Testimony in support of H.178 / H.590 - Chris Kesler 2/22/22
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Black Flannel Brewing & Distilling Co. are the first and only brewery / distillery combination in the state. Being in a unique position with one foot in each industry, I'm writing today in support of H.178 / H.590 An Act Relating to Low-alcohol Spirits Beverage.

Black Flannel Distilling's intent in the coming months is to produce canned cocktails using spirits we manufacture on-site from grain or other sugar sources to mix canned cocktails with a final ABV in the 5% to 10% range packaged in a 12oz aluminum can. It is our intent to use locally grown ingredients whenever there is an option, and grow some of those ingredients ourselves (i.e., white beets used in our Rare Earth White Beet Spirit). ABV for our canned cocktails would never be over 10% in a 12oz can which equates to the same ethanol volume as a 16 oz 8% ABV Double IPA.

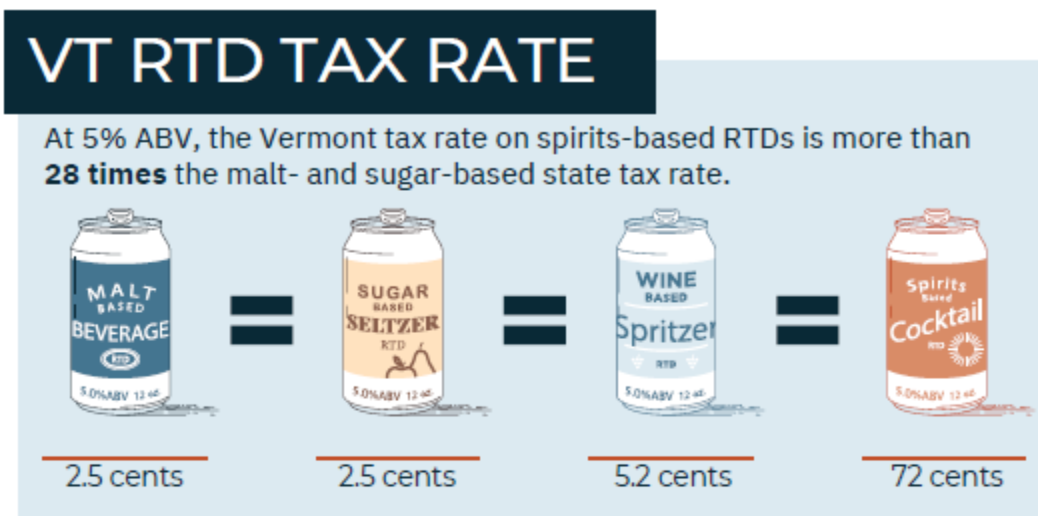
As I understand some of the history of legislation related to malt beverages in Vermont, there was legislation passed in 1994 in favor of raising the ABV limit on malt beverages to allow up to 8% but anything between 6 and 8% was considered a "spirit". Brewers in subsequent years were able to lobby for, and get legislation passed allowing larger package sizes with higher ABV content, all of which are distributed through 3rd party (non-DLC) distributors. The current limit is now 15.9% ABV in up to a 22oz container. Past testimonies from brewing stakeholders cited the need for a level playing field with wine.

Now in 2022, we are now facing a similar call for a level playing field, but this time from the Vermont Distilling community. Vermont Distillers are limited to distributing their spirits products through the 802 system which serves 80 locations throughout the state. This model currently works for high proof alcohol where the liquid in the container is in the 40-60% ABV range. RTD Canned Cocktails are a much different product. These are a natural extension and expression of the distiller's craft bringing the ABV into the same or lower range as vinous & malt beverages. As such, they should be allowed distribution to the same 1000 retail locations throughout Vermont enjoyed by vinous & malt beverages.

To illustrate the current unfair competitive advantage, imagine if Ben & Jerry's could sell their product in 1000 stores but a small local frozen yogurt start-up were only allowed to sell through less than 10% of the same stores simply because of the way it was produced.

Products of a similar ABV should be allowed to appear in the same stores without exception. This opens markets allowing for organic market growth, gives small state producers a fighting chance with the ability to create new channels of revenue, and gives consumers more choice.

Another aspect of this issue is fair taxation. Currently, malt and sugar (seltzer) based tax rates are 28 times less than spirit based RTDs for a 5% ABV product. This inequity is one of the leading barriers for small local distillers to enter the RTD market.



I've read arguments from the national brewer's association that it's between double and triple the cost to produce malt beverages over spirits so taxation should be higher to keep the market fair. This cost discrepancy is not what we've experienced at Black Flannel. Many of our spirits cost more to produce than the beer we brew.

There has also been concern expressed that if we give big liquor the opening to expand distribution channels in Vermont, that it will erode market share for other small local producers. We believe that there would be adjustment but very little erosion of existing market share for established brands, and that larger players will bring more awareness to RTD with their marketing dollars. It will therefore open up a larger market for small Vermont producers who otherwise couldn't afford to bring the kind of education and product awareness that large national & international brands can bring.

This is one of the many reasons Vermont craft beer became such a highly successful industry in our state. The sizeable market & awareness created by larger out-of-state brands which savvy and talented Vermont brewers were able to capitalize on. They created stunning locally crafted products allowing them to capture nice percentages of market share from big beer brands. This had an extended impact to the state economy not only in job growth, but increased travel & tourism for those seeking out their favorite Vermont craft beer brands.

We've also heard concerns related to public safety. We believe these concerns are not warranted. Whether we're malt, vinous, or distilled spirits producers, we all promote alcohol consumption in moderation. Moderation is a practice, not a beverage.

Black Flannel also has a full-service restaurant. Our creative cocktail program in our restaurant has experienced significant challenges consistently procuring many of the spirits products required to deliver craft cocktails to our guests. Moving RTD out of state warehouses would free the state DLC up to focus solely on liquor distribution. This will boost the supply of brands vital to state craft cocktail programs at bars and restaurants.

Moving RTD to 3rd party distributors should also have relatively minor effects on revenue generation at the state DLC; if anything we believe it would increase state revenue. Room to store more spirit brands would offset removal of RTD from the product. Selling through the same channel as beer & wine, would generate far more revenue to the state than if it were kept in the DLC retail system. The only difference being tax revenue would flow directly into state tax coffers rather than passing through the DLC first.

DLC being the current sole distributor for RTD does not give small Vermont Distillers any of the advantages that 3rd party distribution provides (merchandising, product marketing, promotion, and placement). Given the level of service provided by 3rd party distributors, Vermont Distillers will have the opportunity to grow their products faster than currently possible (resulting in more tax revenue for the state).

No Vermont spirits brands have launched an RTD as of today, but that's about to change. Those of us who see this as a vital part of our continued ability to survive in this pandemic economy, have already positioned ourselves to bring RTD canned cocktails to the local market by spending on infrastructure - equipment, raw materials, and human resources.

Not passing this legislation would essentially result in unfair suppression. Suppression of commerce for distillers and suppression of consumer choice at 900 state retail locations.

H.178 / H.590 helps to create a level and fair playing field for all Vermont beverage manufacturers regardless of "sugar-source*". It will grow new markets for state distilleries, and give consumers more choices and better access to a wider range of products. As a consumer, I would prefer to have the convenience of purchasing my favorite canned craft cocktail in all the same locations I am able to purchase my favorite canned craft beer, seltzer, or wine-based products.

This can only be a good thing for Vermont's economy.

**Sugar-source refers to the source of fermentable sugars. For beer the sugar source is malt (grain), for wine it's grapes, for hard cider it's apples, for mead it's honey, and for spirits it can be any / all the above and more.*