

EXHIBIT 1  
DATE 3/28/13  
NR 616



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Honorable Roger Hagan  
Montana House of Representative  
House District No. 19  
Capitol Station  
Helena, Montana 59620

**Re: House Bill No. 616 and Dormant Commerce Clause of the U.S. Constitution**

Dear Representative Hagan:

Per request, I reviewed the dormant commerce clause doctrine to determine whether it would inhibit the Legislature's ability to adopt HB 616. After reviewing the bill and applying the case law regarding what is known as the dormant commerce clause, it is my legal opinion that the doctrine either does not apply, or that the type of regulation proposed by HB 616 is permissible under the doctrine because it deals with public safety regulation relating to alcohol.

The dormant commerce clause applies only in instances where there is an obvious and intentional act by the State to protect in-state economic interests over out-of-state interests. While regulation of trade is, indeed, reserved to the federal government the authority is not so supreme that it prohibits any and all state and local regulation.

The first question is whether a law on its face discriminates against interstate commerce--namely, whether in-state and out-of-state interests treated differently. Are in-state interests benefitted to the detriment of out-of-staters? I fail to see how HB 616 creates any such advantage. Even if theoretical examples show disparate treatment the doctrine actually permits it where the state has a legitimate interest.

Laws, like HB 616, that are designed to promote public health and safety are subject to minimum levels of scrutiny even though interstate commerce might be implicated. USA Recycling Inc., v. Town of Babylon, 66 F 3d 1272 (1995). Courts adopt a flexible approach through a balancing test wherein the benefits of the state law outweigh the burdens imposed on interstate commerce. Again, courts consider the nature of the state or local interests and public safety regulations, like those involved in alcohol service and licensing, is given considerable latitude.

A party challenging the validity of the state law has the burden of showing it discriminates. Hughes v. Oklahoma, 441 US 322, 336 (1979). In Exxon Corp. v.

Maryland, 437 US 117 (1978), the state prohibited petroleum producers from operating retail service stations. The court found the law constitutional. The fact that the law "falls on some interstate companies" does not by itself establish a claim of discrimination against interstate commerce. "The Clause protects interstate markets, not particular interstate firms." Id.

I fail to see how HB 616 even impacts interstate commerce sufficiently enough to invoke the dormant commerce clause, and even if the doctrine were applied HB 616 would be permitted as a valid regulation promoting public safety. The benefits of HB 616 certainly exceed any perceived limited, minimal and incidental burdens on interstate commerce.

Sincerely,

A handwritten signature in blue ink that reads "Chris J. Gallus". The signature is written in a cursive style with a long, sweeping underline.

Chris J. Gallus  
Attorney at Law