

Government Affairs & Legal Update - January 2009

A. FEDERAL / NATIONAL / INTERNATIONAL

Sparks Extinguished. MillerCoors announced its decision to reformulate Sparks energy drink to remove caffeine, taurine, guarana and ginseng following concerns expressed by thirteen state Attorneys General that the stimulants reduce drinkers' sense of intoxication and increase risky behaviors. MC also announced that it would no longer produce any caffeinated alcohol beverages and agreed to pay \$550,000 to the 13 states and the city of San Francisco to cover the cost of their investigation.

B. THE STATES

Distribution and Franchise:

Ohio

Passing both Senate and House, H.B. 420 requires, with respect to any merger, acquisition, purchase, or assignment, that the successor manufacturer compensate a terminated or non-renewed distributor for the diminished value of the distributor's business before assigning the distributor's territories for the particular product or brand of alcoholic beverage to another distributor.

A related bill (S.B. 320) also sent to the Governor provides that when a distributor of a product or brand of alcoholic beverage receives written notice of termination or nonrenewal of its franchise, the distribution of beer or wine for 90 days or more without a written contract does not constitute a franchise relationship between the successor manufacturer of alcoholic beverages and the distributor of alcoholic beverages.

Direct Shipping:

Florida

Senate Bill 272, providing for the direct shipment of wine to Florida residents, has been introduced and referred to multiple Senate committees for consideration.

Michigan

On the Governor's desk for signing into law after passing both chambers of the legislature, House Bill 6644 provides that a retailer cannot deliver alcoholic liquor to a consumer at his or her home or business or at any location away from the retailer's licensed premises.

Taxation:

Maryland

The Maryland Citizen's Health Initiative is advocating raising alcohol excise taxes by a dime a drink. This would raise the tax on beer from 9 cents per gallon to \$1.16 per gallon.

New York

Beer is just one of many targets for potential tax increases in the cash strapped Empire State. A fourteen cent increase in the excise tax is likely to be floated early in the legislative session.

Wisconsin

The Wisconsin District Attorneys Association is calling on the state legislature to raise alcohol taxes to help fund the hiring of additional prosecutors and alcohol abuse treatment programs.

The proposal calls for raising the cost of a six-pack by about 5 cents.

Trade Practice & Other:

Arkansas

The state Alcoholic Beverage Control Division is working on draft legislation that would, in part, significantly raise wholesale and retail permitting and licensing fees for Arkansas businesses.

Georgia

Legislators are preparing to introduce a bill that would allow Sunday sales of alcohol in a bid to raise revenue in a state which is facing a \$2 billion deficit.

New York

The Governor's proposed budget includes a provision allowing grocery, convenience, drug and club warehouse stores licensed to sell beer the ability to sell wine as well. The provision would not apply to beer distributors.

South Carolina

Senate Bill 70 would establish that a municipal or county ordinance that conflicts with a provision of the state's regulation of the sale and manufacture of alcohol or alcoholic beverages or which attempts to regulate any aspect of a business licensed or permitted by the South Carolina Department of revenue, is unenforceable.

Under the provisions of S.B. 173, all permit holders for on-premises consumption of beer, wine, or alcoholic liquor by the drink shall (beginning January 1, 2010) separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises.

Wyoming

House Bill 34 would allow, with prior approval of the applicable licensing authority, malt beverage industry representatives to furnish, give or lend money or other things of value to a licensee to support annual community events open to the public if the licensee (i) is a nonprofit corporation organized under the laws of this state; (ii) is qualified as a tax exempt organization

under the Internal Revenue Code; and (iii) has been in continuous operation for a period of not less than five (5) years.

Government Affairs & Legal Update - February 2009

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Tax Relief. HR 836, the Brewers Excise and Economic Relief Act of 2009, has been introduced in the U.S. House of Representatives by Congressman Earl Pomeroy (D-North Dakota) and Congressman Tom Latham (R-Iowa). This legislation seeks to reduce the tax burden for all brewers and specifically reduces the small brewer rate by 50% to \$3.50 a barrel. The Brewers Association is working hard to build support in Congress for this measure and urges all its members to reach out to their Congressmen and ask that they show their support for America's small brewery businesses by signing onto the bill as a cosponsor.

Trade Practice Crackdown. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has accepted a total of \$803,000 in offers-in-compromise from 10 wholesaler/importers in the Chicago, IL market area for violations of the Federal Alcohol Administration Act. Following a three year investigation, the government alleged that the 10 wholesaler/importers violated the conditions of their basic permits by furnishing or giving money or other things of value to a retailer and/or paying or crediting the retailer for advertising and/or preferred shelf space.

B. THE COURTS

Ruling Goes to Brooklyn. The New York Supreme Court has ruled that an upstate distributor is not entitled to fair market value for the Brooklyn Brewery brands it handled prior to being terminated several years ago. Distributor Gasko and Meyer argued that New York franchise law guaranteed it fair market value rather than the one times gross profit value paid by Brooklyn under the terms of the contract. The court saw it differently, stating that the terms of the contract were absolutely unambiguous and therefore should be enforced.

C. THE STATES

Distribution and Franchise:

Mississippi

Passing the Senate and under House consideration, S.B. 2883 obligates a successor supplier to all of the terms and conditions of any agreement in effect on the date of succession, regardless of the character or form of the succession. The successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all the successor's wholesalers and conform to the Beer Industry Fair Dealing Act.

Ohio

Signed into law by the Governor, H.B. 420 requires, with respect to any merger, acquisition, purchase, or assignment, that the successor manufacturer compensate a terminated or non-renewed distributor for the diminished value of the distributor's business before assigning the

distributor's territories for the particular product or brand of alcoholic beverage to another distributor.

S.B. 320, a related bill also signed by the Governor, provides that when a distributor of a product or brand of alcoholic beverage receives written notice of termination or nonrenewal of its franchise, the distribution of beer or wine for 90 days or more without a written contract does not constitute a franchise relationship between the successor manufacturer of alcoholic beverages and the distributor of alcoholic beverages.

Direct Shipping:

Connecticut

H.B. 5116 seeks to allow hard cider and apple wine to be sold and shipped to consumers.

Florida

Multiple bills authorizing direct shipment of wine into and within Florida for personal consumption have been introduced in both the House (H.B. 245 and 251) and Senate (S.B. 272 and 764).

Indiana

House Bill 1281 (and its companion S.B. 333) allows an Indiana consumer to buy wine from a direct wine seller and have it shipped using a third party verification service retained by the winery (as an alternative to providing information in an initial face to face transaction with the winery).

Michigan

Signed into law by the Governor, House Bill 6644 provides that a retailer cannot deliver alcoholic liquor to a consumer at his or her home or business or at any location away from the retailer's licensed premises.

Mississippi

A pair of bills (H.B. 262 and S.B. 2741) providing for the direct shipping of wine into the state have failed to pass out of committee.

Taxation:

Florida

The mayor of Gulfport has proposed a 1 cent per drink tax to be collected statewide to fund additional probation officers charged with overseeing those convicted of alcohol offenses.

Idaho

A 37 cent per gallon increase in the beer tax (to 52 cents/gallon) has been proposed by the citizen's interest group The Common Interest.

Indiana

House Bill 1613 seeks to increase the beer and cider excise tax from 11.5 cents to 65 cents per gallon. It would also increase the wine excise tax from \$0.47 to \$2.07 per gallon and the liquor excise tax from \$2.68 to \$6.95 per gallon.

Missouri

Beginning January 1, 2010, the provisions of House Bill 308 phase out over a six-year period the state sales and use tax on the purchase of food and replace the revenue with an increase in the excise tax on wine and liquor.

Nebraska

L.B. 59 raises alcohol gallonage taxes (5 cents for beer, 3 cents for wine (farm wineries are exempt) and 7 cents for spirits) to provide funding for the Citizen Safety Grant Fund Program, which provides grants to assist eligible organizations in addressing violent crime.

North Carolina

A 43 cent per gallon increase in the beer tax (to 96 cents/gallon) is under consideration in the state legislature.

Oregon

H.B. 2461 seeks to impose on a manufacturer or an importing distributor of malt beverages a prevention, treatment and recovery tax of \$49.61 per barrel of 31 gallons of malt beverage. This, in addition to the already imposed excise tax, would put the per barrel tax burden to \$52.21.

Texas

Senate Bill 462 would repeal the section of the Texas Alcoholic Beverage Code that provides a 25% tax exemption for breweries producing under 75,000 barrels annually.

Trade Practice & Other:

Colorado

House Bill 1192 seeks to allow the sale of full-strength beer in grocery stores. The Colorado Brewers Guild, an organization representing the state's small brewers, opposes the legislation and has developed the site www.savecoloradocraftbeer.com to support their position.

Connecticut

H. B. 5221 would allow package stores to charge a fee for certain wine tastings and educational classes.

The town of Farmington, by vote of city council, has banned the sale of high gravity beer containing more than 7.9% alcohol. Public drunkenness was cited as the reason for the ban's imposition.

Florida

Under committee consideration, H.B. 297 creates the "Point-of-Purchase Messaging About Alcohol and Pregnancy Act," requiring certain warning signs to be displayed on the premises of alcoholic beverage vendors & manufacturers.

Georgia

Receiving favorable committee consideration, House Bill 102 authorizes manufacturers and wholesalers of alcoholic beverages to conduct samplings for retail dealers and their employees under certain conditions.

Legislation allowing Sunday sales of alcohol under certain circumstances (H.B. 138) has been introduced.

Indiana

Senate Bill 442 allows a microbrewery to sell its beer for carryout on Sunday.

H.B. 1207 requires a food establishment with 20 or more locations in Indiana to make certain nutritional information available to customers for each item or unit of food.

Iowa

House File 21 seeks to enable certain alcohol permit holders to produce and sell high alcohol content beer for consumption on the premises. High alcohol content beer is defined as having an alcohol content by weight of more than 5 percent but less than 20 percent.

Kansas

Like Colorado, Kansas lawmakers may consider legislation that would allow supermarkets and convenience stores to sell full-strength beer.

Mississippi

Meeting an early death in the Finance Committee, Senate Bill 2017 sought to raise the allowable limit of alcohol in beer from 5% abw to 17% abw.

Montana

House Bill 234 authorizes beer or wine tasting events on the premises of grocery stores and drugstores licensed for off premise sales.

Legislation (H.B. 400) seeking to raise the allowable alcohol content in beer to 14% abv has been passed out of committee.

New York

A.B. 488 amends the Alcoholic Beverage Control Law (ABCL) to allow small brewers having three percent (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for good cause as defined in the ABCL.

A.B. 926 amends the policy of the State Liquor Authority to also consider promoting the economic development and job opportunities of the State when pursuing its regulatory activities

with regard to the State's beer, wine, and liquor production industries. This policy consideration is in addition to the already articulated policy to control the manufacture of alcoholic beverages in New York.

Assembly Bill 282 provides for the establishment of a New York City liquor authority to license and regulate the retail alcoholic beverage business in the city.

A.B. 2325 would authorize 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. This bill is intended to promote micro breweries in New York State by authorizing them to sell beer at fairs and farmers' markets in the same manner as wineries. It is estimated that this authorization could increase sales of these small businesses by five percent which will produce jobs and further economic development in New York.

North Dakota

HB1365 provides that a recycler, scrap metal dealer, or scrap yard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if: the keg is clearly marked as the property of a brewery manufacturer; or the keg's identification markings have been made illegible.

Legislation establishing a farm distillery license has been introduced.

Oklahoma

HJR 1019 seeks to amend the Oklahoma Constitution to allow wine sales in stores that sell food, including grocery stores. The measure would also allow liquor stores to sell wine, beer, and mixed beverage coolers cold.

Likewise, HJR 1043 seeks to amend the Oklahoma Constitution to allow winemakers to maintain up to three tasting rooms. The winemakers would be able to give samples of their wine and sell unopened bottles of their wine in the tasting rooms.

South Dakota

House Bill 1038 would leave unchanged a registrant's initial malt beverage brand registration fee of twenty-five dollars, but seeks to raise all subsequent brand registration fees from ten dollars to twenty-five dollars.

Texas

H.B. 1062 provides that the holder of a brewer's permit whose premises is located in an area where the sale of ale and malt liquor is legal and who produces at least 1,000 barrels of ale or malt liquor a year may sell ale and malt liquor manufactured or bottled on the permitted premises to ultimate consumers:

(1) in unbroken packages for off-premises consumption in an amount that does not exceed 35,000 gallons annually; and

(2) for consumption on the brewery premises if the brewery is located in an area where the sale of ale and malt liquor for on-premises consumption is legal.

Utah

Homebrewing legalization legislation (H.B. 51) has unanimously passed the Senate Business and Labor Committee.

Virginia

Under the provisions of Senate Bill 1542, the state run liquor stores would be privatized.

Washington

S.B. 5060 increases the amount of home-made beer or wine an adult may remove from the home from one gallon to 20 gallons. In addition to exhibitions and organized beer or wine tastings and competitions, home-made beer and wine may be used for meetings, conferences, and by 501(c)(3) nonprofit organizations. The use of home-made beer and wine removed from the home would no longer be limited to the producer and event judges. The bill has received a hearing and is moving through Senate committees.

Companion bills H.B. 1441 and S.B. 5403 make changes to the contractual relationships between distributors and producers of malt beverages. Two additional reasons for cancellation or termination without notice are provided: fraudulent actions by the distributor (no compensation) and supplier succession when another distributor is chosen to carry the products (compensation required). Actions taken by the supplier that require compensation include nonrenewal and cancellation of the agreement as well as termination. The "for cause" provision disqualifying the distributor from compensation when a supplier terminates an agreement is removed. When an agreement is terminated, cancelled, or not renewed for any reason other than failure to live up to the terms and conditions of the agreement, insolvency, bankruptcy, or liquor license suspension or revocation, the successor distributor must compensate the distributor for the fair market value of the right to distribute the brand. The definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

Senate Bill 5158 allows the Legislative Gift Center, which is authorized to sell Washington products, souvenirs, and items bearing the state seal, to sell, for off-premise consumption, wine and beer produced in Washington.

H.B. 1462 allows beer and/or wine specialty shop licensees to sell malt liquor in kegs or other containers, holding four or more gallons of liquid, so long as they comply with current keg registration requirements.

Government Affairs & Legal Update – March 2009

A. FEDERAL / NATIONAL / INTERNATIONAL

TTB Approves Adjuncts for Beer Production. The Tax and Trade Bureau recently approved three adjuncts for use in the production of beer. For detailed information, see the TTB posting at http://www.ttb.gov/beer/approved_adjuncts.shtml

B. THE COURTS

New York Restaurants Lose Appeal. The Second U.S. Circuit Court of Appeals has denied a challenge to New York City's requirement that restaurants part of a chain of at least 15 locations nationwide display calorie content information on their menus. The New York State Restaurant Association is considering an appeal.

C. THE STATES

Distribution and Franchise:

Illinois

House Bill 773 amends the Beer Industry Fair Dealing Act. Expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent. Provides that an agreement between a brewer and wholesaler must state that the agreement is governed by the Beer Industry Fair Dealing Act and other matters.

Another amendment to the Beer Industry Fair Dealing Act is moving in the Illinois Senate. S.B. 1282 provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Mississippi

Passing both Senate and House, S.B. 2883 obligates a successor supplier to all of the terms and conditions of any agreement in effect on the date of succession, regardless of the character or form of the succession. The successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all the successor's wholesalers and conform to the Beer Industry Fair Dealing Act.

Pennsylvania

House Bill 291, an enactment of the General Assembly's support for the 3-tier system for alcoholic beverages production, distribution and sale, has been introduced and referred to committee.

Direct Shipping:

Alabama

Introduced in their respective chambers, House Bill 257 and Senate Bill 127 provide for the direct shipping of wine from out of state suppliers.

Connecticut

Senate Bill 322 would facilitate the direct shipment of wine into Connecticut from out-of-state wineries.

Florida

Multiple bills authorizing direct shipment of wine into and within Florida for personal consumption are actively moving in both the House (H.B. 245 and 251) and Senate (S.B. 272 and 764).

Kansas

S.B. 212 would permit in-state and out-of-state wineries to directly ship up to 12 cases of wine annually to Kansas residents.

Maine

A bill seeking to allow direct-to-consumer wine sales has been introduced in the Maine legislature.

Maryland

Senate Bill 338 seeks to enact provisions enabling the state to issue direct shippers' licenses.

Minnesota

Legislation repealing the restrictions on direct wine shipment has been introduced (H.B. 478).

New Mexico

Under committee consideration, House Bill 115 provides for the direct shipment of wine.

Tennessee

A pair of bills (H.B. 1155 and 1156) creating a direct shipper license allowing in-state and out-of-state businesses to ship wine directly to consumers have been introduced.

Washington

House Bill 2099 creates a wine retailer shipper's permit which allows out-of-state online retailers to ship up to two cases of wine or cider per month to a Washington resident 21 years of age or older.

Taxation:

Arizona

House Bill 2524 would impose a new \$3.50 per gallon tax on all alcohol (the current tax on beer is 16 cents/gallon), with revenue funding drug and alcohol treatment programs. The bill has stalled in committee.

California

The budget passed by the California legislature on February 19th that did not include an increase in the alcohol excise tax supported by Governor Schwarzenegger.

AB 1019 seeks to impose a \$0.10 per drink surcharge collected at the wholesale level.

SB 558 establishes the Alcohol Abuse Treatment Program Fund and would authorize the Department of Alcoholic Beverage Control to assess and collect a fee not to exceed \$0.05 per drink to fund the program.

Hawaii

Legislation seeking to increase excise taxes on the proceeds from the sale of alcohol beverages, including beer, has been introduced as an offset to the elimination of excise taxes on medical services, drugs, and non-processed fresh foods.

Idaho

Having failed to gain sufficient support at the committee level, House Bill 140 has died. The bill sought to raise the beer tax to 52 cents per gallon (an increase of 37 cents a gallon) through a 7.8% tax on the wholesale price of beer rather than being levied on a volume basis.

The Governor has signed legislation authorizing payment of beer and wine taxes by filing returns for periods other than monthly, thereby allowing companies paying small amounts of tax to file returns for quarterly or other periods.

Kentucky

Governor Beshear has signed into law a provision imposing a 6% retail tax on alcohol beverages to take effect April 1.

House Bill 237 would impose a sales and use tax on gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises and increase the malt beverages excise tax to \$6.20 on each barrel.

Maryland

House Bill 791 and its Senate companion S.B. 729 increase the state tax rates for alcoholic beverages sold in Maryland from \$1.50 to \$6.00 per gallon for distilled spirits, from 40 cents to \$1.60 per gallon for wine, and from 9 cents to 36 cents per gallon for beer.

Scheduled for a public hearing, H.B. 1160 seeks to increase tax rates for alcoholic beverages from \$1.50 to \$4.00 for each gallon of distilled spirits, from 40 cents to \$1.00 for each gallon of wine, and from 9 to 25 cents for each gallon of beer.

Massachusetts

The Governor has proposed a 5% sales tax on alcohol and non-alcohol beverages as a means to help address the revenue shortfall facing the state as the budget process gets under way.

Nebraska

Hearings were held on L.B. 59, a proposal raising alcohol gallonage taxes (5 cents for beer, 3 cents for wine (farm wineries are exempt) and 7 cents for spirits) to provide funding for the Citizen Safety Grant Fund Program, which provides grants to assist eligible organizations in addressing violent crime.

New Mexico

House Bill 57 seeks to give counties the authority to impose a local liquor surtax.

New York

New York Governor David Paterson's has proposed an increase of the beer excise tax from 11 cents to 24 cents a gallon

Oregon

Several public hearings have been held on H.B. 2461, legislation that seeks to impose on malt beverage manufacturers/importing distributors a prevention, treatment and recovery tax of \$49.61 per barrel of 31 gallons of malt beverage. This, in addition to the already imposed excise tax, would put the per barrel tax burden to \$52.21.

Trade Practice & Other:

Alabama

H.B. 373, raising the ABV of beer from 6 to 13.9%, has passed the House.

Arizona

H.B. 2301, a bill seeking to raise the production limit (from 20,000 to 40,000 barrels) for Class 3 breweries, passed committee unanimously.

Arkansas

Senate Bill 121, expanding the hours during which on-premise establishments may serve alcohol on Sundays, has been signed into law.

Passing the Senate and under House consideration, S.B. 334 allows on-premise sales by small breweries.

Colorado

House Bill 1192 has failed to pass committee and is effectively dead for the session. The bill sought to allow the sale of full-strength beer in grocery stores and was opposed by the Colorado Brewers Guild, an organization representing the state's small brewers.

Connecticut

H. B. 5396 seeks to give liquor stores the option of selling alcohol on Sunday.

Georgia

Legislation allowing limited on-site sales on brewery premises (H.B. 604) has failed to advance beyond committee.

A measure giving voters the ability to decide the issue of permitting Sunday alcohol sales has been withdrawn from Senate consideration. A companion bill in the House (H.B. 138) remains active.

Indiana

Clearing the House, H.B. 1207 requires a food establishment with 20 or more locations in Indiana to make certain nutritional information available to customers for each item or unit of food.

Kansas

Legislation that would allow supermarkets and convenience stores to sell full-strength beer (above 3.2 abw) died in committee.

Mississippi

Legislation providing for an increase of the allowable alcohol content of beer has died in the Senate.

Montana

House Bill 234, authorizing beer or wine tasting events on the premises of grocery stores and drugstores licensed for off premise sales, has failed to be considered by the legislature.

Legislation seeking to raise the allowable alcohol content in beer to 14% ABV has been passed by the House is under consideration by the Senate (H.B. 400).

New Mexico

House Bill 555 would give local option districts the ability to permit gift shops to sell New Mexico wines and beers in unopened containers for consumption off premises.

New York

Receiving favorable committee consideration in the Assembly, A.B. 488 amends the Alcoholic Beverage Control Law (ABCL) to allow small brewers having three percent (3%) or less of a

multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for good cause as defined in the ABCL.

North Dakota

H.B.1365 provides that a recycler, scrap metal dealer, or scrap yard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if: the keg is clearly marked as the property of a brewery manufacturer or the keg's identification markings have been made illegible. The bill has passed the House and is under consideration by the Senate.

South Carolina

Legislation providing for micro-distillery businesses (H.B. 3452) has been passed by the House and sent to the Senate for consideration.

South Dakota

Approved by the House and under Senate consideration, House Bill 1038 would leave unchanged a registrant's initial malt beverage brand registration fee of twenty-five dollars, but seeks to raise all subsequent brand registration fees from ten dollars to twenty-five dollars.

Texas

H.B. 2094 would allow in-state breweries producing 250,000 barrels or less to sell up to 5,000 barrels of their beer for consumption on the brewery premises or in unbroken packages for off-premise consumption.

Utah

Homebrewing legalization legislation (H.B. 51) has been passed by both chambers of the legislature and awaits the Governor's signature.

H.B. 349, allowing full strength beer (greater than 3.2 abw) to be sold on draft, failed to pass the Senate after previously clearing the House.

Virginia

Senate Bill 1542, which sought to privatize the state run liquor stores, has died in committee.

Washington

S.B. 5060, which has passed the Senate, increases the amount of home-made beer or wine an adult may remove from the home from one gallon to 20 gallons. In addition to exhibitions and organized beer or wine tastings and competitions, home-made beer and wine may be used for meetings, conferences, and by 501(c)(3) nonprofit organizations. The use of home-made beer and wine removed from the home would no longer be limited to the producer and event judges.

Companion bills H.B. 1441 and S.B. 5403 have each passed their respective chambers. These bills make changes to the contractual relationships between distributors and producers of malt beverages. Two additional reasons for cancellation or termination without notice are provided: fraudulent actions by the distributor (no compensation) and supplier succession when another

distributor is chosen to carry the products (compensation required). Actions taken by the supplier that require compensation include nonrenewal and cancellation of the agreement as well as termination. The "for cause" provision disqualifying the distributor from compensation when a supplier terminates an agreement is removed. When an agreement is terminated, cancelled, or not renewed for any reason other than failure to live up to the terms and conditions of the agreement, insolvency, bankruptcy, or liquor license suspension or revocation, the successor distributor must compensate the distributor for the fair market value of the right to distribute the brand. The definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

Passing the House, H.B. 1462 allows beer and/or wine specialty shop licensees to sell malt liquor in kegs or other containers, holding four or more gallons of liquid, so long as they comply with current keg registration requirements.

West Virginia

H.B. 2719 creates a definition for "nonintoxicating craft beer" which effectively raises the allowable ABV from 6 to 12%.

Government Affairs & Legal Update - April 2009

A. FEDERAL / NATIONAL / INTERNATIONAL

Congress on Kegs. The Secondary Metal Theft Prevention Act of 2009 has been introduced in both chambers of Congress (H.R. 1006 and S. 418). The legislation seeks to make it unlawful to sell certain secondary metal unless the seller documents ownership and maintains written or electronic records of each secondary metal purchase. “Large bulk containers for beer” are specifically referenced items included within the prohibition.

TTB Clarifies Bailment Warehouse Agreements. The federal Tax and Trade Bureau has delineated the conditions under which bailment warehouse agreements do not violate consignment sale provisions at http://www.ttb.gov/main_pages/bailout-warehouses.shtml

B. THE COURTS

Pennsylvania Distributors Seek Appeal. The Pennsylvania Malt Beverage Distributors Association wants the Pennsylvania Supreme Court to review a Commonwealth Court decision allowing Wegmans grocery stores to sell alcohol in their cafes. The state Liquor Control Board had previously approved restaurant liquor licenses for two Wegmans locations, but the distributors had challenged those approvals, arguing that the restaurant licenses were in fact a “legal fiction” to mask what in reality were grocery store sales.

C. THE STATES

Distribution and Franchise:

Arkansas

Signed into law, H.B. 1807 requires brewers to be consistent across the state in the prices they charge distributors for their beer.

Illinois

House Bill 773, amending the Beer Industry Fair Dealing Act, has passed House and is under Senate consideration. The bill expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Another amendment to the Beer Industry Fair Dealing has received Senate approval and moved to the House. S.B. 1282 provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the

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Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Mississippi

Signed into law, S.B. 2883 obligates a successor supplier to all of the terms and conditions of any agreement in effect on the date of succession, regardless of the character or form of the succession. The successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all the successor's wholesalers and conform to the Beer Industry Fair Dealing Act.

Nevada

A.B. 378 prohibits a supplier from unreasonably withholding or delaying approval of certain sales, assignments or transfers of an interest in a wholesaler's assets or of the substitution of a person under a franchise; provides for the liability of the supplier to a wholesaler if the supplier unreasonably withholds its consent; prohibits a supplier from taking various other actions against a wholesaler.

Direct Shipping:

Connecticut

Senate Bill 322, seeking to facilitate the direct shipment of wine into Connecticut from out-of-state wineries, has died in committee.

Illinois

House Bill 2462 creates a retail wine shipper's license, which allows a person with a wine retailing or wine auctioning license under the laws of another state to ship wine directly to a resident of this State who is 21 years of age or older for that resident's personal use and not for resale.

Kansas

Passing both House and Senate and awaiting the Governor's approval, S.B. 212 would permit in-state and out-of-state wineries to directly ship up to 12 cases of wine annually to Kansas residents.

Maine

House Bill 696 seeks to allow direct-to-consumer wine sales of up to 12 cases annually.

New Hampshire

Government Affairs & Legal Update - April 2009

Legislation providing for the direct shipment of wine by in-state wine manufacturers (H.B. 636) failed to pass the House.

New Mexico

Under Senate committee consideration, House Bill 115 provides for the direct shipment of wine.

Pennsylvania

Senate Bill 454 provides for the direct shipping of wine into the Commonwealth.

Taxation:

California

Withdrawn from consideration, SB 558 sought to establish the Alcohol Abuse Treatment Program Fund and authorize the Department of Alcoholic Beverage Control to assess and collect a fee not to exceed \$0.05 per drink to fund the program.

Florida

A State Senator has proposed a new tax on beer to fund summer job programs for teens. The tax would be approximately the equivalent of a nickel a six-pack.

Indiana

House Bill 1604 proposes to double the beer tax from 11.5 to 23 cents per gallon.

Nebraska

Consideration of L.B. 59 has been indefinitely postponed. The proposal called for raising alcohol gallonage taxes (5 cents for beer, 3 cents for wine (farm wineries are exempt) and 7 cents for spirits) to provide funding for the Citizen Safety Grant Fund Program, which provides grants to assist eligible organizations in addressing violent crime.

Nevada

A.B. 277 seeks to raise alcohol excise taxes, with the malt beverage tax increasing from 16 to 69 cents per gallon.

New York

The budget passed by the legislature includes an increase of the beer excise tax from 11 cents to 24 cents a gallon.

North Carolina

Governor Purdie has proposed a 5% surcharge on alcohol sales to help meet the state's budget shortfall.

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Oregon

House Bill 3407 removes the prohibition against local government enactment of taxes on alcoholic beverages.

Trade Practice & Other:

Arkansas

Passing both legislative chambers and sent to the Governor, S.B. 334 allows on-premise sales by small breweries.

California

Under committee consideration, Assembly Bill 1282 provides that a beer manufacturer may give consumer advertising specialties to the general public that do not exceed \$3 per unit original cost to the beer manufacturer who purchased it.

Florida

Companion bills H.B. 297 and S.B. 1388 create the Point-of-Purchase Messaging About Alcohol and Pregnancy Act, requiring certain warning signs to be displayed in specific ways on the premises of alcoholic beverage vendors & manufacturers.

Maine

H.B. 622 allows a small brewery that holds an on-premise liquor license to sell malt beverages produced at the brewery in half-gallon containers for off-premise consumption.

Michigan

Signed into law by Governor Granholm, Senate Bill 202 provides that the Liquor Control Commission may approve a brewer participating with one or more brewers in an alternating proprietor operation.

Minnesota

Senate Bill 1485 establishes a new classification of brewer (and associated fee) between a brewpub license and a full brewery license. Termed a transitional license, a brewer may hold this designation for a maximum of two years, after which time the holder must either revert to the brewpub designation or transition fully to a brewer's license.

Legislation introduced in the House (H.B. 1294) would remove the prohibition on Sunday off-premise sales of alcohol.

Missouri

House Bill 1011 and Senate Bill 451 would allow any brewer, winery, distiller, manufacturer or wholesaler to provide beverage samples on a licensed retail premises for tasting purposes.

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Montana

Legislation seeking to raise the allowable alcohol content in beer to 14% ABV has passed the legislature and awaits the Governor's consideration (H.B. 400).

New Mexico

Senate Bill 403 would give local option districts the ability to permit gift shops to sell New Mexico wines and beers in unopened containers for consumption off premises. The bill has received Senate approval and is under House consideration.

New York

Passing the Senate, S.B. 2623 permits brewers with an annual production of less than 60,000 barrels to obtain a permit to sell beer in a sealed container for off-premises consumption at fairs and farmers' markets.

S.B. 3246 would allow those with licenses to sell beer or wine for consumption off premises to provide beer samples in their licensed establishments.

Assembly Bill 6873 allows liquor store owners the ability to increase their line of products sold to include items such as gourmet foods. The bill also allows liquor stores owners the ability to open a second store.

North Dakota

Signed into law by the Governor, H.B.1365 provides that a recycler, scrap metal dealer, or scrap yard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if: the keg is clearly marked as the property of a brewery manufacturer or the keg's identification markings have been made illegible.

Oregon

House Bill 3122 allows holders of on-premise sales licenses to obtain verification of the capacity of pint glasses used at the licensed premises for draught malt beverages. Also allows licensees to obtain a display sticker from Oregon Liquor Control Commission if the glasses hold a pint of malt beverage under standard conditions.

South Carolina

H.B. 3693 provides for the sampling or tasting of beer conducted by a licensed microbrewery in sample sizes of less than 6 ounces.

South Dakota

Approved by the Governor, House Bill 1038 leaves unchanged a registrant's initial malt beverage brand registration fee of twenty-five dollars, but raises all subsequent brand registration fees from ten dollars to twenty-five dollars.

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Also signed into law, Senate Bill 90 increases the number of varieties of malt beverages, wine, distilled spirits, liqueur, and cordials that an off-sale alcoholic beverage licensee may offer for sampling in one day.

Texas

H.B. 2094, allowing in-state breweries producing 250,000 barrels or less to sell up to 5,000 barrels of their beer for consumption on the brewery premises or in unbroken packages for off-premise consumption, has received a public hearing in the House.

Utah

Utah Governor Huntsman has signed H.B. 51, the homebrewing legalization legislation. As of May 12th, 2009 Utah's homebrewers can legally brew beer.

Also receiving the Governor's signature, legislation ending the system wherein bars are treated as private clubs and so require patrons to fill out membership applications and pay a membership fee, will become effective on July 1.

Washington

Previously passed by the Senate, S.B. 5060 has now been amended and passed by the House. The legislation increases the amount of home-made beer or wine an adult may remove from the home from one gallon to 20 gallons. Home-made beer and wine may be removed from the home for private use, including use at organized affairs, exhibitions, or competitions such as homemaker's contests, tastings, or judging. The requirement that any beer or wine left over from a tasting or competition must be returned to the home is eliminated.

Passing both legislative chambers, H.B. 1441 makes changes to the contractual relationships between distributors and producers of malt beverages. Two additional reasons for cancellation or termination without notice are provided: fraudulent actions by the distributor (no compensation) and supplier succession when another distributor is chosen to carry the products (compensation required). Actions taken by the supplier that require compensation include nonrenewal and cancellation of the agreement as well as termination. The "for cause" provision disqualifying the distributor from compensation when a supplier terminates an agreement is removed. When an agreement is terminated, cancelled, or not renewed for any reason other than failure to live up to the terms and conditions of the agreement, insolvency, bankruptcy, or liquor license suspension or revocation, the successor distributor must compensate the distributor for the fair market value of the right to distribute the brand. The definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

West Virginia

Awaiting the Governor's signature, H.B. 2719 creates a definition for "nonintoxicating craft beer" which effectively raises the allowable ABV from 6 to 12%.

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A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Tax Relief Bill Builds Momentum. HR 836, the Brewers Excise and Economic Relief Act of 2009, now has a total of 174 Congressmen signed on in support. This legislation seeks to reduce the tax burden for all brewers and specifically reduces the small brewer rate by 50% to \$3.50 a barrel. The Brewers Association continues to work hard to build support in Congress for this measure and urges all BA brewery members to reach out to their Congressmen and ask that they show their support for America's small brewery businesses by signing onto the bill as a cosponsor. For resource information on this issue, visit the BA's [Excise Tax Resource](#) web page.

B. THE COURTS

Bell's Seeks Legal Remedy. Bell's Brewery has filed suit in the Kalamazoo County (Michigan) Circuit Court to stop the sale of its distribution rights. Current distributor Classic Wines is seeking to sell those rights to M&M Distributors, an A-B house, which Bell's asserts cannot meet that brewery's standards due to its relationship with Anheuser-Busch.

C. THE STATES

Distribution and Franchise:

Illinois

[House Bill 773](#), amending the Beer Industry Fair Dealing Act, continues to move in the Senate. The bill expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Similarly, another amendment to the Beer Industry Fair Dealing continues under House consideration. [S.B. 1282](#) provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Indiana

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Becoming law without the Governor's signature, [H.B. 1037](#) stipulates certain requirements of product transfer between beer wholesalers. The bill provides that a primary source of supply that acquires brands of beer or flavored malt beverages: (1) shall reappoint the existing beer wholesaler to distribute the brands; and (2) is prohibited from transferring the brands to another beer wholesaler; if the brands represent at least 15% of the existing wholesaler's dollar sales in the 12 months preceding the acquisition. Additionally, it requires a primary source of supply that acquires brands of beer or flavored malt beverages to give a beer wholesaler notice of the primary source of supply's intent not to reappoint the wholesaler not later than 60 days after acquisition of the brands.

Montana

Signed by the Governor, [S.B. 395](#) clarifies provisions of the Beer Franchise law relating to brewer-wholesaler contracts and the continued appointment of a wholesaler to a brand when a manufacturer transfers ownership of that brand.

Nevada

Passing the House and under Senate consideration, [A.B. 378](#) prohibits a supplier from unreasonably withholding or delaying approval of certain sales, assignments or transfers of an interest in a wholesaler's assets or of the substitution of a person under a franchise; provides for the liability of the supplier to a wholesaler if the supplier unreasonably withholds its consent; prohibits a supplier from taking various other actions against a wholesaler.

North Carolina

Companion bills [H.B. 1017](#) and [S.B. 918](#) seek to raise the self distribution limit to 60,000 barrels from the current 25,000 barrel limit.

Oklahoma

[Legislation](#) signed by the Governor amends the terms under which manufacturers and wholesalers do business under the Low-Point Beer Distribution Act.

Washington

Signed into law by Governor Gregorie, [H.B. 1441](#) makes changes to the contractual relationships between distributors and producers of malt beverages. Two additional reasons for cancellation or termination without notice are provided: fraudulent actions by the distributor (no compensation) and supplier succession when another distributor is chosen to carry the products (compensation required). Actions taken by the supplier that require compensation include nonrenewal and cancellation of the agreement as well as termination. The "for cause" provision disqualifying the distributor from compensation when a supplier terminates an agreement is removed. When an agreement is terminated, cancelled, or not renewed for any reason other than failure to live up to the terms and conditions of the agreement, insolvency, bankruptcy, or liquor license suspension or revocation, the successor distributor must compensate the distributor for the fair market value

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of the right to distribute the brand. The definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

Direct Shipping:

Florida

Senate Bill 764, authorizing the direct shipment of wine into and within Florida for personal consumption, has died in committee.

Kansas

Becoming law with the Governor's approval, [S.B. 212](#) permits in-state and out-of-state wineries to directly ship up to 12 cases of wine annually to Kansas residents.

Louisiana

[Senate Bill 133](#) seeks to rescind the ability of out-of-state vintners and retailers to sell and ship sparkling wine or still wine to Louisiana consumers.

Maine

[House Bill 911](#) establishes a license to allow for the direct shipment of wine to registered shipment outlets. On obtaining a license, in-state and out-of-state wineries could ship up to 12 cases of wine annually to such registered outlets for pick-up by consumers who are 21 years of age or older.

Rhode Island

[House Bill 6011](#) would establish a wine direct shipper license authorizing the shipment of a specified amount of wine directly to a person for personal use.

Tennessee

Companion bills [H.B. 115](#) and [S.B. 166](#) seek to create a wine direct shipper license.

Texas

[H.B. 1084](#) would permit shipment to the same Texas consumer of up to nine gallons of wine within a 30-day period, with a yearly limit of 36 gallons.

Taxation:

California

[Assembly Bill 1019](#) would institute an approximately 10 cent-a-drink "mitigation fee" on beer, wine and hard alcohol. The alcohol fee would be imposed on wholesalers and would increase from the current 20 cents to \$1.27 per gallon of beer (535 percent).

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After being withdrawn from consideration, [S.B. 558](#) is once again under active consideration. The bill seeks to establish the Alcohol Abuse Treatment Program Fund and authorizes the Department of Alcoholic Beverage Control to assess and collect a fee not to exceed \$0.05 per drink from every person who is engaged in business in this state and sells alcoholic beverages for resale.

Hawaii

Although specific tax amounts are not part of the legislation, [H.B. 560](#) imposes a new service tax on alcohol beverages to fund positions and programs in the Office of Veterans Services.

Illinois

Drug and alcohol treatment advocates have asked the Governor and legislature to impose a nickel a drink tax increase to fund substance abuse treatment programs.

Michigan

The Michigan Child Welfare Improvement Task Force has issued a report recommending improvements to Michigan's child welfare system funded in part through a 5-cent per bottle increase in the beer tax (currently the tax is 2 cents for a 12-ounce beer, or \$6.30 per barrel).

Minnesota

[House Bill 2323](#) seeks to increase the gross receipts tax on alcohol beverages from 2.5% to 5.0% and raise alcoholic beverage excise tax rates by an amount approximately equal to 3 cents per drink for distilled spirits and 1 cent per drink for all other types of beverages. The excise tax on beer would increase by \$3.31 per barrel.

New York

The state's final budget package included a beer excise tax increase of 3 cents to 14 cents/gallon.

North Dakota

The provisions of [S.B. 2416](#), which has been signed into law, impose a gallonage tax on all alcoholic beverage wholesalers, domestic wineries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The rate on beer is 8 cents/gallon on bulk and 16 cents/gallon on bottles and cans.

Wisconsin

Although not yet formal legislation, it is expected that a proposed increase in the beer excise tax from \$2/barrel to \$10/barrel will be introduced with the purpose of funding grants to law enforcement and alcohol abuse prevention and treatment programs.

Trade Practice & Other:

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Alabama

[S.B. 492](#), permitting the production of homebrewed beer, mead, cider, and wine for personal use and facilitating organized tasting and judging events, passed committee unanimously.

Arkansas

Signed into law by the Governor, [S.B. 334](#) allows on-premise sales by small breweries.

California

Passing committee review and scheduled for a public hearing, [S.B. 639](#) adds a new provision to the Alcoholic Beverage Control (ABC) Act that authorizes ABC to issue an "on-sale tasting license" to the holder of any off-sale retail license for the purpose of furnishing tastings of alcoholic beverages to consumers subject to certain limitations.

Colorado

[Senate Bill 254](#) authorizes licensed malt liquor and fermented malt beverage manufacturers and licensed brew pubs to obtain authority to use distinct areas within a common licensed premises, known as "alternating proprietor licensed premises", for the manufacture of malt liquors or fermented malt beverages in the state. Additionally, the legislation authorizes the state licensing authority to adopt rules for the implementation, standardization, and enforcement of alternating proprietor licensed premises. Currently passed by both legislative chambers and awaiting the Governor's review.

Maine

Passing the House and under Senate consideration, [H.B. 622](#) allows a small brewery that holds an on-premise liquor license to sell malt beverages produced at the brewery in thirty-two to sixty-four ounce containers for off-premise consumption.

Michigan

[H.B. 4565](#) requires all kegs of beer sold at retail to have an attached identification tag, requires ID and a signature to purchase a keg and creates an administrative fine for retailers and a criminal penalty for consumers for a certain violations. For purposes of the bill, "keg" means any brewery-sealed individual container having liquid capacity of six gallons or more. The bill has passed the House.

Montana

Legislation seeking to raise the allowable alcohol content in beer to 14% ABV has been signed by the Governor ([H.B. 400](#)).

New York

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Companion legislation ([A.B. 8069](#) and [S.B. 5363](#)) seek to amend the environmental conservation law, in relation to eliminating the requirement that bottlers and brewers must include a New York specific universal product code on all redeemable bottles and cans and to extend the start date of registering container labels.

[Assembly Bill 7151](#) permits persons with licenses to sell beer or wine products for consumption off premises to provide beer samples in their licensed establishments.

North Carolina

[H.B. 1595](#) creates a malt beverage special events permit and a malt beverage tasting permit to give brewers the same rights that vintners already enjoy in promoting their products at certain public events.

Oregon

[House Bill 2184](#) establishes a goal for the beverage container return rate, keeping the current deposit at a nickel but increasing it to 10 cents if the return and recycle rate drops below 80 percent in 2015.

Gaining House approval, [House Bill 3122](#) allows holders of on-premise sales licenses to obtain verification of the capacity of pint glasses used at the licensed premises for draught malt beverages. Also allows licensees to obtain a display sticker from Oregon Liquor Control Commission if the glasses hold a pint of malt beverage under standard conditions.

Passing the House, [H.B. 2528](#) allows the issuance of a special events license to brewery-public house licensees.

South Carolina

Reported favorably from the Senate Committee on Judiciary, [S.B. 693](#) seeks to allow those with permits to sell beer for off premise consumption to hold a limited number of beer tastings annually at the retail location.

Authorizing the establishment of micro-distilleries, [House Bill 3452](#) has been signed into law by the Governor.

Texas

[H.B. 2094](#), allowing in-state breweries producing 250,000 barrels or less to sell up to 5,000 barrels of their beer for consumption on the brewery premises or in unbroken packages for off-premise consumption, has been passed by a House Committee.

Washington

[House Bill 2040](#) awaits the Governor's consideration after passing the legislature. The legislation permits financial interests between liquor manufacturers, distributors, and retailers

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under certain conditions; allows liquor manufacturers and distributors to provide branded promotional items to retailers; and eliminates the mandatory 10 percent minimum mark-up for beer and wine manufacturers to charge distributors and for distributors to charge retailers.

On the Governor's desk awaiting her signature, [S.B. 5060](#) increases the amount of home-made beer or wine an adult may remove from the home from one gallon to 20 gallons. Home-made beer and wine may be removed from the home for private use, including use at organized affairs, exhibitions, or competitions such as homemaker's contests, tastings, or judging. The requirement that any beer or wine left over from a tasting or competition must be returned to the home is eliminated.

Under the provisions of [H.B. 1462](#), holders of a beer and/or wine specialty shop license may obtain an endorsement to sell kegs. Licensees must comply with keg registration procedures.

West Virginia

With the Governor's signature, [H.B. 2719](#) creates a definition for "nonintoxicating craft beer" which effectively raises the allowable ABV from 6 to 12%.

A. FEDERAL / NATIONAL / INTERNATIONAL

Senate Finance Committee Considers Excise Tax Increase to Fund Healthcare Reform. The Senate Finance Committee in Washington, DC is currently deliberating the merits of a proposal to increase and equalize (at \$16.00/proof gallon) the excise tax for alcohol beverages to fund healthcare reform. This proposal would **triple** the excise tax for 4.5% ABV beer and impose even higher excise tax rates for higher ABV beers.

Brewers Association staff and Board members have been actively engaged in building the case against an excise tax increase, recently submitting a [letter](#) to the Committee outlining our opposition, with individual brewery members contacting their Senators to detail how such a massive tax burden would affect their businesses.

Senate Introduces Small Brewer Tax Relief Bill. S.1058, the Brewers Excise and Economic Relief Act of 2009 (identical to HR 836), seeks to reduce the tax burden for all brewers and specifically reduces the small brewer rate by 50% to \$3.50 a barrel. The Brewers Association continues to work hard to build support in Congress for both measures and urges all BA brewery members to reach out to their Representatives and Senators to ask that they show their support for America's small brewery businesses by signing onto the bill as a cosponsor.

Proposal Places Burden of TTB Budget Squarely on Alcohol Industry. The President's proposed Fiscal Year 2010 Budget contains provisions authorizing the Alcohol and Tobacco Tax and Trade Bureau (TTB) to impose fees on the companies it regulates for purposes of funding the majority of its \$109 million budget. Brewers, vintners, distillers, wholesalers and retailers would all be required to pay annual fees (essentially re-imposition of the Special Occupational Tax (SOT) that Congress repealed in 2005) and/or user fees for federally-mandated requirements and services. Additionally, as proposed, the fee structure would disproportionately impact small businesses.

The Brewers Association has been working collaboratively with its alcohol industry partners in opposing the proposal, which amounts to nothing more than additional taxation.

B. THE COURTS

New York Bottle Bill Hits Bottleneck. The U.S. District in Manhattan hit New York's recently passed bottle bill with what amounts to a "cease and desist" order by blocking its implementation which had been set for June 1 and delaying all changes to the state's current law until April 1, 2010. Meanwhile, two bills removing the unique New York UPC requirement remain under consideration by the legislature.

Indiana Face-to-Face Transaction Ruling Stands. The U.S. Supreme Court has declined to hear an appeal of a lower court decision affirming Indiana's requirement that direct shipping sales are allowable only after an initial in-person transaction has been completed.

C. THE STATES

Distribution and Franchise:

Illinois

[House Bill 773](#), amending the Beer Industry Fair Dealing Act, has passed both chambers of the legislature. The bill expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Similarly, another amendment to the Beer Industry Fair Dealing has passed both houses of the legislature. [S.B. 1282](#) provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Nevada

Signed by the Governor, [A.B. 378](#) prohibits a supplier from unreasonably withholding or delaying approval of certain sales, assignments or transfers of an interest in a wholesaler's assets or of the substitution of a person under a franchise; provides for the liability of the supplier to a wholesaler if the supplier unreasonably withholds its consent; prohibits a supplier from taking various other actions against a wholesaler.

New York

[A.B. 488](#) amends the Alcoholic Beverage Control Law (ABCL) to allow small brewers having three percent (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for good cause as defined in the ABCL.

Oregon

Becoming law after receiving the Governor's signature, [H.B. 2611](#) changes the self distribution limit for brewpub licensees to 5,000 barrels based on previous calendar year barrels produced.

Texas

[S.B. 2580](#) specifies a four-year statute of limitations for all actions arising under provisions of the Alcoholic Beverage Code that relate to manufacturer-wholesalers relations. It also reaffirms state policy that protections provided to beer distributors apply regardless of a transfer or change of ownership of a brand by a manufacturer. The bill awaits the Governor's signature.

Direct Shipping:

Delaware

Wine direct shipping legislation has been introduced in the House ([H.B. 180](#)).

Florida

Four bills authorizing direct shipment of wine into and within Florida for personal consumption (H.B. 245 and 251; S.B. 272 and 764) expired without further action.

Massachusetts

Receiving committee consideration, [H.B. 317](#) provides for the direct shipment of wine.

Minnesota

Receiving the Governor's approval, [H.B.1476](#) provides that a winery licensed in a state other than Minnesota, or a winery located in Minnesota, may ship, for personal use and not for resale, not more than two cases of wine, containing a maximum of nine liters per case, in any calendar year to any resident of Minnesota age 21 or over.

Pennsylvania

[Senate Bill 787](#) provides for the direct shipping of wine into the Commonwealth.

Rhode Island

Held for further study, [House Bill 6011](#) would establish a wine direct shipper license authorizing the shipment of a specified amount of wine directly to a person for personal use.

Tennessee

[S.B. 166](#) seek to create a wine direct shipper license has been signed by the Governor.

Texas

Awaiting the Governor's signature, [H.B. 1084](#) would permit shipment to the same Texas consumer of up to nine gallons of wine within a 30-day period, with a yearly limit of 36 gallons.

Taxation:**Illinois**

[H.B. 4557](#) raises the tax rate imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of beer.

Drug and alcohol treatment advocates have asked the Governor and legislature to impose a nickel a drink tax increase to fund substance abuse treatment programs.

Massachusetts

Both legislative chambers have approved an increase of the sales tax (from 5% to 6.25%) and the removal of the sales tax exemption on alcohol.

Minnesota

[House Bill 2323](#) has been vetoed by the Governor. The legislation sought to increase the gross receipts tax on alcohol beverages from 2.5% to 5.0% and raise alcoholic beverage excise tax rates by an amount approximately equal to 3 cents per drink for distilled spirits and 1 cent per drink for all other types of beverages. The excise tax on beer would have increased by \$3.31 per barrel.

Missouri

[H. B. 308](#) phases out over a six-year period the state sales and use tax on the purchase of food and replaces the revenue with an additional excise tax on wine and liquor. The bill has been referred to committee.

New Jersey

The Council on Alcoholism and Drug Dependence has called on the Governor to raise the tax on beer in New Jersey 5 cents a gallon.

North Carolina

Seeking to raise the excise tax rates on all alcohol beverages, [H.B. 1579](#) would increase the malt beverage rate from 53.2 cents per gallon to 57.4 cents per gallon.

Pennsylvania

[House Bill 1506](#) seeks to provide a tax credit for capital expenditures made by small brewers (1.5 million barrels or less) so as to encourage the renewal and improvement of that segment of the brewing industry.

Wisconsin

Senate Bill 209/Assembly Bill 287 propose an increase in the beer excise tax from \$2/barrel to \$10/barrel with the purpose of funding grants to law enforcement and alcohol abuse prevention and treatment programs.

Trade Practice & Other:

Alabama

Legislation raising the amount of alcohol allowed in beer to 13.9% by volume from 6% has become law with the Governor's signature.

[S.B. 492](#), permitting the production of homebrewed beer, mead, cider, and wine for personal use and facilitating organized tasting and judging events, has died with the end of the session.

California

[Assembly Bill 1282](#), allowing a beer manufacturer to give consumer advertising specialties to the general public that do not exceed \$3 per unit original cost, has passed the Assembly and moved to the Senate.

Colorado

[Senate Bill 254](#) authorizes licensed malt liquor and fermented malt beverage manufacturers and licensed brew pubs to obtain authority to use distinct areas within a common licensed premises, known as "alternating proprietor licensed premises", for the manufacture of malt liquors or fermented malt beverages in the state. Additionally, the legislation authorizes the state licensing authority to adopt rules for the implementation, standardization, and enforcement of alternating proprietor licensed premises. The bill has been signed into law by the Governor.

Delaware

[House Bill 193](#) would allow grocery stores to sell beer and wine.

Florida

Companion bills H.B. 297 and S.B. 1388 sought to create the Point-of-Purchase Messaging About Alcohol and Pregnancy Act, requiring certain warning signs to be displayed in specific ways on the premises of alcoholic beverage vendors & manufacturers. Both bills died in their respective chambers.

Maine

Signed into law by the Governor, [H.B. 622](#) allows a small brewery that holds an on-premise liquor license to sell malt beverages produced at the brewery in thirty-two to sixty-four ounce containers for off-premise consumption.

Failing to gain committee approval, [Senate Bill 269](#) sought to allow brewers and wholesalers to form limited partnerships in which the brewer is the limited partner and the wholesaler is the general partner, with only the general partner involved in day-to-day management. The bill also provides a 10-year maximum term for any such limited partnership.

Missouri

Having been referred to committee, [House Bill 943](#) seeks to allow a restaurant bar without an onsite brewery that serves 45 or more different types of draft beer to sell 32 fluid ounces or more of beer to customers for consumption off the premises.

Montana

Legislation allowing off premise beer and wine licensees to hold tasting events has died in committee ([H.B. 234](#)).

New Jersey

[Senate Bill 2098](#) provides that on premise and off premise licensees may hold beer, wine and spirits tasting events.

New York

Passing the Assembly, [S.B. 2623](#) permits certain small beer brewers to obtain a permit to sell beer in a sealed container for off-premises consumption at fairs and farmers' markets.

Companions [Assembly Bill 7151](#) and [Senate Bill 3246](#), permitting persons with licenses to sell beer or wine products for consumption off premises to provide beer samples in their licensed establishments, continue to receive consideration in their respective chambers.

North Carolina

[H.B. 1595](#) creates a malt beverage special events permit and a malt beverage tasting permit to give brewers the same rights that vintners already enjoy in promoting their products at certain public events. The bill has passed the House.

Oregon

Following House approval and a public hearing conducted in the Senate, [House Bill 3122](#) remains under active consideration. The legislation allows holders of on-premise sales licenses to obtain verification of the capacity of pint glasses used at the licensed premises for draught malt beverages. Also allows licensees to obtain a display sticker from Oregon Liquor Control Commission if the glasses hold a pint of malt beverage under standard conditions.

Signed into law, [H.B. 2528](#) allows the issuance of a special events license to brewery-public house licensees.

Rhode Island

[House Bill 6169](#), authorizing the operator of a brewery, distillery or winery to make retail sales of beverages to consumers at the place of manufacture for off the premise consumption, has been held for further study.

Texas

[H.B. 2094](#), allowing in-state breweries producing 250,000 barrels or less to sell up to 5,000 barrels of their beer for consumption on the brewery premises or in unbroken packages for off-premise consumption, has failed to advance to the House floor after passing committee.

Washington

[House Bill 2040](#) has been signed into law. The legislation permits financial interests between liquor manufacturers, distributors, and retailers under certain conditions; allows liquor manufacturers and distributors to provide branded promotional items to retailers; and eliminates the mandatory 10 percent minimum mark-up for beer and wine manufacturers to charge distributors and for distributors to charge retailers.

Also becoming law by virtue of the Governor's signature, [S.B. 5060](#) increases the amount of home-made beer or wine an adult may remove from the home from one gallon to 20 gallons. Home-made beer and wine may be removed from the home for private use, including use at organized affairs, exhibitions, or competitions such as homemaker's contests, tastings, or judging. The requirement that any beer or wine left over from a tasting or competition must be returned to the home is eliminated.

A. FEDERAL / NATIONAL / INTERNATIONAL

Federal Excise Tax Increase Proposals Fail to Gain Traction...For the Time Being. After much discussion about a possible tripling and equalization of the federal excise tax on alcohol to fund healthcare reform, neither the Senate Finance Committee nor the House Ways and Means Committee has included a tax increase in the most recent versions of the draft legislation. Brewers Association members have been instrumental in building the case against an excise tax increase by contacting their members of Congress and explaining how such a massive tax burden would affect their businesses. However, we are far from out of the woods, as discussions continue and the issue evolves on a daily basis. Watch your inboxes for another possible call to action.

Small Brewer Tax Relief Bills Continue to Gain Support. S.1058 and HR 836, the Brewers Excise and Economic Relief Act of 2009, seek to reduce the tax burden for all brewers, specifically reducing the small brewer rate by 50% to \$3.50 a barrel. Currently, HR 836 has 208 Representatives signed on in support and S. 1058 has 8 Senators signed on. The Brewers Association continues to urge all BA brewery members to reach out to their Representatives and Senators to ask that they show their support for America's small brewery businesses by signing onto the bill as a cosponsor.

Alcohol Industry User Fee Proposal a Non-Starter. The President's proposal to fund the majority of the Alcohol and Tobacco Tax and Trade Bureau (TTB) 2010 Budget through fees on the companies the Bureau regulates has not been included in the appropriations bill draft recently released by a Senate committee. Under the Administration's plan, brewers, vintners, distillers, wholesalers and retailers would all have been required to pay annual fees (essentially re-imposition of the Special Occupational Tax (SOT) that Congress repealed in 2005) and/or user fees for federally-mandated requirements and services. Again, the Brewers Association and its members worked cooperatively with our alcohol industry partners in opposing the proposal.

Current Draft of Food Safety Legislation Has Minimal Brewer Impact. The Brewers Association, working in close concert with WineAmerica, the trade organization for small domestic wineries, has played a part in significantly reducing the impacts of proposed food safety legislation to alcohol producers. In response to recent food safety issues and recalls, Congress is considering substantial changes to the Food, Drug and Cosmetics Act through which the Food and Drug Administration (FDA) derives its authority. As originally

proposed, HR 2749, the Food Safety Enhancement Act of 2009, would have required the FDA to take on new oversight responsibilities with respect to alcohol producers in many areas already regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and would also have imposed registration fees to fund FDA's new mandates. The annual fees under consideration would have cost individual breweries \$500. Following a targeted campaign to contact key legislators, businesses regulated by the TTB were exempted from most of the substantive requirements and the registration fee.

Proposed Changes to National Organic Program List of Allowed Substances: Recommendations proposing six additions and one deletion to the approved list of substances allowed in organic crop production and organic processing recently appeared as a proposed rule in the Federal Register. Based on an evaluation of petitions submitted by industry participants, the National Organic Standards Board is recommending the addition of aqueous potassium silicate and sodium carbonate peroxyhydrate (used in organic crop production), and gellan gum, tragacanth gum, fortified cooking wine marsala, and fortified cooking wine sherry (all used in organic processing) to the National List. This proposed rule would also remove Glycerine Oleate (Glycerol monooleate) from the list. Further details on the proposed rule and information on submitting comments may be found at <http://edocket.access.gpo.gov/2009/pdf/E9-12818.pdf>

California AG Spars with MillerCoors Over Contract Language. In an issue with potential national implications, the California Attorney General's office has written to MillerCoors expressing concern with certain provisions in the brewer's wholesaler contract that would be unenforceable due to conflict with the state's licensing laws. Although both sides have been talking since April, issues remain unresolved, specifically concerning the level of control over distributor business plans, ownership changes and management employment issues.

B. THE COURTS

3-Tier Reaffirmed in Empire State. A U.S. Court of Appeals has upheld New York's requirement that all alcohol, with the exception of wine, must move through an in-state wholesale operation. The appeal involved an out-of-state retailer wishing to ship direct to New York consumers. In the ruling, the court cited the U.S. Supreme Court's Granholm decision which proclaimed state

systems valid as long as they created a level playing field for both in- and out-of-state entities.

The Final Costco Ruling? U.S. District Court Judge Marsha Pechman has ruled that the state of Washington and the Washington Beer and Wine Wholesalers Association must pay Costco's \$1.9 million legal costs for the 2004 lawsuit challenging the state's laws governing the distribution of beer and wine. Although the majority of Costco's challenges failed on appeal, the striking down of the post and hold requirement was upheld and Pechman cited the public benefit associated with this issue as the basis for awarding Costco its legal costs. The defendants are considering an appeal of Pechman's latest ruling.

C. THE STATES

Distribution and Franchise:

Illinois

[House Bill 773](#), amending the Beer Industry Fair Dealing Act, has been sent to the Governor for consideration. The bill expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Similarly, another amendment to the Beer Industry Fair Dealing has been sent to the Governor for consideration. [S.B. 1282](#) provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Louisiana

With the Governor's signature, the provisions of [H.B. 716](#) providing additional restrictions regarding a supplier's ability to terminate, cancel, not renew, or discontinue an agreement to supply specified brands of alcohol or beer to a distributor, have become law.

New York

Under Senate consideration after passing the Assembly, [A.B. 488](#) amends the Alcoholic Beverage Control Law (ABCL) to allow small brewers having three percent (3%) or less of a multi-brand beer wholesaler's annual business the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for good cause as defined in the ABCL.

Texas

[S.B. 2580](#) specifies a four-year statute of limitations for all actions arising under provisions of the Alcoholic Beverage Code that relate to manufacturer-wholesalers relations. It also reaffirms state policy that protections provided to beer distributors apply regardless of a transfer or change of ownership of a brand by a manufacturer. The bill has been signed into law.

Direct Shipping:

Maine

[House Bill 696](#), providing for the direct shipment of up to 12 cases of wine annually by in- and out- of -state wineries, has become law.

Texas

Gaining the Governor's signature, [H.B. 1084](#) permits shipment to the same Texas consumer of up to nine gallons of wine within a 30-day period, with a yearly limit of 36 gallons.

Taxation:

California

The City of San Francisco is considering levying a tax on alcohol at the wholesale level. Discussions have put the possible tax on beer at 5 cents per 12 ounce serving.

Delaware

[H.B. 212](#), seeking to raise alcohol taxes by two cents per 12-ounce serving of beer, three cents per 5-ounce serving of wine, and 15 cents per bottle of liquor, failed to pass the House of Representatives.

Massachusetts

The Governor has signed a budget that includes a provision raising the sales tax from 5% to 6.25% and removing the sales tax exemption on alcohol.

Trade Practice & Other:

Arizona

[H.B. 2301](#), a bill seeking to raise the production limit (from 20,000 to 40,000 barrels) for Class 3 breweries, has passed the legislature and been signed into law. The bill also provides for self distribution up to 3,000 barrels annually.

California

[Assembly Bill 1282](#), allowing a beer manufacturer to give consumer advertising specialties to the general public that do not exceed \$3 per unit original cost, has passed the Assembly and received Senate committee approval.

Delaware

Signed into law by the Governor, [H.B. 210](#) increases the license fees for those manufacturing and selling alcohol. For breweries, the fees are structured by annual production and range from \$1,500 for a brewery or microbrewery manufacturing not more than 25,000 barrels of beer per year to \$9,000 for breweries producing over 100,000 barrels per year. The legislation also requires all licensees that wish to sell alcohol on Sunday to pay an additional fee.

Iowa

Under the provisions of [S.B. 403](#), signed into law by the Governor, the holders of certain native wine permits whose primary purpose is manufacturing native wine may purchase beer from a wholesaler for sale at retail.

Maine

Gaining the Governor's approval, [H.B. 353](#) authorizes an off-premise retail licensee stocking at least 100 different brands of malt liquor to conduct taste testing of malt liquor on that licensee's premises.

Also signed into law by the Governor, [House Bill 878](#) requires that chain restaurants shall state on a food display tag, menu or menu board the total amount of calories per serving of each food and beverage item listed for sale on the food display tag, menu or menu board.

Massachusetts

Under consideration by a joint committee, [S.B. 400](#) expands the sale of products of farmer breweries.

New Jersey

[Senate Bill 2098](#) provides that on premise and off premise licensees may hold beer, wine and spirits tasting events. The bill has passed the Senate.

New York

Passing the Assembly, [A.B. 2325](#) seeks to promote micro breweries in New York State by authorizing such breweries to sell beer in a sealed container for off-premises consumption at fairs and farmers' markets.

Oregon

Following House approval and a public hearing conducted in the Senate, [House Bill 3122](#) has died on adjournment of the legislature. The legislation sought to allow holders of on-premise sales licenses to obtain verification of the capacity of pint glasses used at the licensed premises for draught malt beverages and to obtain a display sticker from Oregon Liquor Control Commission if the glasses hold a pint of malt beverage under standard conditions.

Tennessee

[S.B. 206](#) increases from 5,000 to 25,000 barrels per year the amount of beer that a manufacturer may sell as a retailer. The measure has been signed into law by the Governor.

A. FEDERAL / NATIONAL / INTERNATIONAL

Congress on Recess – Excise Tax Increase Proposals Remain on Sidelines. With both chambers of Congress on recess, work on identifying funding sources for healthcare reform is likewise on hiatus and there are no new developments concerning a potential increase to federal alcohol excise taxes. As previously reported, neither the Senate Finance Committee nor House committee versions of healthcare reform proposals have included a tax increase, but we must remain vigilant and engaged. Brewers Association members have been instrumental in building the case against an excise tax increase by contacting their members of Congress and explaining how such a massive tax burden would affect their businesses, and you may well be called upon again to contact your elected officials once Congress reconvenes after the Labor Day holiday. Watch your inboxes for another possible call to action.

Small Brewer Tax Relief Bill Attains Majority in House. HR 836, the Brewers Excise and Economic Relief Act of 2009, which includes a reduction of the small brewer rate by 50% to \$3.50 a barrel, has achieved a significant milestone in the U.S. House of Representatives. With 224 Members of Congress signed on to the legislation, a majority of the 435 Representatives now support an excise tax reduction for brewers. This level of support sends a strong message that any proposals to increase the tax will face significant opposition. Companion legislation in the Senate, S. 1058, currently has 8 Senators signed on in support. The Brewers Association continues to urge all BA brewery members to reach out to their Representatives and Senators to ask that they show their support for America's small brewery businesses by signing onto these bills as a cosponsor.

Alcohol Ignition Interlocks to Go National? A federal transportation funding bill currently being discussed and possibly coming up for debate in the autumn, contains language requiring states to implement the mandatory installation of ignition interlocks with convictions for drunken driving. Although a majority of states already require interlocks for certain offenders, this proposal makes their use required for any conviction and uses the threat of withholding highway funding to ensure states adopt the program.

More Deceptive Marketing Claims. The Connecticut Attorney General has asked for the Federal Trade Commission's (FTC) involvement in what he claims is deceptive marketing of the alcohol energy drink Wide Eye. In a letter to the FTC, also signed by the attorneys general from Maine and Maryland, the Connecticut AG alleges that the makers of the energy drink advertise in such a way that consumers may believe the added caffeine counteracts the effects of the alcohol. In a separate but similar action, attorneys general from California,

New York and several other states including Connecticut, are actively investigating the marketing practices of the companies owning the Joose and Four Loko brands. Subpoenas have been issued requesting company documents which the states believe will show the advertising is directed at the underage consumer.

B. THE COURTS

Lengthy Maryland Case Goes Against the State. In a decade old case challenging Maryland's post and hold and volume discount ban laws, a ruling has finally been handed down by a U.S. Court of Appeals. Ultimately unconvinced by the state's arguments that the laws under challenge advanced the cause of temperance, the court found that the laws worked in concert to restrain trade. This setback for state regulation in Maryland was, however, balanced by a prior ruling in New York affirming the three-tier system (see July Legal and Legislative Update), which could mean the U.S. Supreme Court will be asked to step in and make a definitive ruling.

C. THE STATES

Distribution and Franchise:

Illinois

[House Bill 773](#), amending the Beer Industry Fair Dealing Act, has been sent to the Governor for consideration. The bill expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Similarly, another amendment to the Beer Industry Fair Dealing has been sent to the Governor for consideration. [S.B. 1282](#) provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Taxation:

Connecticut

Governor Rell has proposed raising all alcohol taxes 10% to boost state budget coffers.

Illinois

A 25% increase of the state's excise tax on beer remains under consideration as part of the budget proposal.

Massachusetts

A petition movement is already underway seeking to place a question on the November ballot repealing the recently signed sales tax increase and removal of the sales tax exemption on alcohol.

Trade Practice & Other:

Michigan

[House Resolution 117](#), designating July 2009 as Michigan Craft Beer Month and commending Michigan craft brewers, was adopted by the House of Representatives.

New York

Signed into law by the Governor, [S.B. 2623](#) seeks to promote micro breweries in New York State by authorizing such breweries to sell beer in a sealed container for off-premises consumption at fairs and farmers' markets.

North Carolina

[H.B. 1595](#) creates a malt beverage special events permit and a malt beverage tasting permit to give brewers the same rights that vintners already enjoy in promoting their products at certain public events. The bill has been signed into law.

September 2009

A. Federal/National/International

Guidance Issued on Labeling Non-Malt and Certain Other Beers. In July, 2008 the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued ruling [2008-3](#). This ruling clarified that certain brewed products that are classified as "beer" under the Internal Revenue Code nonetheless fail to meet the definition of a "malt beverage" under the Federal Alcohol Administration (FAA) Act because they are not made from both malted barley and hops. Instead they are made from substitutes for malted barley (such as sorghum, rice or wheat) or are made without hops.

The practical result of this distinction is that these beers do not fall under TTB labeling or advertising rules, but rather under U.S. Food and Drug Administration (FDA) rules. These products do, however, remain liable for excise tax collection by the TTB. In response to this ruling, FDA has now issued draft guidance (recommendations) on the labeling of these products. Some important provisions include:

1. A statement of identity on the principal display panel (similar to the statement of composition such as "Beer made from sorghum" or "Sorghum Beer")
2. An accurate statement of the net quantity of contents (e.g., 12 fl oz)
3. The name and place of business of the manufacturer, packer or distributor
4. In the statement of ingredients, the common or usual name of each ingredient in descending order of predominance by weight
5. Nutrition labeling (unless exempt)
6. The food source name of any "major food allergen" present must be declared

Complete information on the provisions contained in this guidance may be found at <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm166239.htm> along with information on how to submit comments to FDA by October 16, 2009.

New Life for Anti-Alcohol Organization. After losing its funding from The Pew Charitable Trusts and the Robert Wood Johnson Foundation in June of 2008, The Center on Alcohol Marketing and Youth (CAMY) made the move from its former digs at Georgetown University in Washington, DC to the Johns Hopkins Bloomberg School of Public Health and a new financial lease on life. The Center was awarded \$4 million in funding from the Centers for Disease Control and Prevention's (CDC) National Center for Chronic Disease Prevention and Health Promotion to monitor youth exposure to alcohol advertising over the next five years.

Feds No Fan of These Cans. With the Federal Trade Commission (FTC) expressing concerns that ABI's Fan Cans could lead to underage and binge drinking, the brewer faces increasing pressure to pull cans of Bud Light sporting university/college team colors in communities across America.

B. The Courts

South Carolina Courts Rule on Lower Drinking Age. A circuit judge has put the kibosh on county court rulings that found in favor of challenges to the state law that bars those under 21 years of age from possessing and consuming alcohol. Those challenges advanced the argument that the state Constitution only banned minors from the ability to purchase alcohol, but the circuit judge found that reasoning "absurd," citing the legislature's undoubted intent to ban possession and consumption as well.

State of Illinois Sued Over Increase of Alcohol Tax. Spirits and wine distributor and NHL team owner Rocky Wirtz has filed a lawsuit claiming that recently passed legislation increasing taxes on alcohol (see state news below) to fund the governor's \$31 billion public works program is a violation of the Illinois Constitution. Among several points raised, the suit questions the legality of the financing of the capital projects, specifically the disparity of the tax hikes on beer, wine and spirits. Spirits received the biggest increase in tax rate, with the levy on a fifth of spirits rising from 90 cents to \$1.71, while the tax on a bottle of wine increased 13 cents and on a six pack of beer about 2.6 cents.

C. The States

Distribution and Franchise

Illinois

[House Bill 773](#), amending the Beer Industry Fair Dealing Act, has been signed into law by the Governor. The bill reinforces the primacy of state law in governing the relationship between a supplier and wholesaler and expands the list of prohibited conduct under the Act, as it applies to brewers, to include: coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent.

Another amendment to the Beer Industry Fair Dealing signed into law, [S.B. 1282](#) provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers.

Taxation

Illinois

A 4.6 cent increase of the beer excise tax passed as part of the budget proposal (new rate as of September 1 is 23.1 cents/gallon).

Trade Practice & Other

California

[A.B. 1282](#) would extend to out-of-state domestic and overseas brewers, as well as importers, the same privileges that California brewers have with respect to the dollar value of advertising specialty items that may be given away to adult consumers and makes it explicit that beer manufacturers cannot require beer wholesalers to fund consumer advertising specialties furnished by the beer manufacturer. The bill has passed both chambers and is on the fast track to the Governor.

Michigan

Successfully passing the Senate, [S.B. 470](#) would require a retailer selling beer in a keg to: attach an ID tag on the keg before or at the time of selling the beer; require the purchaser of the beer to complete and sign a receipt after presenting a driver license or State of Michigan identification card; and refuse to return the keg deposit if the ID tag were not attached when the keg was returned.

A. THE COURTS

New York Bottle Bill Ruled “Not Retroactive”. Although the new, and for wholesalers expensive, provisions of the state’s expanded bottle bill are still in force, a judge has ruled that their effective date was in mid-August. There had been concern that, after vacating the order that held the provisions in abeyance while the courts decided several issues, the effective date would revert to the original June 1, costing wholesalers millions of dollars more through the increased fee provisions.

Citizens Group Challenges State’s Classification of FMBs. Project Extra Mile, a Nebraska group dedicated to underage drinking issues, has filed suit against the Nebraska Liquor Control Commission. The group is challenging the classification of flavored malt beverages as beer, claiming that this allows the drinks to be more widely available at lower prices and thus contributes to consumption by underage individuals.

B. THE STATES

Distribution and Franchise:

New York

Legislation seeking to limit the price charged for beer to retail beer licensees in relation to the price charged non-contracted beer wholesalers, thereby allowing non-contracted wholesalers to compete fairly with contracted wholesalers and bringing lower prices to consumers, continues under active consideration. [S.B. 2089](#) directly addresses situations where wholesalers are using their exclusive agreements to unfairly undermine the non contracted wholesalers’ positioning in the market.

Taxation:

Wisconsin

[Assembly Bill 287](#), seeking an increase in the beer excise tax from \$2/barrel to \$10/barrel for the purpose of funding grants to law enforcement and alcohol abuse prevention and treatment programs, has been scheduled for a committee hearing.

Trade Practice & Other:

California

The California Small Brewers Association (CSBA) has been actively engaged in efforts to pass legislation repealing a recently enacted six-fold increase in the recycling processing fee. The processing fee, meant to augment the California Redemption Value (CRV) and imposed on all in-state manufacturers and out-of-state “importers,” is used to fund recycling efforts in the state. The bill is on the Governor’s desk for action and the CSBA continues to lobby for its passage on behalf of the state’s small brewers.

Indiana

Testimony from both supporters and opponents of repealing Indiana's ban on Sunday off-premise alcohol sales was heard by the Interim Study Committee on Alcoholic Beverage Issues. Lawmakers are gathering information on the issue prior to the next legislative session in anticipation of legislation being introduced.

Massachusetts

A hearing has been held on [H.B. 1113](#), which seeks to prohibit alcohol advertising on any property owned or operated by the commonwealth.

Oklahoma

Lawmakers are studying a proposal to implement a 5-cent beverage container deposit program (to include glass bottles, aluminum cans and plastic water bottles) as a way to reduce litter and provide additional funds for general budgetary purposes. It is anticipated that unredeemed deposits could generate millions of dollars for the state and a bill is expected to be introduced in the next legislative session.

South Dakota

A special committee of the Legislature has recommended that South Dakota stores no longer be required to post signs aimed at pregnant women with warnings about the potentially harmful effects of consuming alcohol.

A. FEDERAL / NATIONAL / INTERNATIONAL

New Federal Reporting Requirement for Brewers. The U.S. Food & Drug Administration (FDA) has implemented the Reportable Food Registry (RFR), an electronic reporting system that requires food industry members to submit reports to FDA about food articles that might pose a serious health risk. **Industry members that manufacture, process, pack or hold alcohol beverages must comply with the requirements of the RFR, effective September 8, 2009.** For more detailed information, including a link to the relevant FDA web site pages, see the Brewers Association post at:

<http://www.brewersassociation.org/pages/government-affairs/current-issues/show?title=new-federal-reporting-requirement-for-brewers>

Alcohol Industry “Watchdog” Issues “Helpful Guidance” to Policymakers. In its recently released report “Big Beer Duopoly: A Primer for Policymakers and Regulators,” the Marin Institute slams the mergers that have led to the “concentration of corporate power and beer market control” in the two foreign-controlled companies of A-B InBev and MillerCoors, speaks to the “dangers” this duopoly poses for “the already weakened three-tier alcohol regulatory system,” and makes reference to beer as “the cheapest and most widely used drug in America.” Among the report’s final recommendations for federal and state legislators: “Raise alcohol taxes and fees to mitigate the damage of alcohol to society and to reduce alcohol consumption and underage drinking.”

The full report can be accessed at:

http://www.marininstitute.org/site/images/stories/pdfs/big_beer_duopoly.pdf

B. THE COURTS

Don’t Mess With Vermonster. Although not strictly a matter falling to the courts, Vermont’s Rock Art Brewery successfully defended its right to the Vermonster name after facing opposition to a trademark application by energy drink company Hansen Beverage Corporation. Claiming that Vermonster, the brewery’s name for its barley wine, would create confusion in the marketplace with its Monster energy drinks, Hansen demanded that Rock Art cease and desist sales and distribution of that beer, drop their trademark application and pay Hansen’s attorney’s fees. Following a groundswell of grassroots support, much of it generated through social networking sites, Hansen and Rock Art reached an amicable agreement. To read the full story, see the posting at:

<http://www.brewersassociation.org/pages/community/news/show?title=monster-inc-4-trademark-laws>

Ring One Up for Bell’s. Michigan’s Bell’s Brewery has settled its lawsuit protesting the sale of its distribution rights to a distributor it claimed did not meet its standards. Bell’s former distributor contended that the brewery had no basis to contest the transfer under the state’s

franchise law. However, with a settlement reached through mediation which places distribution with a company acceptable to Bell's, it appears that Michigan brewers do indeed have a say in the sale of distribution rights.

Federal Court to Hear Direct Shipping Appeal. The Family Winemakers of California, a non-profit association promoting the right to freely produce, market, and sell wines, will ask a U.S. Court of Appeals to hear arguments in favor of overturning a prior Massachusetts decision that denies wineries producing more than 30,000 gallons a year the right to direct ship into the state.

C. THE STATES

Taxation:

Kentucky

Legislation has been pre-filed ([BR 159](#)) to exempt gross receipts from the sale of distilled spirits, wine, and malt beverages, not consumed on the premises, from sales and use tax.

Also pre-filed in the Kentucky legislature, [BR 265](#) would reduce the tax rate on gross receipts from wholesale sales of malt beverages, wine, and distilled spirits to 5.5% for sales made on or after July 1, 2010, and provide that the tax would not apply to sales made on or after July 1, 2011.

New Mexico

A pair of state legislators is floating a "dime-a-drink" proposal to raise additional revenue during the state's special session to address budget shortfalls.

Wisconsin

Following a committee hearing at which testimony was heard both pro and con, [Assembly Bill 287](#) will not move out of committee for a floor vote at this time. The Wisconsin Brewers Guild and individual small brewers testified on the impacts to brewery businesses should the legislation become law and the Brewers Association's Support Your Local Brewery grassroots enthusiast network was activated in support of Wisconsin's small brewers. The bill seeks an increase in the beer excise tax from \$2/barrel to \$10/barrel for the purpose of funding grants to law enforcement and alcohol abuse prevention and treatment programs.

Trade Practice & Other:

California

The Governor has vetoed [S.B. 402](#), legislation repealing a recently enacted six-fold increase in the recycling processing fee. The processing fee, meant to augment the California Redemption Value (CRV) and imposed on all in-state manufacturers and out-of-state "importers," is used to fund recycling efforts in the state. The California Small Brewers Association (CSBA) had been

actively engaged in efforts to pass the bill. With the veto, the July increase will take effect and the state announced an additional increase effective November 1.

[A.B. 1282](#), the legislation increasing the limit on give-aways to consumers from \$0.25 to \$3.00 (original cost to brewer) has been amended to include out-of-state brewers. Distributor limits remain the same (\$0.25 per item) and the new limit only applies to consumers, not retailers. The bill has been approved by the Governor.

Florida

[Senate Bill 446](#) creates the "Point-of-Purchase Messaging About Alcohol and Pregnancy Act," requiring warning signs be displayed in specific ways on the premises of alcoholic beverage vendors and manufacturers.

Indiana

After two years of study, the bipartisan Interim Study Committee on Alcoholic Beverage Issues has recommended that the state keep its ban on Sunday retail alcohol sales and continue to allow only liquor stores to sell cold beer.

New York

Introduced in the Senate, [S.B. 6184](#) provides that the state policy with regard to the alcoholic beverage control law shall be to promote economic development and job opportunities in the beer, wine and liquor industries of the state.

A. FEDERAL / NATIONAL / INTERNATIONAL

Caffeinated Alcohol Under Scrutiny. The federal Food and Drug Administration (FDA) has contacted about 30 manufacturers of alcoholic beverages containing added caffeine stating that it intends to look into the safety and legality of their products. FDA requested that each manufacturer provide, within 30 days, its rationale, and supporting data and information, for concluding that its use of caffeine in an alcoholic beverage is Generally Recognized As Safe (GRAS) or has been previously sanctioned. At this time, FDA is not scrutinizing products that are flavored with coffee.

More information can be found on the FDA web site:

<http://www.fda.gov/Food/FoodIngredientsPackaging/ucm190366.htm>

B. THE COURTS

California Distribution Decisions. Following a ruling in federal court that stated successor suppliers do not have the right of automatic distributor termination under California law, Maita Distributors has filed suit against MillerCoors seeking to invalidate its termination by that supplier. The ruling significantly strengthens a distributor's position in situations of supplier succession.

C. THE STATES

Distribution and Franchise:

Montana

In the draft stage, LC 25 relates to the elimination of the prohibition on shipping wine into the state.

Taxation:

Massachusetts

Public health and addiction treatment interest groups have announced they will fight the petition movement seeking to place a question on the November ballot repealing the recently signed sales tax increase and removal of the sales tax exemption on alcohol

Trade Practice & Other:

Colorado

A Denver attorney has filed a ballot initiative seeking to allow Colorado grocery and convenience stores to sell full-strength beer and wine. The proposal, Initiative 29, would also allow liquor stores to sell non-perishable food items on 5 percent of their shelf space. The proposal also requires at least 20 percent of space allotted for alcohol in grocery and convenience stores be set aside for craft beers and specialty wines. Reportedly, this was included to address the fears of many smaller craft brewers in the state that their sales would decline because grocery stores would reserve the majority of shelf space to larger, out-of-state breweries.

Montana

In the process of being drafted, LC 26 relates to revising microbrewery and microdistillery laws.

New Jersey

Legislation has passed a Senate committee which requires New Jersey locations of restaurants with 20 or more restaurants nationwide to display calorie information along with menus and to provide other nutritional information upon request.