



H.R. 5034 Care: A Friend Or Foe For Retailers?

BY MICHAEL KUDERKA

For those unfamiliar with H.R. 5034, the Comprehensive Alcohol Regulatory Effectiveness act (CARE) pits the wholesalers of beer, wine, and spirits squarely against much of the alcohol industry, and the scuffle seems to be less about the bills' actual wording and more about the implications of the resulting shift in power.

On the surface, H.R. 5034 leaves readers with the impression that this proposed legislation is simply designed to preserve business as usual in the alcohol market. However, many alcohol retailers, craft brewers, independent wineries, and small distillers concerned about the passage of the bill, assert that H.R. 5034 in reality limits distribution, increases the wholesalers' ability to influence policy, and ultimately decreases the number of brands available to consumers.

All those opposed say "nay"

Among those against the bill the objections are twofold: First because the bill works to have alcohol laws made at the state level, the legislation is seen as a power grab by wholesalers who have well established state by state lobbying networks.

Second, because the bill works to amend the Wilson Act of 1890, the legislation releases states from the need to treat out-of-state alcohol products as they do those produced within their state.

"The bill put far too much power in the hands of wholesalers," counsels Tom Wark, Executive Director of the Specialty Wine Retailers Association, and "H.R. 5034 would allow states to pass any alcohol related law it wants without fear that provisions of the Constitution could restrain them". Wark continued, "The bill would make it next to impossible for retailers to see reforms instituted that give them leeway to more efficiently market their products. It would allow laws to be passed that discriminate against retailers wanting to serve a national market via direct shipment."

From the Brewers Associations point of view, according to their web site, "H.R. 5034 was introduced in April 2010 on behalf of beer wholesalers' concerns. It will undermine existing federal authority over taxation, product composition, labeling, advertising, and importation of goods from other nations. These are issues on which national uniformity of regulation is essential... H.R. 5034 invites states to enact inconsistent laws that needlessly raise costs and impede small brewers' efforts to expand into new markets". (www.brewersassociation.org/pages/government-affairs/ba-position-statements#hr_5034)

Finally, the arguments against are best summed up in an extremely thorough piece by Wayne T. Brough, "The CARE Act is

a simple piece of economic protectionism, designed to shore up the monopoly earnings of wholesalers at the expense of everyone else. The bill already has 124 co-sponsors in the House, a tribute to the lobbying muscle displayed by the wholesalers. Ultimately, consumers pay the price for such economic protectionism. Choice is restricted and prices are higher". (<http://www.freedom-works.org/publications/no-wine-shall-be-served-before-its-time>)

All those in favor say "yea"

From the wholesalers' point of view H.R.5034 is less about power and more about protection against underage drinking, illegal distribution, and the preservation of the three tier system which requires their role.

"More than 25 states have faced challenges to their authority to regulate alcohol and their ability to maintain a licensed system of alcohol controls," states National Beer Wholesalers Association, President, Craig Purser on the association's web site. (<http://nbwa.org/node/2472>)

"With the CARE Act, Congress is taking an important step toward preventing the erosion of the states' ability to regulate alcohol by clarifying its intent that states have the primary authority to regulate alcohol and reaffirming its commitment to effective state-based regulation which promotes responsible consumption and maintains an orderly market," continued Purser.

According to the NBWA, "More than 30 states allow wine to be sold direct-to-consumer from a winery. Upon passage, H.R. 5034 would actually PROTECT a state's wine shipping law if someone were to challenge it in court by providing the shipping law with the same presumption of validity granted other state alcohol laws".

Finally, the NBWA's greatest concern is the potential for individual litigation to be inconsistent and to deregulate the three tier system, "legal challenges are not being resolved in court because federal courts are issuing conflicting rulings after interpreting the same laws. For example, the 1st Circuit said a state law that treated small wineries and big wineries differently was unconstitutional. In the 9th Circuit, the court said it was permissible. Unelected federal judges should not set a state's alcohol policy. Only state legislatures have authority to set alcohol policy under the 21st Amendment to the U.S. Constitution".

So beer retailers, "yea" or "nay"

Your customers look to your store to provide a variety of quality

brands, at a reasonable price, with excellent customer service. H.R.5034 has the potential to limit the brands currently available in your state and increase the costs producers pay to get these brands into your market.

Only one segment has continued to grow and outperform the alcohol market during this recession, and again your consumers have responded to craft beer by generating nationally a 12 percent increase in dollar sales and a 9 percent growth in sales volume through June of 2010.

Only big beer and big beer distributors stand to gain from legislation that increases the costs for their growing competition and limits availability of competitive brands.

Say "nay".

Michael Kuderka is the Managing Partner at MC Basset, LLC. The company designs beer selling solutions and training for on-and off-premise retailers. www.the-beerbible.com – Contact Michael at mkuderka@mcbasset.com. © 2010 MC Basset LLC

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