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Subject: My thoughts on the "wine industry and liquor store  
Revitalization act."  
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Dear Colleague:

Assembly bill A8632 (Morelle) should be called the "Farm Winery and Liquor Store Destruction Act," or the "Big Box Store Sweetheart Act," and in no way should it be seen as a "wine industry and liquor store revitalization act." As I read through the torturous legalese of this Trojan Horse piece of legislation it is interesting to note that most of the changes proposed in this bill are designed to protect the special interests of the big box grocery stores. For example, a proposed change to allow under 18 year old employees is okay for grocery stores but not for liquor stores. Why is that? How does that revitalize liquor stores? It doesn't. It is a favor to the supermarkets that already have underage employees stocking shelves, delivering packages to cars and running check-outs.

Hours of sale will be extended to allow wine sales hours to mirror the current time for beer sales. Can you imagine the problem it would be for a grocery store to be able to sell beer until 2 am, but have to stop selling wine at 9 pm? This is just a favor to the supermarkets that are already open 24/7, and has nothing to do with revitalizing liquor stores.

And then there is the 100% proofing requirement. This is a red herring inserted to soften the impact of the public's legitimate concern for underage sales, but really does nothing for public safety and adds millions of dollars of non-productive cost to consumers purchasing alcoholic beverages IN LIQUOR STORES in New York State. If we assume that current requests for proof of age are less than 10% of all transactions, that means this bill requires a lot of additional requests to reach that 100% mandate. If we assume that the added transaction time required to request, produce, check and return the photo ID is 30 seconds, and that average cashier wages is \$12.00 per hour (including payroll taxes and benefits), a conservative estimate, that yields a cost of \$0.10 per transaction. This of course is a burden falling mostly on the liquor stores because 100% of liquor store transactions (10 times the current 10%) will now need to be proofed whereas in grocery stores it will be a much smaller percentage increase.

If we assume that an average transaction is \$10.00 that means that the extra cost to New York consumers for this 100% proofing mandate is \$10 million for every \$1 billion in retail sales. That is enough to wipe out the \$97 million in franchise fees this bill asks grocers for in about 30 months! Now if this effort actually produced positive results you might make a case that it was money well spent, but it would take a real stretch to convince me that proofing every customer in my store, most of which OBVIOUSLY look older than 25 years of age, will produce any real social benefit. After all, we are already asking for proof of age for 100% of the customers that look like they might be underage. That makes sense. This bill's requiring an age check for every customer is just a favor to the supermarkets to make it seem like

adding all those new sale outlets that are stocked and cashiered by underage employees, is not going to result in lots of underage drinking. But as I've shown above, it is a waste of consumer time and money; an alcoholic beverage purchase tax. It produces nothing of value to society and makes it disproportionately more intrusive and time consuming to wait in a liquor store check-out line than in a grocery store check-out line.

Now let's take a look at the 'Medallion' idea. Here the bill is attempting to throw a bone to existing liquor store owners by offering another license opportunity which they can either use or sell. But with one hand they giveth, and with the other hand they taketh away; you have 36 months to use it or lose it. By adding this 'sunset' provision to the medallion the bill makes it worth far less in the market. Because the clock is ticking, every day the value of your medallion is less because in 1096 days it is worth nothing. What do you think it is worth on day 1095? Probably not much more. So, following this supply and demand logic, he who sells first will get the highest price since it is further away from the zero value day. That puts artificial pressure on the opening value of the medallion from day one. If you had all the time in the world to sell your medallion you have more control over what price you settle for, but now that each day it gets closer to worthless there is pressure to demand a lower price right now. Another favor to the supermarkets.

In a guest editorial published last year in the Buffalo News (<http://www.buffalonews.com/149/story/610060.html>) I mentioned that the amount of the franchise fee that is being required of the grocery stores is far too low. It is a pittance, really. If the governor was serious about raising money why was he planning on selling out liquor stores to the big box stores for pennies on the dollar? This bill repeats the same sweetheart franchise fee of 0.46 of annual gross sales that was proposed in 2009. That will leave about \$1 billion in potential franchise fees on the table. Why don't the governor and the sponsors of this bill seek out the advice of a trained economist like Bradley J. Rickard, the Cornell University assistant business professor who authored The American Association of Wine Economists Working Paper No. 48, 'Introducing Wine into Grocery Stores: Economic Implications and Transitional Issues' to determine what the true value of the franchise fee should be instead of inserting this low number that is, frankly, another favor to the big box stores? For that matter why don't the governor and the sponsors of this bill take the advice of the NYS Law Revision Commission and take a serious look at the implications of the changes they propose: "Wine in grocery stores has not been addressed herein because we concluded that before any action should be taken a complete and independent analysis of its economic consequences should be undertaken." Commission Report on Alcoholic Beverage Control Law, December 15, 2009, page 3.

No recommended studies have been done, and all the support for this bill is just rhetoric, opinion or anecdotal. The implications of the changes this bill propose need to be carefully studied and considered before laws are changed. What's the hurry Governor? Why the rush Assemblyman?

The most disturbing part of this bill is the multiple license and cooperative buying language. As I read this bill it looks like one

owner, i.e., person or company, can own an unlimited number of liquor licenses. Now, who do you think that favors? Mr. Liquor Store owner who has a freestanding liquor store that does \$750,000.00 a year in business and has no clue where to even buy cheese or potato chips to sell in his store, or Mr. Supermarket owner who has: virtually unlimited expansion capital, employees trained in buying and selling the new food and beverage products being offered to liquor stores by this bill, long standing purchasing arrangements with the suppliers and vendors of these new items, along with an already huge sales volume for these products (snacks, soda pop, cheese, deli foods, etc.), a fully staffed service counter and a sophisticated bottle return system for water and soda returns, a sophisticated multi-state distribution center/warehouse (handy for cooperative buying) with trucks on the roads 24/7, marketplace dominance and control through ownership of all of the busy retail shopping centers in every market?

Folks, through a deft wave of the hand this bill magically pits the 2700 individual, family run New York liquor stores against the surreal financial and market resources of some of the most powerful businesses in the known universe! The implications to retail liquor stores of this bill are absolutely staggering. What it accomplishes is nothing less than criminal. It steals the life-long sweat equity of honest small businessmen who run their businesses within the rules set by the state - rules that forced them to stay small and weak while the rest of the retail landscape evolved into the megaliths we see today - and GIVES it to the big box stores without just compensation or protection.

Those politicians and businessmen that seek to foist this immoral act of piracy on liquor stores should be ashamed. In fact, I think they should be arrested. Just because they use a pen and not a gun does not make what they want to do any less offensive than blackmail and extortion. Pretty much everything being said about this bill is a lie and a distortion. Let's not obscure the issue by talking consumer convenience or support for wineries and grape growers. Those are real issues that are intertwined with this one, but let's not miss the point: this lame-duck governor, desperate for his party's nomination, is selling us out for political capital and the cost to liquor store owners and employees in financial pain, bankruptcy and unemployment be damned. The cost to small NY wineries pitted against chain buyers and multinational suppliers be damned. The cost to New York citizens in social cost, wasted time, and yes, fewer choices be damned.

The big box stores want the profits from selling wine, and with this 'revitalization' bill they seek to take liquor profits too. Oh, it will be a fair battle played out in the open market. Yeah, right! About as fair as putting a high school second string team in the Super Bowl and saying they have a fair chance of winning the game.

You still think that independent liquor stores will be able to compete successfully against the better resources of the Wal Marts, 7-Elevens and A&P's? To that idea I have one thing to say: Chase Pitkin. This formerly Wegman owned and operated home improvement and garden store chain was closed several years ago when Wegmans admitted that they were just too small to compete against the big boys. They just closed their doors and went away.

Don't let that happen to you. You need to get involved. Most importantly give your financial support to the Last Store on Main Street coalition. They did a great job stopping the wine in grocery forces last year, but this year's war is being fought on two fronts. The fight can be won, but liquor stores need to stand together behind one voice so that our message is clear. No compromise on this 'revitalization' bill. No compromise on wine in grocery stores. It's all about money and political power. The only winners here are the politicians and the big box stores. Everyone else: liquor stores and their employees, small NY wineries and the general public is collateral damage.

Links:

<http://nyslisa.com>

<http://lastmainstreetstore.com>

Regards,

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