

# Fact vs. Fiction

## H.R. 5034

### *The Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010*

#### What H.R. 5034 Accomplishes

- Reaffirms that states have the primary authority to regulate alcohol
- Prohibits states from facially discriminating against out-of-state producers while limiting the use of the dormant Commerce Clause to deregulate alcohol
- Clarifies that state alcohol regulations have the presumption of validity and plaintiffs wishing to challenge these laws bear the burden of proof

#### Fiction Circulating around H.R. 5034

- **Fiction:** *This bill would ban my state's law that allows direct shipping of wine to my house.*  
**Fact:** This bill does not address direct shipping or any specific state alcohol law. It does not preempt a state law that allows direct shipping. It does not mandate a direct shipping law where there currently is not one. The bill does 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.
- **Fiction:** *This is an intra-industry food fight.*  
**Fact:** Protection of a state's power to regulate alcohol is not an "industry food fight." In March 2010, nearly 40 state attorneys general and the National Association of Attorneys General (NAAG) wrote Congress and asked that Congress help address the "growing threat facing our states from unprecedented legal challenges that seek to eliminate our ability to regulate alcohol." While NAAG has not specifically endorsed H.R. 5034, state attorneys general and alcohol regulators are very concerned about this ongoing litigation. Moreover, [a public opinion survey released by the Center for Alcohol Policy](#) in April 2010 confirms that 79 percent of Americans support the states' ability to set the alcohol laws and regulations that help keep them safe. The survey also revealed the same vast majority of Americans are concerned about alcohol produced by foreign-owned companies and think that the American regulatory system, with its local controls over alcohol sales, is increasingly important in safeguarding our public health.
- **Fiction:** *H.R. 5034 would undermine existing federal regulatory authority over alcohol and undermine national uniformity of regulation.*  
**Fact:** The 21<sup>st</sup> Amendment provides for state-based regulation of alcohol. National uniformity of regulation does not exist for alcohol beverages. States currently have the authority to set excise tax rates, regulate composition, approve labels, restrict advertising and regulate importation. This bill does not amend or alter the Federal Alcohol Administration Act (FAA Act) which provides federal guidelines in many of these areas.
- **Fiction:** *This bill will "overturn" the 2005 Granholm decision.*  
**Fact:** As to the interpretation of the Constitution, only the Supreme Court itself or a constitutional amendment can "overturn" a Supreme Court decision. Congress can, and always has, amended federal statutes to clarify, expand or narrow the scope of Supreme Court interpretations of these laws. It is the intent of this language to make clear the congressional support for the holding in *Granholm* – prohibiting state laws that allow an in-state winery to do something a similarly situated out-of-state winery cannot do. Language that bars facial discrimination is included in the bill to codify this prohibition.
- **Fiction:** *Some say the current system is not under attack, it works well and there is no need for this legislation.*  
**Fact:** Over half the states have been sued challenging their alcohol laws. The lawsuits have attacked

# Fact vs. Fiction

## H.R. 5034

### *The Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010*

items such as commonsense safeguards that require a face-to-face transaction (needed for I.D. checks) to buy alcohol or whether states can regulate small businesses differently than big businesses. The language from adverse decisions has been used by plaintiffs' attorneys to open new litigation as well as force the state to pay attorneys fees. H.R. 5034 will end this gradual erosion of state rights.

- **Fiction:** *We can just solve these challenges individually in court.*  
**Fact:** The federal courts have had a “one step forward, one step back” approach granting the state a win in one case, and a loss in another. For example, in January, a circuit court struck down a Massachusetts volume cap as unconstitutional. Then in April, another circuit court said an Arizona volume cap was constitutional. Other states have had their laws requiring a face-to-face transaction upheld; others have had them struck down. One state’s law prohibiting the use of volume discounts in alcohol was struck down, a similar law in another state upheld. These conflicting opinions have not resolved the ultimate issues and have set the stage for confusion with alcohol regulators at the state level with lawyers being the only victors. Unelected judges should not set alcohol policy; this responsibility rightly rests with individual state legislatures, as guaranteed under the 21<sup>st</sup> Amendment to the U.S. Constitution.
- **Fiction:** *This bill threatens the balance between state and federal powers by creating new state powers particularly in the area of labeling, composition, advertising and taxation.*  
**Fact:** The states already have the power to regulate in labeling, composition, advertising and taxation and this bill does not give states additional power to regulate. Efforts to specifically exempt such items from state oversight would be counter to the goals of the legislation and could in fact preempt state regulatory authority. State laws that raise concerns can and should be addressed in the state legislature.
- **Fiction:** *This bill allows states to raise taxes or pass different laws on big brewers and exempt small brewers.*  
**Fact:** States already have the power to regulate different-sized entities differently, but that is a subject of present litigation. NBWA supports allowing states to regulate different-sized producers differently. The proposed legislation makes clear, however, that states cannot pass laws that facially discriminate against an out-of-state producer to support an in-state producer without a legally justifiable reason.

If you have any questions about the bill itself, please feel free to read it in its entirety by clicking [here](#).