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**“CRISIS DE-REGULATIONS”  
SHOULD THEY STAY OR  
SHOULD THEY GO?**

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An Essay on a Current Alcohol Industry Dilemma (June, 2020)

# **“Crisis De-Regulations”: Should They Stay, or Should They Go?**

## **An Essay on a Current Alcohol Industry Dilemma**

### **EXECUTIVE SUMMARY**

It is common for one crisis to cause another, and another and another. The results could be endless. The current generation has not seen anything like the Covid-19 virus and the response by government officials is unparalleled. When this crisis begins to wane, how should we respond?

Public health and safety are core governmental functions. As a result, alcohol laws and regulations were created as safeguards to help protect the public from harms associated with the use of alcohol. The Covid-19 crisis should not propel the government to permanently change these safeguards without understanding the basis and purpose of such policies.

Some of these safeguards are found within the alcohol three-tier system. Understanding the history of the three-tier system is important so the blunders of the pre-Prohibition era are not lost in the haste of a response to the current crisis.

Current public safety measures including alcohol access to minors have become more problematic during this crisis as a result of alcohol deliveries from on-premises locations. Caution should be taken when drafting laws or regulations in order to allow for full transparency and accountability of those businesses or contractors responsible for delivering alcohol outside their establishments.

With the advent of e-commerce, it is also important to understand how counterfeit alcohol could become more troublesome in America if regulations are changed within the retail marketplace. Without proper checks and balances through regulations, we could see counterfeit alcohol being delivered right to consumers' doorsteps.

Understanding that high-alcohol products like distilled spirits are different from low-alcohol beer and wine is another important theme woven throughout alcohol regulations in the United States. Covid-19 does not change this reality and ought to be considered when developing new laws regarding alcohol sales to consumers.

Another consequence of the Covid-19 virus is lost revenue as alcohol retail establishments are closed. This not only affects businesses but governments as well. Elected officials who govern cities, counties, states, and the country will have to make difficult decisions on how to cut budgets in response to massive revenue reductions. During this time, it is essential to have measures in place for the efficient collection of excise and other taxes.

There is not a perfect solution to the many issues brought upon by Covid-19, but governments should take a slow and methodical approach when making permanent decisions before changing current alcohol laws and regulations. This deliberate action will not only save businesses, but it may save lives as well.

## INTRODUCTION

People in the United States and the rest of the world are living in a new paradigm of an invisible enemy. Terms like social distancing, masks, Zoom, work from home, 6 feet, toilet paper, and alcohol determined as essential are words we have heard for many weeks and will be discussed and debated for many more months, if not years from now.

In May 2020, deaths in the United States related to Covid-19 pandemic surpassed 100,000. This number is a stark reminder of the dangerous reality of Covid-19 and should not be taken lightly. Another reality is that according to the Centers for Disease Control and Prevention (CDC), 88,000 people in the United States are expected to die this year from alcohol related issues.<sup>1</sup> Unlike deaths attributed to Covid-19, deaths from alcohol do not have an endpoint and are expected to continue each year, and could even increase year after year.

During the current Covid-19 world, several states have taken steps to loosen regulatory enforcement on key alcohol laws as an emergency effort to try to ease the perceived financial burden mostly encountered by on-premises liquor licensees, such as restaurant and bar owners. Being forced to close their doors to dining has created a financial downward spiral for these businesses and the impacts will likely be felt for years.



There is wide support for the concept of temporary de-regulation during this time since some businesses will not weather the storm and will close permanently. In Michigan, reports estimate up to 1/3 of restaurants will permanently close due Covid-19<sup>2</sup> and according to Steve Hafner, CEO of Booking Holdings' Open Table and travel site Kayak, one out of every four restaurants will not reopen.<sup>3</sup> The generalized hope is that loosening these regulations (along with other assistance like federal, state and local subsidies) will support businesses to remain open until operations can return to full capacity.

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<sup>1</sup> Centers for Disease Control and Prevention (2019, June 26). Excessive Alcohol Use, <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/alcohol.htm>

<sup>2</sup> Deiters, B. (2020, April 1). Estimate: COVID-19 will permanently close 1/3 of restaurants. <https://www.woodtv.com/health/coronavirus/association-expects-covid-19-to-permanently-close-one-third-of-restaurants/>

<sup>3</sup> Graham, J. (2020, May 15). One in 4 restaurants won't re-open after pandemic, says exec. <https://www.usatoday.com/story/tech/2020/05/14/your-favorite-restaurant-may-not-reopen-post-covid-opentable-study/5193994002/>

Just two months after the initial loosening of these regulations, some states are evaluating whether to allow the loosened regulations to become permanent. While the outcomes of these permanent changes may seem simple, they are complex and should be thoroughly evaluated to understand the short- and long-term impacts, specifically those involving health and safety. This essay will explore some of the temporary de-regulations including questions concerning their existence and future so key decision makers (including government regulatory entities, lawmakers, and alcohol industry members) can study the 360-degree effects of permanently eliminating important alcohol laws and regulations.

## **CHANGE CREATED CHANGES – BUT SHOULD THEY BE PERMANENT?**

Covid-19 changed this world and some of those changes will remain indefinitely. One thing that has not changed is the physical content of alcohol and its impacts on society when left unchecked. The public health and safety concerns surrounding alcohol consumption that existed at the end of 2019 continue to exist after the beginning of Covid-19.

The fact of the matter is excessive use of alcohol has serious and deadly consequences including chronic health issues, high blood pressure, heart and liver disease, cancer, violence, injuries, poisonings, unintended pregnancies, and accidents.<sup>4</sup>

Government officials responded to the Covid-19 crisis by closing businesses and government operations, mandating social distancing and stay-at-home orders, passing the CARES Act and announcing many other intervening executive orders to help keep Americans safer. These changes have been necessary in response to the crisis to save lives.

The understanding that alcohol is still dangerous should be an important theme when considering the recovery of Covid-19. In the United Kingdom, the Britain Medical Journal (BMJ) summarizes this concept in stating, “Tackling alcohol harms must be an integral part of the nation’s recovery.” A May 20, 2020 BMJ article continues to point out, “as signs emerge of some control over new cases of Covid-19, it is increasingly clear that if we don’t prepare for emerging from the pandemic, we will see the toll of increased alcohol harm for a generation.”<sup>5</sup>

Should the Covid-19 crisis be used as a springboard to disrupt the current alcohol regulatory scheme? The support for a radical overhaul to alcohol laws and the three-tier system may be gaining popularity, but at what cost?

Experts are concerned the Covid-19 crisis could trigger more serious drinking problems and even create new ones for people who have never struggled with alcohol dependency previously.

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<sup>4</sup> See Footnote 1

<sup>5</sup> British Medical Journal (2020, May 20). Covid-19 and alcohol – a dangerous cocktail. <https://www.bmj.com/content/369/bmj.m1987>

“I expect we’re going to see pretty significant increases in what I call unhealthy alcohol use, which means drinking above recommended limits,” said Dr. Sarah Wakeman, an addiction medicine doctor at Massachusetts General Hospital in Boston.<sup>6</sup>

## THE THREE-TIER SYSTEM: VITAL TO ALCOHOL SALES

The term “three-tier system” is a term known throughout the alcohol industry and is designed to prohibit vertical integration of alcohol sold to consumers. It is an important concept developed post-Prohibition based on public health and safety concerns and is vital for the safe production, delivery, and sales of alcohol to consumers.



Benefits include:

1. A proven regulatory system that monitors licensing, sales, and compliance with liquor laws;
2. Checks and balances to reduce counterfeit alcohol sold to consumers;
3. Equal access for all manufacturers to the marketplace that promotes competition and variety of choices for consumers;
4. Allows for the most efficient collection of alcohol taxes;
5. Prevents the monopolization of the alcohol industry and;
6. Boosts consumer confidence in the quality of alcohol products.

A 2019 Center for Alcohol Policy survey showed that Americans want alcohol laws to prioritize safety and 75% of the respondents show support for states to regulate alcohol through a three-tier system.<sup>7</sup> In the decision of *Granholm v. Heald*, 544 U.S. 460 (2005), the United States Supreme Court again recognized the “three-tier system” as “unquestionably legitimate.”<sup>8</sup>

Some states have temporarily suspended laws and regulations associated with enforcement of the three-tier system including relaxing credit terms between distributors and retailers and allowing returns of alcohol products to distributors. If these changes or other allowances became permanent, what will be the consequences?

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<sup>6</sup> Cramer, M. (2020, May 26). Could All Those ‘Quarantinis’ Lead to Drinking Problems?

<https://www.nytimes.com/2020/05/26/health/coronavirus-alcohol-addiction.html?searchResultPosition=3>

<sup>7</sup> Center for Alcohol Policy (2019, May 6). National Survey: Support for State Regulation of Alcohol Bridge Partisan Gap

<https://www.centerforalcoholpolicy.org/2019/05/06/national-poll-shows-support-for-state-regulation-of-alcohol-bridges-partisan-gap/>

<sup>8</sup> Justia (2005). *Granholm v. Heald*, 544 U.S. 460 (2005). <https://supreme.justia.com/cases/federal/us/544/460/>

Prior to Covid-19, many states enjoyed the booming craft alcohol beverage industry. Small brewers, distillers, and vintners were able to get their products to market mostly due to laws and regulations promoting the independent three-tier system. Notwithstanding the effects of Covid-19, permanent changes to the three-tier system could result in small businesses not being able to compete against larger companies who will dominate the market and bring back the days of anticompetitive and harmful tied houses.



Some have argued that state alcohol laws are archaic and are a form of prohibition and should be changed to reflect the current ideas of commerce for consumers.

According to the state government affairs group Leonine Public Affairs, there have been over 2,260 law changes in the United States concerning alcohol since 2011.<sup>9</sup> This equates to roughly 4.5 alcohol-related bills signed into law every year for each state in that time frame. Alcohol laws constantly are tweaked and changed, which is reflective of state legislative debates and no one can credibly argue that alcohol is sold in the same fashion in 2020 as it was in 1933 let alone in 2011.

A large majority of these law changes did not impact the three-tier system, which was being enforced prior to Covid-19. These changes suggest that states are updating alcohol laws and rules to reflect current trends in the marketplace and consumer desire, while keeping the three-tier system mostly intact.

## **AN INCREASE OF ALCOHOL ACCESS TO MINORS: WHO IS DELIVERING, WHAT IS THE COST?**



Many state alcohol laws in the country do not allow on-premises licensees to sell sealed containers of alcohol to go.<sup>10</sup> Current executive orders across the country are now allowing restaurants, bars, and manufacturers to sell sealed alcohol containers to go. In some instances, states have also allowed mixed drinks to go if they comply with rules defining how to seal the cup, glass, or similar container.

Third-party service companies have become popular with on-premises licensees and provide delivery to consumers for food and in some instances, alcohol.

<sup>9</sup> Focus (2018, November 14). State-Level Alcohol Laws Face a Federal Challenge in the Supreme Court.

<https://www.leoninepublicaffairs.com/focus/state-level-alcohol-laws-face-federal-challenge-supreme-court/>

<sup>10</sup> Substance Abuse and Mental Health Services Administration (2018). State Performance & Best Practices for the Prevention and Reduction of Underage Drinking,

[https://www.stopalcoholabuse.gov/media/ReportToCongress/2018/profile\\_summaries/20\\_home\\_delivery.pdf](https://www.stopalcoholabuse.gov/media/ReportToCongress/2018/profile_summaries/20_home_delivery.pdf)

Some third-party companies have been delivering alcohol for off-premises licensees for several years but with the increased demand, one of the growing pains that has surfaced includes concerns with delivering alcohol to minors from on-premises accounts.

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***“We know that even during the pandemic, drunk and drugged driving haven’t stopped.”***

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The National Liquor Law Enforcement Association has recently highlighted the concern of law enforcement in making sure laws preventing sales to minors or to those who are intoxicated are not lost in the rush to deregulate alcohol sales.<sup>11</sup> In California, the Department of Alcoholic Beverage Control (ABC) saw a spike in non-compliance with delivery regulations where third-party delivery services were routinely delivering alcohol to minors. According to an ABC investigation, the most concerning aspect of the investigation was that “there have been instances in which the licensee’s own employees have done so, but a far greater rate has been evident among third-party delivery services.”<sup>12</sup>

Traditionally, the full liability for any delivery violations should fall on the liquor licensee as they are the entity holding the license and are responsible for maintaining compliance. Some states mandate deliveries to consumers be conducted by employees of the licensee using vehicles owned or leased by the licensee. This approach helps the licensee maintain control of their employees and the delivery process through policy and procedures compared to contracting with a third-party company to delivery alcohol. For states that decide to allow third-party companies to continue to deliver alcohol, consideration should be given to create a licensing system for the third-party companies delivering alcohol products to consumers to provide clear regulations and strict accountability. For example, Michigan has recently passed legislation on this issue.<sup>13</sup>

In the first quarter of 2020 in Colorado, the number of DUIs is double the number during the same period last year.<sup>14</sup> Also, “While overall traffic fatalities might be down, injury and fatal crashes caused by drug and alcohol use are up,” according to Colorado State Patrol Chief Matthew Packard. Chief Packard continues to say, “We know that even during the pandemic, drunk and drugged driving haven’t stopped.”

Evaluating the long-term effects of allowing the delivery or sales of alcohol in open containers to go should be a priority when determining if on-premises should permanently sell for off-premises consumption. Most states have laws prohibiting an open container of alcohol in a vehicle. Will allowing mixed drinks to go cause an increase to DUI rates and deadly crashes?

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<sup>11</sup> National Liquor Law Enforcement Association, (2020, May 28). Member Advisory.

<https://files.constantcontact.com/c1247982301/3095a03e-6bdc-4b54-8e0e-2ecab6e48285.pdf>

<sup>12</sup> California Alcoholic Beverage Control, (2020). Delivery of Alcoholic Beverages. <https://www.abc.ca.gov/delivery-of-alcoholic-beverages/>

<sup>13</sup> Michigan Department of Licensing and Regulatory Affairs, Liquor Control Commission. (2020). Third Party Facilitator Service License Requirements & General Information. [https://www.michigan.gov/documents/lara/tpfs\\_554912\\_7.pdf](https://www.michigan.gov/documents/lara/tpfs_554912_7.pdf)

<sup>14</sup> Grewe, L. (2020, May 26). Despite pandemic, DUI numbers up significantly in 2020.

<https://www.kktv.com/content/news/Despite-pandemic-DUI-numbers-up-significantly-in-2020-570766601.html>

Law enforcement will invariably challenge what some have called the “need” to sell mixed drinks to go on account of prioritizing public health and safety on the roads. These permanent critical public safety decisions are not best legislated by way of “emergency” declarations when law enforcement, highway safety, and public health officials are not able to fully offer their perspective and expertise.

## **COUNTERFEIT ALCOHOL PREVENTION IS EVEN MORE IMPORTANT DURING COVID-19**

As Covid-19 started to grip this country, states had to decide what businesses were considered essential. Most states gave the nod for alcohol to be considered essential and permitted businesses that sold alcohol to continue operating under strict health guidelines. Some government officials did not give alcohol the same priority, which created pandemonium among consumers who made a mad rush to the liquor stores before the ensuing order took effect.<sup>15</sup>

Other states that did not consider alcohol as essential saw consumers traveling to neighboring states to purchase alcohol, sometimes violating stay at home orders.<sup>16</sup> Both examples show the response from consumers when it comes to alcohol. Like the Prohibition era - people will always try to find a way to secure alcohol.

In early March of this year, the Center for Alcohol Policy published my report highlighting concerns of counterfeit alcohol within the direct to consumer marketplace by retailers.<sup>17</sup> As the nation recovers from Covid-19, more avenues for selling alcohol will be explored including allowing retailers to ship directly to consumers. This will invariably include bad actors who will exploit the alcohol market with the infusion of counterfeit products that cause serious injury and even death. As recently as May 2020, 70 people in Mexico died after consuming counterfeit alcohol procured in response to severe restrictions enacted due to Covid-19.<sup>18</sup>

Now is not the time to permanently remove safeguards put in place to protect consumers and strengthen the marketplace.

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<sup>15</sup> Associated Press (2020, March 23). After panic buying, Denver Mayor reopens liquor, pot shops but keeps ‘stay at home’ order in place. <https://www.aspentimes.com/news/denver-mayor-issues-stay-at-home-order-to-fight-coronavirus-spread-closes-liquor-pot-shops/>

<sup>16</sup> Peirce, P. (2020, April 4). West Virginia county bans liquor sales to out-of-state residents including Pennsylvanians. <https://triblive.com/local/regional/west-virginia-county-bans-liquor-sales-to-out-of-state-residents-including-pennsylvanians/>

<sup>17</sup> Maroney, P. (2020, March). Fake Alcohol and Interstate E-Commerce. [https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/03/CAP-2020-Report-on-Counterfeit-Alcohol\\_FINAL.pdf](https://www.centerforalcoholpolicy.org/wp-content/uploads/2020/03/CAP-2020-Report-on-Counterfeit-Alcohol_FINAL.pdf)

<sup>18</sup> Semple, K. (2020, May 13). At Least 70 Dead in Mexico From Drinking Tainted Alcohol. <https://www.nytimes.com/2020/05/13/world/americas/mexico-tainted-alcohol-deaths.html>

One bad counterfeit incident can cause more economic harm to the entire alcohol industry than the regulatory relief given by the relaxation of regulation in response to Covid-19.<sup>19</sup> “Efforts to eliminate this time-tested and working system will harm legitimate alcohol businesses, increase the risks to public health and safety, increase tax evasion due to sales outside the regulated system and introduce fake and counterfeit alcohol into the important, profitable U.S. market.”<sup>20</sup>

## **RETAILERS AS THE MANUFACTURER?**

Companies in the United States that make alcohol beverage products are regulated at the federal and state level. Regulations are often vigorous on how alcohol beverage products are produced to ensure they are safe for the consumer.

During Covid-19, states have loosened regulations to allow on-premises retailers to sell alcohol to go including mixed drinks that comply with temporary rules on sealing methods. In some instances, on-premises retailers are starting to develop their own brand of cocktail to sell in sealed containers. Could this behavior be considered “manufacturing?” If so, what safeguards are in place to ensure safe, unadulterated products are provided to consumers. These licensees could easily sidestep regulations for manufacturers and allow retailers to become producers of a product under a retail license.

There is a real danger of new loopholes created to ensure the safest manufacturing system for alcohol at the manufacturer level are not undermined by a short-term focus to help retailers stay afloat.

These intricate rules and regulations not only create a level playing field for manufacturers but are designed to provide stringent public health and safety protections. While selling a bottle or can of beer or wine may be appealing to retailer, the consumer would presumably have the original package to know the source, how much alcohol it contains, and other helpful/useful/important consumer information. However, mixed drinks in a cup do not have any of these protections. These laws should not be discarded or undercut, and calmer discussion and legislative hearings will produce the best policy away from the disruption of the Covid-19 crisis.

## **BEER, WINE AND SPIRITS ARE STILL DIFFERENT**

The dangers of alcohol are no different today than they were in December 2019 (pre-Covid-19) or December 1933. Beer, wine, and spirits are still different and should be continued to be regulated differently.

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<sup>19</sup> See for example the shutdown of the liquor trade in Czech Republic, British Broadcasting Corporation (2012, September 15). Czechs ban spirits after bootleg alcohol poisoning. <https://www.bbc.com/news/world-europe-19608461>

<sup>20</sup> See footnote 17

There has been increased attention to the difference between products in some policy such as the Interfraternity Council's 2019 ban on the use of higher alcohol products in Greek life activities.<sup>21</sup> Loosening current regulations on spirits could have long-term impacts, yet unknown.



Due to the higher alcohol concentration, spirits pose a greater public health risk than beer and wine. “In addition to the higher alcohol by volume causing more intoxication per ounce consumed, spirits have been linked to increased risk for illness and disease compared to other types of alcohol. Higher risk for certain cancers has been linked to spirits.”<sup>22</sup>

The changes brought on by the disruption of Covid-19 have been so rapid that law enforcement or public health insights regarding the differences between selling a 4.2% ABV beer to go versus a 70% ABV mixed drink have not been given proper discussion with all non-alcohol industry stakeholders involved.

## **POTENTIAL REDUCTION OF ENFORCEMENT RESOURCES AND THE IMPORTANCE OF SUSTAINED FEES/TAXES**

The taxing of alcohol and license fees has been a funding mechanism for governments since the end of Prohibition in 1933. It is an important aspect of the liquor industry and has withstood the test of time. Without the taxation of alcohol and other associated fees, the ability for the state and federal government to regulate alcohol becomes increasingly challenging.

A 2019 survey from the Center for Alcohol Policy reveals the attitude of 86% of Americans who say alcohol should remain regulated and that 82% of Americans agree alcohol should be regulated differently from other products.<sup>23</sup>

In the wake of Covid-19, all states across America will face a massive reduction in revenue<sup>24</sup> and will need to decide how current funds should be allocated.

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<sup>21</sup> North American Interfraternity Conference (2019). NIC fraternities ban hard alcohol in decisive action.

<https://nicfraternity.org/nic-fraternities-vote-to-ban-hard-alcohol/>

<sup>22</sup> Erickson, P. (2018, November). The rationale for tighter control of liquor versus wine and beer.

<http://www.dramshopexpert.com/the-rationale-for-tighter-control-of-liquor-versus-wine-and-beer/>

<sup>23</sup> Center for Alcohol Policy (2019, May 6). National Survey: Support for State Regulation of Alcohol Bridges Partisan Gap.

<https://www.centerforalcoholpolicy.org/2019/05/06/national-poll-shows-support-for-state-regulation-of-alcohol-bridges-partisan-gap/>

<sup>24</sup> Cannon, L. (2020). States Face Massive Revenue Declines. [https://www.lexisnexis.com/en-us/products/state-](https://www.lexisnexis.com/en-us/products/state-net/news/2020/05/15/States-Face-Massive-Revenue-Declines.page?utm_source=Daily+Brew&utm_campaign=bf2b42831d-EMAIL_CAMPAIGN_2019_11_18_04_20_COPY_01&utm_medium=email&utm_term=0_935b7e0b70-bf2b42831d-37016821)

[net/news/2020/05/15/States-Face-Massive-Revenue-Declines.page?utm\\_source=Daily+Brew&utm\\_campaign=bf2b42831d-EMAIL\\_CAMPAIGN\\_2019\\_11\\_18\\_04\\_20\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_935b7e0b70-bf2b42831d-37016821](https://www.lexisnexis.com/en-us/products/state-net/news/2020/05/15/States-Face-Massive-Revenue-Declines.page?utm_source=Daily+Brew&utm_campaign=bf2b42831d-EMAIL_CAMPAIGN_2019_11_18_04_20_COPY_01&utm_medium=email&utm_term=0_935b7e0b70-bf2b42831d-37016821)

This correlates to layoffs and cutting programs that will change the way states regulate alcohol, including a potential reduction in enforcement personnel. The collection of taxes is even more important as the value of every dollar increases. The ability for states to collect excise tax on alcohol sales is paramount in this time of crisis. With a probable reduction in personnel to enforce compliance it is crucial to maintain the three-tier system which has proven to be highly effective with regards to the collection of taxes.<sup>25</sup>

## **THE ALCOHOL INDUSTRY IS NOT A MONOLITH SO ANY CHANGES NEED THE COMPLETE STORY**

When there is discussion of helping the “industry” all policymakers should stand back and think about that claim. The alcohol industry is not a monolith, but the industry, the consumer, and public health all benefit from strong regulation. Changing alcohol regulation in one area inevitably creates consequences in others, and short-term fixes can cause long-lasting damage.

There have been some extremely pessimistic predictions of economic calamity for the alcohol industry. Retailers, wholesalers, and manufacturers have all announced layoffs; however, this pain has not been spread evenly across parties within certain tiers. For example, the off-premises retailers, particularly those with grocery, have had unprecedented, record sales.<sup>26</sup> On the other hand, on-premises bars, restaurants, and taverns have had to close their doors or greatly shift their business model to address the Covid-19 shutdowns. To say all alcohol retailers are the same is simply incorrect.

Further, there are long-standing policy fights between industry members that legislators, regulators, and the public must be mindful of as they try to assist one part of the industry. For example, allowing an on-premises account or other license types not permitted for sale to go to sell off-premises can be a substantial devaluation of an off-premises retail right in states that greatly restrict their availability. Some states have some off-premises locations open and some closed depending on their business structure. Each state and market are different, and no one size fits all, but it is safe to say all industry members are different.

Similarly, despite early predictions of widespread economic collapse for craft breweries due to Covid-19 there are conflicting viewpoints on how harmful it will finally be. Craft beer sales according to Nielsen are recently up 20%. While there are predicted closures, several craft leaders believe it will not be as bad as initially predicted.<sup>27</sup>

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<sup>25</sup> National Beer Wholesalers Association (2014, April). Industry Reports – Tax Studies. <https://www.nbwa.org/resources/kpmg-tax-study-state-and-local-taxes-distribution-and-sale-beer-0>

<sup>26</sup> Redman, R. (2020, May 18). Food sales stay strong in April despite U.S. retail sales plunge. <https://www.supermarketnews.com/consumer-trends/food-sales-stay-strong-april-despite-us-retail-sales-plunge>

<sup>27</sup> Brewbound (2020). Brewbound Frontlines: California, New York and Illinois Guild Directors & Brewers Association Discuss Craft Beer During Covid-19. <https://www.brewbound.com/livestream/brewbound-frontlines-california-new-york-and-illinois-guild-directors-and-brewers-associations-paul-gatza-discuss-craft-beer-during-covid-19>

This confusion on true impacts and harms illustrates the need for policymakers to give pause and thoughtfully consider making any hasty changes permanent. While the economic data continues to be collected, outreach by policymakers to public health and law enforcement officials on the public health and safety impacts of changes to alcohol regulation is crucial.

## **POLICY “FIXES” SHOULD BE NARROWLY TAILORED AND FINITE**

It may be helpful to consider another industry greatly impacted by Covid-19, the air travel industry. The public is not flying and the industries that operate airlines are suffering greatly. The aid packages that governments have created to help them stay afloat, however, are more targeted in direct aid. There is no talk of lowering airline safety protocols, cutting corners on airline inspections, or allowing airlines to do the work of other industries. That said, no amount of regulatory changes or direct aid can realistically restore profitability until the public feels safe to fly again.

That is an important reminder for alcohol industry regulations. The loss of business to alcohol industry participants is not directly due to alcohol health and safety regulations but is mostly tied to the lack of consumer interaction and confidence in venturing outside their house. This will eventually change, just as the public overcame their fear of flying on airlines post-9/11. Things will return to a new normal, but it is unknown when.

The restoration of public confidence is important so businesses can fully open and serve consumers without fear of harm. Those harms are just not specific to Covid-19. Permanently changing alcohol laws aimed to protect consumers seem to contradict this concept.

## **CONCLUSION**

As the United States recovers from Covid-19, a growing number of states will consider whether to codify temporary changes in the regulation of alcohol and some industry members perceive this crisis as a ripe opportunity to promote their agenda.

The crisis of the Covid-19 ought not be a catalyst to permanently change time-tested laws, regulations, and programs, which promote the health and safety of consumers as well as positive competition within the marketplace. An emergency related to a health pandemic is no time to shoehorn major changes into the proven system of state alcohol regulation.

In some cases, states may inadvertently remove laws and regulations initially created for public health and safety reasons for the sake of issues brought upon by Covid-19 and the ubiquitous desire for alcohol availability throughout the country. An education on the goals of alcohol policy as they relate to protecting vulnerable populations and preventing the harms of alcohol from impacting the entire nation would serve our nation well.

A classical adage attributed to Augustus is “Festina Lente,” which means to “make haste slowly.”<sup>28</sup> Governments had to react quickly when Covid-19 showed up at our doorsteps, but a “Festina Lente” approach should be taken when deciding how to best recover from this crisis to ensure additional and unintentional negative consequences do not occur concerning alcohol beverage sales and consumption.

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***“The crisis of the Covid-19 ought not be a catalyst to permanently change time-tested laws, regulations, and programs, which promote the health and safety of consumers...”***

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<sup>28</sup> Wikipedia. Festina lente. [https://en.wikipedia.org/wiki/Festina\\_lente](https://en.wikipedia.org/wiki/Festina_lente)

## **ABOUT THE AUTHOR**

Patrick Maroney is the President of Maroney Consulting Services LLC, and provides consulting related to liquor laws, rules, liability, training and compliance for liquor licensees and stakeholders. Patrick has over 33 years of experience in law enforcement and regulatory compliance. In June 2019, Patrick retired from the state of Colorado where he served as the Director for the Colorado Liquor Enforcement Division (LED) since 2013. For over two years previously, Patrick served as the Chief of Investigations for the LED. He has also worked for other government agencies including the Colorado Lottery, Colorado Bureau of Investigation, Arapahoe County Coroner's Office and the Larimer County Sheriff's Office.

Patrick is a former board member of the National Conference of State Liquor Administrators (NCSLA) and has served on several panels during NCSLA conferences as well as hosted the 2017 National Conference in Denver.

During his tenure as Director of the Colorado LED, Patrick saw several changes in liquor law, policy, rules and industry practices. He worked closely with liquor stakeholders in 2016 and 2018 to implement two bills passed by the Colorado legislature that brought about the most significant changes to Colorado's liquor laws since Prohibition. He understands the importance of strengthening America's strong alcohol regulatory system and its relevancy to protecting public health and safety.

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