wineMICHIGAN

Claims and Facts Regarding House Bill 4959

Michigan wineries and Michigan consumers request the Michigan Legislature to really look at the claims and the facts concerning House Bill 4959

CLAIM: House Bill 4959 protects Michigan Consumers.

FACTS: The Supreme Court decision was pro consumer. HB 4959 is not.

It only enshrines MBWWA protection at the expense of Michigan consumers. It takes away existing rights of Michigan wineries to ship to their retail customers and consumers. It guarantees that the only wines from out of state that will be available to Michigan consumers are the wines wholesalers are willing to distribute. There are over 4,000 wineries in the US and another 2,000 wineries being imported. There is no way that Michigan wholesalers can service this number of products. The consumer and the marketplace should decide what can be bought or sold, not wholesalers.

CLAIM: Michigan winery direct shipments are insignificant and do not need to be considered.

FACTS: These long standing rights amount to between 1% and 100% of our business and average around 30% of our business. Losing a right that we have built our businesses upon will bring our industry to a screeching halt and close down small Michigan, rural enterprises. No new wineries will be established, and consumers will not get the wine they are seeking. On the contrary, direct shipments from out of state, in any of the 27 states that allow them, have never exceeded one-half of one percent of total wine sales in any state. Direct shipments are vital to Michigan wineries, and even combined with out of state shipments of wine, are actually insignificant to wholesalers and retailers. How much monopoly protection do wholesalers deserve? We think 99% plus is enough.

CLAIM: House Bill 4959 still allows Michigan wineries to bring products to market through their tasting rooms and wholesaler network.
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FACTS: The only initial outlet for a new winery is its tasting room. There are no customers or demand for its wines when first established. No distributor will take on a wine until it has a market. That is not what they do. Over 600,000 visitors go to Michigan tasting rooms annually and discover wines they like. After they leave the tasting room most of these wines are not available in the consumer's home market. If they were, the consumer would purchase them locally rather than go through the effort and expense of ordering from the winery.

If the consumer wants that particular wine, not available in the local market, he or she has no alternative but to order directly unless he or she returns to the tasting room – a difficult requirement considering our location in rural counties away from population centers. Even when a winery is fortunate enough to find a distributor, no Michigan distributor or retailer carries all the wines that any Michigan winery produces

CLAIM: Direct shipping will lead to underage access to alcohol due to the absence of a face to face transaction.

FACTS: There is no problem of underage access from direct shipping of wines to consumers. On the contrary, controlled and accountable direct shipping has been the most effective way to avoid such problems. Michigan wineries have shipped wines directly to Michigan consumers for over 35 years with absolutely no problems of underage access while the MLC can confirm that there are thousands of instances every year of minors procuring alcohol through retail store outlets.

Both the Supreme Court and FTC have dismissed claims of underage consumers using direct shipment channels to obtain alcohol. Where direct shipping violations have occurred, they have been through contrived stings, from retailers, involving spirits and beer not wine, and not wine producers. No wine producer would jeopardize its federal and state licenses to ship to minors. Wineries have zero tolerance for underage access for their products.

Direct shipping is actually more controlled and accountable than retail store transactions and involves a face to face transaction between the delivering driver and receiving consumer. Under our existing laws a delivery company must provide this face to face verification service and the shipping winery must purchase this service. Career delivery company employees provide controlled and accountable age verification more effectively than minimum wage and underage retail store clerks selling to their friends.

Consumers have clearly demonstrated that they are willing to follow Michigan's existing strict rules requiring that proof of age be presented both at time of ordering and time of delivery, that all shipments be clearly labeled as containing alcohol, and that an adult signature is required before delivery can be made. In addition there is a record of every transaction for audit and for prosecution of the consumer if necessary. These are effective barriers to minors.

Wholesalers know this, and it is particularly cynical that HB 4959 only proposes to eliminate the rights of wineries to direct ship wine to consumers while specifically protecting the rights of Michigan retailers to ship beer, wine and spirits to Michigan consumers after a telephone or internet order is placed.

CLAIM: The extension of Michigan wineries' direct shipping rights to wineries out of state will open the floodgates to beer and spirits.

FACTS: In all the years that both Michigan and 27 other states have allowed direct shipment of wine there have been no efforts by the beer and spirits industries to obtain those same right at any time in any state. This can be easily verified by both the Distilled Spirits Council of the US and the National Association of Brewers. In Michigan today, there is no discrimination for spirits and beer as neither product may be shipped by local producers. The wholesalers' "chicken little" claims of spirits and beer following wines are not probable or provable. Even if this was attempted the Legislature has the right to act on any such request.

CLAIM: Michigan will suffer loss of excise and sales taxes if direct shipping of wine from out of state is allowed.

FACTS: Michigan will actually gain excise and sales taxes if out of state wineries are allowed to ship under the same rules and regulations that Michigan wineries follow, as any untaxed sales would then fall under a regulated and taxed system. In addition Michigan wineries would then have markets opened to them in other states as we would now be able, on a reciprocal basis, to ship wine to consumers in other states. This new business would generate additional business and employment tax revenue for the state, as our businesses would grow. HB 4959 is a tax killer for the state.

CLAIM: House Bill 4959 protects the three tier distribution system that serves Michigan so well

FACTS: How well does the three tier system actually serve Michigan?

Michigan does not have a three-tier distribution system for spirits. The Michigan Legislature has long approved an exemption to the three tier distribution system for Michigan wineries as they

realized that was the best way to foster growth of the Michigan wine industry. The only real three tier system is for breweries, and that has effectively shut down micro-breweries in this state, a disaster for micro breweries, but a boon for wholesaler interests.

The Supreme Court says that the state cannot discriminate as to how it handles in state and out of state producers. Michigan wineries can tell you that if you take away our rights to reach our consumers you will have caused discrimination - big distributors carrying big winery producers' major brands will dominate the wine market - effectively killing our small business sector in this state.

Michigan wineries are not opposed to wholesalers and uniformly use them when they develop enough business to justify having a wholesaler. Hiding behind a questionable three-tier system or false claims about underage access, in order to protect a virtual monopoly while ignoring consumer interests is the worst example that Michigan could set. Michigan needs to join progressive states such as Texas, Connecticut and New York and not become the poster child for regressive states on this issue.

When the three-tier system was established there were few wineries in the US and only limited brands available or consumed. Who could have envisioned the market for premium, award winning Michigan wines by visitors from Illinois, Wisconsin, Ohio, Indiana and even further afield. HB 4959 destroys any opportunity we might have to sell these visitors Michigan wines when they return home from their Michigan visit. Ask those potential ambassadors for Michigan what they think about Michigan's regulatory environment.

CLAIM: Direct shipments of wine will lead to uncontrollable and unregulated alcohol sales

FACTS: All sales of alcohol in Michigan are controlled and regulated by the Legislature.

The Legislature can level up or level down following the Supreme Court decision. Leveling down is represented by HB 4959 with drastic consequences for the consumer, Michigan wineries, agriculture, tourism and small businesses. Leveling up would be to instead pass legislation for controlled and accountable limited direct shipping of wine from out of state wineries only to consumers for personal use only and not for resale. Michigan wineries do this now. The Legislature has demonstrated that controlled and regulated wine sales directly to consumers works. You have an obligation to actually look at a level up proposal rather than pass a level down proposal without full consideration of the consequences.

CLAIM: Why protect small wineries? They don't amount to anything.

FACTS: We are 42 rural businesses and over 100 growers located where local economies need us. We are successful agricultural businesses in one of only a few sectors of agriculture that are growing. We contribute over $75 million in economic activity in this state which is having a difficult time with the economy. We employ directly and indirectly over 1,000 people at a time when every job counts. We are a major force in tourism, and for every dollar spent at our wineries, five dollars are spent for lodging and dining and shopping in our local economies. Our award winning products are extending the Michigan name far and wide. Should these benefits delivered by small family farm businesses be sacrificed for large, corporate, monopoly interests?

If you think these benefits should be sacrificed, vote for HB 4959. If you do, expect the original litigants, joined by thousands of Michigan consumers who have seen their win in the US Supreme Court nullified, to take Michigan right back to the courts of the land and the court of public opinion. HB 4959 is a bill designed only for special interests. It should not be moved out of committee.