



Present Day Prohibition

By Michelle Minton

(Editor's note: A longer version of this story appeared in Michigan Capitol Confidential on Sept. 29, 2011.)

Summary

Antiquated post-Prohibition laws continue to favor alcohol distributors and wholesalers, giving them a monopoly that negatively impacts producers and consumers.

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Ken Burns' latest documentary, "Prohibition," notes that the era "made a mockery of the justice system, caused illicit drinking to seem glamorous and fun, encouraged neighborhood gangs to become national crime syndicates, permitted government officials to bend and sometimes even break the law..." Unfortunately, that is still the case today. The regulatory scheme enacted to "safely reintroduce" alcohol into society following Prohibition's repeal has grown into a labyrinth of state-based rules, resulting in a number of negative consequences — many similar to those of Prohibition.

Many readers may balk at that, and ask, "Sure, we've got some blue laws here and there, but how bad could it be?" Examining the regulations on the sale of just one type of alcoholic beverage, beer, makes it clear that significant remnants of Prohibition are still with us today — strangling small businesses and protecting cartels.

Perhaps the worst effect of Prohibition was the crime and corruption resulting from mob warfare in the underground market. Because demand was not squelched with the ban on alcohol, criminals were able to amass great wealth by successfully shipping and selling alcohol at high prices to the drinking masses. Successful bootleggers were those who could bribe or blackmail police and politicians into looking the other way. While the days of the beer baron may be over, there are still plenty of deals being made behind the scenes. The difference is that the buying and selling of political favors is now legal.

The "three-tier system" legally separates brewers from distributors and retailers. That means that a brewer is required to sell his or her product to a distributor or wholesaler who may then sell to bars, restaurants and stores. This was meant as a way to get the mob, which had controlled beer distribution during Prohibition, out of the industry.

The ban on alcohol manufacturers selling their product directly to consumers or retailers makes producers fully reliant on wholesalers to get their product on the market — giving those wholesalers massive amounts of power over the industry. If a wholesaler chooses not to distribute a brewer's



For more information on policy suggestions for making Michigan's alcohol distribution system less expensive and more consumer-oriented, please see www.mackinac.org/1933.

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products or does a bad job of it, the brewer could be put out of business. This mandate has transformed the distributors into one of the nation's most powerful and wealthiest lobbying groups. In the 80 years since the end of Prohibition, the makeup of the American brewing industry has changed dramatically, from a handful of large breweries during the 1940s to thousands of small brewers across the nation today. Yet the power held by the distributors' lobby has allowed them to maintain the requirement that brewers only sell to distributors, hamstringing brewers' ability to expand their market despite their willingness to grow and an increase in consumer demand.

In Michigan, distributors have made campaign contributions of millions of dollars to maintain their monopoly, blocking brewers' ability to sell directly to consumers. Unfortunately, their efforts have been successful. Michigan, like some other states, maintains "franchise laws" that virtually lock a brewer into a contract with a distributor, regardless of whether that distributor does a good job of selling the producer's beer or not. Sometimes brewers can be locked into contracts for years or decades without any way out.

As a result of current mandated distribution laws, most small brewers are forced to limit the sales of their beer to one or two states. Furthermore, consumers have fewer choices at higher prices, and those who want to purchase a beer that isn't distributed in their state have to break the law by either crossing into another state and transporting it home, or by having the beer shipped to them.

Unless we reject the antiquated idea that alcohol is a "different kind of product," or an evil from which we need the government to protect us, we will never truly put Prohibition behind us. It is time to end the mandatory three-tier system to allow producers to have control over the distribution of their products and to give consumers the freedom to make their own decisions about where, when and for how much they purchase their alcoholic beverages. It is time to truly bring Prohibition to an end.

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