Government Affairs & Legal Update - January 2006

A. FEDERAL / NATIONAL

TTB to Provide Federal Compliance Training for the Brewery Industry. On April 20, 2006 TTB will hold a compliance training session in Nashville, TN. Topics include recordkeeping and reports, the Pay.gov system, statement of process, bonds, and taxes. To learn more, visit the TTB web page http://www.ttb.gov/pdf/sebeerflyer2.pdf

TTB Issues Guidance for Retention of COLAs by Alcohol Wholesalers. A clarification of TTB requirements for COLA retention for alcohol beverages kept on wholesalers' premises can be found at http://www.ttb.gov/main_pages/ttb_issues_guidance.htm Although in some very specific circumstances wholesalers are required to maintain that type of information on its premises, that requirement does not apply in the majority of cases.

B. THE COURTS

Direct Shipping Ban Challenged in Delaware. Suit has been brought by a Pennsylvania winery in U.S. District Court challenging the legality of Delaware's prohibition on direct consumer shipments of wine by out-of-state manufacturers.

Eisenberg, et. al. v. Anheuser-Busch, Inc., et. al. Dismissed with Prejudice. The lawsuit brought against A-B and a number of other brewers (including The Boston Beer Co.), distillers and importers has been dismissed by the U.S. District Court for the Northern District of Ohio. The suit had alleged that these manufacturers had deliberately and recklessly targeted underage consumers in the advertising and marketing of their products.

C. THE STATES

Franchise:

Washington House Bill 3213, now before committee, would allow in-state and out-of state wineries and breweries to distribute a limited amount of wine and beer of their own production to Washington retailers. Breweries would be limited to 2,500 barrels or less per year of beer and wineries to 5,000 cases or less per year.

Taxation:

Iowa's Governor Tom Vilsack has proposed a 10 cent per gallon increase in the state excise tax on beer. Legislators have expressed their opposition to the proposal.

Maine House Bill 1334 changes the excise tax filing schedule for breweries and wineries to coincide with the current sales tax schedule.

Also in **Maine**, S.B. 729 provides tax incentives to brewers with the goal of increasing employment in Maine and the amount of malt liquor produced in-state and exported for sale outside of Maine. The incentives are in the form of credits against alcohol excise taxes (17.5 cents per gallon) and income taxes (50% of withheld payroll taxes for each employee above the number of employees in the previous year). The bill also creates a new license for someone who contracts with a brewery to manufacture that person's malt liquor.

Nebraska LB 889 would eliminate the requirement that state excise tax reports and schedules be notarized so that submission of these reports could be done electronically.

Legislation in **Vermont** (H.B. 679) has been introduced exempting beer from the sales tax. As a result, wine would also be exempt should the legislation pass.

Direct Shipping:

Colorado House Bill 1120 amends Colorado's laws relating to the interstate and intrastate shipment of wine to conform with the Supreme Court's ruling in *Granholm v. Heald*. The bill permits the sale and direct shipment of wine produced in-state or out-of-state to personal consumers in Colorado while requiring that wineries obtain winery direct shipper's permits from the state licensing authority, that shipments only be made to individuals allowed to purchase and consume alcohol beverages under Colorado law, and that applicable Colorado excise taxes be collected on such sales.

Under legislation currently before the **Illinois** legislature (H.B. 4350 and S.B. 2180), a non-resident wine manufacturer's license would be created which would allow wineries licensed in other states to sell and ship their wine to Illinois residents. Although this would give the same rights to both in-state and out-of-state manufacturers, the bill at the same time severely restricts the amount of wine allowed to be shipped directly to consumers.

Indiana H.B. 1036/S.B. 156 would allow both in-state and out-of-state farm wineries to sell and ship wine directly to Indiana residents provided the winery holds a direct wine shipper's permit.

Another **Indiana** bill (H.B. 1190) would prohibit direct sales of wine from a farm winery to a retailer.

Kansas S.B. 370 would allow in-state and out-of-state farm wineries (defined as not exceeding the manufacture of 100,000 gallons) to sell wine direct to consumers by means

of the internet or phone, but requires that the wine be shipped from the producer to a licensed wholesaler, who would then take the product to a retail liquor store where it would be picked up by the customer.

A pair of bills before a **Kentucky** Senate committee (S.B.'s 40 and 82) provide for a winery in another state to be able to ship a specified amount of wine to Kentucky residents if the wine has been purchased in person at the winery.

The **Maine** legislature is considering H.B. 1341, allowing interstate and foreign suppliers to ship wine directly to in-state consumers.

Massachusetts Senate Bill 2335, introduced on January 18, authorizes the direct shipment of wine.

Mississippi H.B. 556 authorizes the sale and shipment of certain wines by out-of-state manufacturers to retailers within the state.

Companion bills H.B. 1069 and S.B. 2454 moving through the **Mississippi** legislature would allow native wineries to sell native wines directly to in-state consumers, but only at the location of the winery.

Virginia House Bill 1288 creates a new small producer distribution license that authorizes the licensee to sell and deliver, or ship by common carrier, the wine produced by the licensee to both those licensed to sell the wine at retail and to persons in Virginia to whom alcoholic beverages may be lawfully sold.

A pair of **Washington** bills (H.B. 2561 and S.B. 6537) would allow both wineries licensed in Washington and wineries licensed in other states to ship wine to Washington residents who are 21 or older for personal use and not for resale.

Trade Practices & Other:

The **Alabama** Senate voted 30-0 on January 17 to change the definition of keg beer, making individual sales illegal (S.B. 139). Under the bill's provisions, keg beer consumption would be restricted to the property of the bar, restaurant or other licensed retailer who sells it. Word from the House committee it has been referred to is that it will not be brought up for consideration.

Florida House Bill 95, seeking to ban alcohol vaporizing (AWOL) devices, passed committee on a 17-1 vote in early January.

AWOL-related legislation in **Iowa** seeks to prohibit any person or club holding a liquor license or retail beer or wine permit from distributing alcohol in a vaporized form (H.B. 2083).

The Story County, **Iowa** Board of Supervisors voted unanimously to approve a keg registration ordinance requiring retailers to keep detailed information on those purchasing kegs.

Introduced in 2005 but finding new life this year, **Kansas** SB 299 would create a new Cereal Malt Beverage Retailers' Act (CMBRA) and would establish a statutory scheme which would allow the cities that adopt it to redefine a cereal malt beverage to increase the alcoholic content to *not to exceed 5 percent alcohol by weight.* It also would establish an additional class of licensee, the cereal malt beverage retailer. Currently, grocery stores and convenience stores are licensed to sell cereal malt beverages which are defined as malt products containing *not more than 3.2 percent alcohol by weight.* All other alcoholic malt beverages are defined as beer and are sold by the package only in retail liquor stores.

Under the provisions of H.B. 763, the state of **Mississippi** would establish a responsible alcohol vendor program designed to stop the sale of alcoholic beverages to underage persons.

Missouri Senate Bill 763 would prohibit grocery and convenience stores from selling individually packaged or refrigerated beer. Under the bill, stores would lose their liquor license if they sold beer colder than 60 degrees.

In **New Hampshire**, the House Judiciary Committee has voted down a bill to lower the drinking age to 18 for members of the armed forces.

Legislation currently before a **New Hampshire** House committee would permit beer manufacturers and distributors to provide carbon dioxide filters to retailers.

After passing the lower chamber in 2005, **New York** Assembly Bill 914 has been sent back to the Assembly by the Senate. The bill would repeal the prohibition on the sale of beer by retail establishments and restaurants between the hours of 3 a.m. and 12 noon on Sundays.

Another **New York** bill that passed the Assembly in 2005 and has now been returned by the Senate, A.B. 2656 authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption.

Ohio House Bill 209 was signed into law by the Governor in the last week of December. This legislation allows manufacturers and wholesale distributors of beer or intoxicating liquor to provide to other manufacturers or wholesale distributors travel, lodging, food, and beverages and to provide to liquor permit holders food, beverages, and recreational activities. All such activities were formerly prohibited.

Introduced in mid-January, **Vermont** House Bill 561 permits malt beverages to have the same alcohol content as vinous beverages.

Vermont House Bill 682 would allow the sale of a Vermont brewery's beer in another similarly licensed establishment in which the brewery has a financial interest.

Legislation has been introduced in **Virginia** (H.B. 512) which provides that certain on-premise and off-premise wine and beer licensees may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption.

Virginia Senate Bill 326 would authorize any retail on-premises wine or beer licensee, his agent or employee to offer for sale or sell to any person to whom alcoholic beverages may be lawfully sold tastings of wine or beer.

Virginia Senate Bill 328 authorizes any retail on-premises wine or beer licensee, his agent or employee, to give a sample of wine or beer, not to exceed two ounces, to persons to whom alcoholic beverages may be lawfully sold for on-premises consumption.

AWOL-banning legislation (S.B. 100) has been introduced in the **Virginia** state Senate.

Washington House Bill 3046 creates the Washington Beer Commission, which is charged by the legislature with speaking on behalf of the Washington government with regard to the marketing and promotion of Washington-produced beer. The Commission will have seven voting members (six producers and the Director of the Washington Department of Agriculture) and is funded by an annual assessment of 10 cents per barrel of beer produced, up to 10,000 barrels per location, levied on producers. The bill has received initial committee consideration and a public hearing.

House Bill 1430, which passed the **Washington** House in March, 2005, has been sent back to that chamber by the Senate. It would authorize the sale by spirit, beer, and wine licensees of malt liquor in containers that are capable of holding four gallons or more.

Government Affairs & Legal Update - February 2006

A. FEDERAL / NATIONAL

User Fees Again Appear in President's 2007 Budget. The Administration is calling for $29 million in new fees to fund TTB's regulatory functions. These would include filing fees for COLA's, formulas and permit applications. The Brewers Association is once again opposing the proposal and will be targeting those in Congress serving on the committees where enabling legislation would be introduced. BA members in the districts of those legislators will be contacted and asked to express their opposition as well.

TTB to Provide Federal Compliance Training for the Brewery Industry. On April 20, 2006 TTB will hold a compliance training session in Nashville, TN. Topics include recordkeeping and reports, the Pay.gov system, statement of process, bonds, and taxes. To learn more, visit the TTB web page http://www.ttb.gov/pdf/sebeerflyer2.pdf

TTB Issues Temporary Rule on Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers. On February 2, TTB published a temporary rule in the Federal Register to implement the recently enacted quarterly excise tax payment procedure for alcohol excise taxpayers who pay less than $50,000 per year in Federal alcohol excise taxes. The rule may be accessed at:

http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-981.pdf

TTB Reopens Comment Period. The Alcohol and Tobacco Tax and Trade Bureau is once again accepting comments on proposed amendments to the regulations governing the use of the word ''pure'' on labels or in advertisements of alcohol beverage products. Notice 53 was originally published in the December 7 edition of the Federal Register and may be read in full by linking to:

http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-23680.pdf

C. THE STATES

Distribution and Franchise:

Arizona H.B. 2697, that would eliminate self-distribution for both wineries and breweries, stalled in committee in mid-February.

Legislation (S.B. 259) in an **Ohio** Senate Committee seeks to revise the laws with regard to the termination of manufacturers franchise agreements with wine wholesalers.

A legislative threat in the **Vermont** Senate has been turned back largely due to unified opposition from the **Vermont Brewers Guild**. The proposal would have allowed an exception to the tied-house rule by permitting a brewpub to supply beer directly to other establishments in which an ownership interest exists.

Companion bills H.B. 3246 and S.B. 6850 in the **Washington** legislature would allow in-state and out-of-state breweries to self distribute up to a 2,500 barrel annual production limit. Breweries above that limit could only self distribute if they maintain an in-state distribution facility separate and distinct from their production facility.

Taxation:

California Assembly Bill 2013, introduced on February 10, would require all surtaxes, penalties and interest resulting from the reclassification of an alcoholic beverage from a beer to a distilled spirit, be used to fund a youth alcohol prevention program.

Legislation in the **California** Senate (S.B. 656) authorizes counties, with voter approval, to levy a local tax on the consumption of beer, wine and distilled spirits consumed on the premises of the seller of one of these products. The bill has been temporarily removed from consideration.

Florida Governor Jeb Bush has proposed repealing the state's alcohol by-the-drink tax, potentially saving businesses $51 million.

Maine LB 2048, "An Act to Strengthen Maine's Craft Brewers," provides tax incentives to brewers with the goal of increasing employment in Maine and the amount of malt liquor produced in-state and exported for sale outside of Maine. The incentives are in the form of credits against alcohol excise taxes (17.5 cents per gallon - the percentage of malt liquor that is eligible for the credit is 90% of the amount produced and exported and is reduced by 10% each year) and income taxes (50% of withheld payroll taxes for each employee above the number of employees in the previous year).

A bill has been introduced in the **Maryland** legislature raising the tax rate on beer by 18 cents a gallon (from 9 cents to 27 cents). Hearings are scheduled for March.

Missouri H.B. 1162 which would raise the excise tax on beer from 6 cents to 24 cents per gallon, is moving through the State House.

Tennessee Senate Bill227 increases the beer privilege tax $20.00 and the beer permit fee $50.00 with the additional revenue earmarked for underage substance abuse prevention.

Passed by the **Vermont** House and now in Senate committee, H. B. 702 raises alcohol beverage manufacturer's fees on a variety of licenses and application approvals.

Direct Shipping:

Colorado House Bill 1120 passed the full House on February 7 and is under consideration in the Senate. The bill permits the sale and direct shipment of wine produced in-state or out-of-state to personal consumers in Colorado while requiring that wineries obtain winery direct shipper's permits from the state licensing authority, that shipments only be made to individuals allowed to purchase and consume alcohol beverages under Colorado law, and that applicable Colorado excise taxes be collected on such sales.

The **Florida** state Department of Business and Professional Regulation announced in mid-February that it no longer will enforce a ban on direct sales from out-of-state wineries to Florida consumers.

Hawaii House Bill 1968, requiring wine direct shippers to obtain a permit, was poised to pass the full House on the last day of February. A companion Senate Bill (S.B. 2109) was also moving through that chamber and is expected to be passed in March.

On February 15, the **Idaho** House passed House Bill 454 which makes legal, and lays out the requirements for instituting, direct shipment of wine to the state's residents.

A pair of direct shipping bills before the **Illinois** legislature (H.B. 4350 and S.B. 2180) continued to move through their respective chambers. The bills allow direct sales of wine to Illinois residents by both in-state and out-of-state suppliers, but provide that the initial retail sale must be in person. Subsequently, the supplier may ship up to two cases of wine per year to that customer.

Indiana House Bill 1190, providing for direct wine shipments, has stalled in the Senate after passing the House on February 1. With adjournment scheduled for mid-March, it is unlikely the bill will be taken up again this session.

Passing the Senate on February 9, **Kansas** S.B. 370 would allow in-state and out-of-state farm wineries (defined as not exceeding the manufacture of 100,000 gallons) to sell wine direct to consumers by means of the internet or phone, but requires that the wine be shipped from the producer to a licensed wholesaler, who would then take the product to a retail liquor store where it would be picked up by the customer. This bill now joins H.B. 2811, also permitting direct shipping, as bills under consideration in the lower chamber.

The **Kentucky** Senate has passed S.B. 82 which provides for wineries (producing less than 50,000 gallons) outside the state to be able to ship a specified amount of wine to Kentucky residents if the wine has been purchased in person at the winery.

Maryland House Bill 625, establishing a direct wine shipper's license, was introduced on February 2.

As anticipated, the **Massachusetts** legislature overrode Governor Mitt Romney's veto of legislation that would have limited the ability of out-of-state wineries to ship directly to Massachusetts consumers. The bill called for prohibiting direct sales by wineries that

produce more than 30,000 gallons of wine a year and who have been represented by a Massachusetts wholesaler for the past six months. Romney had called the legislation anti-consumer.

Resolutions have been introduced in both houses of the **Oklahoma** legislature calling for a referendum on a constitutional amendment authorizing certain winemakers to sell and ship wine to consumers, while H.B. 2918 was introduced seeking to authorize the same.

South Dakota House Bill 1187, establishing an in-state wine direct shipper permit and providing for certain direct shipments of wine, has been removed from consideration.

Two **Tennessee** bills (H.B. 2884 and S. B. 2865) permit legal age consumers to have wine shipped directly from in-state and out-of-state wineries to their homes for personal consumption.

Virginia HB 1288, creating a new small producer distribution license that authorizes the licensee to sell and deliver or ship by common carrier the wine produced by the licensee, has been tabled.

Companion bills (H.B. 3166 and S.B. 6799) in the **Washington** legislature allow for both in-state and out-of-state wineries and breweries to distribute an unlimited amount of wine and beer of their own production to Washington retailers.

Washington S.B. 6537 allowing both wineries licensed in Washington and wineries licensed in other states to ship wine to Washington residents who are 21 or older for personal use and not for resale, has passed the Senate.

A **Wyoming** House committee approved legislation allowing both in-state and out-of-state wineries the right to ship up to 2 cases of wine to Wyoming residents.

Trade Practice & Other:

Legislation introduced in the **Colorado** House (H.B. 1182) limiting the number of licenses issued for the sale of alcohol beverages in sealed containers for off-premise consumption, has been postponed indefinitely by the Committee on Business Affairs and Labor.

Passing the **Idaho** Senate on February 14, S.B. 1351 prohibits the use, possession, purchase or sale of alcohol without liquid (AWOL) devices.

Iowa House Bill 2333, prohibiting any person or club holding a liquor license or retail beer or wine permit from distributing alcohol in a vaporized form (AWOL devices), has been sent to the Senate for consideration.

Legislation has been introduced in **Iowa** permitting manufacturers, bottlers and wholesalers of alcoholic beverages to provide retailers, consistent with federal law, free wine and beer coil cleaning services.

A pair of bills introduced in the **Maryland** legislature (H.B. 1122 and S.B. 812) would allow certain manufacturers to obtain a limited wine wholesaler's license.

Maryland House Bill 1302 would authorize certain holders of a Class 7 micro-brewery license to sell and deliver not more than 5,000 barrels of beer annually to those licensed to sell beer at retail.

Legislation introduced in **Mississippi** in January establishing a responsible alcohol vendor program designed to stop the sale of alcoholic beverages to underage persons, has died in committee.

Mississippi S.B. 2454, allowing native wineries to sell native wines directly to in-state consumers only at the location of the winery, passed the Senate on February 2 and is in the House Ways & Means Committee.

Legislation has been filed in **New Jersey** (A.B. 2621) prohibiting the use, possession, sale, distribution and manufacture of alcohol without liquid (AWOL) machines.

Under consideration in **New Jersey**, A.B. 2178 allows holders of restricted brewery licenses to sell to retailers not more than half of the 3,000 barrels they are permitted to brew annually.

Two **Rhode Island** bills (H.B. 7241 and S.B. 2480) would increase the amount of beer and wine samplings for holders of specified retail licenses.

Tennessee S.B. 3408 prohibits manufacturers from providing direct services to retailers and licensed premises including shelving, stocking, pricing and assisting customers.

Legislation (H.B. 512) has passed the **Virginia** House which provides that certain on-premise and off-premise wine and beer licensees may conduct wine or beer tastings sponsored by the licensee for its customers for on-premises consumption.

Washington House Bill 1430 passed on February 8 and has been sent to the Senate. It would authorize the sale by spirit, beer, and wine licensees of malt liquor in containers that are capable of holding four gallons or more.

The **Washington** House has passed legislation (H.B. 3154) allowing domestic breweries and microbreweries that hold spirits, beer, and wine restaurant licenses to sell beer of their own production for off-premises consumption. Beer may be sold in kegs or growlers that are filled at taps at the time of sale.

Senate Bill 6823 passed the **Washington** Senate and is under House consideration. Its provisions allow an in-state or out-of-state winery, brewery, or microbrewery to act as its own distributor. Out-of-state producers may distribute their product directly to the retailer, use a distributor, or a retailer may hire a common carrier to pick up the product from the producer and deliver it to the retailer (these are the current delivery options permitted for in-state producers).

West Virginia H.B. 4415 seeks to raise the allowable alcohol content of beer to 15%.

A **Wyoming** House committee is considering H.B. 144 that calls for implementing a keg registration program.

Legislation (S.B. 36) was preliminarily approved by the **Wyoming** Senate making it illegal for anyone in a moving vehicle to have an open container of alcohol. Wyoming law currently allows vehicle passengers to have open containers.

Government Affairs & Legal Update - March 2006

A. FEDERAL / NATIONAL

Federal Trade Commission Weighs In on Ohio Direct Shipping Legislation. In a reply to a request for comment by the prime sponsor of a bill in the Ohio Senate authorizing the direct shipment of wine to consumers by both in-state and out-of-state manufacturers, the FTC expressed it's support based on the resulting price and variety benefits to consumers. The agency response also stated that the oft-referenced underage access issue was adequately addressed by the regulatory requirements contained in the bill.

B. THE COURTS

Suit Against Beer Institute and 19 Alcohol Manufacturers Dismissed. On March 28, the Superior Court of the District of Columbia dismissed a suit alleging the defendants (BI and certain alcohol manufacturers) had deliberately targeted underage consumers in the advertising of alcohol products to gain the financial profit from such illegal consumption. The court found the plaintiff lacked standing in light of the fact that no actual, only hypothetical, injury was alleged.

Oklahoma Wholesalers File Suit to End Direct Shipping Rights. In yet another reaction to the Supreme Court's *Granholm* decision, three wholesalers have brought an action against the state to reverse self distribution rights granted to in-state wineries in 2001.

C. THE STATES

Distribution and Franchise:

California
The Assembly's AB 2398 provides for beer and wine wholesalers to sell lawful products to off-sale licensees in addition to their current ability to sell to on-site licensees.

Louisiana
Introduced in early March, H.B. 71 authorizes producers of native wine to sell their products at wholesale.

Oklahoma
Authorizing winemakers to sell wine at retail and to direct ship to consumers, H.B. 2918 passed the full House on March 20 and is pending in the Senate.

S.B. 1845 allows the holder of a brewer license to manufacture, bottle, package and store beer on licensed premises, to sell beer in-state to holders of certain wholesale and retail

licenses and to sell beer out-of-state to qualified persons. The bill passed the Senate in early March and has been referred to the House.

Taxation:

New Jersey
Governor Jon Corzine has proposed raising the excise tax on beer, wine and spirits 1%.

Nebraska
A trio of proposed bills would raise the tax on beer, wine and spirits by 30-40 percent, 630 percent and, oddly, by enough to raise $2.5 million. Two would fund alcohol-related treatment and compensation funds, the third an anti-violent crime program. None are expected to clear committee.

North Dakota
A proposed ballot measure seeks to increase the state tax on beer in bottles and cans from 16 cents per gallon to 24 cents per gallon, and larger containers from 8 to 16 cents per gallon. The revenues raised would fund a commission to combat alcohol abuse.

Direct Shipping:

Arizona
Passing the Senate in mid-March, S.B. 1276 allows wine ordered by phone, mail, fax or through the Internet to be shipped directly to the purchaser if the wine is purchased from a licensed limited production winery.

Colorado
House Bill 1120 was amended and passed by the Senate in late March and has been returned to the House for concurrence. The bill permits the sale and direct shipment of wine produced in-state or out-of-state to personal consumers in Colorado while requiring that wineries obtain winery direct shipper's permits from the state licensing authority, that shipments only be made to individuals allowed to purchase and consume alcohol beverages under Colorado law, and that applicable Colorado excise taxes be collected on such sales.

Hawaii
House Bill 1968, requiring wine direct shippers to obtain a permit, passed the full House on March 7 and is under consideration in the Senate. On the same date, companion Senate Bill 2109 passed the Senate and was sent to the House.

Idaho
On March 11, Governor Dirk Kempthorne signed House Bill 454 into law, making the direct shipment of wine to the state’s residents legal.

Illinois
S.B. 2180, allowing the direct sales of wine to Illinois residents by both in-state and out-of-state suppliers, has passed the Senate and been referred to the House Committee on Rules. It stipulates that the initial retail sale must be in person, but that subsequent limited amounts may be shipped to that customer.

Indiana
Legislation (H.B. 1016) permitting wineries to ship up to 3,000 cases annually to consumers (individuals may receive up to 24 cases per year) was signed into law on March 24.

Montana
The legislature began work on drafting legislative authorization for the direct shipment of wine.

Vermont
S.B. 58, permitting the direct shipping of out-of-state wine and beer to Vermont consumers, passed the Senate and moved to the House on March 16.

Washington
S.B. 6537, allowing both wineries licensed in Washington and wineries licensed in other states to ship wine to Washington residents who are 21 or older for personal use and not for resale, has been signed by the Governor.

Trade Practice & Other:

Connecticut
A bill allowing Sunday liquor sales on the two days previous to Christmas and New Year's has been rejected at the committee level.

Iowa
House Bill 2333, prohibiting any person or club holding a liquor license or retail beer or wine permit from distributing alcohol in a vaporized form (AWOL devices), passed unanimously in the Senate on March 29. Having also passed the House unanimously in February, the Governor is expected to sign this legislation.

Companion legislation has been introduced (S.B. 2368 and H.B. 2707) permitting manufacturers, bottlers and wholesalers of alcoholic beverages to provide retailers, consistent with federal law, free wine and beer coil cleaning services. The bills also specify that retailers would not be responsible for the costs of carbon dioxide filters. S.B. 2368 successfully passed the Senate on March 14, and both bills are now in the House.

Mississippi

S.B. 2454, allowing native wineries to sell native wines directly to in-state consumers only at the location of the winery, but prohibiting direct sales to retail permit holders, was signed into law by the Governor on March 13.

New Jersey
A.B. 2621, prohibiting the use, possession, sale, distribution and manufacture of alcohol without liquid (AWOL) machines, is before the Committee on Law and Public Safety for consideration.

New York
Legislation (A.B. 914) that repeals the prohibition on the sale of beer by retail establishments and restaurants between the hours of 3 a.m. and 12 noon on Sundays has been reintroduced in the Assembly. Last session the measure died in the Senate after passage in the lower chamber.

A.B. 2656 authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption. This bill passed the Assembly in the third week of March and is now before a Senate committee.

South Dakota
Governor Mike Rounds has signed H.B. 1233 into law, which authorizes the establishment and operation of artisan distillers.

Vermont
H.B. 665 was signed by the Governor on March 9, authorizing alcohol beverage sampling at educational and marketing events and requiring permits be obtained.

Virginia
On the Governor's desk for signature, S.B. 685 authorizes manufacturers of alcoholic beverages and wine or beer wholesalers or their authorized representatives to conduct tastings under certain conditions as part of the privileges of their respective licenses.

Washington
Legislation establishing the Washington Beer Commission has been signed by Governor Gregoire. The Commission is charged by the legislature with speaking on behalf of the Washington government with regard to the marketing and promotion of Washington-produced beer. The Commission will have seven voting members (six producers and the Director of the Washington Department of Agriculture) and is funded by an annual assessment of 10 cents per barrel of beer produced, up to 10,000 barrels per location, levied on producers.

Senate Bill 6823 has also been signed into law by the Governor. Its provisions allow an in-state or out-of-state winery, brewery, or microbrewery to act as its own distributor. Out-of-state producers may distribute their product directly to the retailer, use a distributor, or a retailer may hire a common carrier to pick up the product from the

producer and deliver it to the retailer (these are the current delivery options permitted for in-state producers).

Also signed by the Governor, H.B. 3154 allows domestic breweries and microbreweries that hold spirits, beer, and wine restaurant licenses to sell beer of their own production for off-premises consumption. Beer may be sold in kegs or growlers that are filled at taps at the time of sale.

Wyoming
Legislation (H.B. 144) implementing a keg registration program was signed into law on March 11.

Government Affairs & Legal Update - April 2006

A. FEDERAL / NATIONAL

TTB Posts Helpful Hints for Filing *Brewer's Report of Operations*. Line by line guidance for preparing Form 5130.9, Brewer's Report of Operations, is available at

http://www.ttb.gov/forms/pdfs/5100/51309worksheet.pdf

TTB is providing this worksheet with the goal of helping brewers accurately report the required information.

B. THE COURTS

Costco v. Hoen Findings Bring Wholesale Change to Washington Three Tier. With the release of her findings on April 21st, Judge Marsha Pechman redefined alcohol beverage distribution in the state. She concluded that the Washington State Liquor Control Board should cease enforcing the current policies requiring price posting, uniform pricing and mandatory mark-ups, and the prohibitions on credit sales, volume discounts and central warehousing. A 30 day stay of the judgment was included to allow the state time to consider an appeal, and the state has subsequently filed a challenge to the ruling.

Three Tier Challenged in Texas. A lawsuit filed in the U.S. District Court for northern Texas challenges the current state law that prohibits Texas residents from purchasing alcohol direct from out-of-state retailers. The basis of the suit lies in the Supreme Court's *Granholm* decision which struck down discrimination between in-state and out-of-state entities shipping wine directly to consumers.

Minnesota Acknowledges Unconstitutionality of Internet Sales Ban. The state of Minnesota has agreed to stop enforcing the provisions of a 1993 law banning internet alcohol sales and the advertisement of direct to consumer sales. Suit was filed against the state late last year, arguing that a continuation of this ban would mitigate the positive impacts of the changes then being made to the state's direct shipping laws (to allow the direct shipment of up to two cases of wine per year to consumers).

C. THE STATES

Distribution and Franchise:

Arizona
On April 17, the House passed and sent back to the Senate S.B. 1322 containing several provisions relating to microbreweries. The bill would permit a licensed domestic microbrewery to sell and deliver beer to persons licensed to sell beer in another state if it

is lawful in that state; allow a domestic microbrewery to sell and deliver up to 93,000 gallons of beer that it has produced directly to licensed retailers in any calendar year; decrease the minimum amount a microbrewery needs to produce in order to qualify as a domestic microbrewery, from 10,000 to 5,000 gallons of beer in a calendar year; and increase the maximum amount a microbrewery can produce in order to continue to qualify as a domestic microbrewery, from 310,000 gallons to 620,000 gallons of beer in a calendar year.

Louisiana
H.B. 1009 exempts any wine producer who produces and sells less than 2,000 cases of wine from wholesale distribution of its product for commercial purposes. Additionally, it authorizes a holder of a wine producer's permit to sell the manufactured beverage at retail for consumption on or off the licensed premises.

Missouri
House Bill 1726, currently pending in a House committee, specifies that a brewer or importer must offer to assign a brand extension to a wholesaler to whom he or she granted the exclusive sales territory for the brand if the brand extension was not assigned before August 28, 2006. It also stipulates that flavor and other non-beverage ingredients containing alcohol may be used in producing intoxicating and non-intoxicating beer but may not contribute to more than 49% of the overall alcohol content of the finished beer.

Washington
Washington Governor Gregoire has signed S.B. 6823, allowing an in-state or out-of-state winery, brewery, or microbrewery to act as its own distributor. Out-of-state producers may distribute their product directly to the retailer, use a distributor, or a retailer may hire a common carrier to pick up the product and deliver it to the retailer. This legislation is in direct response to the Costco ruling that found discrimination between in-state and out-of-state distribution rights.

Direct Shipping:

California
Joint Resolution 30, memorializing the other 49 states to enact uniform and uncomplicated direct wine shipping laws to increase consumer choice and promote wine commerce on equal terms without discrimination by size or other criteria, has been passed in the Senate and sent to the Assembly.

Colorado
House Bill 1120 was signed into law by the Governor on April 13. The bill permits the sale and direct shipment of wine produced in-state or out-of-state to personal consumers in Colorado.

Delaware

Governor Minner has signed H.B. 379 into law, allowing wineries under 1,000 cases annual production to ship limited amounts of wine directly to retailers.

Florida
Legislation (H.B. 247) authorizing direct mail shipments of wine from wineries producing less than 250,000 gallons annually has passed the state House and been referred to a Senate committee.

Hawaii
Following House passage in March, the Senate amended House Bill 1968, requiring wine direct shippers to obtain a permit. The House disagreed with those changes and the bill is now in conference to reach a compromise.

Kansas
Senate Bill 297, allowing wineries, both in-state and out-of-state, to accept internet and phone orders from Kansas residents, continues to move through the legislature. Under provisions of the bill, purchases will have to be picked up at a liquor store.

Kentucky
Senate Bill 82 became law on April 18, making it legal for wineries (producing less than 50,000 gallons) outside the state to be able to ship a specified amount of wine to Kentucky residents if the wine has been purchased in person at the winery. Small wineries would henceforth be prohibited from selling direct to retail license holders.

Maryland
Legislation creating a limited wine wholesaler's license and authorizing holders of such to sell and deliver its own brand of wine directly to legal consumers (S.B. 812) has been signed by the Governor.

Trade Practice & Other:

California
Assembly Bill 3046 increases the number of participants from 100 to 200 that an incorporated beer manufacturer's trade association may conduct beer tastings on behalf of licensed manufacturers for groups of individuals unaffiliated with a sponsoring nonprofit organization. Passing the Assembly in early April, the bill is now under committee consideration in the Senate.

Senate Bill 1548 adds "beer" to an existing provision of law that authorizes limited and free "instructional" tastings of wine and distilled spirits, as specified, at on-sale retail licensed premises and doubles the current amount that can be offered to an individual of legal drinking age per day (to 12 ounces of beer per day per consumer).

Connecticut

Passing the House in April and now before the Senate, H.B. 5666 permits beer manufacturers, wholesalers or out-of-state shipper permittees to differentiate the manner in which products are packaged on the basis of the intended place of consumption (i.e. on-premise or off-premise).

Georgia
A bill (H.B. 1168) allowing winery tasting room sales of wines, distilled spirits and malt beverages produced for off-premise consumption has been vetoed by Governor Sonny Perdue.

Idaho
The Governor has signed legislation (S.B. 1351) prohibiting the use and passion of alcohol without liquid devices.

Iowa
House Bill 2333, prohibiting any person or club holding a liquor license or retail beer or wine permit from distributing alcohol in a vaporized form (AWOL devices), was signed into law by the Governor on April 7.

Signed by the Governor on April 20, S.B. 2368 permits a manufacturer of alcoholic beverages, wine, or beer, or an agent of such manufacturer, to provide to a retailer without charge wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters. The manufacturer is responsible for paying the costs of any filters provided.

Rhode Island
H.B. 7241, increases the number of wine and beer products available at tasting events and the number of tasting events that can be held in a 30 day period, is being held in committee for further study.

South Carolina
H.B. 4995, currently before the House Judiciary Committee, would raise the allowable alcohol content of malt beverages to 14% by volume.

Legislation (S.B. 1362) calling for the formation of a study committee to conduct a complete review of the laws and regulations governing the sale of beer and wine and the regulations governing the sale of alcoholic beverages in the state, is pending in a Senate committee.

Virginia
H.B. 512, allowing certain on-premise and off-premise wine and beer licensees to conduct wine or beer tastings sponsored by the licensee for its customers for on-premise consumption, has been signed into law.

Also approved by the Governor, S.B. 685 authorizes manufacturers of alcoholic beverages and wine or beer wholesalers or their authorized representatives to conduct tastings as part of the privileges of their respective licenses.

Government Affairs & Legal Update - May 2006

A. FEDERAL / NATIONAL

U.S. House of Representatives Passes Resolution Commending Craft Brewers. House Resolution 753, recognizing both America's craft brewers for their many and varied contributions to our nation's communities, economy, culture and history and the establishment of American Craft Beer Week, was formally approved in the first week of June. Representatives Sherwood Boehlert (R-NY) and Peter DeFazio (D-OR) were instrumental in achieving passage of what BA president Charlie Papazian calls "an important and significant step in our effort to raise the profile of craft beer and brewing in Washington."

BA Petitions TTB on Ingredients and Processes. On May 24th, the BA filed a petition with the Tax and Trade Bureau requesting the recognition of a number of ingredients and processes, all currently in widespread use by America's craft brewers, as traditional brewing ingredients and processes under current standards. If approved, brewers would no longer need to submit a Statement of Process/Formula when using these ingredients and/or processes.

Thanks to the 148 BA member breweries that provided responses to our online survey, as this data forms a core element of the petition. The petition can be accessed on the BA website at: http://www.beertown.org/pdf/Final_Petition_TTB_Formula_5_24_06.pdf

Fair Flat Tax Act of 2006 Could Mean Higher Taxes for Brewers. Recently introduced in Congress as HR 5176, this legislation would, along with completely changing the tax structure in the United States, impose an inflation adjustment to excise taxes on beer, wine, distilled spirits and tobacco. The bill has been referred to the House Ways and Means Committee for consideration.

19 State Attorneys General Support FTC's Plan to Collect Alcohol Industry Data. In a May 8 letter to Federal Trade Commission Secretary Donald Clark, the highest law enforcement officials in 19 states expressed support for a Commission plan to collect detailed information on sales and marketing spending, compliance data for the industry's own advertising code and the status of third-party complaint reviews of alcohol advertising in the effort to address underage drinking across the nation.

TTB to Consider Status of "Scotch Ale" and "Scottish Ale" on Labels. TTB is expected to issue a notice regarding the use of these terms and whether they have effectively lost their geographical significance and hence become generic. Similar to last year's review of "Russian Imperial Stout," this process could result in approval of use on labels without the additional qualifying descriptors of "type" or "American."

B. THE COURTS

The State of Washington Appeals U.S. District Court Judgment in Costco Case. Citing the state's right to regulate alcohol and the precedence of that right over federal antitrust statutes, the Washington Liquor Control Board formally appealed the April ruling that it cease enforcing core elements of the three-tier system.

Three Tier Successfully Challenged in Texas. On May 22nd, U.S. District Judge John McBryde (Northern District of Texas) approved a preliminary injunction prohibiting the state of Texas from enforcing its ban on out-of-state retailer shipments direct to consumers, thereby opening the entire state (including "dry" jurisdictions) to direct shipping of wine.

Alcohol Advertising Class Action Suit Tossed in Michigan. The U.S. District Court for Eastern Michigan found for a group of defendants including domestic brewers, distillers, importers and the Beer Institute in a class action suit filed on behalf of children allegedly injured because they were exposed to alcohol advertising in the mass media. Judge Marianne Battani found the complaint to be "utterly devoid of a factual basis."

C. THE STATES

Distribution and Franchise:

California
A.B. 2398, providing for beer and wine wholesalers to sell lawful products to off-sale licensees in addition to their current ability to sell to on-site licensees, has passed the Assembly and is now before a Senate committee.

Delaware
Under the provisions of H.B. 336, which Governor Minner has signed into law, farm wineries are required to sell their product to wholesalers for distribution to retailers.

Direct Shipping:

Arizona
S.B. 1276 is on the Governor's desk awaiting approval. This legislation allows wineries with an annual production of 20,000 gallons or less to ship directly to both consumers and retailers.

Hawaii
H.B. 1968, establishing a direct wine shipper permit process to allow wineries to ship wine to Hawaii residents, is before the Governor for signature.

Kansas

Senate Bill 297 was signed into law by the Governor on May 23rd. The law allows both an in-state farm winery and out-of-state winery, producing not more than 100,000 gallons annually, to ship wine to a licensed retailer in Kansas for delivery to persons of legal drinking age.

Maine
House Bill 415, allowing for the direct shipment of wine and malt liquor to state residents from out-of-state shippers, has been signed into law by the Governor.

Vermont
Citing compliance with the Supreme Court's *Granholm* ruling as its genesis, S.B. 58 was signed into law by the Governor on May 10th. Specifically, the Act authorizes both in-state and out-of-state wineries to ship wine to Vermont consumers and retailers on even-handed terms.

Trade Practice & Other:

Alaska
Legislation (H.B. 240) increasing the production cap for brewpubs from 150,000 gallons to 465,000 gallons is before the Governor for signature. This legislation also permits brewpubs in Anchorage and Fairbanks to self-distribute up to 200 barrels of beer per year and allows breweries to charge for tasting room samples.

California
Governor Schwarzenegger has signed A.B. 273 into law, prohibiting the sale, use and possession of alcohol without liquid devices (AWOL).

Connecticut
Connecticut Governor Jodi Rell has signed legislation into law (Public Act No. 26) which makes permanent the law that (1) requires manufacturers and wholesalers of alcoholic beverages to register their brands with the Department of Consumer Protection (DCP) and post their prices for the following month with it and (2) prohibits them from discriminating in price between one liquor permittee and another.

H.B. 5666 has been referred to committee in the Senate. This legislation permits beer manufacturers, wholesalers or out-of-state shipper permittees to differentiate the manner in which products are packaged on the basis of the intended place of consumption (i.e. on-premise or off-premise).

Delaware
Legislation permitting the sale of beer in grocery stores has been introduced (H.B. 437).

Iowa
The Governor of Iowa has signed S.B. 2368 into law, permitting manufacturers, bottlers and wholesalers of alcoholic beverages to provide retailers free wine and beer coil

cleaning services. The law also specifies that retailers would not be responsible for the costs of carbon dioxide filters.

Michigan
House Bill 4641has been reported from committee to the floor of the House. The bill would amend the Liquor Control Code to allow the Liquor Control Commission to issue a special beer festival license to a nonprofit organization composed primarily of brewers, microbrewers, and brewpubs for an event showcasing beer and its production. The special license would be good for up to five events per calendar year.

Missouri
Legislation (H.B. 1735) revoking the ability of alcohol beverage manufacturers to offer cash rebate coupons is under review in the House Local Government Committee.

New York
A.B. 11271 allows for wholesalers of wine and liquor to provide unlimited services to grocery stores holding off-premise consumption licenses, has been introduced and referred to committee.

Under consideration by the Senate, S.B. 5343 authorizes the retail sale of beer after 8:00 A.M. on Sundays.

S.B. 2322, introduced in February of 2005, is once again moving in the New York Senate. The legislation authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption. It also provides for tastings at such licensed establishments or annual fairs.

South Carolina
Reported favorably from the Senate Judiciary Committee, H.B. 4768 makes it lawful for consumers to receive merchandise coupons from manufacturers, suppliers or importers when they purchase beer, wine or spirits.

Virginia
The Governor has signed S.B. 100, prohibiting any person from purchasing, offering for sale, selling or using any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device (AWOL).

Government Affairs & Legal Update - June 2006

A. FEDERAL / NATIONAL

Deadline Approaching: TTB has posted a friendly reminder to brewers that all previous approvals that allowed operation as an alternating proprietor at a brewery will be invalid as of September 1, 2006. Brewery proprietors who alternate premises will need to resubmit applications for alternate methods of operation if they intend to continue operating as an alternating brewery proprietor after August 31, 2006. For more information, link to the TTB Circular at:

http://www.ttb.gov/publications/ind_circulars/ic2005_2.pdf

TTB Updates Two Important Forms. TTB has released updated versions of the Application for Certification/Exemption of Label/Bottle Approval (COLA) and the COLAs Online Access Request form. For further information and a link to TTB's online printable forms page, go to:

http://www.ttb.gov/press/fy06press/new_cola_form061906_update.pdf

B. THE COURTS

A Texas-Sized Three Tier Challenge in California? Several lawsuits have been filed across the state of California which closely resemble the challenge in Texas that out-of-state retailers be allowed to ship wine directly to in-state consumers.

C. THE STATES

Distribution and Franchise:

Arizona
Governor Napolitano has signed S.B. 1322 into law. Among its provisions, the new law makes it possible for licensed domestic microbreweries to sell and deliver beer to persons licensed to sell beer in another state and to sell and deliver up to 93,000 gallons of beer that it has produced directly to licensed retailers in any calendar year. Additionally, it decreases the minimum amount a microbrewery needs to produce in order to qualify as a domestic microbrewery, from 10,000 to 5,000 gallons of beer in a calendar year, and increases the maximum amount a microbrewery can produce in order to continue to qualify as a domestic microbrewery, from 310,000 gallons (10,000 bbl) to 620,000 gallons (20,000 bbl) of beer in a calendar year.

Taxation:

Florida
On June 9th, Governor Jeb Bush approved H.B. 7105 which deletes a provision imposing a surcharge on alcoholic beverages sold for on-premise consumption.

Direct Shipping:

Arizona
The Governor of Arizona has signed S.B. 1276 into law. This legislation allows wineries with an annual production of 20,000 gallons or less to apply for a domestic farm winery license and thereby ship directly to both consumers and retailers.

Hawaii
H.B. 1968, establishing a direct wine shipper permit process to allow wineries to ship wine to Hawaii residents, was signed into law by the Governor on June 22nd.

Trade Practice & Other:

Connecticut
By affixing her signature to H.B. 5668, Connecticut Governor Jodi Rell has created Public Act No. 95, which prohibits selling, purchasing, or possessing an alcohol vaporization device.

Delaware
H.B. 437, permitting the sale of beer in grocery stores, has died in committee.

Florida
June 9th saw H.B. 95 signed into law, prohibiting the sale, offer for sale, purchase, or use of machines or devices which vaporize alcohol.

Louisiana
Signed by the Governor on June 2nd, H.B. 122 prohibits the use of an alcohol vaporizing machine within licensed premises.

Missouri
Signed into law in early June, S.B. 725 allows culinary students who are eighteen years of age or older to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum. The act explicitly disallows a student under the age of twenty-one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the

student's required curriculum and the beverage is used only for instructional purposes during classes conducted as part of the curriculum.

New York
S.B. 2322, introduced in February of 2005, has passed the New York Senate. The legislation authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption. It also provides for tastings at such licensed establishments or annual fairs.

Having passed the Senate in May and the Assembly in June, S.B. 5343 has gone back to the Senate for concurrence of Assembly amendments. The bill authorizes the retail sale of beer after 8:00 A.M. on Sundays.

Texas
A provision of the Texas Alcohol Beverage Code imposing restrictions on beer container sizes has been repealed. This will open the market to a variety of domestic and foreign products in their original container sizes.

Government Affairs & Legal Update - July 2006

A. FEDERAL / NATIONAL

TTB Issues Proposal on Mandatory Major Food Allergen Labeling: On July 26, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published both an Interim rule and a Notice of Proposed Rulemaking (NPRM), Notice No. 62, in the Federal Register concerning the labeling of allergens in alcohol beverages.

Under the interim regulations, producers, bottlers, and importers of malt beverages, wines, and distilled spirits, may voluntarily declare the presence of milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as ingredients that contain protein derived from these foods, in their products. Mandatory rules for how such labeling is to be accomplished are also included, along with exemption procedures.

The NPRM proposes to make major food allergen labeling mandatory for alcohol beverages. As with the interim rule, procedures for petitioning for an exemption from allergen labeling are also included. TTB has opened a public comment period on the proposed labeling requirements and the time frame for making the requirements mandatory that runs until September 25th.

Beer and Wine & Spirits Wholesaler Associations Pass Resolutions Supporting Federal Underage Drinking Legislation. The boards of both the National Beer Wholesalers Association and the Wine and Spirits Wholesalers of America passed resolutions in the third week of July supporting H.R. 864, the STOP Underage Drinking Act. Although these groups had previously withheld their support for this bill, draft language has been added to the legislation which underscores the importance of state regulation in preventing underage drinking. State regulation of the alcohol industry, particularly of distribution issues, is a key component of the three-tier system which many see as potentially vulnerable following the Supreme Court's decision on the direct shipping of wine.

TTB User Fees Rejected. In a reprise of 2005, a Bush administration proposal to charge fees for a variety of TTB applications and permits currently carrying no cost was left out of the budget document approved by a Senate Appropriations Subcommittee.

Controversial Survey On Underage Internet Alcohol Sales Released.

B. THE COURTS

Challenge to Maine's Direct Shipment Laws Suffers Setback. A magistrate judge in the U.S. District Court of Maine has recommended a judgment in favor of the state of Maine in a suit brought by a small Oregon vineyard challenging the prohibition on direct delivery of wine. A key point in the judge's opinion was that the requirement that direct sales be conducted on-premise, in face-to-face transactions, "simply does not impose any

cognizable burden on interstate commerce that could possibly outweigh the putative local benefit of regulating minors' access to alcohol." Because Maine's laws governing purchases of alcohol are written with the intent of restricting access to those under the legal drinking age, "it is not for this Court to second-guess that policy determination in favor of the plaintiff's free market perspective."

C. THE STATES

Taxation:

Idaho
The Idaho Association of Counties has proposed raising the state tax on beer and wine from 1 cent to five cents per serving. The estimated $15 million generated annually would be used to fund drug and alcohol prevention programs in schools.

Direct Shipping:

California
Joint Resolution 30, memorializing the other 49 states to enact uniform and uncomplicated direct wine shipping laws to increase consumer choice and promote wine commerce on equal terms without discrimination by size or other criteria, has passed both houses of the legislature.

Louisiana
H.B. 1387, now Act No. 808 after being signed into law by the Governor, allows for the direct shipment of wine to consumers by producers both inside and outside of the state.

Trade Practice & Other:

California
Assembly Bill 3065 continues to move through the Senate after passing the Assembly in May. The bill provides manufacturers and wholesalers greater latitude to re-equip a retailer with the necessary equipment and fixtures to reopen an establishment after a natural disaster.

Also moving through the Senate is A.B. 3067, which in part redefines the term "beer manufacturer" to exclude from the definition a person who brews beer for personal or family use under specified conditions.

S.B. 1548 received a favorable consideration from an Assembly committee after numerous amendments were made in the month of June. The bill permits beer manufacturers and beer and wine wholesalers to instruct consumers regarding beer at the premises of a retail on-sale licensee and allows for the furnishing of tasting under specified conditions. Some of the major provisions include: beer tastes shall not exceed

eight ounces per person; the tasting portion of a course of instruction shall not exceed one hour; beer may not be served to a consumer in the original container but must be served in an individual glass or cup; beer shall be served only as part of the course of instruction and only by an employee of the on-sale retail licensee; no more than 6 tastings per year may be conducted at any one location; a representative of a beer manufacturer or a beer and wine wholesaler must be present and authorize any tastes of beer.

New Jersey
A.B. 3432 would allow wineries to produce and sell certain distilled alcoholic beverages.

Provisions in A.B. 3433 allow for sampling of wine at winery salesrooms and sales direct sales by wineries at certain farm markets.

New York
S.B. 5343, authorizing the retail sale of beer after 8:00 A.M. on Sundays, was signed into law by Governor Pataki on July 26th.

Also signed into law this month, S.B. 8036 permits a brewer to sell, or offer at no cost, beer at retail on a Sunday once per year, before 8 am and at a specified location.

Pennsylvania
Act 84, signed into law by the Governor on July 7th, prohibits the use of alcohol vaporizing devices in the Commonwealth.

Rhode Island
Legislation increasing the number of beer and wine products available at tasting events and increasing the number of events that may be held in a thirty day period, became law in early July.

Government Affairs & Legal Update - August 2006

A. FEDERAL / NATIONAL

TTB Extends Comment Period on Mandatory Allergen Labeling. Originally set to close on September 25th, a 90 day extension of the public comment period for the Notice of Proposed Rulemaking (NPRM) on allergen labeling published in late July has been granted by the Tax and Trade Bureau. The NPRM proposes to make major food allergen labeling mandatory for alcohol beverages.

Controversial Survey On Underage Internet Alcohol Sales Released. A survey released in August by the Wine and Spirits Wholesalers of America, Inc. (WSWA) purports to prove that millions of minors either buy alcohol online or know an underage friend who does. Although the survey sounds the alarm bell on what appears to be an epidemic of illegal sales to minors, the methodology and conclusions drawn have been questioned in the media and within the survey industry itself. The media has also raised the question of motive, as WSWA has been a vocal opponent of such sales and the direct shipping to consumers that completes the sale.

B. THE COURTS

Anti-Direct Shipment Suit Tossed in Arkansas. A wholesaler lawsuit to prevent the direct shipment of wine to consumers has been dismissed by an Arkansas circuit judge. While it's possible another court may hear the case, it is more likely the legislature will resolve the matter when it reconvenes in January.

Kentucky Decision Supports Direct Shipping. On August 22nd, a U.S. District Court ruling effectively opened the state to the direct shipment of wine from out-of-state wineries. Striking down the current requirement that allows direct shipping only to complete face-to-face sales occurring at the winery, the ruling allows all wineries producing less than 50,000 gallons a year to ship to Kentucky residents.

Class Action Brought in West Virginia Dismissed. A class action suit brought by a West Virginia couple on behalf of themselves and all others in a similar situation claimed that the 100+ alcohol producers named as defendants (also including the Beer Institute) deliberately market to minors and illegally profit by sales to underage consumers. In dismissing the suit with prejudice, the federal district judge cited the lack of factual evidence linking any of the defendants with alleged injuries resulting from the practices outlined in the case.

C. THE STATES

Trade Practice & Other:

Alaska
Legislation (H.B. 240) increasing the production cap for brewpubs from 150,000 gallons to 465,000 gallons has been signed into law by the Governor. This legislation also permits brewpubs in Anchorage and Fairbanks to self-distribute up to 200 barrels of beer per year and allows breweries to charge for tasting room samples.

Effective in early September, active duty military personnel under the age of 21 may enter licensed clubs serving alcoholic beverages.

California
A.B. 2398, providing for beer and wine wholesalers to sell lawful products to off-sale licensees in addition to their current ability to sell to on-site licensees, died in the Senate.

Kansas
In an opinion on proposed legislation, the state's Attorney General stated that the residency requirements now imposed on those seeking microbrewery licenses would be found unconstitutional. The reasoning is, in part, based on the Supreme Court's decision involving the direct shipment of wine and the resulting nondiscriminatory handling of in-state and out-of-state interests.

Massachusetts
A measure has been added to the November ballot which seeks to allow local authorities the right to grant licenses to food stores (retail grocery, supermarket, club, warehouse) to sell wine. No single person or business could hold more than 10% of such licenses.

New York
A.B. 2656 was signed by Governor George Pataki on August 16th. The legislation authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption. It also provides for tastings at such licensed establishments or annual fairs.

A.B. 3676 prohibits the sale of alcohol vaporizing devices and the possession of alcohol vaporizing devices by any person licensed under the alcoholic beverage control law. This legislation has been signed into law.

Government Affairs & Legal Update - September 2006

A. FEDERAL / NATIONAL

TTB Extends Comment Period on Mandatory Allergen Labeling. Originally set to close on September 25th, a 90 day extension of the public comment period for the Notice of Proposed Rulemaking (NPRM) on allergen labeling published in late July has been granted by the Tax and Trade Bureau. The NPRM proposes to make major food allergen labeling mandatory for alcohol beverages.

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C. THE STATES

Trade Practice & Other:

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In an opinion on proposed legislation, the state's Attorney General stated that the residency requirements now imposed on those seeking microbrewery licenses would be found unconstitutional. The reasoning is, in part, based on the Supreme Court's decision involving the direct shipment of wine and the resulting nondiscriminatory handling of in-state and out-of-state interests.

Massachusetts
A measure has been added to the November ballot which seeks to allow local authorities the right to grant licenses to food stores (retail grocery, supermarket, club, warehouse) to sell wine. No single person or business could hold more than 10% of such licenses.

New York
A.B. 2656 was signed by Governor George Pataki on August 16th. The legislation authorizes the issuance of a temporary brewer tasting permit to allow brewers of beer and malt beverages to offer samples of their products at places licensed for off-premises consumption. It also provides for tastings at such licensed establishments or annual fairs.

A.B. 3676 prohibits the sale of alcohol vaporizing devices and the possession of alcohol vaporizing devices by any person licensed under the alcoholic beverage control law. This legislation has been signed into law

A. FEDERAL / NATIONAL

Revised S.T.O.P. Legislation Garners Broad Support of Beer Industry. The Sober Truth on Preventing Underage Drinking Act (S.T.O.P.) has received the support of key groups following revisions made as the result of discussions between the Beer Institute (BI), the National Beer Wholesalers Association (NBWA), the Brewers Association (BA), the Wine Institute (WI), the Wine and Spirits Wholesalers of America (WSWA) and the Distilled Spirits Council of the United States (DISCUS). Central to the revisions coming out of these discussions was that concerning language emphasizing the role of states in the regulation of alcohol, a point particularly pushed by the wholesaler segment. State regulation of the alcohol industry, which includes distribution issues, is central to the three-tier system which has suffered some setbacks due to court challenges arising out of direct shipping issues.

B. THE COURTS

In Reversal, Appeals Court Affirms 3-Tier in Virginia. Overturning a previous lower court decision that found parts of the Virginia alcohol code unconstitutional, an appeals court judge reaffirmed the state's right to regulate the movement of alcohol across its borders. Both the law restricting individual consumers from carrying in more than one gallon of alcohol for personal use and the law authorizing state-run liquor stores to only offer Virginia wines were deemed constitutional. The judge's rationale for the ruling drew on language contained in the landmark Supreme Court decision on the direct shipment of wine, which emphasized the legitimacy of the three-tier system.

Vintners Group Challenges Massachusetts Direct Shipping Laws. Family Winemakers of California has filed suit in U.S. District Court challenging the provision that limits the ability to sell directly to consumers to those wineries producing less than 30,000 gallons annually and/or retain a distributor.

Kentucky Appeals Decision Favoring Direct Shipping. The U.S. District Court ruling striking down the requirement that allows direct shipping only to complete face-to-face sales occurring at the winery, which effectively opened the state to the direct shipment of wine from out-of-state wineries, is under appeal by the state.

Oklahoma Wholesalers Attack Direct Sales. A wholesaler lawsuit challenging the ability of in-state wineries to sell directly to retail stores and restaurants has been filed in Oklahoma. The suit claims the current law is unconstitutional because out-of-state wineries are required to use wholesalers to bring their wine to market. This will force the direct shipping issue in Oklahoma in that the judge must decide to allow out-of-state wineries to direct ship or take that right away from in-state businesses.

C. THE STATES

Taxation:

Vermont
Effective January 1, 2007 retail beer sales will be liable for the state's 6% sales tax for the first time.

Trade Practice & Other:

California
Assembly Bill 3065, providing manufacturers and wholesalers greater latitude to re-equip a retailer with the necessary equipment and fixtures to reopen an establishment after a natural disaster, has been signed into law by Governor Schwarzenegger.

On September 29th, Governor Schwarzenegger also approved S.B. 1548, which authorizes beer manufacturers and wholesalers to offer beer samples to individuals of legal drinking age at on-sale retail licensed premises under, among others, the following conditions:

- Permits a beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler to instruct consumers regarding beer and furnish tastings of beer at the premises of a retail on-sale licensee authorized to sell beer provided that:
    - ∑ The beer tastings do not exceed 8 ounces per adult, per day, served in a cup or glass, not the original container (bottle/can).
    - ∑ The tasting portion of a course of instruction does not exceed one hour at any individual licensed establishment.
    - ∑ The beer tastings are served only as part of the course of instruction, with the beer manufacturer/wholesaler present, and are served to an adult consumer by an employee of the on-sale retail licensee.
- Provides that a beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may not hold more than six courses of instruction per calendar year at any individual on-sale retail licensed premises if the course of instruction includes consumer tastings of beer.
- Makes it explicit that the representative of the beer manufacturer/beer wholesaler will be responsible for paying the retailer for the tastings of beer served during the course of instruction and such payment shall not exceed the retail price of the beer.
- Prohibits an on-sale retail licensee from requiring one or more courses of instruction pursuant to provisions of this bill as a requirement to carry a brand or

brands of any beer manufacturer, licensed beer and wine importer general or licensed beer and wine wholesaler.

Montana
A bill (LC 515) is being drafted for introduction in the 2007 session which would revise out-of-state winery access to Montana retailers.

Oklahoma
A group called Oklahomans for Modern Laws has started a drive for a ballot petition calling for wine and full strength beer (above 3.2 ABW) to be available for sale in convenience and grocery stores.

Government Affairs & Legal Update - November 2006

A. FEDERAL / NATIONAL

More Underage Drinking Legislation Introduced in Congress. Joining the Sober Truth on Preventing Underage Drinking Act (S.T.O.P.) legislation that, as reported in last month's update, has now received the support of a broad coalition of alcohol industry groups, the Underage Drinking Prevention Act of 2006 was introduced on September 27th. The bill seeks to establish a Federal incentive grant program for States that implement effective measures to prevent and reduce underage consumption of beverage alcohol. Additionally, provisions are included for the evaluation of the effectiveness and efficiency of anti-underage drinking programs funded with Federal dollars, and to provide appropriate reporting of Federal underage drinking data.

TTB Extends Permissibility of Use for "Old Version" COLA. TTB recently announced that the updated version of the Application for Certificate/Exemption of Label/Bottle Approval (COLA) form approved last June, adding a requirement to identify the product as either domestic or imported, will now be mandatory for submissions on and after January 15, 2007. This extends the original effective date by three and a half months. More information can be found at: http://www.ttb.gov/pdf/new_form.pdf

Allergen Comment Deadline Extended. TTB has also extended until December 26th the time for comment submission on the proposed mandatory major food allergen labeling requirements.

B. THE COURTS

Tennessee Law Called Anti-Consumer, Anti-Competitive in Suit. A Volunteer state law prohibiting out-of-state wineries from selling directly to consumers has been challenged in U.S. District Court. A Tennessee resident has joined an out-of-state vintner in bringing the suit which alleges the law is protectionist and restricts the availability of wine at cheaper prices.

Costco v. Hoen Update. On October 23, the State Attorney General's office filed a motion to request a further "stay" of Judge Marsha Pechman's ruling until the end of the Costco lawsuit appeal currently in the U.S. District Court. That ruling found serious legal problems with Washington State's regulatory system governing the distribution of beer and wine. A partial stay through the end of the 2007 legislative session was granted by Judge Pechman on Sept. 14, 2006, giving the legislature an opportunity to address the anti-trust portions of the ruling.

Ohio Law Prohibiting Cross-Border Alcohol Purchases Overturned. A municipal court judge in Ohio has ruled that a law prohibiting consumers from transporting into the state alcohol purchased outside state borders is unconstitutional. Citing interference with interstate commerce, Judge Gene Zmuda's opinion also stated that the law's provisions

extended well beyond 21st Amendment issues and denied Ohio residents access to a broader market.

Delaware Court Challenge Dismissed. A winery's suit alleging that Delaware law governing direct to consumer sales is discriminatory against out-of-state wineries has been dismissed. The suit was based on claims that state law violated the Commerce Clause because it allowed in-state wineries to sell direct to residents while out-of-state businesses could not. In reality, no wineries (no matter their location) can ship direct to consumers, although in-state wineries may sell direct to consumers at the winery location.

C. THE STATES

Direct Shipping:

New Jersey
Introduced on October 12th, Senate Bill 2237 would allow the direct shipping of alcoholic beverages from out of State to New Jersey consumers under certain conditions.

Trade Practice & Other:

Oregon
The Oregon Liquor Control Commission has ruled to allow the use of mail-in rebate coupons for malt beverages, wine and cider. This levels the playing field with spirits, which gained the right to use such coupons earlier this year.

Government Affairs & Legal Update - December 2006

A. FEDERAL / NATIONAL

U.S. House of Representatives Passes STOP Act. On November 14, the House formally approved H.R. 864, the "Sober Truth on Preventing (STOP) Underage Drinking Act." Following significant content revisions made over the summer, the legislation was able to gain broad industry backing, something it had never achieved in its former incarnations. Along with removing questionable language that the industry found objectionable, language was added emphasizing the role of states in the regulation of alcohol, a point central to the three-tier system.

"Scotch" and "Scottish" Deemed Generic. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has determined that, through usage and common knowledge, the terms "Scotch Ale" and "Scottish Ale" have lost their geographical significance to such an extent that they have become a generic type of malt beverage. Thus, brewers may use the terms "Scotch Ale" or "Scottish Ale" on labels to describe this type of malt beverage without the addition of any qualifying statements, such as "type", "American", etc.

EU Challenges Canadian Wine and Beer Tax. A proposal currently being debated in the Canadian Parliament, but in fact already being applied through administrative decision, would eliminate or reduce excise duties on Canadian wine made wholly from Canadian-grown agricultural products and on domestically produced beer. The excise tax on imported wine and beer would remain in place. The EU has requested that the World Trade Organization meet with Canadian officials regarding what they regard as a discriminatory measure.

B. THE COURTS

U.S. District Court Finds Against Oklahoma Direct Shipping Laws. In a suit brought against the Oklahoma Alcoholic Beverage Laws Enforcement Commission by three liquor wholesalers challenging as unconstitutional current statutes that allow in-state wineries to ship direct to retailers and restaurants, but denying that right to out-of-state businesses, the court found in favor of the plaintiffs but deferred remedy to the state legislature.

County Sues State of California Over "Alcopop" Taxes. Santa Clara County has filed suit against the state of California in an effort to force an increase in the tax rate on flavored malt beverages. Currently, those products are classified as beer and are taxed at the rate of 20 cents per gallon, whereas distilled spirits are at the higher rate of $3.30 per gallon. The lawsuit claims that as a result of the lower, improper tax rate being applied, such beverages are sold cheaply and are readily available to minors.

C. THE STATES

Taxation:

Oregon
Legislation to raise the tax on beer is already under discussion following a change in party control in the state legislature. Proponents reference the rising costs associated with substance abuse and the fact that the tax has not risen significantly in many years as the rationale for their proposal, which would exempt breweries that produce fewer than 200,000 barrels a year.

Trade Practice & Other:

Georgia
According to press reports, the Georgia Food Industry Association and the Georgia Association of Convenience Stores will push a proposal in the General assembly to allow retailers the opportunity to sell beer and wine on Sundays.

Massachusetts
The measure added to the November ballot seeking to allow local authorities the right to grant licenses to food stores (retail grocery, supermarket, club, warehouse) to sell wine, has been rejected by the voters.

Michigan
Introduced in mid-November, H.B. 6613 would allow limited wine tastings to take place in wine retail shops.

Montana
Draft Bill 67 seeks to revise beer and wine licensing laws. No further details until the legislation is actually drafted and printed.

New Jersey
Two bills have been introduced (S.B. 2318 and 2319) that would allow wineries to produce and sell certain distilled spirits, engage in wine sampling in winery salesrooms and sell at specified farm markets.

North Carolina
The NC Alcohol Beverage Control Commission voted down a proposal that would have allowed beer and wine retailers to offer discount coupons to frequent shoppers.