlines some specific examples.

OVER-EXPANSION OF LICENSES AND PRODUCT, LEADING TO INCREASED ALCOHOL ACCESS

Since 9/11, Michigan communities have 3,585 fewer law enforcement officers on the streets today to keep local neighborhoods safe.⁷ This fact highlights one of the central flaws of the membership of the LCARC: Had a municipal law enforcement voice been included on the panel (which it was not), this representative would have been in the position to state clearly and unambiguously that local law enforcement departments are already under tremendous strain. Already called upon to do more with fewer resources, they will be under even greater pressure if access to alcohol were to be expanded, which is the end result of the ORR recommendations

Both the LCARC and the ORR failed to account for public health and safety and the concerns of Michigan residents by recommending a significant expansion of the number of retail outlets selling alcohol.⁸

Weakening safeguards that will result in the proliferation of more alcohol outlets – and more alcohol-related problems – will stretch local law enforcement officers even thinner than they already are, putting the communities they serve at risk.

Currently, Michigan has over 16,000 retail outlets selling alcohol⁹, which places us ninth in the nation¹⁰ and provides numerous avenues for consumers to purchase products. The state allows wineries to ship wine directly to consumers' homes in Michigan and allows retailers, microbrewers and brewpubs to deliver beer and wine to consumers in Michigan. In addition, retailers are also allowed to deliver spirits to consumers in connection with catered events. In other words, Michigan consumers do not have a problem finding a retail outlet to meet their demand for alcoholic beverages: 94 percent of likely Michigan voters say it's easy to find a variety of beer, wine and liquor in their communities.¹¹

More importantly, numerous studies have shown that alcohol outlet density is directly related to the level of alcohol harm that neighborhoods experience, particularly violence.¹²

Some of the irresponsible LCARC/ORR recommendations to expand retail licenses include the following:

⁷ Michigan Commission on Law Enforcement Standards, data as of 7/31/2012.

⁸ Public Opinion Strategies & Greenberg Quinlan Rosner Research statewide poll of likely Michigan voters 1/31-2/2/2012.

⁹ Source, Michigan Liquor Control Commission

¹⁰ Source, The Beer Institute, The Economic Impact of the Beer Industry 2010

¹¹ Public Opinion Strategies & Greenberg Quinlan Rosner Research statewide poll of likely Michigan voters 1/31-2/2/2012.

¹² Michigan Department of Community Health, Bureau of Disease Control, Prevention & Epidemiology (10/25/2011); Marin Institute, Alcohol outlet density and public health, (11/9/2011).

Statutorily lower the inventory requirement for gas stations to receive Specially Designated Merchant (SDM) licenses (MCL436.1541)

Currently, Michigan law allows some gas stations in rural areas that have lower populations to also sell alcohol for consumption off of the premises (herein referred to as the rural exemption). This was and continues to be done because some less populated areas of the state have limited retail outlets to service them and this allows those retail outlets that are gas stations to provide additional service to customers.

In addition, in areas where a gas station can't qualify under the rural exemption, an exemption was created that allowed only those gas stations with a minimum inventory of \$250,000 – those resembling true convenience and grocery stores – to obtain a Specially Designated Merchant (SDM) license, which licenses the retailer to sell beer and wine and/or allows the retailer to receive a Specially Designated Distributor (SDD) license, which allows the retailer to sell spirits. The LCARC and the ORR have recommended that the current inventory level of \$250,000 be lowered to \$50,000 in order to allow more gas stations to receive SDM licenses. This will lead to negative consequences.

First, there are no caps on the number of SDM licenses that can be issued. Second, the recommendation does not define what can be considered “inventory.” Some have suggested that inventory includes gas, tobacco and lottery products, which virtually ensures that every gas station will qualify for an SDM. Under this definition, that's approximately 3,200 additional SDM licenses in Michigan. To put this in perspective, Michigan currently has approximately 16,000 licensed retail outlets. Approximately 1,820 of these are gas stations¹³. Currently Michigan has over 5,000 gas stations. This proposed change could add around 3,200 more licensed retail outlets, a 20-percent increase in the total number of Michigan licensees.

In addition to the over-saturation that could undercut the success and profitability of existing convenience stores (including those that sell gas under the current inventory levels), the members of LCARC and the ORR failed to consider recently passed legislation that allows holders of SDM and SDD licenses to receive permits allowing them to provide consumers with samples of beer, wine and spirits – samples that will be consumed on the premises of the SDM and SDD licensee.¹⁴ Gas stations with SDM and/or SDD licenses qualify to engage in this activity. Creating 3,200 more gas station licensees where alcohol can be given away to consumers for immediate consumption as they get back behind the wheel and drive away is simply irresponsible, bad for motorist, local communities and public health and safety.

This proposal, the oversaturation of licenses that it will create and the increased access to immediately consumable alcoholic beverages at gas stations will be harmful to the health and welfare of the community and will further devalue licenses that already exist.

Statutorily increasing the number of resort licenses issued per year

The ORR/LCARC report recommends creating an additional 40 resort licenses per year, and lowering the capital investment threshold required for these new licenses to \$500,000.

¹³ Michigan Liquor Control Commission

¹⁴ Public Act 213 of 2010 and PA 175 of 2010

Currently, Michigan's on premises liquor licenses are issued according to a quota system that is based on the population of each city, township and village. The legislature has provided for licenses to be issued over and above the quota many times and for many reasons over the years. Currently there are approximately 1,194 existing resort licenses that have been issued without regard to the current quota requirements¹⁵ and the statute (MCL 436.1531) allows the Liquor Control Commission to issue 20 more of these licenses every year.

The quota system was established to keep a balance in the number of establishments licensed to sell alcohol. Providing an additional avenue to avoid the quota limits puts existing businesses and public health at risk by:

- Devaluing the lifetime investments made by current licensees;
- Increasing the likelihood of selling to underage minors;
- Increasing the possibility of selling to intoxicated people; and
- Increasing the likelihood of other illegal acts.

These risks are real because businesses want to remain profitable, which becomes more difficult in light of the continual increase of licensed establishments, especially when many are allowed to enter the market with significantly less capital investment than existing licensees. Accordingly, in oversaturated markets licensees are more willing to sell to undesirable customers, such as intoxicated patrons and minors, in order to be profitable and remain in business.¹⁶

The number of original resort-type licenses issued by the Commission was capped at 550. However, over the years more have been created. Today, resort licenses are issued to applicants who operate businesses that meet certain requirements. Five of the 20 additional resort licenses that can be issued every year must be issued to applicants that invest at least \$75,000. The remaining 15 of these resort licenses can be issued to applicants who invest at least \$1.5 million in the business. They also must meet other requirements by being a full-service restaurant, a hotel with at least 25 rooms, a conference center that can accommodate at least 200 people, a sports/entertainment venue with at least 4,500 seats, such as the Palace of Auburn Hills, or an 18-hole golf course of at least 5,000 yards open to the public.

As it currently stands, not all of the approximately 1,194 available resort licenses are operating at this time. Of the 550 resort licenses that can be transferred anywhere in the state, 75 are in escrow and available for transfer to qualifying businesses. There are 52 non-transferable resort licenses that are in escrow and not being used.¹⁷

The statute allows several other types of licenses to be issued without regard to quota as well. Cities, villages and townships that are experiencing redevelopment within their communities can qualify for additional licenses. Some cities, such as Grand Rapids, have a lot of money being invested in industrial, residential and commercial development and therefore qualify for many on-premises liquor licenses.

¹⁵ Michigan Liquor Control Commission

¹⁶ Michigan Department of Community Health, Bureau of Disease Control, Prevention & Epidemiology (10/25/2011); Marin Institute, Alcohol outlet density and public health, (11/9/2011).

¹⁷ Michigan Liquor Control Commission

Despite the ready abundance of licenses that are available, the LCARC and ORR want to add another 40 licenses per year. They also want to lower the minimum investment to \$500,000. Considering the fact that over the last five years, the Commission has issued 50 percent or less of the number of resort licenses available¹⁸, this proposal is not needed.

With so many licensees available in the state as a whole, it is unwise to create new additional licenses that can circumvent quota requirements and be used in existing high density areas, rather than finding ways to better utilize the existing licenses that are available and not being used.

If a proposed licensee is unwilling to invest the capital to qualify for one of the many licenses already available, they may not be the type of business that the state should be licensing. This proposal is just an attempt to further circumvent the statutory on-premise quota limits in high license density areas of the state. As discussed above, these limits have already been drastically expanded due to numerous exemptions. By embracing the idea of expanding opportunities to avoid the quota limitation, the LCARC and the ORR are making an unsafe recommendation that will ultimately increase license density and negatively impact neighborhoods, families and public health.¹⁹

Allow wineries and beer manufacturers to sell and sample at farmers markets

Michigan's alcohol producers have several ways to access Michigan's alcohol market, including sales at licensed retailers, tastings at retail establishment (including off-premise licensees), on-site tasting rooms, off-site tasting rooms and direct shipping for wineries. The LCARC and ORR recommend extending direct shipping to beer. With about 16,000 outlets selling alcohol, finding alcohol products is NOT a problem for adult consumers in Michigan.²⁰ In fact, a staggering 94 percent of Michiganders believe that there are enough outlets in their communities to purchase alcohol.

According to the Michigan Farmers Market Association's web page, Michigan has approximately 280 farmers markets. Farmers markets are traditionally family friendly events, held on weekend mornings that cater to adults and children. By allowing sales at farm markets, Michigan is creating an additional alcohol outlet and unnecessarily expanding access to alcohol at family friendly venues. These licenses will increase the density of alcohol availability and compete with licensees that have made brick-and-mortar investments in their communities.

As with other LCARC/ORR recommendations, this new class of license is a risk to local businesses and community interests. Alcohol does not need to be present at every location and event in this state. Families should have a place where they can enjoy time together without having to deal with alcohol producers pitching their products.

Allowing beer to be directly shipped to consumers

¹⁸ Michigan Liquor Control Commission

¹⁹ Marin Institute. Alcohol Outlet Density and Public Health (11/9/2011); Cunradi CB et. al. Alcohol Outlets, Neighborhood Characteristics, and Intimate Partner Violence; Ecological Analysis of a California City. Journal of Urban Health; Bulletin of the New York Academy of Medicine, 88 (2); 191-200.

²⁰ Public Opinion Strategies & Greenberg Quinlan Rosner Research statewide poll of likely Michigan voters 1/31-2/2/2012.

Currently, both in-state and out-of- state wine suppliers that receive a direct shippers' license from the Michigan Liquor Control Commission are allowed to ship up to 1,500 cases a year (per each direct shipper) to Michigan consumers. Initially, only Michigan wineries were allowed to ship their products to Michigan consumers. In response to the United States Supreme Court decision in Granholm v Heald this right was expanded to out-of-state wine producers as well. Both the LCARC and the ORR have recommended extending this right to micro-brewers, which are Michigan licensed brewers of beer that produce less than 30,000 barrels of beer per year.

When this right was extended to wineries in Michigan and subsequently to out-of-state wineries, it was believed that states could require common carriers to check the identification of the person accepting delivery of the product. However, due to the recent U.S. Supreme Court ruling in the case of Rowe v New Hampshire Motor Transport Association, we now know that states are prohibited from requiring common carriers to check the identification of the person accepting delivery of alcoholic liquor. The Supreme Court decision not only makes the common carrier provisions of Michigan's current wine direct shipping statute unconstitutional, it also will prohibit Michigan from placing a similar safeguard in any statute designed to allow direct shipping of beer. This potentially means more minor access to alcohol. Even before the court made it unconstitutional to have common carriers check the identification of persons accepting delivery of alcoholic liquor, studies and law enforcement indicated that minors used direct shipping as a way to gain access to alcohol.²¹

While we believe that the direct shipping of wine exposes minors to illegal access to alcohol, the direct shipping of beer poses an even greater risk. Studies indicate that high school aged males who consume alcoholic beverages choose to drink beer at a rate 24 percent higher than wine. High school aged women who consume alcohol choose to drink beer at a rate 8 percent higher than wine.²²

Had a more diverse LCARC committee been formed, it is likely that the committee and the ORR would have considered the fact that in 2010, the cost of underage drinking nationally was approximately \$62 billion. In Michigan, underage drinking cost taxpayers \$2 billion a year, according to the Michigan Department of Community Health. (Additionally, Governor Snyder referenced this figure in his proclamation designating April as Alcohol Awareness month in Michigan.) These costs include medical care, work loss and pain and suffering costs related to alcohol related problems.²³ Hospitalization alone is estimated to cost approximately \$755 million per year.²⁴

Expansion of an already unenforceable statute to bring in access to alcohol beverage types that are more popular with high school aged youth is unwise and will lead to more minor access to alcohol.

Elimination of the fingerprint requirement

Currently, applicants for liquor licenses must be fingerprinted. Their fingerprints are run through the Automated Fingerprint Identification System (AFIS), which will indicate if applicants have a record for

²¹ 2006 Teenage Research Unlimited (TRU) Research Finding: Underage Alcohol Access & Consumption; Ingham County Sheriff Gene Wrigglesworth, *Lansing State Journal*, 12/8/2008

²² Michigan Department of Community Health, Bureau of Epidemiology, Alcohol Epidemiology Program & Tobacco Program (11/2010)

²³ Pacific Institute for Research and Evaluation (September 2011)

²⁴ *Journal of Adolescent Health* (2/12/2012)

any crimes in Michigan or other states. Based on faulty information, many members of the LCARC voted to eliminate this vital step for all applicants. The ORR is now recommending moving away from this reliable system and to replace it with the Law Enforcement Information Network (LEIN), National Crime Information Center (NCIC) and Internet Criminal History Access Tool (ICHAT) checks based only on the name supplied by the applicant.

Eliminating this process for existing licensees (those that have already been fingerprinted) that are seeking to expand or open additional licensed establishments makes sense. However, for new applicants this vital step must take place to ensure that the MLCC actually knows the identity of the person asking for a license. While running LEIN, NCIC and ICHAT will reveal the criminal history of the name supplied, it will not reveal the criminal history of an applicant that has provided a false name.

By no longer requiring fingerprints, law enforcement and the MLCC will be limited in their ability to keep convicted criminals from receiving liquor licenses. This increases the risk that convicted criminals will own and operate licensed establishments within our communities. This does nothing to help economic development. On the other hand, it does a lot to put the public at risk.

Perhaps better than any other example, this recommendation demonstrates the flawed makeup of the LCARC committee. The panel had no representative from local and municipal-level law enforcement, who perform the majority of fingerprinting and background checks. Because law enforcement entities at the most local levels were not represented at all on the LCARC to point out this fact, many panel members – through no fault of their own – may not have been made aware of this frontline reality and voted on the issue without full knowledge of its impact.

Fingerprinting is a necessary part of the process of performing reliable criminal history checks and the bulk of this task is done by local, municipal law enforcement. It is a time tested fact that fingerprints are the most cost-effective way for law enforcement to reliably determine who they are dealing with and is way more effective than simply relying on the name a person supplies.

Elimination of finance verification

Currently, all applicants must verify their financing arrangements before they are eligible for a license. These checks are designed to ensure that applicants have sound financial resources and that they are not using illegal funds. These checks also determine who the true owner of the proposed licensed establishment will be. The LCARC and the ORR have made the irresponsible recommendation that verification of finances be eliminated for all applicants. In other words, they are recommending the state look the other way when it comes to who owns licensed establishment, who funds licensed establishments, where financing came from and whether a proposed licensee is financially capable of running an establishment.

In place of these safeguards, the LCARC and ORR recommend that applicants simply provide a sworn affidavit attesting to the source and legitimacy of funds used to buy or start the business. However, they go on to recommend that even that ineffective measure shall not be required for applicants who are publicly traded corporations, LLCs or partnerships, or subsidiaries of such a publicly traded entity.

While removing the verification of financing for existing licensees that are expanding or acquiring new licensees may make sense, removing the verification of financial information for new applicants, or

previously rescinded applicants will promote illegal enterprises, financially unstable licensees, illegal acts and unfair competition to legitimate businesses, thereby placing public health and safety at risk.

Verification of financing is the most critical part of controlling alcohol in Michigan.

Applicants must have enough funds to purchase and operate the business for which they apply. If they are underfunded and face financial pressures as a consequence, they may be inclined to resort to tactics such as selling to underage people and allowing over-consumption to make the money they need to stay in business. Moreover, people who do not use their own funds, or are not responsible for the funds that have been invested into a licensed establishment, will have significantly less motivation to operate their businesses within the law.

Not verifying the funds of a new applicant or a previously rescinded applicant at any stage of the investigation or allowing a “sworn affidavit” will allow people to claim they are getting the funds – and they may never get them. A worst scenario would be funds acquired through illegal enterprises such as gambling, the sale of drugs and other illegal activities.

If the financing for first time applicants and previously rescinded applicants is not investigated and verified, the MLCC will not know who owns the business, who is operating the business or who is receiving the profits of the business. A licensee who has their license revoked could finance the new “owner” of the business and still be controlling the operation.

A proper investigation of all finances used to purchase a liquor licensed business that scrutinizes and verifies all funding as legitimate before the license is issued is essential to protect the health, welfare and overall interests of the citizens of Michigan. It also protects legitimate licensees who have invested their lives into their businesses from unfair competition financed by illegal enterprises.

ADDITIONAL PROPOSALS THAT THREATEN MICHIGAN’S REGULATORY SAFEGUARDS

Michigan has a system of alcohol regulations that allow all segments of the industry to thrive and succeed. This includes producers of alcoholic beverages that are based in Michigan as well as other states and countries.

Many of the LCARC and ORR recommendations are designed to provide rights to Michigan-based entities by creating exceptions to or outright elimination of Michigan’s three-tier system of alcohol distribution. However, these recommendations do not extend to out-of-state entities. While this may help the “home team,” we have seen this movie before and know how it ends – in lawsuits and attacks on a system that has worked well at balancing health and safety concerns with business and consumer needs.

As previously mentioned, the state of Michigan was sued and lost in a case called Granholm v Heald. The lawsuit was over Michigan’s winery direct shipping law. The case was filed because Michigan allowed in-state wineries to ship wine directly to Michigan consumers but prohibited out-of-state wineries from doing the same. In other words, we were “helping the home team” by eliminating allowing it to avoid Michigan’s three tier distribution system. The end result of this lawsuit was all wineries, in-state an out-of-state, can now bypass Michigan’s three tier distribution system and direct ship wine into Michigan.

Recommendations designed to create more exceptions to, or outright eliminate, Michigan’s three-tier distribution system to allow in-state entities exemptions to Michigan’s franchise law or proposals to

allow all but one in-state brewer to operate in a single-tier distribution system (issuing one license that allows brewpubs and craft brewers to be supplier, distributors and retailers) will inevitably result in the collapse of Michigan's successful regulatory structure. A structure that has proven to be the bedrock of many of the alcohol safeguards that protect public health and safety while providing the benefit of strong economic growth for all sectors of Michigan's beverage alcohol industry. Make no mistake, providing exceptions for Michigan-based businesses will invite lawsuits, the results of which will weaken Michigan's regulatory structure and harm public health and safety.

CONCLUSION

While we support efforts to improve regulations so they help, not hinder, economic growth in Michigan, it can't be done at the expense of our communities and families. The LCARC and the ORR should not have assumed that all regulation is harmful to the economy and that every aspect of Michigan's economy is broken. We urge Governor Snyder, the Legislature and the Michigan Liquor Control Commission not to make the same assumption and to reject the large number of irresponsible proposals of the LCARC and ORR.

The fact is Michigan's alcohol industry is prospering and has been a bright spot in Michigan's still-fragile economy. Recent economic data indicates that Michigan's balanced approach on alcohol regulations is encouraging strong economic growth in our beverage industry while also protecting public health. In other words, Michigan's alcohol rules and laws are working and outperforming the efforts of other states. [*See Appendix B*]

The release of the ORR report on June 29 was met with criticism and concern not only from law enforcement, public safety and public health advocates, but also from craft brewers such as Bell's Brewery. [*Appendix F*]

Earlier, in late 2011, several business groups signed a joint letter together with a network of law enforcement, public health, substance abuse prevention groups, education professionals and others urging policymakers to uphold the current system of alcohol safeguards and reject attempts to weaken that system. [*Appendix G*]

It is important to note that based on numbers provided by the Michigan Liquor Control Commission, as of July 2011, Michigan continues to offer incredible choice and in-state manufacturers are a big part of that growth.

- 725 wine suppliers from Michigan and across the United States are licensed by the state to ship directly to Michigan residents.
- 154 Michigan winemakers produce wine in the state.
- 95 craft brewers make beer in Michigan.
- 674 suppliers of beer and wine from outside the state bring products into the Michigan marketplace.
- 802 new wines entered the Michigan market in one month – June 2011 – alone.
- 47 new brands of beer entered the Michigan market in June 2011.

These measurable figures demonstrate that Michigan's beverage alcohol industry is strong. The system works well and does NOT need an overhaul. Many of the recommendations put forth by the LCARC and ORR represent a narrow agenda that will only increase the density of licensees and sales at the risk of public health and safety.

Responsible businesses – including many signatories of this counter-report- and some members of the LCARC, recognize that they have a duty to operate in a manner that not only considers but protects the communities they serve. Unfortunately many of the LCARC and ORR recommendations demonstrate that some individuals do not recognize this responsibility.

Despite the belief of some on the LCARC and the ORR, the Governor's EO did not direct or demand change. What it ordered is a review of the current system. It is astounding that the LCARC and the ORR did not review existing economic data and metrics, and report back that Michigan's alcoholic beverage

industry is strong, highly competitive and growing. While we agree on the need for modernization, we also agree that the system works. It is not broken and it deserves to be upheld for the sake of local businesses and most importantly public health and safety.

APPENDIX A

HEALTH, SAFETY IMPACT

Michigan's system of alcohol rules, regulations and laws have succeeded in helping reduce health and safety problems related to alcohol use.

Since 1997, underage drinking has declined significantly (as measured by the Michigan Youth Risk Behavior Survey) and is better than the national average.

- Lifetime use: Michigan average 68.8% in 2009, down from 81.9% in 1997. (National average: 72.5% in 2009)
- Alcohol use before age 13: Michigan average 18.8% in 2009, down from 34.9% in 1997. (National average: 21.1% in 2009)
- Use in the past 30 days: Michigan average 37% in 2009, down from 50.5% in 1997. (National average: 41.8% in 2009)
- Binge drinking: Michigan average 23.2% in 2009, down from 32.4% in 1997. (National average: 24.2% in 2009)

APPENDIX B

MICHIGAN'S GROWING LOCAL BEER, WINE INDUSTRY

- Sales of Michigan craft beer in Michigan supermarkets almost doubled from \$11.2 million in 2007 to \$22 million in 2010. (Source: *Symphony IRI Group*)
- While the state's unemployment rate was around 12 percent entering 2011, breweries, microbreweries and brew pubs added jobs, increased production and invested in expansions and renovations totaling more than \$70 million. (Source: *Kalamazoo Gazette*, 2/20/11)
- Michigan's total of more than 80 beer-makers ranks fifth nationally; at least three more plan to open this year. (Source: *The Associated Press*, 2/28/2011)
- In 2010, Michigan's craft beer industry had its largest growth spike ever, jumping 21 percent in sales over 2009 – outpacing the national average of 5 percent. Its growth counters the U.S. beer industry as a whole, which declined 4 percent in 2010. (Source: *The Eastern Echo*, 7/1/2011)
- Michigan wines are also expanding at a rate of around 10 percent every year since 2005, according to the Michigan Grape and Wine Industry Council.
- Wholesalers continue to remain stable, protecting good-paying local jobs for more than 5,100 men and women across the state. (Source: *Michigan Beer & Wine Wholesalers Association*)

APPENDIX C

Constitution of the Liquor Control Advisory Rules Committee

The actual balance of the LCARC illustrates the point that public health, public safety and law enforcement voices were conspicuously absent and that the industry had a super-majority of the committee members. The committee members were as follows:

Industry representatives (17):

- Aday Arabo, President and CEO, Associated Food and Petroleum Dealers;
- Ritchie Coleman, Regional Manager, Speedway Gas Stations;
- Linda Gobler, President and CEO, Michigan Grocers Association;
- Michael Brown, Partner Carlin Edwards Brown PLLC (represents licensed industry participants);
- J Lambrecht, Proprietor, Fountain Bistro and Bookies Bar and Grille;
- Gerald Smith, Owner/stockholder, Talley's Log Cabin Bar, Inc.;
- Andy Deloney, Chairman, Michigan Liquor Control Commissioner (recently resigned as Vice President of the Michigan Restaurant Association)
- Joe Borello, President, Tasters Guild International (an entity that promotes wine retailers)
- Mark Burzych, Member, Fahey Schultz Burzych Rhodes, PLC (represents licensed industry participants)
- Mike Telliga, Director of Government Affairs and Special Projects, Midland Area Chamber of Commerce (members include retailers)
- Pat Moody, Executive Vice President, Cornerstone Chamber of Commerce (members include retailers)
- Larry Alexander, President and CEO, Detroit Metro Convention and Visitors Bureau (revenues derived, in part, from retail interests)
- Donald Coe, Managing Partner, Black Star Farms (a Michigan winery);
- Matt Greff, Owner, Arbor Brewing Company (a Michigan Microbrewer)
- Marsha Keenoy, Director of Michigan Market, Diageo (world's largest alcohol beverage supplier)
- Greg O'Neil, President/Owner, O.K. Distributors (A beer and wine wholesaler)
- Harold McGovern, President, NWS of Michigan (a wine wholesaler and authorized distribution agent for the state of Michigan)

Public health (1):

- Laura Fitzpatrick, Program Manager/Advocacy Liaison MCHP/ Mercy Health Partners

Law enforcement (1):

- Dwain Dennis, Ionia County Sheriff

Local government (1):

- Samantha Harkins, Legislative Associate, Michigan Municipal League

Office of Regulatory Reinvention (1):

- Mike Zimmer, Chief Deputy Director of the Department of Licensing and Regulatory Affairs.

In contrast to its alcohol-industry-heavy make-up, the LCARC had **NO** representative from sectors that play key roles in maintaining public health and safety, including the following:

- NO emergency room doctors, trauma nurses and other medical first responders
- NO emergency first responders, such as firefighters
- NO addiction therapists
- NO municipal and local-level law enforcement
- NO substance abuse prevention advocates
- NO Michigan Medical Association
- NO Michigan Association of Community Health

The ORR created a committee with a majority of alcohol industry interests – and increased the problem by failing to balance the industry interests with public health and law enforcement. This problem was worsened by only requiring the support of a simple majority of “the members voting” for a proposal to pass.

Together with the industry-dominated makeup of the committee, the majority rule approach virtually ensured that the wishes of many industry representatives would prevail regardless of the concerns of others on the LCARC. With a super majority of the members, even if some industry representatives considered public health concerns, (which a few did) industry interests still outweighed any public health, local community or law enforcement concerns.

For these reasons, it is impossible to conclude that the LCARC complied with the Governor’s EO or his expectation that a broad spectrum of stakeholders be included in the committee membership. The only stakeholders with any power to impact the final recommendations of the ORR were industry representatives; no other group had a voice absent having industry support.

APPENDIX D

http://www.michigan.gov/lara/0,4601,7-154-35738-254962--,00.i LARA - Provide your com... x

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Office of Regulatory Reinvntion

- The Rulemaking Process
- Recent & Pending Rule Changes
- Latest Rule Activity
- Michigan Register
- Michigan Administrative Code (Rules)
- Annual Admin Code Supplement (AACCS)
- Search ORR Database
- Agencies, Bureaus & Commissions
- Construction Codes
- Commercial Services
- Health Systems & Health Profession
- Inside LARA
- Liquor Control Commission
- MIOSHA
- Michigan Administrative

Provide your comments on existing rules

THE OFFICE OF REGULATORY REINVENTION

Michigan's citizens deserve a regulatory system that fosters business growth and job creation. The Office of Regulatory Reinvntion (ORR) is dedicated to working with all citizens to identify obsolete, burdensome and unnecessary regulations that are limiting economic growth.

We need your help. We would appreciate hearing your thoughts regarding which existing regulations could be changed or eliminated in order to make Michigan's regulatory system more simple, fair, efficient, and transparent.

Your suggestion will be automatically routed to the ORR. Your E-Mail Address is required in case the ORR staff needs to contact you with questions or requires additional information. Please specify which rules, rule numbers, or rule set titles your comment addresses, so that the ORR can more effectively respond to your concerns.

Please do not use this form to send comments relating to proposed draft rules as part of the public hearing process prescribed by the Administrative Procedures Act. You should submit such comments to the promulgating department or agency. Comments on existing statutes or pending legislation are outside of the scope of the ORR and should be directed to your legislator.

Thank you for your contribution to the Office of Regulatory Reinvntion's goal of creating a more favorable business environment in Michigan!

First Name:

Last Name:

E-Mail*:

Applicable Rule, Rule No., or Rule Set Title*:

Related Content

- ORR Recommendations
- Advisory Rule Committee Members
- Using Recent & Pending Rule Changes
- Using the Administrative Code

10:14 AM 3/14/2012

Michiganders OK with booze regulations, poll finds

By PAUL EGAN

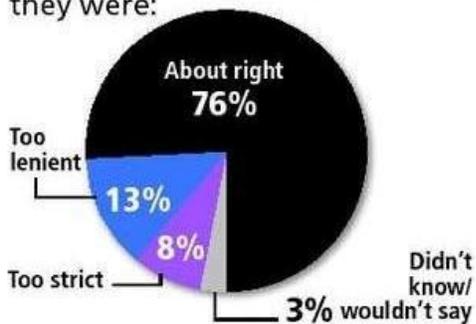
Saturday, March 17, 2012

LANSING -- A poll commissioned by Michigan's beer and wine wholesalers suggests state residents aren't overly concerned with cutting "red tape" when it comes to alcohol sales.

By a 2-1 margin, respondents said it was more important to "ensure that Michigan has strong safeguards on the sale of alcohol to ensure public safety," than "to reform Michigan's outdated regulations that tie up local producers and small businesses."

POLL SUGGESTS MICHIGAN RESIDENTS OPPOSE EASING OF ALCOHOL RULES

Asked what they thought about Michigan's current alcohol regulations, those polled said they were:



Source: Greenberg Quinlan Rosner Research/Public Opinion Strategies

DETROIT FREE PRESS

More than 70% said alcohol needs stronger regulations than other consumer products and 76% said existing regulations on booze were "about right."

The poll of 506 likely voters, conducted in early February, has a margin of error of plus or minus 4.4 percentage points, according to the poll produced jointly by the Republican polling firm Public Opinion Strategies and the Democratic firm Greenberg Quinlan Rosner Research.

The results were released Friday as a state advisory committee is working on a report to Gov. Rick Snyder that's expected to recommend changes to the state's alcohol control regulations. It's part of a systematic effort by the Snyder administration to modernize and ease business regulations statewide.

"The system works and now is not the time to dismantle a system that protects people's lives," said Mike Tobias, coordinator for the Michigan Coalition to Reduce Underage Drinking.

Mike Lashbrook, president of the Michigan Beer and Wine Wholesalers Association, said current laws require large and small beer and wine producers to sell their products through independent private distributors. He said that helps put Michigan craft beers and wines on an equal footing with large international producers.

[PRESS RELEASE]

FOR IMMEDIATE RELEASE

Friday, March 16, 2012

By wide margins, MI voters tell policymakers that public safety, health trump economics on alcohol

LANSING – Overwhelming majorities of Michigan voters – Republicans, Democrats and independents – say public health and safety concerns trump all economic factors such as updating regulations when it comes to alcohol regulations and safeguards, a new bipartisan poll released today shows.

“Voters from all backgrounds – Republicans, Democrats and independents – are quite satisfied with Michigan’s current regulations and standards for alcohol,” said **Lori Weigel**, partner at **Public Opinion Strategies**, the nation’s largest Republican polling firm with experience in hundreds of federal, state, legislative and local campaigns in Michigan since its inception. “Michigan voters believe that beer, wine and liquor are widely available and easy for adults to purchase and few express concerns that alcohol costs more in Michigan than other states. Three-quarters of Michigan voters across the political spectrum reject the idea that Michigan’s current alcohol laws are too strict.”

The bipartisan poll conducted Jan. 30-Feb. 2 found the following among likely Michigan voters:

- By a 2-to-1 margin (62 to 29 percent), voters say that it is more important to “ensure that Michigan has strong safeguards on the sale of alcohol to ensure public safety” rather than “to reform Michigan’s outdated regulations that tie up local producers and small businesses.”
 - Sixty-five percent of Republican voters and 68 percent of Democratic voters agree.
- More than 70 percent of voters agree that alcohol needs stronger regulations than other consumer products
- 76 percent of voters say Michigan’s safeguards and rules regarding alcohol are either “about right” or “too lenient.”
- Strong Democrats and strong Republicans are less likely to believe current laws are too strict than independents and weak partisans

“At almost every possible turn, Michigan voters believe that public health and safety should trump the potential economic benefits of reducing regulations on businesses,” said **Andrew Baumann**, vice president at **Greenberg Quinlan Rosner Research**, a Democratic firm that co-wrote the poll with POS. “Increasing choice or reducing the price of alcohol barely even register as concerns.”

The poll also found that Michigan voters – Republicans, Democrats and independents – are less likely to support politicians who vote to loosen alcohol regulations.

“Parents, police officers, retailers and educators already have a hard enough time keeping alcohol out of the hands of minors and teens,” said **Bob Stevenson**, executive director of the **Michigan Association of Police Chiefs**. “Weakening alcohol safeguards will only worsen alcohol-related problems and make things more difficult for all of us.”

“Substance abuse prevention groups, health care advocates, law enforcement, educators, local businesses, community leaders and more all agree Michigan’s existing alcohol system protects public health and safety while supporting Michigan businesses,” said **Mike Tobias**, coordinator for the **Michigan Coalition to Reduce Underage Drinking**. “Michigan’s alcohol safeguards have helped reduce excessive alcohol use and drunken driving, while supporting the growth of Michigan’s craft beer and wine sectors. The system works and now is not the time to dismantle a system that protects people’s lives.”

“Our policymakers should be mindful of how decisions on alcohol can directly impact young people, especially if those decisions make it easier for youth and minors to get access to a substance that should be available only to responsible adults,” said **Bob Howe**, executive director of the **Michigan Elementary and Middle School Principals Association**. “This poll is an important reminder for decision-makers in Lansing going forward. Michigan families’ top priorities are creating jobs and strengthening our children’s education, and it’s important for Lansing to stay focused on these issues.”

“Michigan’s current law requires beer and wine producers big and small to sell their products through independent private distributors, who help Michigan craft beers and wines compete on an equal footing with large international producers,” said **Mike Lashbrook**, president of the **Michigan Beer & Wine Wholesalers Association**, which commissioned the survey. “Weakening Michigan’s alcohol safeguards would open the door for large international producers to force Michigan wineries and craft brewers out of the market, costing Michigan jobs.”

The poll had a sample size of 506 likely voters and a margin of error of plus-minus 4.4 percentage points.

###

APPENDIX F



Bell's Brewery, Arbor Brewing Co. disagree on proposed changes to Michigan's liquor regulations

June 29, 2012

Melissa Anders | manders@mlive.com

LANSING, MI — Michigan's beer makers don't all see eye-to-eye on recommendations to loosen the state's craft brewery restrictions.

The Michigan Office of Regulatory Reinvention on Friday with 72 recommendations to update the state's liquor control system. The proposals came from a 21-member committee comprised of business owners, chambers of commerce leaders, state regulators, trade groups, law enforcement and others.

The changes, which require action by the legislature, would impact the state's growing craft beer industry that now boasts more than 100 breweries and brewpubs.

The recommendations largely maintain the state's [three-tier distribution system](#) that requires a distinct separation between licensed alcoholic beverage suppliers, wholesalers and retailers.

But the proposed rule changes would allow microbrewers, small wine makers and distilleries to sell their products to wholesalers, to consumers through direct shipment, or at retail locations for consumption on or off the licensed premises. The regulations would mirror those currently in place for Michigan's wineries.

Existing law prevents proprietors from owning both a microbrewery, which produces beer for off-premise sales, and a brewpub, which sells beer on premise. The committee recommends combining the two into a single small brewer's license.

There are ways around the law, by having two separate owners, but existing regulations didn't promote growth, said Scott Graham, executive director of the Michigan Brewers Guild Inc.

"Some of the people who have successfully operated brewpubs, it seems to be a logical extension for some of them to then want to take some of their beers to market," he said.

The committee also recommended allowing microbrewers and small winemakers from the state's franchise law if they comprise less than 3 percent of a wholesaler's volume. That would

allow the brewers to cancel or renegotiate their contracts with wholesalers as their business grows.

“Franchise laws that were wisely put in place to protect wholesalers from the undue bargaining power of their largest suppliers need to be updated to protect small suppliers from that same undue bargaining power,” the committee wrote in its report.

That doesn’t sit well with Larry Bell, owner of Bell’s Brewery in Kalamazoo, which is by far the state’s largest beer maker.

He said the franchise exemption could hurt wholesalers who rely on small brewers.

“While I do believe that the Michigan franchise law could have some amendments, I’m not so sure that this is the one to do it with,” he said.

Bell also criticized the state for not including large brewers or more wholesalers on the committee.

Matt Greff, owner of Arbor Brewing Co. in Ann Arbor, was the sole brewer on the committee.

He argued that supply chain decisions and other marketing considerations should be left to businesses, not the state.

“State laws and rules must support an independent distribution tier that is unencumbered ... and insure access to market by all brewers,” he said.

Bell called for more discussion on the recommendations.

“It’s going to take some serious dialogue for everybody in the business to come to some consensus to find some changes in the law,” he said.

http://mobile.mlive.com/advann Arbor/db_/contentdetail.htm?contentguid=022Fueop&full=true#display



Traverse City Record-Eagle

June 30, 2012

Group eyes changes to liquor laws

LANSING (AP) — State regulators unveiled 72 recommendations Friday intended to increase the size of Michigan's licensed beverage industry, but not all alcoholic beverage producers liked the results.

The Michigan Wine Producers Association said the suggested changes would make the regulation of Michigan wineries more business-friendly. Association President Mike Beck said his members welcome any recommendations "that sensibly support the responsible growth of the wine industry."

However, Bell's Brewery founder and CEO Larry Bell said Friday's report, which the state Office of Regulatory Reinvention sent to Gov. Rick Snyder, didn't represent the unanimous position of craft brewers — with Bell's being among the largest in Michigan.

"This report raises serious concerns and deserves close study by policymakers before they make any changes that inadvertently hurt Michigan businesses and endanger public health and safety," Bell added.

Among the biggest recommendations is to change the state law that makes it a crime to serve or sell alcohol to someone who's intoxicated. The report suggests that the crime should be harder to prosecute, with the law's language changed to say someone would have to "knowingly allow" an intoxicated person to be served rather than simply "allow." Such a change would require lawmakers' and the governor's approval, and it wouldn't be changed for situations where the person who was served was under age 21, the legal age for drinking.

Not all recommendations would need legislative approval; some could be adopted by the state as administrative rules. It is unlikely proposals needing lawmakers' OK could be drawn up and considered until this fall.

Friday's report suggests the state get rid of fingerprinting and financial verification requirements to hold a liquor license. That would be a mistake, said Mike Tobias, executive director of the group Michigan Alcohol Policy Promoting Health and Safety.

"The law enforcement people tell us it's not a good idea to reduce the fingerprinting and financial records" requirements, Tobias said. "That might be OK in some circumstances, but I trust the people in law enforcement." Police and school groups also opposed the changes. In a joint statement, the Michigan Association of Chiefs of Police and the Michigan Elementary

and Middle Schools Principals Association said any weakening of the state's alcohol laws that endangers public health should be rejected.

The Office of Regulatory Reinvention noted that public health and safety interests were represented on the committee that drafted the changes and shaped many of the recommendations. The office said its report also was developed with the help of representatives from the tourism and hospitality industries to promote business growth.

The recommendations also suggest allowing craft brewers in Michigan to have off-premise tasting rooms and provide free samples, along with other changes that allow them some of the sales and marketing rights enjoyed by the state's small wineries. Beer and wine wholesalers are likely to fight giving the small producers more leverage on where and how much they can sell their products.

The report also suggests that the state allow up to 40 resort licenses each year, make it easier for smaller gas stations to get a license to sell alcohol, and remove all prohibitions on how items provided by alcoholic beverage suppliers are used in contests and advertising. It recommends that certain types of alcohol permits be issued immediately and calls for raising fees to cover the state's costs and moving to one — rather than three — warehousing and delivery agent in the state.

<http://record-eagle.com/statenews/x1058724397/Group-eyes-changes-to-liquor-laws>

APPENDIX G

In December 2011, a diverse network of law enforcement, health advocacy, education, substance abuse prevention groups, local Michigan businesses, faith organizations and more signed a joint open letter to Gov. Rick Snyder, the Legislature and the public urging support for Michigan's current alcohol

regulations, laws and safeguards. The letter called on decision-makers to put public health and safety considerations ahead of other factors.

*Signed by more than 40 organizations, the letter is attached below:
December 2, 2011*

To Governor Snyder, the Michigan Legislature, and the people of Michigan:

Mend It, Don't End It – Alcohol Laws and Controls Work in Michigan!

We, the undersigned organizations, support Michigan's alcohol laws, and the state's ability to establish these regulations.

Michigan's alcohol laws and controls work well and are necessary to promote business and protect public health.

Since 1997, underage drinking has declined significantly (as measured by the Michigan Youth Risk Behavior Survey) and is better than the national average.

- Lifetime use: Michigan average 68.8% in 2009, down from 81.9% in 1997. (National average: 72.5% in 2009)
- Alcohol use before age 13: Michigan average 18.8% in 2009, down from 34.9% in 1997. (National average: 21.1% in 2009)
- Use in the past 30 days: Michigan average 37% in 2009, down from 50.5% in 1997. (National average: 41.8% in 2009)
- Binge drinking: Michigan average 23.2% in 2009, down from 32.4% in 1997. (National average: 24.2% in 2009)

A proper balance between business growth and public health is good for everyone. Michigan's alcohol laws and accountability measures have found this proper balance.

According to 2010 data, Michigan had the lowest consumption rate among our Midwest neighbors, yet saw solid growth in Michigan's homegrown beer and wine industries. Here are just a few examples of progress by Michigan's beer and wine producers:

- Michigan's total of more than 80 beer-makers ranks fifth nationally; at least three more plan to open this year.^[1]
- In 2010, Michigan's craft beer industry had its largest growth spike ever, jumping 21 percent in sales over 2009 – outpacing the national average of 5 percent. Its growth counters the U.S. beer industry as a whole, which declined 4 percent in 2010.^[2]

^[1] Associated Press, 2/28/2011

^[2] *The Eastern Echo*, 7/01/2011

- Michigan wines are also expanding at a rate of around 10 percent every year since 2005, according to the Michigan Grape and Wine Industry Council.

We support Michigan’s alcohol accountability measures and urge you to join us. Alcohol is not toothpaste, T-shirts or iced tea, but beverages that must be monitored, controlled and consumed only by legal adults.

- Strong alcohol regulations protect public safety and help fight minors’ access to alcohol. States with strong alcohol regulations had 7.5 percent fewer fatal alcohol-related crashes in 2009 than states with looser regulations.^[3]
- Michigan’s alcohol regulation system is the gold standard for keeping out contaminated and tainted products. The producer-distributor-retailer system of alcohol distribution, coupled with territorial integrity, ensures that all alcohol products are tracked and accounted for at every stage.
- Deregulating or privatizing alcohol would put the public’s health at risk. In February 2011, the United States Center for Disease Control (CDC)’s Task Force on Community Preventive Services reported, “Based on its charge to identify effective disease and injury prevention measures, The 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.”^[4]
- Michigan is one of 18 control states and generates about \$330 million in general fund revenue. This revenue helps to fund essential services like police, fire, schools, roads and economic development.
- Michigan’s alcohol laws and accountability measures protect citizens by using a wide range of tools that work and will continue to work. These accountability measures include background checks on anyone applying for liquor licenses, strong enforcement operations that prevent illegal underage drinking and other steps that help reduce crime while encouraging moderation.

^[3] Fatality Analysis Reporting System, National Highway Traffic Safety Administration (www-fars.nhtsa.dot.gov/CrashesCrashesAlcohol.aspx)

^[4] U.S. Department of Health and Human Services, “Preventing Excessive Alcohol Consumption: Privatization of Retail Alcohol Sales” (www.thecommunityguide.org/alcohol/RRprivatization.html)

For these reasons, we support Michigan's system of alcohol regulations.

Ann Arbor Campus Community Coalition

Associated Food and Petroleum Dealers

Berrien County Alcohol Taskforce

CARE of Southeastern Michigan

Clinton County Substance Abuse Prevention Coalition

Comprehensive School Health Coordinators' Association

Church of God in Michigan

Deputy Sheriff's Association of Michigan

Eaton County Substance Abuse Advisory Group

Eta Sigma Gamma-Gamma Mu - Western Michigan University

Greater West Bloomfield Community Coalition

Harbor Hall, Inc.

Holly Area Community Coalition

Ingham Substance Abuse Prevention Coalition

Ionia County Substance Abuse Initiative

Kent County Prevention Coalition

Livingston Community Prevention Project

Marquette County Substance Abuse and Violence Prevention Coalition

Mecosta-Osceola Coalition to Reduce Underage Drinking

Michigan Alcohol Policy Promoting Health and Safety

Michigan Association of Alcoholism and Drug Abuse Counselors

Michigan Association of Chiefs of Police

Michigan Association of School Nurses

Michigan Association of Substance Abuse Coordinating Agencies

Michigan Beer & Wine Wholesalers Association
Michigan Campus Community Coalition
Michigan Coalition to Reduce Underage Drinking
Michigan Council on Alcohol Problems
Michigan Elementary and Middle School Principals Association
Michigan Nurses Association
Michigan Parent Teacher Association
Michigan Prevention Association
Michigan Sheriffs' Association
Midland Area Partnership for Drug Free Youth
National Council on Alcoholism and Drug Dependence- Greater Detroit Area
National Hospitality Institute
North Point Counseling Services, LLC
PACT (Parents and Community Together) - Saline
Parenting Awareness of Michigan
Project VOX of Greater Macomb
Recovery Consulting, LLC
Recovery Network, Inc.
STONEHOUSE, Inc.
SUDDS Coalition (Stop Underage Drinking Downriver)
Teamsters Union of Michigan
Troy Community Coalition for the Prevention of Drug and Alcohol Abuse
Washtenaw County Community Partnership
Woodlands Behavioral Healthcare Network of Cass County

APPENDIX H

EXECUTIVE OVERVIEW OF “PUTTING PUBLIC HEALTH FIRST!” COUNTER-REPORT

Below is a brief synopsis of ORR recommendations and the likely consequence and reality of those recommendations.

ORR RECOMMENDATION

Significantly increases alcohol licenses and expand access to alcohol products, including more resort licenses and introducing the new farmers’ market liquor license.

REALITY

Michigan has 16,000 retail alcohol outlets. Also, 94 percent of likely voters say they have easy access to alcohol. The expansion of licenses will undermine the value of current retail owners’ assets.

ORR RECOMMENDATION

Significantly reduce inventory requirement for gas stations to receive Specially Designated Merchant (SDM) license, from current \$250,000 to \$50,000.

REALITY

The number of gas stations licensed to sell alcohol will skyrocket from 1,800 to 5,000. Because Michigan law currently allows sampling of alcohol products, this recommendation means people could consume alcohol at a gas station and then get behind the wheel.

ORR RECOMMENDATION

Allow beer to be directly shipped to consumers.

REALITY

Court decisions prevent carriers from checking identity and age of recipients, resulting in greater minor access to alcohol.

ORR RECOMMENDATION

Weakening fingerprint checks for liquor license applicants.

REALITY

Applicants would use aliases or unverified names, which means people can bypass the easy-to-circumvent Law Enforcement Information Network (LEIN) system.

ORR RECOMMENDATION

Weaken financial requirement for liquor license applicants.

REALITY

If liquor businesses are underfunded and face financial pressures, they may be inclined to resort to tactics such as selling to underage people and allowing over-consumption to make the money they need to stay in business. Moreover, people who do not use their own funds, or are not responsible for the funds that have been invested into a licensed establishment, will have significantly less motivation to operate their businesses within the law.