

Government Affairs & Legal Update - January 2007

A. FEDERAL / NATIONAL

STOP Act Signed by President. On December 21, President Bush signed the *Sober Truth on Preventing (STOP) Underage Drinking Act* into law. Some of the key provisions it contains include establishing the Interagency Coordinating Committee on Prevention of Underage Drinking, grant programs targeting the involvement of adults and parents in fighting underage consumption and a media campaign. The law also includes language emphasizing the role of states in the regulation of alcohol, a point central to the three-tier system.

BA Submits Allergen Comments. On December 26, the Brewers Association sent formal comments on Notice 62 - Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages - to the federal Tax and Trade Bureau. To read the comments in full, access them at:

http://www.beertown.org/govt_affairs/pdf/Notice62_BAComments.pdf

TTB e-COLA Announcement. All electronic COLAs approved on and after December 20, 2006, will display the following change in the TTB Authorized Signature Line (Item # 24): **TTB Specialist (electronically approved signature)**

This change will not have any impact on or affect electronically approved COLAs prior to December 20, 2006. This change is an interim step to ultimately display the name of the Specialist who approves the COLA.

B. THE COURTS

Bad Santa? The Maine Civil Liberties Union filed suit in U.S. District Court accusing the state of Maine of censorship for denying label applications for Santa's Butt Winter Porter, which depicts the Christmas icon raising a pint. The state claims the label is inappropriate in that it might appeal to children, while the MCLU cites First Amendment rights of expression.

C. THE STATES

Distribution and Franchise:

Montana

A request for draft legislation revising brewery regulation and beer distribution laws has been made in the state legislature. No further details are available until the legislation is actually drafted and printed.

Texas

A move is underway to introduce legislation allowing breweries making less than 75,000 barrels a year to sell up to 5,000 barrels a year from the brewery for on- and off-premise consumption. Led by Houston's Saint Arnold Brewing Co., the effort has broad support among the state's small brewers and among beer enthusiasts.

Direct Shipping:

Florida

Senate Bill 126, introduced in mid-December, provides for a license classification as winery shipper and authorizes certain direct shipments of wine.

Montana

In a direct response to the Granholm decision, SB 127 has been introduced to allow all licensed wineries to make limited sales direct to Montana retailers.

Taxation:

California

On December 13, the State Board of Equalization voted to review the current tax classification for flavored malt beverages. Currently, these beverages are taxed at the rate for beer (20 cents per gallon), whereas distilled spirits are taxed at the significantly higher rate of \$3.30 per gallon. The vote is the result of a law suit filed by Santa Clara County that claimed the improper tax classification allowed these products to be sold at an artificially low price, thus making them more available to minors.

Trade Practice & Other:

Michigan

Passing the House on the last day of November, House Bill 4641 would allow the Liquor Control Commission to issue a special beer festival license (good for up to five events per year) to a nonprofit organization composed primarily of brewers, microbrewers, and brewpubs for an event showcasing beer and its production. The bill would specifically permit a licensed brewpub to sell directly to the special licensee.

The bill defines a "beer festival" as an event at which the various types and kinds of beer and the production of beer are showcased to the general public and at which the general public can purchase and sample the beer being showcased on the licensed premises.

South Carolina

Senate Bill 50, providing that beer and wine may be sold at all hours except those when state law prohibits such sales (including Sundays) and that municipal and county

ordinances conflicting with those state laws are unenforceable, has been sent to the Finance Committee for consideration.

Keg registration legislation (SB 213) has been introduced in the South Carolina Senate.

Government Affairs & Legal Update - February 2007

A. FEDERAL / NATIONAL

Interest Group Urges Congress to Raise Alcohol Beverage Taxes. In a January 23rd letter, the Center for Science in the Public Interest asked Members of Congress to “seriously consider a long over-due alcohol tax increase to achieve budgetary goals and help pay for the prevention and treatment of alcohol-related problems.” The letter was signed by about four dozen national and state organizations that either advocate against alcohol or treat alcohol abuse.

B. THE COURTS

Court Strikes Kentucky Direct Shipping Provision. A U.S. District Court judge ruled that the provision contained in the direct shipping law passed by the state legislature in 2006 requiring a face-to-face purchase before direct shipping could occur, is unconstitutional and ordered the state to cease enforcement. Left in place, however, were the provisions relating to production (to be eligible to ship directly, a winery could not produce more than 50,000 gallons annually) and the 2 case limit per order, as the judge felt these requirements apply equally to both in- and out-of-state wineries.

A-B – InBev Fallout. A handful of California wholesalers have filed suit against A-B over the compensation terms offered for the termination of their distribution rights for InBev brands.

C. THE STATES

Distribution and Franchise:

Indiana

House Bill 1479 would allow a small brewery (20,000 bbl/year or less) to sell and deliver beer to a person holding a retailer or a dealer permit, and removes a provision that allows a large brewery (over 20,000 bbl/year) to sell and deliver beer to a consumer.

Mississippi

Two bills have been introduced (H.B. 1389 and S.B. 2519) to allow a distiller, wine manufacturer, brewer, rectifier, blender or bottler to have a financial interest in a premises where alcoholic beverages are sold at retail by a permittee, or in the business conducted by a permittee, if the permittee does not sell or serve any alcoholic beverages made by that manufacturer.

Oklahoma

Legislation permitting winemakers to engage in direct retail sales to consumers was pre-filed in the state House.

Virginia

H.B. 2450 creates a new nonresident winery distributor license that authorizes the licensee to sell and deliver its own wine. The bill defines "nonresident winery distributor" as any winery located outside the Commonwealth and licensed as such in the state where the winery is located and whose total wine distribution to all Virginia licensees does not exceed 3,000 cases in any calendar year. The bill also grants these same self-distribution privileges to certain winery and farm winery licensees.

Direct Shipping:

Florida

Senate Bill 126, creating the alcoholic beverage license classification of "winery shipper" and authorizing the direct shipment of wine for personal use to those eligible to lawfully purchase it, has moved to committee consideration in the Senate.

Georgia

Currently under consideration by the state House, H.B. 159 provides for the direct shipment of up to 24 cases of wine a year to Georgia residents and allowing those purchases to be made by phone or over the Internet. Currently, a winery with a federal basic wine manufacturing permit can ship up to five cases of wine to a consumer if the customer is present at the winery when the sale is made.

Idaho

Introduced in mid- January, House Bill 11 makes changes to the law enacted last year permitting the direct shipment of wine to Idaho consumers. Provisions include: the issuance of direct shipper permits to holders of wine wholesale or retail licenses issued in Idaho and other states; the prohibition of the direct shipment of wine to consumers by any person not holding a direct shipper permit; clarifies the duty to pay sales and use taxes and wine excise taxes on wine sold under a direct shippers permit.

Taxation:

Maine

Governor John Baldacci has stated his commitment to funding and expanding the state subsidized health insurance program and has not ruled out possible tax increases on beer and wine.

Michigan

A Michigan think tank has publicly stated that state officials should consider raising the tax on beer as a means to address the state's budget problems. The Center for Michigan claims that if the state's beer tax was simply indexed for inflation, it would generate more than \$270 million a year instead of the current \$44 million.

North Dakota

Passing the Senate on January 23rd, S.B. 2135 would impose a “privilege of doing business in the state” tax on all alcohol beverage wholesalers, domestic wineries, microbrew pubs and direct shippers, with the amount on beer set at 8 cents per wine gallon draft and 16 cents per wine gallon bottled/canned.

Oregon

House Bill 2535 imposes a malt beverage cost recovery fee of \$32 per barrel on manufacturers and importing distributors of malt beverages. The resulting funds would be used to recover a portion of the government costs incurred as a result of the consumption of malt beverages and to nearly double the number of state troopers.

Pennsylvania

The State College Borough Council is considering the levy of a 5-10% per drink tax on alcohol beverages sold in bars and restaurants.

Rhode Island

A State Representative is proposing a bill that would raise the tax on beer - doubling the current rate of \$3.00 per barrel - to fund alcohol treatment programs.

West Virginia

Legislation has been introduced in the Senate that would allow county commissioners to levy a tax on alcoholic drinks of up to 35 percent of their cost. The provisions of the bill only apply to on-premise consumption.

Trade Practice & Other:

Arizona

Registration of kegs would be required under the provisions of House Bill 2219, introduced and under consideration by the state House.

Georgia

Senate Bill 26 would allow the governing authority of a county or municipality, to authorize the retail sale of malt beverages and wine at any time on Sundays if such sales of malt beverages and wine are approved by referendum.

Iowa

House File 56 would make the many local ordinances dealing with keg registration obsolete by instituting a statewide law.

Missouri

H.B. 136 prohibits the use or possession of an alcohol beverage vaporizer.

Montana

Senate Bill 296 increases the number of restaurant beer and wine licenses that may be issued in a particular quota area.

Nebraska

LB 549 provides for a microdistillery license and allows any party holding that license to manufacture and retail their own spirits within their licensed retail location, similar to the craft brewing law for beer. The bill also mandates that the holder of the microdistillery license shall not be allowed to engage in the wholesale distribution of spirits.

New York

Assembly Bill 237, providing for the establishment of a New York City liquor authority to license and regulate the retail alcoholic beverage business in the city, has been introduced and referred to committee.

North Dakota

Legislation banning alcohol without liquid devices (AWOL) has been introduced in the House.

Oklahoma

The grassroots interest group Oklahomans for Modern Laws has started a petition to allow wine and strong beer sales at grocery and c-stores in the state.

South Carolina

Senate Bill 96, now under Senate committee consideration, makes it unlawful for a person to possess, use or purchase an alcohol without liquid device.

Vermont

S.B. 28 would permit certain retail licensees to sell beer with the same alcoholic content as wine (deemed “specialty beers”) and to tax the higher alcohol beer at the same rate as wine

Also in the Senate, legislation has been introduced that would equalize the limitations imposed on both in-state and out-of-state producers of malt beverages regarding holding an interest in a Vermont retail liquor license.

Virginia

Legislation (H.B. 1784) restoring the right of a brewery, winery, or farm winery (both in-state and out-of-state) that is authorized to engage in the retail sale of wine or beer to deliver wine and beer to consumers, passed the House in late January and is before a Senate committee for consideration.

House Bill 2491 authorizes licensed retailers of alcoholic beverages to display, and manufacturers, their authorized vendors, and wholesale wine and beer distributors to

provide or sell to such retailers, alcoholic beverage point of sale advertising materials for use in the interior of licensed retail establishments.

Washington

H.B. 1251 attempts to address the matter of stolen metal property (including kegs) by creating additional record keeping requirements that must be met during any transaction involving a pawnbroker or second-hand (scrap) dealer.

House Bill 1338 authorizes the Washington Beer Commission to accept gifts, grants, and endowments from public or private sources for the use and benefit of the purposes of the Commission. Expenditures must be made according to the terms of the gifts, grants, or endowments. The bill has received an initial public hearing.

Introduced in mid-January, H.B. 1349 would allow a holder of a liquor license to sell malt liquor in containers that can hold four gallons or more.

Senate Bill 5611 allows a microbrewery holding either a spirits, beer, and wine restaurant license or a beer and/or wine license to apply to the Liquor Control Board for a location endorsement to either of these licenses to allow the microbrewery to open a second location. Each location endorsement would cost \$1,000 per year.

Under the provisions of S.B. 5751, the Liquor Control Board (LCB) would establish a pilot project to allow beer and wine tasting in grocery stores, running from October 1, 2007, to September 30, 2008. As part of the pilot, 30 locations could hold six tastings but no grocery store licensee can hold more than one tasting per month.

Government Affairs & Legal Update - March 2007

A. FEDERAL / NATIONAL

No New Taxes, Please. In a February 6th letter to Congress, the Beer institute, National Beer Wholesalers Association and several liquor and retailer organizations expressed the view that now is the time to consider reducing the tax on alcohol. Although a variety of interest groups believe that increasing the tax would be beneficial in the effort to reduce underage drinking, the letter states that this is not the panacea those groups claim it to be and that important facts about the decline in teen alcohol use over the past decade have been ignored by those advocating higher taxes.

Poor Reception for Bud.TV. In a letter signed by 23 Attorneys General, serious concerns were expressed about the age verification technology employed on the site, particularly that the measures were insufficient to guarantee denial of access to those under the legal drinking age. In part, the letter stated that "...with Bud.TV, Anheuser-Busch is venturing into unknown, and more importantly unmeasured, territory. We feel strongly that, since you are creating the programming and controlling the Internet-based network, not just advertising on it, you have a higher responsibility to ensure that youth are not exposed to the marketing on your site."

B. THE COURTS

Court Strikes Kentucky Direct Shipping Provision. After a U.S. District Court judge ruled that the provision contained in Kentucky's direct shipping law requiring a face-to-face purchase before direct shipping could occur was unconstitutional last month, Kentucky regulators have now decided not to appeal that ruling. Although the Wine and Spirits Wholesalers of Kentucky have filed an appeal, the potential for small wineries in Kentucky and other states to ship directly to Kentucky consumers based on phone and Internet orders has taken another step to becoming a reality.

More A-B – InBev Fallout. Three New Jersey wholesalers have filed suit against A-B over the termination of their distribution rights for InBev brands, claiming violations of the New Jersey franchise law. Also on the offensive, A-B has filed suit against distributors in several states (Arizona, Rhode Island and Louisiana) claiming that contracts to sell InBev brands have expired and there is no longer any obligation to supply those brands to the named distributors. A-B is seeking to recover all costs associated with the litigation.

C. THE STATES

Distribution and Franchise:

Arkansas

Prompted by the Granholm decision on direct shipping, S.B. 304 would remove special consideration for native wineries and protect the state's traditional three-tier system for the control of alcoholic beverages.

Illinois

Amending the Beer Industry Fair Dealing Act, H.B. 1084 defines "brand extension" as a brand that incorporates all or a substantial part of the features of a pre-existing brand of the same brewer and that relies to a significant extent on the good will associated with the pre-existing brand. Provides that a brewer may not fail to assign brand extensions to a wholesaler who has been granted the territory to the brand from which the brand extension resulted and who agrees to accept the brand extension, but this requirement does not apply if the wholesaler is not in compliance with the agreement at the time the brewer offers the brand extension to the wholesaler.

Indiana

Passing the House and moving to the Senate, House Bill 1479 allows a brewer of a small brewery (20,000 barrels annual production or less) to sell and deliver beer directly to a consumer.

Mississippi

Legislation to allow a distiller, wine manufacturer, brewer, rectifier, blender or bottler to have a financial interest in a premises where alcoholic beverages are sold at retail by a permittee, or in the business conducted by a permittee, if the permittee does not sell or serve any alcoholic beverages made by that manufacturer, has been signed into law.

New Hampshire

Introduced in mid-February, Senate Bill 233 modifies the conditions under which a beverage manufacturer licensee may self distribute directly to a retail licensee (lowering the current threshold of 5,000 barrels annual production to be allowed to self distribute to 2,500 barrels), requiring an "all or nothing" choice of either self distribution or utilizing a wholesaler and changing the definition of specialty beer to include certain flavored malt beverages.

Oklahoma

House Bill 1603 authorizes winemakers to sell wine at retail and to ship wine to consumers.

Virginia

Legislation (H.B. 1784) restoring the right of a brewery, winery, or farm winery (both in-state and out-of-state) that is authorized to engage in the retail sale of wine or beer to deliver wine and beer to consumers, was placed before the Governor for his signature.

Direct Shipping:

Alaska

House Bill 34, allowing the holder of a winery license to ship wine direct to consumers in quantities of 5 gallons or less, passed the House on the 14th of the month.

Georgia

H.B. 159 provides that any person currently licensed in this or any other state as a winery or a manufacturer, wholesale dealer, importer, or retail dealer of wine who obtains a wine direct shipper license, may ship up to 24 nine-liter cases of wine annually directly to a resident of Georgia, who is at least 21 years of age, for such resident's personal use.

Hawaii

A bill seeking to limit the amount of wine a household may purchase by direct shipment to six 9-liter cases per year has been introduced (H.B. 1093).

Oklahoma

A state referendum is proposed in Senate Joint Resolution 27 on allowing the direct shipment of wine.

Oregon

H.B. 2171 was the subject of a public hearing on February 19th. The bill would allow a manufacturer of wine or cider to sell and ship directly to Oregon residents provided the manufacturer holds a direct shipper permit issued by Oregon Liquor Control Commission.

Pennsylvania

H.B. 255 amends the Pennsylvania Liquor Code to provide for the direct shipment of wine to certain consumers.

Tennessee

Legislation authorizing those licensed in Tennessee or another state as wine manufacturers, producers, suppliers, importers, wholesalers, distributors and retailers to ship wine directly to Tennessee residents of legal age (H.B. 1850 and S.B. 1977).

Taxation:

Maine

Legislation introduced in the Senate (S.B. 202) calls for taxing beer, wine and sparkling wine at the uniform rate of 12 cents per ounce of pure alcohol each contains, with 10 cents (excise tax portion) going to the General Fund and the remaining 2 cents going into a Prevention Fund. Both the House and Senate have postponed action on the bill indefinitely.

Maryland

H.B. 757 and S.B. 422 both call for increasing the State tax rates for alcoholic beverages in Maryland from \$1.50 to \$3 per gallon for distilled spirits, from 40 to 80 cents per gallon for wine, and from 9 to 18 cents per gallon for beer. The additional revenue raised would go to a special for addiction treatment and prevention services.

Ohio

Although no legislation has yet been introduced, several towns with colleges or universities are exploring the idea of seeking state authority to levy a per bottle beer tax to help pay for police and fire services.

Oregon

H.B. 2731 seeks to increase the tax on malt beverages (\$2.60 per barrel), wines and cider. The additional revenue would be used to fund alcohol and drug abuse prevention and treatment and to fund state police.

Vermont

The 6 percent state sales tax on beer that took effect January 1 would be repealed under the provisions of H.B. 243 now under consideration in the House.

Trade Practice & Other:

California

A.B. 323 would authorize beer and wine wholesale licensees and retail package off-sale beer and wine licensees to donate wine to nonprofits and pour wine at events sponsored by nonprofits.

In a move to more prominently reveal the true character of some flavored malt beverages, A.B. 346 seeks to add a warning that these products contain alcohol.

Georgia

Legislation (H.B. 238) has been introduced allowing a licensed brewer or wholesaler to provide and install carbon dioxide filters to a licensed retailer without charge. A licensed brewer may also provide carbon dioxide filters to a licensed wholesaler without charge. The licensed brewer shall pay the cost of any filter provided without charge by a licensed wholesaler to a licensed retail dealer.

H.B. 462 provides for the provision and service of food in connection with educational and promotional brewery tours and the free tasting of malt beverages.

Currently being considered in the Georgia legislature, both H.B. 468 and S.B. 26 provide for the local authorization and regulation of sales of alcoholic beverages on Sunday.

Kansas

S.B. 317 would establish the Cereal Malt Beverage Retailer's Act. The bill would allow beer with an alcohol content of up to 5.0 percent to be sold at all locations where 3.2 percent beer is currently sold. Local governments would have the option of adopting the act and would be allowed to set the hours of operations.

Massachusetts

House Bill 272 would allow liquor stores within 10 miles of the New Hampshire state border to open at 9:00AM on Sundays.

Minnesota

Pending in Committee, House Bill 310 allows small brewers (under 3,500 barrels per year) and brewpubs to sell 750 milliliter bottles for off-premise consumption, and allows brewers to provide small samples of product during tours.

Montana

Senate Bill 296, increasing the number of restaurant beer and wine licenses that may be issued in a particular quota area, has passed the Senate and moved to the House for consideration.

Nebraska

L.B. 544, currently pending in committee, eliminates the prohibition on retailers accepting credit from beer manufacturers and wholesalers.

New Mexico

S.B. 195 seeks to make it a violation of the Liquor Control Act license to sell for consumption off the licensed premises alcoholic beverages that have been refrigerated or otherwise cooled or chilled in any manner.

New York

A.B. 5411 and S.B. 2466 provide for the ability of all brewers or manufacturers doing business in the state to conduct beer tastings in small samples to legal age consumers at licensed establishments and annual fairs.

North Carolina

Legislation to make illegal the possession and sale of alcohol vaporizing equipment has been introduced in both chambers of the legislature.

Oregon

Senate Bill 502 seeks to repeal laws relating to required contracts between suppliers and wholesalers of alcoholic beverages and eliminates statutorily mandated exclusive territories for wholesalers of alcoholic beverages.

South Carolina

The state Senate passed a bill that would ban alcohol without liquid devices.

Texas

H.B. 1926, The Texas Microbrewery Free Trade Bill, introduced on the last day of February in the state House, would allow small breweries to make on-premise sales to patrons of no more than 5,000 barrels of ale and malt liquor annually.

Vermont

Legislation (H.B. 34) proposing an increase in the beverage container deposit amount from 5 cents to 10 cents per container has been introduced.

H.B. 94 seeks to raise the limit on the percentage of alcohol allowed in malt beverages from 8% to 16%.

Washington

Senate Bill 5611, allowing a microbrewery holding either a spirits, beer, and wine restaurant license or a beer and/or wine license to apply to the Liquor Control Board for a location endorsement to either of these licenses to allow the microbrewery to open a second location, continues to move in the Senate.

H.B. 2234 has been introduced to allow independent grocery stores to do central warehousing of beer and wine if vertically integrated stores are allowed to do central warehousing as a result of a court decision in the *Costco* case.

Legislation to allow microbreweries with a restaurant endorsement to conduct catering (S.B. 5639) is under consideration in the Senate.

H.B. 1251 has been amended with a provision making it illegal for scrap yards and recyclers to receive kegs from any non-industry personnel.

Legislation (H.B. 2076 and S.B. 5751) establishing a pilot project to allow beer and wine tasting in grocery stores has stalled in committee.

On track to pass the House, H.B. 2240 would allow breweries to list their retail customers on their websites and provide links to their retailers' websites.

Wisconsin

A.B. 122 has been introduced, relating to the provision of taste samples of fermented malt beverages and wine on certain retail premises.

Government Affairs & Legal Update - April 2007

A. FEDERAL / NATIONAL

Excise Tax Rollback Legislation Introduced. H.R. 1610, introduced in the U.S. House of representatives on March 20th, seeks to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level of \$9.00 per barrel.

B. THE COURTS

Maine Court Reaffirms Three-Tier Support. A March 5 ruling from the U.S. District Court in Maine upheld a previous ruling which found in favor of the state's requirement that an in-person transaction must occur before wine could be direct shipped to a consumer. Because in the court's opinion this particular requirement serves to prevent underage sales, any potential restriction to interstate commerce brought about by this requirement was not sufficient to strike it down.

C. THE STATES

Distribution and Franchise:

Colorado

Late March saw the Governor sign franchise law into effect, although with an exemption for small suppliers (less than 10,000 barrels annual production). H.B. 1103 allows a supplier of malt beverages to terminate an agreement with a wholesaler if:

- 1) the wholesaler fails to comply with the written agreement between the wholesaler and the supplier;
- 2) the wholesaler receives written notice from the supplier of the alleged noncompliance and is given no less than 60 days to cure such noncompliance;
- 3) the wholesaler fails to cure the noncompliance within 60 days; and
- 4) the supplier provides further written notice of continued failure to comply with the agreement, and such notice contains a statement of the intention of the supplier to terminate the agreement, the reasons for such termination, and the date of termination.

The bill further establishes reasons for which a supplier may immediately terminate an agreement with a wholesaler upon written notification of such termination, requires notification to the wholesaler if a particular brand of products is transferred from a supplier to a successor supplier and establishes remedies for wholesalers.

Illinois

H.B. 1084, amending the Beer Industry Fair Dealing Act, has passed the house and is under Senate consideration.

Montana

S.B. 524, allowing brewers under 60,000 barrels annual production to self distribute, passed the Senate and is under consideration by the House.

Oregon

H.B. 2677 authorizes Oregon Liquor Control Commission to issue a wine self-distribution permit to a U.S. manufacturer of wine or cider, and provides that a wine self-distribution permit authorizes the holder to sell and transport wine or cider they produce directly to retail licensees in Oregon.

Virginia

H.B. 1784 has been signed into law by the Governor. The bill restores the ability of a brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to conduct retail sales of wine or beer to deliver wine and beer to consumers.

Direct Shipping:

Arkansas

S.B. 592 seeks to equalize wine licensing laws for native and out-of-state wineries and creates a direct wine shipper's permit.

Florida

Senate Bill 126, creating the alcoholic beverage license classification of "winery shipper" and authorizing the direct shipment of wine for personal use to those eligible to lawfully purchase it, continues to move in the Senate.

H.B. 1217, authorizing certain direct shipments of wine to Florida residents, has met a similar fate in a House Committee.

Missouri

H.B. 944 allows licensed wine manufacturers and retail alcoholic beverage licensees to ship or deliver intoxicating liquor to Missouri residents who are 21 years of age or older.

New Mexico

After passing the House in February, H.B. 1018 continues to move through the Senate. This bill would create the mechanism for providing a direct wine shipment permit.

Oklahoma

In mid-March, House Joint Resolution 1020, authorizing winemakers to sell and ship wine to consumers, passed the House and moved to the Senate for consideration. In the Senate, Joint Resolution 29 calling for a constitutional amendment allowing the direct shipment of wine, passed and moved to the House.

Virginia

S.B. 984 became law on March 19, creating an internet wine retailer license. The bill defines an internet wine retailer as a person who owns or operates an establishment with

adequate inventory, shelving, and storage facilities, where in consideration of payment, internet or telephone orders are taken and wine is shipped directly to consumers.

Washington

S.B. 5011, removing the June 30, 2008 expiration date for the direct shipment of beer and wine by out-of state wineries and breweries to retailers, passed both houses of the legislature and is on the Governor's desk.

Taxation:

Arkansas

Looking like the Governor's signature is almost a certainty, S.B. 1004 imposes a 1% retail beer tax to take effect July 1, 2007.

After passing both houses of the legislature, the Governor's signature on H.B. 2564 is all that is needed for Arkansas small brewers (less than 25,000 barrels annual production) to qualify for a rebate of \$7.50 per barrel on excise taxes paid on beer sold through both the brewery and wholesalers.

Maine

S. B. 357, an Act to Strengthen Main's Craft Brewers, provides tax incentives (in the form of credits against excise taxes) to malt liquor brewers to encourage them to increase their employment in Maine and the amount of malt liquor produced in Maine and exported for sale outside of Maine.

Montana

Legislation seeking to raise the per barrel tax \$4.70 to \$9.00 on beer produced by breweries with annual production over 20,000 barrels was introduced and tabled in committee (S.B. 559).

North Dakota

The group Students Against Destructive Decisions is actively collecting petition signatures in an effort to raise North Dakota's beer tax through a ballot initiative. The proposed tax increase would fund a new Responsible Choices Commission, the mission of which would be alcohol and drug abuse prevention. If successful, North Dakota's keg-beer tax would double (to 16 cents a gallon) and the tax on canned and bottled beer would rise 33% (to 24 cents a gallon).

Trade Practice & Other:

Arkansas

Act 455 (formerly H.B. 2397) authorizes those licensed to sell wine, beer, or spirits under a retail liquor permit to conduct tasting events for educational and promotional purposes on the licensed premises after obtaining a wine sampling permit.

California

A.B. 1245 would increase the allowable number of participants to 200 at beer tasting events held by a beer manufacturers' trade association.

Georgia

H.B. 563 provides for the sale of malt beverages manufactured by the brewer for consumption on the premises and in closed packages in limited quantities for consumption off the premises.

Illinois

H.B. 1654 provides that recyclable metal dealers (as well as scrap processors) are required to keep records of their acquisition of scrap metals and that verification of the identity of the seller is required if the value of the scrap metal acquired is \$100 or more. ***Provides that a scrap processor or recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer whose identity is stamped on the keg, or the manufacturer's representative.*** This bill has passed the House and the Senate version (S.B. 69) is close to passage in that chamber.

Iowa

H.B. 650, requiring the registration of all beer kegs sold, is on its way to the Governor for signature.

Missouri

S.B. 616 allows wineries, distillers, manufacturers, wholesalers, or brewers to provide or pour samples for customer tasting purposes on any temporary licensed retail premises.

Nebraska

Signed into law on March 7th, LB 549 provides for a microdistillery license and allows any party holding that license to manufacture and retail their own spirits within their licensed retail location, similar to the craft brewing law for beer. The bill also mandates that the holder of the microdistillery license shall not be allowed to engage in the wholesale distribution of spirits.

New Mexico

S.B. 1071 providing for a small distiller's license (defined as producing less than 150,000 proof gallons per year), awaits a floor vote on the House.

New York

A.B. 5973 expands agricultural direct marketing assistance, extending it to fermented agricultural products.

Oregon

A bill allowing the holder of an off-premise sales license to pay the manufacturer or wholesaler of alcoholic beverages not more than five business days after alcoholic beverages are delivered, has been introduced (H.B. 3230).

H.B. 3231 requires payment to a distributor or manufacturer prior to delivery of beverages, and allows the distributor or manufacturer to accept cash at time of delivery.

South Carolina

Introduced and gaining favorable committee support, H.B. 3624 seeks to raise the allowable alcohol content in fermented malt beverages from 5 to 14%.

S.B. 570 looks to prohibit the use of scan-back rebates to retailers of beer, wine and liquor.

Texas

Under consideration by a House committee, H.B. 2723 allows the holder of a brewer's permit to conduct samplings/tastings at a retail location.

Virginia

Signed into law by the Governor on March 15, H.B. 2491 authorizes manufacturers, their authorized vendors, or beer and wine distributors to provide licensed alcoholic beverage retailers with point of sale advertising materials that may be displayed in the interior of licensed retail establishments.

Washington

Legislation to allow microbreweries with a restaurant endorsement to conduct catering (S.B. 5639) passed the Senate unanimously and is under consideration in the House.

Passing the House and moving on to the Senate, H.B. 2240 would allow breweries to list their retail customers on their websites and provide links to their retailers' websites.

Wisconsin

A.B. 122, relating to the provision of taste samples of fermented malt beverages and wine on certain retail premises, has been approved by a House committee and referred to the Rules Committee for further consideration.

Government Affairs & Legal Update - May 2007

A. FEDERAL / NATIONAL

TTB Issues Clarifying Guidance on Tax and Reporting Requirements for Beer Shortages. TTB Industry Circular 2007-1 addresses the responsibilities of brewers when reporting shortages and in determining tax liability on those shortages. The circular may be accessed at http://www.ttb.gov/industry_circulars/archives/2007/2007_01.html

B. THE COURTS

Tennessee Court Ruling Supports States, Three-Tier. Tennessee's requirement that all alcohol move through the state's three-tier system was upheld by a recent federal court ruling. Suit had been brought against the state claiming that out-of-state wineries were at a disadvantage to in-state vintners because direct shipping options were denied to all wineries.

C. THE STATES

Distribution and Franchise:

California

S.B. 169 establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

Montana

S.B. 524, allowing brewers under 60,000 barrels annual production to self distribute up to 10,000 barrels annually (and no more than the case equivalent of 8 barrels per day to each individual licensed retailer, draught excepted) has passed both Houses of the legislature and has been placed on the Governor's desk.

Ohio

Legislation containing a provision stripping self-distribution rights from Ohio's breweries was amended just prior to a floor vote on April 19th, removing the offensive section. The BA's Support Your Local Brewery grassroots network actively worked to alert Ohio legislators of the problem and the small brewers of the state quickly mobilized to meet and defeat the threat.

Virginia

Becoming law in early April, H.B. 2450 creates a new restricted wholesale wine license that authorizes the licensee to provide wholesale wine distribution services to winery and

farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year.

Direct Shipping:

Alaska

House Bill 34, allowing the holder of a winery license to ship wine direct to consumers in quantities of 5 gallons or less, continues to move in the Senate following House passage in February.

Arkansas

S.B. 592, seeking to equalize wine licensing laws for native and out-of-state wineries and creating a direct wine shipper's permit, has passed the Senate.

Oklahoma

House Joint Resolution 1020, authorizing winemakers to sell and ship wine to consumers, has stalled in the Senate after passing the House in March.

Tennessee

Under active consideration since February, two bills (H.B. 1850 and S.B. 1977) seek to authorize persons licensed in-state or another state as wine manufacturers, producers, suppliers, importers, wholesalers, distributors and retailers to ship wine directly to Tennessee residents who are 21 years old or older for personal use.

Washington

S.B. 5011, removing the June 30, 2008 expiration date for the direct shipment of beer and wine by out-of state wineries and breweries to retailers, has been signed into law by the Governor.

S.B. 5898, signed into law on April 9th, allows an in-state or out-of-state winery to use a common carrier to deliver up to 100 cases of its production per month to a licensed Washington retailer.

Taxation:

Arkansas

Signed into law on April 4th, Act 1203 allows Arkansas small brewers (less than 25,000 barrels annual production) a rebate of \$7.50 per barrel on excise taxes paid on beer sold through both the brewery and wholesalers.

Legislation (Senate Bill 795) seeking to impose a 5% excise tax on the sale of alcoholic beverages for off-premise consumption has died in committee.

S.B. 1004 imposes a 1% retail beer tax to take effect July 1, 2007, representing a reduction of 2% on the tax rate. Signed into law on April 4th.

Maine

House Bill 1208 seeks to raise the tax on beer, wine, sparkling wine, fortified wine, hard cider and low-alcohol spirits products by establishing a uniform tax of 10¢ per drink. Distilled spirits are unaffected by the proposal.

Montana

S.B. 559, seeking to raise the per barrel tax \$4.70 to \$9.00 on beer produced by breweries with annual production over 20,000 barrels, has died in the Senate Taxation Committee.

New Hampshire

House Bill 891, establishing a beverage fee to be paid by beverage manufacturers and distributors on beverages sold for resale in the state, failed to pass the House of Representatives.

North Dakota

A new tax has been imposed on microbrew pubs, domestic wineries and direct shippers for the privilege of doing business in the state. Rates on beer are 8 cents per gallon for bulk containers and 16 cents per gallon for bottles and cans (S.B. 2135).

A bid to place a tax increase measure on the ballot has failed due to an insufficient number of signatures gathered before the deadline to submit the petition to the Secretary of State. Students Against Destructive Decisions was behind the effort to double North Dakota's keg-beer tax to 16 cents a gallon and to raise the tax on canned and bottled beer 33% (to 24 cents a gallon).

Oregon

H.B. 2535 seeks to impose a malt beverage cost recovery fee of \$32.00 per barrel on manufacturers and importing distributors of malt beverages. Those with an annual production of less than 125,000 barrels are exempt. According to the sponsor, the resulting funds would be used to recover a portion of the government costs incurred as a result of the consumption of malt beverages.

H.B. 3421 increases the tax on malt beverages by \$1.96 per barrel every year over the next five years. The beneficiaries of this tax are the State Police and alcohol treatment programs.

Two additional House bills (2731 and 3255) seek unspecified increases on the malt beverage tax.

Trade Practice & Other:

Alabama

A procedural vote in the House of Representatives has temporarily stalled H.B.195, which would eliminate the current 6% alcohol by volume cap on beer.

California

Receiving a favorable committee vote in late April, Assembly Bill 346 seeks to require (on or before July 1, 2008) that California ABC promulgate regulations requiring any alcoholic beverage container sold in the state to bear a prominently displayed label that provides information on the alcohol content of the beverage and the phrase "Attention: Contains Alcohol." The phrase shall be visible to an average consumer from at least five feet away. *The California Small Brewers Association opposes the bill, stating "the standards which would trigger the excessive labeling requirements under this bill are too subjective."* Also in opposition is Anheuser-Busch.

Currently under committee consideration, A.B. 1445 would expand the permitted services relating to the rotating, restocking, and rearranging of alcoholic beverages within the licensed premises of off-sale retail licensees by manufacturers.

Connecticut

Gaining House approval, H.B. 7138 would give brew pubs the ability to sell sealed bottles and containers of beer brewed on their premises to wholesalers holding a wholesaler beer permit.

Passing the Senate and moving to the House, S.B. 1172 seeks to allow beer manufacturers, wholesalers and out-of-state shipper permittees to differentiate in the manner in which their products are packaged on the basis of on-site or off-site consumption and to require wholesale postings for beer to be provided to retail permittees by the twentieth day of each month.

Delaware

Senate Bill 67, allowing all manufacturers of beer to sell products made at the premises to be sold at the premises for off-premise consumption, has cleared the Senate. In addition, this bill would allow all breweries to provide samples to visitors of their premises in a manner approved by the Alcoholic Beverage Control Commissioner.

Illinois

S.B. 69 provides that recyclable metal dealers (as well as scrap processors) are required to keep records of their acquisition of scrap metals and that verification of the identity of the seller is required if the value of the scrap metal acquired is \$100 or more. **Provides that a scrap processor or recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer whose identity is stamped on the keg, or the manufacturer's representative.** This bill has passed the Senate and the House version (H.B. 1654) has passed the House. It is anticipated that this legislation will move to the Governor's desk shortly.

Iowa

Legislation (House File 650) requiring an identification number on each keg of beer sold and the recording of information relating to the purchaser of the keg, was signed into law by Iowa's Governor.

Kansas

Legislation allowing, in part, microbreweries to hold more than one microbrewery license has been vetoed by the Governor. Although the reasons for the veto of H.B. 2202 were not specified, the bill is mostly concerned with the ability of farm wineries to also act as a caterer.

Maine

Legislation (H.B. 569) increasing the amount of bottle deposits on beverage containers (except wine and spirits) has died in the Senate.

Missouri

S.B. 616, allowing wineries, distillers, manufacturers, wholesalers, and brewers to provide or pour samples for customer tasting purposes on any temporary licensed retail premises, has passed the Senate.

New York

Assembly Bill 7252 authorizes licensed brewers with an annual production of less than 60,000 barrels to apply to the State Liquor Authority for a permit to serve bottled beer at the state fair, county fairs and not-for-profit farmers markets. A representative of the brewer would be required to be present at the time of the sale.

North Dakota

H.B. 1082, prohibiting the use and possession of alcohol without liquid devices, has been signed into law.

South Carolina

With the passage of H.B. 3218, South Carolina is officially the latest state to “pop the cap,” raising the allowable alcohol by volume content in fermented malt beverages 17.5%.

Texas

Gaining Committee passage, H.B. 2723 authorizes the holder of a brewer’s permit to conduct samplings of ale or malt liquor, including tastings, at a retailer’s premise and authorizes an agent or employee of the holder of a brewer’s permit to open, touch, or pour ale or malt liquor, make a presentation, or answer questions at a sampling event.

Vermont

Passing the House and moving to the Senate, H.B. 94 seeks to raise the limit on the percentage of alcohol allowed in malt beverages from 8% to 16%.

Virginia

Signed by the Governor on April 11th, S.B. 1140 establishes requirements regarding purchases of scrap metal by scrap metal processors. Under this act, scrap metal processors shall not purchase nonferrous scrap (including stainless steel), metal articles,

and proprietary articles directly from a person who is not an authorized scrap seller or its agent without recording the seller's identification information.

Washington

With the Governor's signature, S.B. 5639 clarifies and makes law that a microbrewery or brewery holding a spirits, beer, and wine restaurant license is also eligible to hold all other privileges and endorsements, including a caterer's endorsement, that are permitted to those licensees.

S.B. 5859 has been delivered to the Governor for signing. The legislation allows a brewery or microbrewery with a restaurant license to operate a second restaurant, off the premises of the brewery or microbrewery.

Signed into law on April 27th, H.B. 2240 allows internet listings and links between wineries and breweries, and retailers.

Wisconsin

Act 9 (formerly A.B. 122) makes the provision of taste samples of fermented malt beverages on certain retail premises legal.

Government Affairs & Legal Update - June 2007

A. FEDERAL / NATIONAL

Hops a Highlight of Proposed Amendment to USDA's Organics List. Responding to a request from the National Organic Standards Board, the U.S. Department of Agriculture has proposed allowing the use of non-organically produced hops as an ingredient in a product labeled as organic. The request apparently stems from the Board's finding that should a particular variety of organically produced hop be unavailable, brewers would find it preferable to use the same variety hop, albeit non-organic, rather than a different variety hop which has been produced organically.

B. THE COURTS

Supreme Court Takes a Pass. The U.S. Supreme Court decided not to review a Virginia Circuit Court of Appeals decision finding in favor of state-based regulation of alcohol, including laws that allow only Virginia-made wine to be sold in state-run liquor stores and restrictions on the amount of alcohol consumers can bring into the state for personal use. Wholesalers welcomed the news as tacit support for the embattled three-tier system.

Texas Wholesaler Residency Requirement Falls. A federal district court judge in Austin has found that the one year residency and citizenship requirement imposed by the state on those owning an alcohol distributorship is indefensible, thereby finding in favor of the plaintiff, Southern Wine & Spirits.

C. THE STATES

Distribution and Franchise:

Alabama

Legislation (S.B. 479) has been introduced authorizing the production of small farm wines and allowing their direct sale to consumers.

California

Passing the Senate and moving to the House, S.B. 169 establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

Illinois

Passing both houses of the legislature, H.B. 1084 amends the Beer Industry Fair Dealing Act by defining "brand extension" as a brand that incorporates all or a substantial part of the features of a pre-existing brand of the same brewer and that relies to a significant extent on the good will associated with the pre-existing brand. Provides that a brewer may not fail to assign brand

extensions to a wholesaler who has been granted the territory to the brand from which the brand extension resulted and who agrees to accept the brand extension, but this requirement does not apply if the wholesaler is not in compliance with the agreement at the time the brewer offers the brand extension to the wholesaler.

Minnesota

Legislation introduced in the Senate (S.B. 2326) would allow brewpubs and other small brewers to make on-premise and off-premise sales of their beer and to self distribute.

Montana

S.B. 524, allowing brewers under 60,000 barrels annual production to self distribute up to 10,000 barrels annually (and no more than the case equivalent of 8 barrels per day to each individual licensed retailer, draught excepted) has been signed by the Governor.

North Carolina

House Bill 1630 seeks to increase the small brewery production limit for self distribution to 60,000 gallons. Currently, once a brewer passes the 25,000 gallon production threshold, a wholesaler must be used for distribution.

Oregon

Passing the House, H.B. 2677 authorizes the Oregon Liquor Control Commission to issue wine self-distribution permits to domestic manufacturers of wine or cider.

Texas

Legislation (H.B. 984) governing pricing agreements between manufacturers and wholesalers, has gained committee approval.

Direct Shipping:

Alaska

House Bill 34, allowing the holder of a winery license to ship wine direct to consumers in quantities of 5 gallons or less, has been signed into law by the Governor.

Arkansas

S.B. 592, seeking to equalize wine licensing laws for native and out-of-state wineries and creating a direct wine shipper's permit, failed to pass the House before the legislature adjourned.

Florida

Senate Bill 126, creating the alcoholic beverage license classification of "winery shipper" and authorizing the direct shipment of wine for personal use to those eligible to lawfully purchase it, died in a Senate Committee.

Oklahoma

H.B. 1753 allows Oklahoma wineries to ship products manufactured in the state to consumers in other states, so long as the recipient is of legal age and the laws of the recipient's state allow such shipments. This measure has become law.

Oregon

Gaining House approval and moving to the Senate, House Bill 2171 provides for the direct shipping to Oregon residents by manufacturers of wine and cider who hold the proper permit from the Oregon Liquor Control Commission.

Taxation:

Louisiana

H.B. 299 provides that for manufacturers or brewers which produce less than 300,000 barrels per year, the excise tax imposed on the first 100,000 barrels be reduced from \$10 per barrel to \$4 per barrel. For each barrel in excess of 100,000, the excise tax reverts to the \$10 per barrel rate.

Maine

A bill (H.B. 1102) to raise and dedicate additional funds for use by the Office of Substance Abuse for substance abuse prevention, case treatment, case management and monitoring, enforcement programs and drug courts, died in a Senate committee. The additional funds would have been raised through an increase of existing license and certificate of approval fees presently paid by those that either manufacture or distribute malt liquor, wine and distilled spirits within the state.

Oregon

In a bid to break the legislative impasse over raising the state's beer excise tax, a State Senator has introduced legislation that would give cities and counties the authority to levy their own local taxes on beer. H.B. 2171A recently gained committee approval and moved to the floor of the Senate.

Pennsylvania

A State Senator is floating a 10% per drink tax proposal with the goal of funding increased police patrols on college towns. Hearings are currently being held.

Wisconsin

Two state legislators are preparing to introduce legislation that would raise the Wisconsin beer tax by 2.4¢ per 12 oz. bottle (for a total state tax of 3¢ per bottle). The approximate \$40 million in new revenue would be used to fund alcohol abuse prevention, treatment and alcohol enforcement programs.

Trade Practice & Other:

Delaware

Senate Bill 67, allowing all manufacturers of beer to sell products made at the premises to be sold at the premises for off-premise consumption, and additionally allows all breweries to provide samples to visitors at their breweries, has passed both the Senate and the House and is eligible for the Governor's signature.

Illinois

S.B. 69 and H.B. 1654 both provide that recyclable metal dealers (as well as scrap processors) are required to keep records of their acquisition of scrap metals and that verification of the identity of the seller is required if the value of the scrap metal acquired is \$100 or more. Also **provide that a scrap processor or recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer whose identity is stamped on the keg, or the manufacturer's representative.** Both bills have received the approval of the Senate and the House. It is anticipated that this legislation will move to the Governor's desk shortly.

Indiana

House Bill 1324, providing that a valuable metal dealer may not accept a damaged or an undamaged metal beer keg if: (1) the keg is clearly marked as the property of a brewery manufacturer; or (2) the keg's identification markings have been made illegible, has been signed into law.

Kansas

Legislation allowing, in part, microbreweries to hold more than one microbrewery license has been signed into law by the Governor.

Maryland

A new law prohibits the use, possession, purchase or sale of alcohol without liquid devices in the state.

Michigan

Effective May 11, the Michigan Liquor Control Commission amended the rules on barrel deposits and refunds, increasing the barrel deposit from \$10.00 to \$30.00.

Minnesota

The Governor has signed House Bill 1070 into law, which in part allows brewpubs and small brewers to sell 750 milliliter bottles for off-premise consumption.

New Hampshire

Legislation (H.B. 469) allowing brew pub licensees to obtain off-site catering licenses and permitting a beverage manufacturer licensee to serve employees in its hospitality room and allowing consumption in the hospitality room of any beverages manufactured or distributed by the manufacturer, has become law.

New York

Legislation (Assembly Bill 7252 and Senate Bill 2466) authorizing licensed brewers with an annual production of less than 60,000 barrels to apply to the State Liquor Authority for a permit to serve bottled beer at the state fair, county fairs and not-for-profit farmers markets, is under consideration in both legislative chambers.

Under committee consideration, S.B. 2881 would allow a brewer to purchase an annual tasting permit to conduct tastings at off-premise licenses.

S.B. 5443 provides for an increase in the bottle deposit from 2 cents to 3.5 cents on all carbonated and non-carbonated drinks, but not including milk or alcoholic beverages other than beer.

Passing the Senate, S.B. 3584 requires scrap dealers to record information about the source of certain metal items purchased (including beer kegs) and identification information of the seller.

Oregon

The Governor has signed into law provisions amending the allowable alcohol content of cider to 7% abv. Currently, cider is defined as having an abv of 10% or less.

Pennsylvania

Under consideration in a Senate Committee, S.B. 674 would allow distributors to sell 12-packs, 15-packs and 18-packs of beer. Currently, distributors are restricted to selling full cases of 24 bottles or cans.

Texas

Passing the House, H.B. 2723 authorizes the holder of a brewer's permit to conduct samplings of ale or malt liquor, including tastings, at a retailer's premise and authorizes an agent or employee of the holder of a brewer's permit to open, touch, or pour ale or malt liquor, make a presentation, or answer questions at a sampling event.

Vermont

Signed by the Governor, H.B. 157 permits judges to taste home-fermented malt and vinous beverages produced by amateur home producers at a competition.

Also signed into law is legislation (S.B. 120) permitting wine and malt beverage tastings at farmers; markets.

Washington

S.B. 5859 has been signed into law by the Governor. The legislation allows a brewery or microbrewery with a restaurant license to operate a second restaurant, off the premises of the brewery or microbrewery.

Also becoming state law, H.B. 1349 allows spirits, beer, and wine restaurant licensees may sell malt liquor in kegs or other containers capable of holding four or more gallons.

Government Affairs & Legal Update - July 2007

A. FEDERAL / NATIONAL

B. THE COURTS

A-B Sues Florida Distributor. Following its disapproval of the sale of Eagle Brands, Inc., a Florida A-B distributor, to Gold Coast Beverage Distributors, a non A-B wholesaler, A-B responded to Eagle's threat of legal action by taking them to court first. According to A-B, disapproval was predicated on the competitive implications of Gold Coast attaining a virtual monopoly on major brands in the region.

Three-Tier Upheld In Oklahoma. In 2006, a group of wholesalers challenged a voter-approved measure that exempted vintners from the requirement that all alcohol manufacturers must use a wholesaler to bring their wine to market. A federal judge ruled that the provision was, in fact, a violation of interstate commerce laws and gave the legislature six months to rectify the situation. Lawmakers, however, never addressed the matter and so, on June 15th, a ruling was handed down in federal court striking down winery exemption.

C. THE STATES

Distribution and Franchise:

California

Passing the Senate and moving to the House, S.B. 574 establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

Illinois

H.B. 429 allows a person licensed to make wine under the laws of another state who has a winery shipper's license and annually produces less than 25,000 gallons of wine to make application to the Liquor Control Commission for a self-distribution exemption to allow the sale of not more than 5,000 gallons of the exemption holder's wine to retail licensees per year. The bill has cleared the House and awaits Senate consideration.

Maine

Legislation seeking to allow retail licenses to the owners of farm wineries has died in the House.

New York

S.B. 6101 and A.B. 9055 permit small brewers having five percent or less of a multi-brand beer wholesaler's annual business to terminate an agreement with such wholesaler and require payment of fair compensation unless the termination is for good cause.

Oregon

Signed into law by the Governor, H.B. 2677 authorizes the Oregon Liquor Control Commission to issue wine self-distribution permits to domestic manufacturers of wine or cider.

Direct Shipping:

Connecticut

Public Act 39 prohibits shippers of wine from shipping more than five gallons in a two-month, rather than a 60-day, period directly to any one consumer in Connecticut. State law classifies shippers as in-state farm wineries and out-of-state shippers and wineries.

Maine

Both chambers of the legislature have “indefinitely postponed” consideration of S.B. 54, legislation allowing the direct shipment of wine or malt liquor to the state’s residents.

Oregon

Gaining the approval of both the House the Senate, House Bill 2171 provides for the direct shipping to Oregon residents by manufacturers of wine and cider who hold the proper permit from the Oregon Liquor Control Commission.

Taxation:

Louisiana

H. B. 135 has been withdrawn from consideration by its sponsor. The bill sought to levy an Alcoholic Beverage Drink Tax of 25¢ per "average alcoholic beverage drink," to be collected by wholesalers from retailers. The rate on beer would have equaled \$82.67 per barrel.

Maine

Passing the House in mid-June, S. B. 357, an Act to Strengthen Maine’s Craft Brewers, provides tax incentives (in the form of credits against excise taxes) to malt liquor brewers to encourage them to increase their employment in Maine and the amount of malt liquor produced in Maine and exported for sale outside of Maine.

Pennsylvania

A proposed state Senate transportation funding bill (H.B. 1629) designed to help the cash-strapped Port Authority would allow Allegheny County officials to raise taxes on poured alcoholic drinks up to 10 percent.

Trade Practice & Other:

California

After being amended to remove beer from the provisions, A. B. 346 passed the Assembly in late June. The bill seeks to require that California ABC promulgate regulations requiring certain alcoholic beverage containers sold in the state to bear a prominently displayed label that provides information on the alcohol content of the beverage and the phrase "Attention: Contains Alcohol." The phrase shall be visible to an average consumer from at least five feet away. *The California Small Brewers Association has now taken a neutral position on the bill.*

S.B. 520 allows an alcohol manufacturer, winegrower's agent, holder of an importer's general license, or a distilled spirits manufacturer's agent or to sponsor events promoted by, and may purchase advertising space and time from, or on behalf of, a live entertainment marketing company. The bill has passed the Senate and is under Assembly consideration.

Connecticut

Signed by the Governor on the 25th, H.B. 7138 would give brew pubs the ability to sell sealed bottles and containers of beer brewed on their premises to wholesalers holding a wholesaler beer permit.

H.B. 7141, allowing the retail sale of beer, wine and spirits at certain universities, became law on the 12th of June.

Passing both Houses and awaiting the Governor's signature, S.B. 1172 allows beer manufacturers, wholesalers and out-of-state shipper permittees to differentiate in the manner in which their products are packaged on the basis of on-site or off-site consumption. It would also require wholesale postings for beer to be provided to retail permittees by the twentieth day of each month.

Delaware

Senate Bill 67, allowing all manufacturers of beer to sell products made at the premises to be sold at the premises for off-premise consumption, and additionally allows all breweries to provide samples to visitors at their breweries, has been signed by the Governor.

Illinois

S.B. 69 and H.B. 1654 both provide that recyclable metal dealers (as well as scrap processors) are required to keep records of their acquisition of scrap metals and that verification of the identity of the seller is required if the value of the scrap metal acquired is \$100 or more. Also **provides that a scrap processor or recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer whose identity is stamped on the keg, or the manufacturer's representative.** Both bills have received the approval of the Senate and the House and await action by the Governor.

Michigan

A resolution designating July 2007 as Michigan Craft Beer Month and commending Michigan Craft Brewers was adopted by the state House on June 28th.

Nebraska

Legislation eliminating the prohibition on retail beer licensees accepting credit from a beer manufacturer or wholesaler has been carried over into the second regular session of the legislature.

New Hampshire

H.B. 323 has been signed into law. The bill establishes a committee to study liquor commission revenues, enforcement and training for retail liquor licenses.

New York

Passing both chambers of the legislature A.B. 2600 permits persons licensed to sell wine at retail for consumption on the premises to sell certain other New York-produced alcoholic beverages that contain not more than twenty-four per centum alcohol by volume, and that are produced from agricultural products that are grown or produced in New York state.

A.B. 8846 has been introduced with the intent of authorizing the issuance of a temporary beer, wine and liquor permit, good for twenty-four consecutive hours, to promote products produced in the state.

Meeting with the approval of both the House and Senate, A.B. 8895 establishes a farm distillery license for distillers manufacturing liquor primarily from farm and food products. The bill further provides for on-premise retail sales on a cash and carry basis and for liquor tastings.

North Carolina

H.B. 1277 provides for the revocation of the drivers license of persons convicted of giving alcoholic beverages to any underage person. The bill has passed the House and has moved to the Senate.

The Governor has signed into law legislation (S.B. 125) making alcohol without liquid devices illegal.

South Carolina

Social host liability legislation (S.B. 213) has been signed into law by the Governor. This bill also included keg registration requirements.

Tennessee

Taking effect July 1st, the Tennessee Responsible Vendor Act requires that an ID be shown for all purchases of beer, no matter how old or young the person appears. The law does not apply to wine and liquor purchases or to beer sales in bars and restaurants. The act expires after one year to give lawmakers and vendors a chance to review its impact.

Texas

With the Governor's approval, H.B. 2723 has become law. The legislation authorizes the holder of a brewer's permit to conduct samplings of ale or malt liquor, including tastings,

at a retailer's premise and authorizes an agent or employee of the holder of a brewer's permit to open, touch, or pour ale or malt liquor, make a presentation, or answer questions at a sampling event.

Government Affairs & Legal Update - August 2007

A. FEDERAL / NATIONAL

Serving Facts Labeling Proposed Rule Published. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has published a Notice of Proposed Rulemaking (NPRM) in the Federal Register relating to the labeling of beer, wine and distilled spirits. The proposed rules will require a "serving facts panel" on all alcohol beverage labels, which includes mandatory information on alcohol content, serving size, calorie, carbohydrate, fat and protein content, and an option to include the number of U.S. fluid ounces of pure alcohol per serving (as part of the alcohol content statement) on the label.

The rule calls for these provisions to be implemented over a three-year period, after which time, compliance is mandatory. TTB is accepting comments on the proposed rulemaking until October 29, 2007. To view the complete proposal and submit comments, link to TTB's home page <http://www.ttb.gov/> and follow the [Notice No. 73](#) link within the first bulleted item.

Brewers Association staff, legal counsel and the Government Affairs Committee of the Brewers Association board of directors are currently reviewing the proposal in detail prior to submitting comments to TTB. Member breweries should anticipate being asked to participate in a confidential survey in the next several weeks as part of the BA's formal comment submission.

TTB to Hold Brewery Operations Seminar Prior to the Great American Beer Festival. The Alcohol and Tobacco Tax and Trade Bureau will hold a seminar covering detailed information about the Brewer's Report of Operations on Wednesday, October 10th at the Denver Marriott City Center, the official GABF headquarters hotel. For more details visit http://www.ttb.gov/pdf/gabf_seminar.pdf

B. THE COURTS

Industry Class Action Suit Dismissed. The U.S. Sixth Circuit Court of Appeals has dismissed a suit brought by the parents of minor children against domestic alcohol beverage manufacturers and the Beer Institute. The suit alleged that defendants' advertising is the cause of illegal, underage purchases of alcohol, and claimed injury, both economic and to their rights as parents. The court found the plaintiffs' claims to be wholly without standing, stating "If these plaintiffs are convinced that alcohol advertising (i.e., First Amendment commercial speech) should be outlawed, then the means must be by legislation or constitutional amendment, not by judicial fiat."

Wholesaler Groups Support Maine Court's Reaffirmation of Three-Tier. With an appeal of the March 5 ruling from the U.S. District Court in Maine only a matter of time, the Wine & Spirits Wholesalers of America (WSWA) and the National Beer Wholesalers

Association (NBWA) have filed an *amicus* brief in support of that decision. The March ruling found in favor of the state's requirement that an in-person transaction must occur before wine could be direct-shipped to a consumer. Because, in the court's opinion, this particular requirement serves to prevent underage sales, any potential restriction to interstate commerce brought about by this requirement was not sufficient to strike it down.

A-B Challenges Small Brewery Trademark Application. When Wisconsin-based Capital Brewery filed a trademark application for the phrase "America's No. 1 Rated Brewery," Anheuser-Busch took offense. Capital has made use of the phrase since 1999 when the brewery won top honors in the Beverage Testing Institute's 1998 rankings. A-B has stated that it does not have a problem with Capital using the phrase, only their attempt to register it as a trademark. Capital recently filed a response to A-B's challenge, and the St. Louis brewery has until October to respond.

C. THE STATES

Distribution and Franchise:

Connecticut

S.B. 1270 has become Public Act 165 and allows, in part, a brew pub to manufacture, store, and bottle beer and to sell alcoholic liquor (alcohol, beer, spirits, and wine) at retail for on-premise consumption and to sell limited amounts (eight liters per person per day) for off-premise consumption. To hold a permit, a brew pub must make at least 5,000 gallons of beer on the premises each year. It may sell for on-premise consumption on the same days and during the same hours that a restaurant may sell liquor. A brew pub may sell at retail for off-premise consumption on the same days and during the same hours that a package store may sell.

Delaware

Legislation has been introduced establishing the Grocery Store Beer Sales Task Force, charged with studying the feasibility of grocery store beer sales.

Pennsylvania

Passing the House and moving to the Senate, H.B. 1420 creates new definitions of "distributor", "small manufacturer" and "out-of-state small manufacturer," the latter two terms defined as those breweries that produce no more than 300,000 barrels per year. Although out-of-state breweries under that threshold would be allowed to self-distribute, they would be required to use their own vehicles and would not be able to utilize in-state storage facilities.

Direct Shipping:

Missouri

Signed into law by the Governor, S.B. 299 requires wineries to obtain a direct shipping permit before shipping wine to Missouri residents.

Oregon

Signed by Governor Kulongoski, House Bill 2171 provides for the direct shipping to Oregon residents by manufacturers of wine and cider who hold the proper permit from the Oregon Liquor Control Commission.

Taxation:

Maine

S. B. 357, an Act to Strengthen Maine's Craft Brewers, providing tax incentives (in the form of credits against excise taxes) to malt liquor brewers to encourage them to increase their employment in Maine and the amount of malt liquor produced in Maine and exported for sale outside of Maine, has died on adjournment of the legislature.

Seeking to raise the tax on beer, wine, sparkling wine, fortified wine, hard cider and low-alcohol spirits products (distilled spirits are unaffected by the proposal) by establishing a uniform tax of 10¢ per drink, House Bill 1208 has been carried over to the next session of the legislature.

Massachusetts

A State Senator is considering the introduction of legislation that would apply the state's 5% sales tax to alcohol purchases for off-premise consumption. The revenue raised would be directed to substance abuse treatment and prevention.

Pennsylvania

In a provision passed as part of the state budget, Allegheny County has been granted the authority to levy a 10% tax on poured alcoholic drinks, with the funds going to local transportation initiatives.

Wisconsin

A.B. 474 seeks to increase the tax on fermented malt beverages from \$2 per barrel to \$10 per barrel, with the additional revenue funding enforcement and treatment services.

Trade Practice & Other:

California

A.B. 1598 has passed both houses of the legislature. The bill provides that the prohibition against the sale or consumption of alcoholic beverages on the grounds of a public school does not apply if the alcoholic beverage is beer or wine and is used in connection with a course of instruction, sponsored dinner, or meal demonstration given as part of a culinary arts program at a campus of a California Community College.

Connecticut

With the Governor's signature, S.B. 1172 has become law. The legislation allows beer manufacturers, wholesalers and out-of-state shipper permittees to differentiate in the manner in which their products are packaged on the basis of on-site or off-site consumption. It would also require wholesale postings for beer to be provided to retail permittees by the twentieth day of each month.

New York

Signed into law in July, S.B. 3584 requires scrap dealers to record information about the source of certain metal items purchased (including beer kegs) and identification information of the seller.

Sent to the Governor for signature, S.B. 2881 allows a brewer to purchase an annual tasting permit to conduct tastings at off-premise licenses.

Pending in a Senate committee, S.B. 6262 seeks to amend the alcoholic beverage control law trade relations language to clarify that manufacturers and wholesalers may participate in the activities of retailer associations (e.g. associate memberships, participating in conventions, trade shows, product tastings and education).

Oregon

Legislation authorizing those holding brewery-public house licenses to place video lottery game terminals in their establishments has been signed into law.

South Carolina

Act 96 reduces the biennial alcoholic manufacturers license fee from \$50,000 to \$1,000.

Texas

Senate Bill 1215, amending the Alcoholic Beverage Code to increase the maximum quantity of beer, ale, or malt liquor the holder of a distributor's license or wholesaler's permit may withdraw in its undamaged original packaging from a retailer's stock for quality control purposes from the equivalent of 15 cases of 24 12-ounce containers to 25 cases of such containers, has been signed into law.

Wisconsin

Companion bills S.B. 224 and A.B. 455 have been introduced which would prohibit breweries with an annual production over 10,000 barrels from also holding a restaurant license. This effectively means that only brewpubs (those breweries producing up to, but not more than, 10,000 barrels) may operate a restaurant and brewing facility concurrently. Breweries holding a restaurant permit prior to the effective date of the legislation would be grandfathered under the current law.

Government Affairs & Legal Update - September 2007

A. FEDERAL / NATIONAL

Brewers Association Files Labeling Comments with Office of Management and Budget. On August 30th, the BA submitted comments to the Office of Management and Budget (OMB) in response to a request for comment on the collection of information element contained in TTB Notice of Proposed Rulemaking (Notice 73) - Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages. Under the Paperwork Reduction Act, OMB has review authority on proposed rules that impose information collection time commitments on those affected by the rule.

In formulating these comments, the BA utilized member responses to the recent on-line survey and to a survey conducted in 2005. This submission is separate from comments requested by the federal Tax and Trade Bureau (TTB), which has a deadline of October 29, 2007, and to which the BA will respond as well. To view the complete proposal, link to TTB's Labeling home page <http://www.ttb.gov/labeling> and follow the [Notice No. 73](#) link within the second bulleted item.

TTB to Hold Brewery Operations Seminar Prior to the Great American Beer Festival. The Alcohol and Tobacco Tax and Trade Bureau will hold a seminar covering detailed information about the Brewer's Report of Operations on Wednesday, October 10th at the Denver Marriott City Center, the official GABF headquarters hotel. For more details visit http://www.ttb.gov/pdf/gabf_seminar.pdf

Federal Beer Excise Tax "Roll Back" Legislation Now Bicameral. Senate Bill 1995, introduced by Colorado Senator Ken Salazar on August 3rd, seeks to roll back the federal excise tax on beer to the pre-1991 level of \$9.00 per barrel. This bill now joins its companion in the House of Representatives, H.R. 1610, introduced back in March. Both bills are awaiting committee consideration.

States Take Alcoholic Energy Drinks to Task. The Attorneys General from 29 states signed on to a letter to the Alcohol and Tobacco Tax and Trade Bureau (TTB) expressing their "concerns about the formulation and marketing of alcoholic beverages that contain caffeine and other stimulants." Examples of the types of drinks referred to are Sparks, Bud Extra, and Liquid Charge. The letter goes on to state that the AG's "believe that alcoholic energy drinks constitute a serious health and safety risk for America's youth" and ask the TTB to investigate the formulation of such drinks to determine whether they are properly classified as malt beverages under federal law.

B. THE COURTS

Wholesalers Defend States' Rights. The Wine and Spirits Wholesalers of America, Inc. (WSWA) have filed a "friend of the court" brief asking the U.S. Supreme Court to keep

states in control of alcohol sales and delivery rather than cede constitutionally granted state authority to the federal government. The actual case under review involves a challenge by carriers to Maine's Tobacco Delivery Law which requires tobacco sellers to verify the age and identity of the purchaser when delivering their product by carrier.

WSWA filed the brief because of possible ramifications for state regulation of carrier delivery of alcohol to consumers. Laws on the books in other states aimed at alcohol delivery are worded similarly to the Maine tobacco statute, so any finding by the Supreme Court that those state laws are collectively preempted by federal statute could have serious consequences for a state's ability to regulate alcohol sales within their own borders.

Judge Finds Discrimination in Indiana Wine Shipping Law. A U.S. District Court judge in Indianapolis has ruled that parts of Indiana's law regulating wine sales violate the commerce clause of the U.S. Constitution. The judge found that the state wrongly prohibits most out-of-state wineries from shipping wine directly to Indiana consumers, because those wineries with wholesale privileges in their home states are denied the ability to obtain a direct wine sellers permit in Indiana. Also struck down was the requirement that both in-state and out-of-state wineries must have an in-person transaction with a customer before shipping wine to them.

Eagle Brands Returns to A-B Nest. Recall that A-B, following its disapproval of the sale of Eagle Brands, Inc., a Florida A-B distributor, to Gold Coast Beverage Distributors, a non A-B wholesaler, A-B responded to Eagle's threat of legal action by taking them to court first. After a couple of months of the usual legal wrangling, the court ordered them into mediation and it didn't take long for Eagle to agree to sell to A-B after all.

C. THE STATES

Distribution and Franchise:

California

Having passed both the Senate and the House, the last stop is the Governor for S.B. 574, which establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

Illinois

Signed into law by the Governor, H.B. 1084 amends the Beer Industry Fair Dealing Act by defining "brand extension" as a brand that incorporates all or a substantial part of the features of a pre-existing brand of the same brewer and that relies to a significant extent on the good will associated with the pre-existing brand. Provides that a brewer may not fail to assign brand extensions to a wholesaler who has been granted the territory to the brand from which the brand extension resulted and who agrees to accept the brand extension, but this requirement does not apply if the wholesaler is not in compliance with the agreement at the time the brewer offers the brand extension to the wholesaler.

Direct Shipping:

Illinois

Only awaiting the Governor's signature (which is expected), H.B. 429 will allow wineries to ship up to 12 cases of wine per person per year after obtaining a winery shipper's license. The new law will require winery shippers to agree to Illinois regulatory jurisdiction and pay Illinois' excise and sales taxes. In addition, it allows small wineries both in-state and out-of-state that produces less than 25,000 gallons of wine annually to sell up to 5,000 gallons of their wines per year directly to retailers.

Taxation:

Alaska

The city of Anchorage is in the process of meeting the requirements to put a ballot initiative before voters that would place a 10% wholesale tax (retailers would pay it when making purchases from wholesalers) on alcohol.

California

With a 3-2 vote, the California Board of Equalization voted to tax flavored malt beverages at the rate of distilled spirits (\$3.30 a gallon) rather than at the lower rate applied to malt beverages 20 cents a gallon).

Trade Practice & Other:

California

S.B. 520, originally dealing solely with events sponsorship, has been amended to include provisions relating to keg purchases by recyclers and scrap dealers. Specifically, the bill provides that no junk dealer or recycler may purchase or receive refillable stainless steel or aluminum alloy beer kegs marked with an indicia of ownership from any person or entity other than the indicated owner, unless the seller provides a receipt from the indicated owner verifying the seller's current ownership or a document indicating that the seller is authorized by the indicated owner to sell or transfer the beer kegs.

A.B. 1598 has been signed into law by the Governor. The bill provides that the prohibition against the sale or consumption of alcoholic beverages on the grounds of a public school does not apply if the alcoholic beverage is beer or wine and is used in connection with a course of instruction, sponsored dinner, or meal demonstration given as part of a culinary arts program at a campus of a California Community College.

Illinois

S.B. 69 has been signed into law by the Governor. The legislation provides that recyclable metal dealers (as well as scrap processors) are required to keep records of their acquisition of scrap metals and that verification of the identity of the seller is required if the value of the scrap metal acquired is \$100 or more. Also **provides that a scrap processor or recyclable metal**

dealer may not purchase metal beer kegs from any person other than the beer manufacturer whose identity is stamped on the keg, or the manufacturer's representative.

New Hampshire

S.B. 233, in part requiring "specialty beer" greater than 12% alcohol by volume to carry a statement of alcohol content on the label, has been signed into law.

New York

Signed into law by the Governor, S.B. 2881 allows a brewer to purchase an annual tasting permit to conduct tastings at off-premise licenses.

Senate Bill 6012 establishes a farm distillery license (class D distiller's license) for distillers manufacturing liquor primarily from farm and food products. It also allows on-premise, cash and carry retail sales and authorizes liquor tastings. The bill was signed into law in mid-August.

Government Affairs & Legal Update - October 2007

A. FEDERAL / NATIONAL

TTB Excise Tax Form Updated. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has introduced a new version of the excise tax return form (TTB F 5000.24).

Additionally, there is a new mailing address for filing hard copies of the return, which appears on the instruction page of the form. For complete information go to

http://www.ttb.gov/alcohol/excise_tax_returns_alcohol.shtml

Updated TTB Submission Information. TTB has issued Industry Circular 2007-4, Pre-COLA Product Evaluation (supersedes Industry Circular 20022, Pre-COLA Product Evaluation). The circular describes the different types of evaluations that some alcohol products must undergo before TTB will issue a certificate of label approval (COLA) and explains an alternate procedure providing for the voluntary use of the form TTB F 5100.51 for the submission of alcohol beverage formulas, pre-import letters, and products for laboratory analysis. To read the circular, link to

http://www.ttb.gov/industry_circulars/archives/2007/2007_04.html

Comment Deadline Extended for Federal Labeling Proposal. TTB has announced that it has extended the comment deadline for the Serving Facts Labeling proposal to January 27, 2008. To view the complete proposal, link to TTB's Labeling home page

<http://www.ttb.gov/labeling> and look for the Notice No. 73 link.

Feds Looking Over States' Shoulders? The Federal Trade Commission (FTC) has asked Oklahoma officials to provide copies of the state's alcohol beverage laws for review.

There are reports that several other states have also been contacted by FTC. Provisions relating to price posting and bans on volume discounts and credit are potential areas of concern from the perspective of the feds.

B. THE STATES

Distribution and Franchise:

California

Only awaiting the Governor's signature, S.B. 574 establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

Direct Shipping:

Illinois

Recently signed into law, H.B. 429 will allow wineries to ship up to 12 cases of wine per person per year after obtaining a winery shipper's license. The new law will require winery shippers to agree to Illinois regulatory jurisdiction and pay Illinois' excise and sales taxes. In addition, it allows small wineries both in-state and out-of-state that produces less than 25,000 gallons of wine annually to sell up to 5,000 gallons of their wines per year directly to retailers.

Taxation:

Pennsylvania

A grassroots group calling itself F.A.C.T. (Friends Against Counterproductive Taxation) has formed to oppose efforts to levy a 10% tax on all poured alcoholic drinks in Allegheny County, which includes the city of Pittsburgh. To learn more about the group's efforts, visit <http://www.stopdrinktax.com/>

Trade Practice & Other:

California

On the Governor's desk for signature, S.B. 520 provides that no junk dealer or recycler may purchase or receive refillable stainless steel or aluminum alloy beer kegs marked with an indicia of ownership from any person or entity other than the indicated owner, unless the seller provides a receipt from the indicated owner verifying the seller's current ownership or a document indicating that the seller is authorized by the indicated owner to sell or transfer the beer kegs.

A. B. 346, seeking to require that California ABC promulgate regulations requiring certain alcoholic beverage containers sold in the state to bear a prominently displayed label that provides information on the alcohol content of the beverage and the phrase "Attention: Contains Alcohol," has died in the Senate.

New York

A.B. 9145, authorizing the continuance of the requirement that beer kegs be marked with an identification label or tag, has been signed into law.

Utah

The state's Attorney General is leading a move to have flavored malt beverages removed from grocery and convenience stores, making them available only through the state's liquor stores.

Government Affairs & Legal Update - November 2007

A. FEDERAL / NATIONAL

TTB Formulations Submission Form Updated. The Alcohol and Tobacco Tax and Trade Bureau (TTB) have introduced a new version of form TTB F 5100.51, *Formula and Process for Domestic and Imported Alcohol Beverages*. For a TTB Q&A go to <http://www.ttb.gov/faqs/alf23.shtml>

B. THE COURTS

Case 1: Three-Tier Upheld in New York. A judge in the U.S. District Court for Southern New York has ruled to dismiss a suit seeking to invalidate the state's restrictions on the ability of out-of-state retailers to direct ship to consumers. The legitimacy of the three-tier system as expressed in the Supreme Court's *Granholm* decision was the cornerstone of the ruling in favor of the current structure of alcohol regulation in New York.

Case 2: Maine Ruling Favors Three-Tier. At issue was the ability of in-state farm wineries to sell directly to consumers, while out-of-state wineries are prohibited from any and all direct wine shipments to Maine residents. The plaintiffs in the case alleged economic discrimination to those out-of-state businesses, however the court found that the exception for small farm wineries (under 50,000 gallons annual production) did not, in fact, create discrimination against interstate commerce.

Case 3: Two Out of Three Ain't Bad. Although not a direct assault on the three-tier, a U.S. District Court denied a motion to dismiss a suit challenging the Michigan law which prohibits out-of-state retailers from direct shipping wine to the state's residents, while in-state retailers may legally engage in that activity. The court found that Michigan's law has the effect of favoring the economic interest of in-state retailers over that of retailers in other states, which poses a constitutional issue under the Commerce Clause.

Class Action Dismissal Affirmed. A Wisconsin Court of Appeals has tossed a class action suit brought against dozens of alcohol beverage producers and the Beer Institute. The suit alleged intentional marketing to underage consumers over the last 25 years and sought compensatory damages to the class. The court ruled, however, that the complaint failed to "assert an interest recognized and protected by law" and therefore lacked standing.

C. THE STATES

Distribution and Franchise:

California

S.B. 574, establishing a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler, has become law.

Maine

Legislation allowing direct-to-consumer wine sales has been introduced.

Direct Shipping:

Oklahoma

A state legislator has proposed a bill to allow in-state wineries to direct ship up to 10,000 gallons of wine a year both within and out of state.

Taxation:

Alaska

Supporters of a proposed 10% wholesale tax on all alcohol beverages in the city of Anchorage are actively collecting the 7,000 signatures required to place the initiative on the ballot.

The Mayor of Fairbanks has also proposed a 10% tax on all alcohol drinks (up from 5%) to help address a city budget shortfall.

Illinois

The Chicago City Council held hearings on a proposed city tax increase amounting to 75% on non-beer alcohol and 23% on beer.

Trade Practice & Other:

California

Signed into law by the Governor, S.B. 520 provides that no junk dealer or recycler may purchase or receive refillable stainless steel or aluminum alloy beer kegs marked with an indicia of ownership from any person or entity other than the indicated owner, unless the seller provides a receipt from the indicated owner verifying the seller's current ownership or a document indicating that the seller is authorized by the indicated owner to sell or transfer the beer kegs.

New Jersey

In an advisory opinion, the Director of the New Jersey Division of Alcohol Beverage Control has informed local municipalities that they may not adopt keg registration ordinances due to the impossibility of uniform enforcement.

Pennsylvania

H.B. 1420, allowing beer distributors to sell beer in a variety of package configurations (current law stipulates that a case is the smallest amount distributors may sell) and allowing bars to sell a total of three six-packs in any one sale (up from two), has passed out of the Senate Law and Justice Committee and is under full Senate consideration. The bill previously passed the full House in June.

Utah

The Utah Alcoholic Beverage Control Commission voted unanimously to have a regulation drafted that would require flavored malt beverages to be available only through the state's liquor stores. Currently, grocery and convenience stores are allowed to sell such beverages. The impetus for the change is directly related to underage access issues.

Wisconsin

As part of the budget bill, provisions allowing brew pubs under 10,000 barrels annual production to have up to six retail locations (previously those with production over 4,000 barrels were limited to two locations) and restricting any future brewery over 10,000 barrels from concurrently holding restaurant and brewery licenses, were signed into law.

Government Affairs & Legal Update - December 2007

A. FEDERAL / NATIONAL

Home Distilling Championed in Washington, DC. Congressman Bart Stupak of Michigan has introduced H.R. 3949 which would amend the Internal Revenue Code to repeal the prohibition on producing distilled spirits in specified locations, including dwelling houses, sheds, yards, and enclosed areas connected with any dwelling house, as well as premises where beer or wine is produced.

B. THE COURTS

Appeal for a Face-to-Face. After an Indiana court struck down the face-to-face sale requirement before a direct shipping transaction can occur due to concerns that this discriminates against out-of-state wineries, the Wine & Spirits Wholesalers of America have filed an appeal.

C. THE STATES

Direct Shipping:

Maine

Draft legislation (L.R. 3147) to allow direct-to-consumer wine sales is under active consideration.

Taxation:

Alaska

The proposed 10% wholesale tax on all alcohol beverages in the city of Anchorage, which supporters hoped to place on the ballot for a vote, has come up short on the required number of signatures.

California

In a 3-2 vote, the California Board of Equalization voted to approve classifying flavored malt beverages as distilled spirits, thereby raising the tax on these products from 20 cents per gallon to \$3.30 per gallon.

Maryland

Legislation (H.B. 13A) increasing the tax rates for alcoholic beverages in Maryland from \$1.50 to \$3.50 per gallon for distilled spirits, from 40 cents to \$1.00 per gallon for wine, and from 9 cents to 25 cents per gallon for beer failed to be considered in a special session of the legislature.

A similar bill (H.B. 32A) sought to increase the tax rate for alcoholic beverages from \$1.50 to \$5.25 per gallon for distilled spirits, from 40 cents to \$1.40 per gallon for wine, and from 9 cents to 31.5 cents per gallon for beer, and likewise died in the special session.

A similar bill made a brief appearance in the Senate (S.B. 17A) before expiring along with the special session.

Wyoming

Legislation has been introduced seeking to increase the tax on beer 4.5 cents per gallon (up from 2 cents per gallon) to pay for mental health and substance abuse programs. The taxes on wine and distilled spirits remain unchanged at 28 cents per gallon on wine and 24 cents per gallon on spirits.

Trade Practice & Other:

Pennsylvania

After passing the House in June, H.B. 1420, allowing beer distributors to sell beer in a variety of package configurations (current law stipulates that a case is the smallest amount distributors may sell) and allowing bars to sell a total of three six-packs in any one sale (up from two), failed to receive floor consideration in the Senate.

Utah

A vote of the Utah Alcoholic Beverage Control Commission to reclassify flavored malt beverages as “liquor,” has been reconsidered and the issue of the proper classification of these beverages will now be taken up by the state legislature.