

## Government Affairs & Legal Update - January 2008

### A. FEDERAL / NATIONAL

TTB Announces 2008 COLAs Online Workshop Schedule. TTB has a full slate of new and improved hands-on workshops designed to familiarize new users with the system and to assist current users with commonly encountered problems. For a full listing of the 2008 schedule, go to [http://www.ttb.gov/pdf/posting\\_industry.pdf](http://www.ttb.gov/pdf/posting_industry.pdf)

### B. THE COURTS

Still Going. A U.S. District Court judge in New Jersey has denied a motion filed by A-B and InBev to dismiss a suit filed almost a year ago by three New Jersey wholesalers over the termination of their distribution rights for InBev brands, claiming violations of the New Jersey franchise law.

### C. THE STATES

#### **Distribution and Franchise:**

##### **New Jersey**

Although no vote was held, a Senate committee discussed legislation (S.B. 1691) that would remove the prohibition on a corporation or individual from holding more than one retail liquor license. The bill is controversial in that such a change would open up the possibility that alcohol could be sold in grocery and convenience stores.

#### **Direct Shipping:**

##### **Illinois**

S. B. 123, providing for a direct shipper's wine license and that a holder of said license may ship, for personal use and not for resale, not more than 12 cases of wine per year to any resident of the state of legal drinking age, continued to move in the Senate.

##### **Maine**

Legislation has been introduced in the Senate to allow for the direct shipment of wine from an out-of-state business to Maine residents of legal drinking age.

#### **Taxation:**

##### **Pennsylvania**

Allegheny County Council (including the City of Pittsburgh) adopted of a \$727.5 million budget on Dec. 4 which includes the 10 percent tax on poured alcoholic drinks effective January 1, 2008.

A proposal to raise the current 10-percent tax cut to 16 percent for any wholesale business with a Pennsylvania liquor license buying product from the Pennsylvania Liquor Control Board is under consideration in the Senate.

### **Trade Practice & Other:**

#### **Florida**

H.B. 105, under consideration in the House, requires scrap metal dealers to gather more in-depth information about the sellers of regulated metals, including kegs. The bill also increases the penalties that scrap dealers and sellers of regulated metals face by failing to comply with the regulations and/or giving false information.

#### **South Carolina**

House Bill 4348 would allow manufacturers of alcohol beverages to own and operate more than one production facility and permits limited on-premise and off-premise tastings.

## Government Affairs & Legal Update - February 2008

### A. FEDERAL / NATIONAL

Brewers Association Submits Comments on Labeling Proposal. On January 25, the Brewers Association (BA) submitted comments on Notice 73 - Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages (Serving Facts Labeling) to the Alcohol and Tobacco Tax and Trade Bureau (TTB). The proposed rule contains the following provisions:

- Alcohol content expressed in ABV as a mandatory requirement.
- New reference serving sizes for beer: Beer < 10% ABV has a 12-oz serving size. Beer > 10% ABV has a 5-oz serving size.
- A mandatory serving facts panel to include serving size, servings per container, alcohol percent by volume, calories and grams of fat, carbohydrates and protein.
- An optional disclosure of fluid ounces of pure alcohol (ethyl alcohol) as part of the serving facts panel.
- An alternative of a linear serving facts display for bottles of 50 ml or less.
- An effective date of three years from the publication of a final rule, although labels may be brought into compliance ahead of that date.

The BA's comments were developed largely from responses to a member survey focusing on economic impacts to small breweries. A key finding from the survey included in the comments was the preference for a linear display of serving facts (rather than a panel format depiction) based on a significantly lessened economic impact. Additional points made in the comment letter included support for including a statement of alcohol by volume, opposition to an optional statement of grams of pure alcohol and a clarification of appropriate serving sizes for beers of varying ABV. The complete comment document may be viewed at

[http://www.beertown.org/craftbrewing/govt\\_affairs/Abgvpr73Erfcbafr/Notice\\_73\\_BA\\_Filing\\_Final.pdf](http://www.beertown.org/craftbrewing/govt_affairs/Abgvpr73Erfcbafr/Notice_73_BA_Filing_Final.pdf)

### B. THE COURTS

Texas Court Ruling: Give and Take. In a "give" to retailers, Judge Sidney Fitzwater of the U.S. District Court for the Northern District of Texas has ruled as unconstitutional Texas law allowing in-state retailers to ship wine directly to state residents but denying out-of-state retailers similar rights. But now the "take": the judge upheld the state requirement that out-of-state retailers must purchase wine from Texas wholesalers.

Majority of Washington Beer and Wine Regulations Upheld. The U.S. Court of Appeals for the Ninth Circuit has reversed a district court ruling and upheld seven of the nine provisions regarding the sale and distribution of beer and wine challenged by Costco's antitrust lawsuit. The two provisions tossed by the court as violations of the Sherman Antitrust Act concern the requirements that alcohol distributors post their prices with the

state liquor board and hold to these prices for at least 30 days. That leaves the following provisions valid: uniform pricing, minimum mark-up, the ban on quantity discounts, the ban on credit, delivered pricing (price to retailer includes cost of delivery), the ban on central warehousing and the ban on retail to retail sales.

## **C. THE STATES**

### **Distribution and Franchise:**

#### **Indiana**

Legislation has been introduced that, among other things, allows a small brewery to sell and deliver beer to a consumer and removes a provision that allows a large brewery to sell and deliver beer to a consumer. Senate Bill 239 defines a small brewery as producing not more than 20,000 barrels a year.

#### **Maryland**

House Bill 136, authorizing specified holders of a Class 7 micro-brewery license to sell and deliver not more than 5,000 barrels of beer each calendar year to persons licensed to sell beer at retail in the State, is under committee consideration.

#### **New York**

S.B. 6752 limits the price charged for beer to retail beer licensees in relation to the price charged non-contracted beer wholesalers and charges beer wholesalers a fee for each contract or agreement it has with a brewer or importer of beer.

#### **Virginia**

Senate Bill 366 creates a new nonresident winery distributor license that authorizes the licensee to sell and deliver the wine produced by the licensee in closed containers, to persons licensed to sell the wine at retail for the purpose of resale, the ABC Board and persons in Virginia to whom alcoholic beverages may be lawfully sold. The bill defines "nonresident winery distributor" as any winery located outside the Commonwealth and licensed as such in the state where the winery is located and whose total wine distribution to all Virginia licensees does not exceed 3,000 cases in any calendar year. The bill also grants these same privileges to certain winery and farm winery licensees.

### **Direct Shipping:**

#### **Florida**

S.B. 1096 authorizes a winery to directly ship wine to a Florida resident only under a winery shipper's license obtained from the Division of Alcoholic Beverages and Tobacco. The bill also requires recipients of a direct shipment of wine to be 21 years of age, proof of age and the signature of the recipient.

## **Georgia**

Senate Bill 357, providing for the direct shipment of wine, has been introduced and referred to committee.

## **Hawaii**

A Senate bill limiting the purchase of wine by direct shipment by a household to 6 nine liter cases per year is once again under consideration after carrying over from the 2007 legislative session.

## **New Mexico**

Senate Bill 59 creates a direct wine shipment permit allowing both wineries and retailers in any state to ship wine directly to New Mexico consumers and New Mexico wineries and retailers to ship to any state. The holder of a direct wine shipment permit may ship: (1) not more than twenty-four nine-liter cases of wine annually to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and (2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL - SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED FOR DELIVERY".

## **Tennessee**

H.B. 2824 and companion S.B. 2686 would authorize persons licensed in Tennessee or another state as wine manufacturers, producers, suppliers, importers, wholesalers, distributors, and retailers to ship wine directly to Tennessee residents who are 21 years old or older.

## **Taxation:**

### **California**

The Marin Institute, a self-proclaimed alcohol industry watchdog, has called on the Governor and legislature to raise beer, wine and distilled spirits taxes to help address the \$14 billion budget deficit.

### **Maine**

A carryover bill from 2007 (LD 1725) raising taxes on beer, wine, sparkling wine, fortified wine, hard cider and low-alcohol spirits products by establishing a uniform tax of 10¢ per drink, has been killed.

### **Maryland**

S.B. 232 seeks to increase tax rates for alcoholic beverages in Maryland from 9 cents to 54 cents per gallon for beer, from \$1.50 to \$4.50 per gallon for distilled spirits, from 40 cents to \$1.20 per gallon for wine.

### **New York**

New York Governor Elliott Spitzer has proposed, as part of his 2008-2009 budget, reclassifying certain malt beverages to enable them to be taxed at the “low liquor” rate rather than the beer rate. This reclassification is expected to result in a \$15 million revenue increase.

A Brooklyn assemblyman has proposed what he refers to as a “sin tax” of 25 cents on every alcoholic beverage sold in New York, with revenues funding alcohol and drug abuse prevention programs targeting underage drinkers.

### **South Dakota**

S.B. 61, which would add \$1.06 to the wholesale tax on a gallon of beer, \$2.56 cents more per gallon of wine, and an extra \$8.54 cents per gallon of liquor (about 10 cents per drink), has been killed in committee at the request of its supporters. Apparently realizing the votes were not there to pass the measure, it is now likely to appear as a ballot initiative in November.

### **Utah**

Legislation proposed in the Senate (S.B. 95) seeks to reduce the tax on liquor, wine and heavy beer produced by small breweries and distilleries. Passing the Senate Business and Labor Committee, the bill would reduce the mark-up on heavy beers, those with an alcohol content higher than 3.2 percent.

### **Wyoming**

Draft legislation would raise the current beer tax rate of 2 cents per gallon to 6.5 cents per gallon.

### **Trade Practice & Other:**

#### **Colorado**

Recently introduced, Senate Bill 82 would eliminate the prohibition against the retail sale, service, or distribution of beer, wine, and distilled spirits in sealed containers on Sundays, effective November 1, 2008.

#### **Delaware**

Senate Bill 195 would off-premise retailers to sell alcohol beverages on all election days (general, primary and special).

The resolution establishing a task force to study the feasibility of grocery store beer sales has been withdrawn from consideration.

#### **Kentucky**

Proposed legislation would allow those 18 years of age and older enlisted in the armed services to legally purchase and consume alcohol beverages.

#### **Idaho**

House Bill 348 seeks to eliminate the prohibition on the sale of alcohol at state liquor stores on Election Day.

### **Iowa**

Legislation has been introduced to require the posting of a notice regarding the effects of alcohol on pregnant women and fetuses in the premises of licensees.

### **Maryland**

Companion bills H.B. 339 and S.B. 9 would require the collection and recording of identifying information about the purchasers for all retail keg beer sales.

### **New Hampshire**

House Bill 1177 seeks to eliminate the prohibition on liquor and wine manufacturers, liquor and wine vendors, and liquor and wine representatives having an interest in business of a holder of an on-premises liquor license.

### **Oklahoma**

House Joint Resolution 1094 would put before the voters for approval, among other measures, a provision allowing package stores to sell refrigerated beer, wine and mixed beverage coolers.

### **South Carolina**

House Bill 4348, allowing manufacturers of alcohol beverages to own and operate more than one production facility and permits limited on-premise and off-premise tastings, has been introduced and referred to committee.

### **South Dakota**

H.B. 1210 prohibits recyclers, scrap metal dealers, or scrap yard operators from purchasing any metal beer keg, or identifiable pieces thereof, whether damaged or undamaged, except from the brewer or its 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.

### **Vermont**

After passing the House in 2007, H.B. 94 is now under consideration in the Senate. The bill seeks to raise the limit on the percentage of alcohol allowed in malt beverages from 8% to 16% and would permit these beers to be sold in typical retail channels and not exclusively through the state liquor outlets.

Senate Bill 324 proposes to permit beer tastings in the same way that wine tastings are currently permitted.

### **Virginia**

Legislation requiring the Alcoholic Beverage Control Board to complete an implementation study on how it will privatize government stores by December 31, 2008, has been introduced. H.B. 421 provides for the issuance of a "package store" license to

authorize the retail sale of alcoholic beverages for off-premises consumption and also requires the ABC Board to sell at auction all real estate used as ABC stores, and to terminate leased property upon which the ABC Board has operated a government store. The bill has a delayed effective date of January 1, 2009, to achieve full retail privatization of government stores.

House Bill 601 allows localities by ordinance to regulate or prohibit the sale, for off-premises consumption, of single units of alcoholic beverages from their original multi-unit packaging by the manufacturer.

H. B. 694 allows gourmet shop licensees to sell or give samples of wine or beer at tastings sponsored by the licensee for its customers for on-premises consumption. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

### **Washington**

Under the provisions of H.B. 2076, the Liquor Control Board is directed to establish a pilot project for beer and wine tasting in grocery stores. The pilot project is for 30 stores with at least six tastings (but no more than once a month) at each location between October 1, 2007 and September 30, 2008.

Introduced in mid-January, House Bill 2501 allows beer and/or wine specialty shops to sell malt liquor in kegs or other containers capable of holding less than 15.5 gallons of liquid.

## Government Affairs & Legal Update - March 2008

### A. FEDERAL / NATIONAL

Make Mine Decaf. A number of State Attorneys General are concerned enough about the marketing of caffeinated alcohol beverages that, according to *The Wall Street Journal*, they “have issued civil investigative demands for internal papers related to the alcohol energy drinks' marketing practices” from both Anheuser-Busch and Miller Brewing Co. Meanwhile, a group of 16 AG's has requested that the federal Tax and Trade Bureau take a closer look at Miller's Sparks products, claiming that the actual alcohol content is higher than labeled and the caffeine content more than allowable under TTB regulations.

### B. THE COURTS

As Expected: Costco Asks for Rehearing in Wake of January Ruling. Costco has petitioned the Ninth Circuit Court for a rehearing following the recent Appeals Court decision upholding seven of the nine Washington State provisions regarding the sale and distribution of beer and wine challenged by Costco's antitrust lawsuit.

Supreme Court: Federal Law Trumps State in Decision with Direct Shipping Implications. The highest court in the nation recently ruled a Maine statute requiring age verification on delivery of tobacco products invalid. Citing federal pre-emption of Maine's attempt to, in effect, regulate common carrier services which fall under federal jurisdiction, the ramifications to the many state laws requiring age verification for the receipt of direct shipped wine remain to be seen.

### C. THE STATES

#### **Distribution and Franchise:**

#### **Alabama**

Senate Bill 134 would authorize the direct sale of small farm wines to consumers. The bill would also authorize licensed wineries, including small farm wineries to conduct wine festivals and make direct sales to consumers at these festivals.

#### **Illinois**

Senate Bill 2754 amends the definition of "successor brewer" In the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand. The bill is moving quickly toward a floor vote in the Senate.

Legislation allowing certain winemakers to produce up to 100,000 gallons of wine annually and to self distribute up to 25,000 gallons, has been introduced (S.B. 2121).

### **Indiana**

House Bill 1118, passing both houses of the legislature, contains a provision which allows a small brewery to sell and deliver beer to a consumer and removes a provision that allows a large brewery to sell and deliver beer to a consumer. The legislation defines a small brewery as producing not more than 20,000 barrels a year.

### **Maryland**

Legislation requiring a successor beer manufacturer who terminates an agreement with a beer distributor to remunerate the beer distributor a sum equal to the fair market value calculated from the date of the termination for the sale of the beer and requiring a successor beer manufacturer to give notice to a surviving beer distributor before termination of specified agreements, has been introduced (H.B. 205 and S.B. 118).

Senate Bill 592 authorizes a holder of a Class 7 micro-brewery license to sell and deliver malt beverages to retail licensees, limiting the yearly sales to 5,000 barrels of malt beverages that are brewed and bottled at the license location.

### **New York**

Introduced in June, 2007, Assembly Bill 9055 and Senate Bill 6101 are once again under consideration. The legislation permits small brewers having five percent or less of a multi-brand beer wholesaler's annual business to terminate an agreement with such wholesaler and requires payment of fair compensation unless the termination is for good cause.

### **Oklahoma**

House Joint Resolution 1063 calls for a ballot initiative on a Constitutional amendment that would allow winemakers to: receive orders for wine to be delivered or shipped directly to consumers, sell wine directly to retail package stores and restaurants (pertains to both in-state and out-of-state vintners) and sell wine they produce to any (rather than every) wholesale distributor.

### **Virginia**

On a committee vote prior to session adjournment, Senate Bill 366 was carried over for consideration in the 2009 legislative session. The bill creates a new nonresident winery distributor license that authorizes the licensee to sell and deliver the wine produced by the licensee in closed containers, to persons licensed to sell the wine at retail for the purpose of resale, the ABC Board and persons in Virginia to whom alcoholic beverages may be lawfully sold. The bill defines "nonresident winery distributor" as any winery located outside the Commonwealth and licensed as such in the state where the winery is located and whose total wine distribution to all Virginia licensees does not exceed 3,000 cases in any calendar year. The bill also grants these same privileges to certain winery and farm winery licensees.

### **Wisconsin**

Under provisions of S.B. 485, wineries producing more than 25,000 gallons annually would no longer be able distribute their products directly to retailers, but would be required to use wholesalers to get their wines to market. The bill has passed both legislative chambers and is expected to be signed by the Governor.

### **Direct Shipping:**

#### **Maryland**

Legislation (House Bill 1260 and Senate Bill 616) establishing a direct wine shipper's license for persons in or outside of the state, has been introduced.

#### **Rhode Island**

Legislation to permit the direct shipping of wine to consumers has been introduced (S.B. 2125).

### **Taxation:**

#### **Arizona**

A potential ballot measure is being discussed that would ask voters to approve doubling the state taxes on liquor, wine and beer, with the resulting funds going to hospitals that serve children and the poor.

#### **Colorado**

House Bill 1341 refers to the voters a measure to authorize a 2% increase in the state sales and use tax on alcohol beverages and requires all of the net revenues from the tax increase to be deposited in the old age pension fund.

#### **Maine**

The president of the Maine Association of Substance Abuse Programs recently testified before legislators, suggesting that the state tax on alcoholic beverages be raised by 10 cents a drink to help fund substance abuse programs imperiled by the state's budget deficit. The proposed tax would apply to both on-premise and off-premise consumption.

#### **Maryland**

H.B. 904 seeks to increase the State tax rates for alcoholic beverages in Maryland from \$1.50 to \$3.50 per gallon for distilled spirits, from 40 cents to \$1.00 per gallon for wine, and from 9 cents to 25 cents per gallon for beer.

Increasing the State tax rates for alcoholic beverages sold in Maryland from \$1.50 to \$4.50 per gallon for distilled spirits, from 40 cents to \$1.20 per gallon for wine, and from 9 to 27 cents per gallon for beer, introduced legislation provides for the distribution of the additional revenue to a special fund to be used only for the purpose of providing additional funding for specified addiction treatment and prevention services (H.B. 1310 and S.B. 562).

Senate Bill 232 calls for increasing the State tax rates for alcoholic beverages in Maryland from \$1.50 to \$4.50 per gallon for distilled spirits, from 40 cents to \$1.20 per gallon for wine, and from 9 cents to 54 cents per gallon for beer (equivalent to just over 5 cents for each 12-ounce container of beer).

### **New Hampshire**

Legislation containing a proposed 1-cent wholesale tax on all beverage containers failed in a House floor vote (H.B. 503).

### **Utah**

Passing both the Senate and the House, S.B. 95 would reduce the mark-up on heavy beers, those with an alcohol content higher than 3.2 percent.

### **Virginia**

House Bill 1416, which sought to raise the excise tax on beer and wine coolers and the liter tax on wine, has died in committee.

## **Trade Practice & Other:**

### **Alabama**

Passing the House, H.B. 196 seeks to change the definition of beer to allow an alcohol by volume content of up to 13.9%.

S.B. 355, currently under House committee consideration, would provide for home production of beer, mead, cider, and wine for personal use.

### **Colorado**

Senate Bill 82, eliminating the prohibition against Sunday alcohol sales, passed the Senate in a 23-8 vote.

S.B. 149, allowing supermarkets to sell full strength beer and wine, has stalled in committee following testimony from liquor store owners, beer distributors and craft brewers.

### **Idaho**

Passing the House and under Senate consideration, House Bill 466 encourages retail establishments to post warning notices relating to birth defects caused by consumption of alcohol, spirits, wine or beer.

House Bill 348, seeking to eliminate the prohibition on the sale of alcohol at state liquor stores on Election Day, passed the House and has moved to the Senate.

### **Iowa**

H.B. 2357 provides that a native winery may be issued a class "C" beer permit to sell beer to consumers for off-premises consumption. Current law provides that only a grocery or pharmacy may be issued a class "C" beer permit.

### **Kansas**

H.B. 2817 would remove the requirement currently in the licensing statutes for in-state microbreweries (producing not more than 15,000 barrels annually) that not less than 50 percent of the agricultural products used in the manufacturing of domestic microbrewery beer be grown in Kansas.

### **Maryland**

H.B. 339 requires a person who sells beer in kegs at retail to write the identifying number of the driver's license, passport, or military identification card of the purchaser on the registration form that must be completed and signed before the keg is sold or otherwise transferred.

Companion bills H.B. 674 and S.B. 716 sought to establish a home brewing instructor's permit which would authorize a permit holder to teach a client methods of home brewing beer under specified circumstances. The House bill received an unfavorable committee report, while the Senate version has been withdrawn.

House Bill 703 authorizes the issuance of a special brewery promotional event permit to a holder of a class 5 Manufacturer's license allowing the holder to conduct on the brewery premises a promotional event at which the holder may provide samples of not more than 2 fluid ounces per brand to consumers and sell beer produced by the holder to persons who participate in the event. The beer at the event shall be sold by the glass and for consumption on the premises only. There is a limit of four permits in a calendar year.

### **Nebraska**

Legislative Bill 766 requires scrap yards to fingerprint people from whom they buy copper, aluminum, stainless steel and other metals.

### **New York**

The New York City Board of Health recently voted to require restaurant chains operating in New York City to prominently display calorie information on their menus and menu boards. The new regulation, which takes effect on March 31, 2008, applies to any New York City chain restaurant that has 15 or more outlets nationwide.

### **Oklahoma**

The state's Alcoholic Beverage Laws Enforcement Commission (ABLE) held a hearing regarding the role of beer distributors in providing quality control of strong beer after several distributors requested the Commission rescind a rule that allows brewers to determine which quality control procedures need to be in place for their particular products. A ruling is expected at the next Commission meeting.

### **Pennsylvania**

Senate Bill 1273 contains a provision to solicit recommendations concerning the privatization of the State liquor stores which currently sell wine and distilled spirits.

### **South Carolina**

Senate Bill 1073 seeks to allow military personnel under the age of 21 the ability to purchase malt or other fermented beverages.

### **South Dakota**

H.B. 1210, making it illegal for scrap-metal dealers and recyclers to buy beer kegs that are marked as the property of breweries or if the identifying marks are illegible, has been signed into law by the Governor.

### **Utah**

Passing the Senate and under House committee consideration, S.B. 211 would restrict the availability of flavored malt beverages to state liquor stores. Currently, consumers may buy these beverages in grocery and convenience stores.

H.B. 425, creating an exemption from licensure for a fermented beverage manufactured in an individual's personal residence, passed the Utah House, but did not receive Senate consideration before the end of the legislative session.

### **Vermont**

Legislation has been introduced creating a commission to study the implications of lowering the drinking age to 18 (H.B. 678).

### **Virginia**

Signed into law by the Governor, H. B. 694 allows gourmet shop licensees to sell or give samples of wine or beer at tastings sponsored by the licensee for its customers for on-premises consumption. Additionally, with the consent of the licensee, farm wineries, wineries, and breweries may participate in tastings held by licensees authorized to conduct tastings, including the pouring of samples to any person to whom alcoholic beverages may be lawfully sold.

### **Washington**

Allowing microbreweries to maintain off-premises warehouses for distribution, S.B. 6572 has passed both chambers of the legislature.

Under the provisions of S.B. 5751, the Liquor Control Board is directed to establish a pilot project for beer and wine tasting in grocery stores. The pilot project is for 30 stores with at least six tastings (but no more than once a month) at each location between October 1, 2007 and September 30, 2008.

Passing the House, H. B. 2501 allows beer and/or wine specialty shops to sell containers of malt liquor that hold four gallons or more and requires compliance with keg registration procedures.

Passing both House and Senate and on its way to the Governor, H.B. 2959 reduces the current distiller licensing fee of \$2,000 to \$100 for distillers that: 1) produce no more than 20,000 gallons of spirits; and 2) use Washington grown raw materials in at least half of their production. Distilleries paying the reduced licensing fee are called "craft distilleries," and may sell spirits of its own production for consumption off the premises (up to two liters per person per day) and provide one-half ounce samples of spirits, limited to two ounces per person per day.

S.B. 6770 was also on the fast track to the Governor's desk. Provisions include: domestic wineries and breweries are authorized to donate beer and wine to corporations or associations exempt from taxation under section 501(c)(6) of the Internal Revenue Code; a domestic brewery or microbrewery may hold up to two licenses for on premise or off premise retail facilities (with taverns included as facilities for which a domestic brewery or microbrewery may seek a retail license to operate on- or off-premise); starting June 30, 2008, a microbrewery may contract brew beer for another microbrewer.

### **West Virginia**

Passing the House and moving rapidly toward Senate passage, H.B. 4423 would ensure beer kegs are not considered scrap metal unless received directly from a beer manufacturer or an authorized representative.

House Bill 2934 has been introduced and seeks to add the following definition to the current definition of "non-intoxicating beer," thereby raising the allowable abv: "Craft beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute and containing not less than six percent and not more than fifteen percent alcohol by volume. All beverages within the definition of craft beer shall bear a label clearly indicating the alcohol content of the beverage.

### **Wisconsin**

A.B. 774 and S.B. 469 create brew-on-premise permits for beer and wine.

# Government Affairs & Legal Update - April 2008

## A. THE COURTS

Pennsylvania Showdown: Beer Distributors vs. Supermarkets. Following a Pennsylvania Liquor Control Board decision to allow Wegman's Food Markets to hold six liquor licenses, allowing them to sell beer in their Market Cafes, the Malt Beverage Distributors Association of Pennsylvania is seeking a reversal of that decision in Commonwealth Court.

Costco Denied Rehearing in Washington State Decision. The U.S. Court of Appeals for the Ninth Circuit has declined to rehear the recent Appeals Court decision upholding seven of the nine Washington State provisions regarding the sale and distribution of beer and wine challenged by Costco's antitrust lawsuit.

## B. THE STATES

### Distribution and Franchise:

#### **Illinois**

Senate Bill 2754 has passed out of committee and awaits a full Senate floor vote. The legislation amends the definition of "successor brewer" in the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

#### **Indiana**

House Bill 1118, signed into law in mid-March, contains a provision which allows a small brewery to sell and deliver beer to a consumer and removes a provision that allows a large brewery to sell and deliver beer to a consumer. The legislation defines a small brewery as producing not more than 20,000 barrels a year.

#### **Maryland**

Passing their respective chambers, companion legislation H.B. 205 and S.B. 118 require a successor beer manufacturer who terminates an agreement with a beer distributor to remunerate the beer distributor a sum equal to the fair market value calculated from the date of the termination for the sale of the beer and requiring a successor beer manufacturer to give notice to a surviving beer distributor before termination of specified agreements.

Companion bills S. B. 592 and H.B. 136, authorizing a holder of a Class 7 micro-brewery license to sell and deliver malt beverages to retail licensees, limiting the yearly sales to

5,000 barrels of malt beverages that are brewed and bottled at the license location, have been withdrawn from consideration.

### **Massachusetts**

Under study by the legislature, S.B. 199 seeks to obligate those acquiring the rights to sell, ship or distribute brands to the same rights, privileges and duties of the predecessor from whom those brands were acquired.

### **New York**

In an effort to prohibit unfair competition and deceptive practices between franchised wholesalers and non franchised wholesalers and foster lower prices to consumers, Assembly Bill 10216 limits the price charged for beer to retail beer licensees in relation to the price charged non-contracted beer wholesalers.

### **South Carolina**

House Bill 4782 seeks to repeal the provisions relating to territorial agreements governing the distribution of fermented malt beverages by wholesalers.

### **Wisconsin**

Signed by the Governor, S.B. 485 requires wineries producing more than 25,000 gallons annually to use wholesalers to get their wines to market and can no longer distribute their products directly to retailers. The bill also contains provisions for limited direct shipping to consumers.

### **Direct Shipping:**

#### **Florida**

Four distinct pieces of legislation (H.B. 693, H.B. 1293, S.B. 1096, S.B. 1736, and S.B. 2608) providing for the direct shipment of wine by licensed winery shippers into or within Florida for personal consumption are working their way through House and Senate committees.

#### **Maryland**

Legislation (House Bill 1260 and Senate Bill 616) establishing a direct wine shipper's license for persons in or outside of the state, has failed to pass committee.

#### **Oklahoma**

Senate Joint Resolution 29 calls for a ballot initiative for a Constitutional amendment to allow the direct shipment of wine. The resolution is under consideration in the House following Senate passage.

### **Taxation:**

#### **Idaho**

Although undrafted, a legislative proposal is being discussed which would increase the excise tax on beer and make wholesale price rather than volume the determinant of the rate.

### **Maryland**

The Senate has approved legislation (S. B.745) that would treat hard cider and flavored malt beverages like beer under the state tax code.

### **Utah**

S.B. 95 would reduce the mark-up on heavy beers, those with an alcohol content higher than 3.2 percent. Signed into law by the Governor.

### **Trade Practice & Other:**

#### **Colorado**

Senate Bill 82, eliminating the prohibition against Sunday alcohol sales, has passed both the Senate and the House.

#### **Connecticut**

H.B. 5757, allowing beer manufacturers and suppliers to offer price promotions to wholesalers, who would then be required to reduce their prices to retailers, has stalled in a House committee.

#### **Georgia**

Favorably reported from House committee, H.B. 516 defines a flavored malt beverage as “any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products, in water containing not more than 6 percent alcohol by volume to which other flavors and non-beverage alcohol ingredients are added so long as no more than 49 percent of the overall alcohol content of the alcoholic beverage is derived from the addition of flavors and non-beverage alcohol ingredients.” Alcoholic beverages meeting this definition but containing more than 6 percent alcohol by volume or in which more than 49 percent of the overall alcohol content is derived from the addition of flavors and non-beverage alcohol ingredients shall be deemed distilled spirits.

#### **Indiana**

Citing economic development and tourism promotion, House Resolution 119 urges a legislative study committee to look at the benefits of the Sunday sale of microbrewery products for carry-out at Indiana microbreweries.

#### **Maryland**

H.B. 339, requiring a person who sells beer in kegs at retail to write the identifying number of the driver's license, passport, or military identification card of the purchaser on the registration form that must be completed and signed before the keg is sold or otherwise transferred, has been withdrawn.

Passing the House and moving to the Senate, H. B. 703 authorizes the issuance of a special brewery promotional event permit to a holder of a class 5 Manufacturer's license allowing the holder to conduct on the brewery premises a promotional event at which the holder may provide samples of not more than 2 fluid ounces per brand to consumers and sell beer produced by the holder to persons who participate in the event. The beer at the event shall be sold by the glass and for consumption on the premises only. There is a limit of four permits in a calendar year.

### **Massachusetts**

Legislation allowing liquor stores within ten miles of the New Hampshire border to open at 9:00 AM on Sunday mornings, is under study (H.B. 272).

### **Minnesota**

House Bill 3682 authorizes off-premise intoxicating liquor sales on Sundays.

### **New Hampshire**

H.B. 1177 eliminates the prohibition on liquor and wine manufacturers, liquor and wine vendors, and liquor and wine representatives having an interest in business of a holder of an on-premises liquor license.

### **New Jersey**

Under current law, no person or corporate entity can hold more than two retail licenses to sell alcoholic beverages. Senate Bill 1608 would allow licensees to hold more than two retail distribution licenses when the license or licenses are used in connection with the operation of a supermarket. In addition, supermarkets would be limited to selling only wine and beer, but those supermarkets currently selling liquor would continue to do so.

### **New York**

Companion legislation A.B. 10314 and S.B. 7178 would give the State Liquor Authority, in addition to its existing function of regulating and the manufacture and sale of alcoholic beverages, the tools that they need to consider the economic development and job opportunities that can be created by promoting the prudent expansion of the manufacture of beer, wines, and liquors.

### **Ohio**

Senate Bill 171, requiring that scrap metal dealers record identifying information of sellers with respect to the sale of beer kegs, has passed the Senate and moved to the House.

### **Oklahoma**

The Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission voted by a margin of 5-1 to retain beer quality rules applying to strong beer. Several beer wholesalers had requested the Commission rescind a rule that allows brewers to determine which quality control procedures (e.g. stock rotation, refrigeration, tap line cleaning) need to be in place for their particular products.

Signed by the Governor, S.B. 41 provides for a charitable beer event license.

### **South Carolina**

House Bill 4348 allows the holder of a valid manufacturer's license to conduct limited on-premise and off-premise tastings. The bill has passed the House.

### **South Dakota**

The Governor's veto of H.B. 1269, allowing a beer and wine combination license, has been overridden by the legislature.

### **Vermont**

Signed into law by the Governor, H.B. 93 allows a manufacturer of malt beverages to have a financial interest in the business of certain retail licensee (and certain retail licensee to have a financial interest in a manufacturer of malt beverages) provided the retail licensee does not purchase, possess, or sell the malt beverages produced by a manufacturer with which there is any financial interest.

### **Washington**

S.B. 6572 allows microbreweries to maintain off-premises warehouses for distribution. The bill has been signed into law.

Under the provisions of S.B. 5751, which the Governor has signed into law, the Liquor Control Board is directed to establish a pilot project for beer and wine tasting in grocery stores.

With the Governor's nod, craft distilleries have become legal in Washington. Under provisions of H.B. 2959, craft distilleries are defined as those producing no more than 20,000 gallons of spirits and using Washington-grown raw materials in at least half of their production. They may also sell spirits of their own production for consumption off the premises (up to two liters per person per day) and provide one-half ounce samples of spirits, limited to two ounces per person per day.

S.B. 6770 has become law with the Governor's signature. Provisions include: domestic wineries and breweries are authorized to donate beer and wine to corporations or associations exempt from taxation under section 501(c)(6) of the Internal Revenue Code; a domestic brewery or microbrewery may hold up to two licenses for on-premise or off-premise retail facilities (with taverns included as facilities for which a domestic brewery or microbrewery may seek a retail license to operate on- or off-premise); starting June 30, 2008, a microbrewery may contract brew beer for another microbrewer.

### **West Virginia**

H.B. 4423 would ensure beer kegs are not considered scrap metal unless received directly from a beer manufacturer or an authorized representative. The bill was signed into law in mid-March.

Senate Bill 535 would establish the state's first mandatory ignition interlock program. Those convicted of DUI offenses would need to test their blood-alcohol content prior to operating a motor vehicle during a court-ordered period of time.

# Government Affairs & Legal Update – May 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

### New Federal Food Safety Proposal Could Mean Big Bucks to Small Brewers.

Legislation has been introduced in the U.S. House of Representatives (H.R.5904) that would establish new procedures and requirements to improve the safety of domestic and imported food through improved technology and enhanced capacity to identify and address food safety issues on a scientific basis. Naturally, such an initiative requires funding and the chairman of the House Committee on Energy and Commerce, to which it has been referred, has suggested a \$2,000 annual fee on all food processing facilities. This could potentially cost small brewers a collective \$3 million annually.

WHO's Perspective on Alcohol. The World Health Organization recently released a draft resolution on global alcohol harm reduction. One of the key components in the strategy to reduce the harmful use of alcohol is through increased taxation and pricing.

## B. THE COURTS

Big Apple Bites. Following a federal judge's ruling denying a legal challenge brought by the New York State Restaurant Association, the New York City Board of Health requirement that restaurant chains operating in New York City must prominently display calorie information on their menus and menu boards, will go into effect. The new regulation, which won't be enforced until June 4, 2008, applies to any New York City chain restaurant that has 15 or more outlets nationwide.

Volume Caps A-OK in AZ. A U.S. District Court recently upheld an Arizona direct shipping law that ties production directly to the ability to ship direct to consumers. In responding to a suit alleging discrimination against out-of-state wineries, the judge ruled that the law, which allows any winery producing less than 20,000 gallons to direct ship to Arizona residents, does not unfairly advantage in-state wineries simply because there are more out-of-state wineries over the limit than there are in-state wineries.

## C. THE STATES

### Distribution and Franchise:

#### **Illinois**

Senate Bill 2754 has passed the Senate and moved to the House. The legislation amends the definition of "successor brewer" in the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other

arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

### **Maryland**

Companion legislation H.B. 205 and S.B. 118, requiring a successor beer manufacturer who terminates an agreement with a beer distributor to remunerate the beer distributor a sum equal to the fair market value calculated from the date of the termination for the sale of the beer and requiring a successor beer manufacturer to give notice to a surviving beer distributor before termination of specified agreements, have passed both chambers and await action by the Governor.

### **New York**

Assembly Bill 9055 permits small brewers having five percent or less of a multi-brand beer wholesaler's annual business to terminate an agreement with such wholesaler and requires payment of fair compensation unless the termination is for good cause. The bill has passed the Assembly and is under Senate consideration.

### **Direct Shipping:**

#### **Georgia**

Legislation providing for a special order shipping license, which allows the holder to ship up to 12 cases of wine annually to an individual consumer, has been sent to the Governor for action.

#### **Oklahoma**

Senate Joint Resolution 29 calls for a ballot initiative for a Constitutional amendment to allow the direct shipment of wine. The amended resolution has passed the House and has been returned to the Senate for concurrence.

### **Taxation:**

#### **California**

Legislation has been proposed to raise the current beer tax by about 1,400 %. The current tax is 2 cents per 12 ounces and under this proposal that would jump to 30 cents per can or bottle (or \$1.80 per six-pack). The tax would raise approximately \$2 billion annually to fund health care services, crime prevention and programs to prevent underage drinking and addiction.

#### **Colorado**

House Bill 1341 authorizes a 2% increase in the state sales and use tax on alcohol beverages to fund a children's health plan. The bill is stalled in committee.

#### **Maine**

The legislature and Governor have teamed up to raise beer, wine and soda taxes to fund a state health insurance program. The beer excise tax will increase 12 cents per gallon, while wine will go up 30 cents per gallon. A ballot initiative to repeal the taxes is already actively gaining support.

### **Maryland**

The Governor has postponed signing legislation that would continue treating flavored malt beverages like beer under the state tax code.

### **South Dakota**

A ballot initiative seeking to impose a dime a drink tax on beer, wine and liquor has failed due an inability to attain the required number of signatures before the filing deadline.

### **Trade Practice & Other:**

#### **Alabama**

S.B. 355, legalizing homebrewing of beer, wine, mead and cider for personal consumption, passed out of Senate committee but has not been taken up by the full Senate.

House Bill 196 seeks to change the definition of beer to allow an alcohol by volume content of up to 13.9%. The bill is pending action in the Senate.

#### **California**

Moving through Senate committees, S.B. 1246 allows a beer manufacturer or wholesaler to sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises at no less than cost.

#### **Colorado**

Senate Bill 82, eliminating the prohibition against Sunday alcohol sales, has been signed into law by the Governor.

#### **Maryland**

Signed into law by the Governor, H.B. 703 authorizes the issuance of a special brewery promotional event permit to a holder of a class 5 Manufacturer's license allowing the holder to conduct on the brewery premises a promotional event at which the holder may provide samples of not more than 2 fluid ounces per brand to consumers and sell beer produced by the holder to persons who participate in the event. The beer at the event shall be sold by the glass and for consumption on the premises only. There is a limit of four permits in a calendar year.

#### **Nebraska**

L.R. 389 proposes to study and develop a plan for implementation of mandatory alcoholic liquor server training for employees of retail liquor licensees in Nebraska.

**New York**

Under active Senate consideration, S.B. 7178 would give the State Liquor Authority, in addition to its existing function of regulating and the manufacture and sale of alcoholic beverages, the tools that they need to consider the economic development and job opportunities that can be created by promoting the prudent expansion of the manufacture of beer, wines, and liquors.

**Tennessee**

Legislators have voted to extend the universal carding requirement for beer purchases beyond the July 1 expiration date, although penalties applied to clerks failing to check the ID of someone who reasonably appears to be over 50 years of age have been removed.

**Vermont**

Senate Bill 324, allowing malt beverage tastings in the same manner as wine tastings are permitted, has passed both chambers of the legislature.

After passing both the House and Senate, H.B. 94's last stop is the Governor's desk. The bill seeks to raise the limit on the percentage of alcohol allowed in malt beverages from 8% to 16% and would permit these beers to be sold in typical retail channels and not exclusively through the state liquor outlets.

**Virginia**

Approved by the Governor, House Bill 908 allows state Alcoholic Beverage Control stores to be open on Sunday in any city with a population of 100,000 or more.

**West Virginia**

Signed into law by the Governor, Senate Bill 535 establishes the state's first mandatory ignition interlock program. Those convicted of aggravated DUI offenses would need to test their blood-alcohol content prior to operating a motor vehicle during a court-ordered period of time.

**Wisconsin**

A.B. 774 and S.B. 469, creating brew-on-premise permits for beer and wine, have both failed to pass their respective chambers.

Legislation creating an exception to current law to allow a manufacturer or rectifier to sell, or provide free taste samples of, an intoxicating liquor that is manufactured or rectified on the premises directly to consumers for consumption on- or off-premise, died in the Assembly (A.B. 129).

# Government Affairs & Legal Update - June 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

Sparks Debate Snuffed. In February a group of 16 state Attorneys General requested that the federal Tax and Trade Bureau take a closer look at Miller's Sparks products, claiming that the actual caffeine content was more than the allowable amount under TTB regulations. TTB investigated and found that caffeine levels were significantly lower than claimed, coming in substantially below several non-alcohol caffeinated products.

Special Occupational Tax Repeal Permanent: July 1, 2008 marks the date of permanent repeal of the special occupational tax on a variety of alcohol-related occupations, including alcohol beverage producers. Recordkeeping and registration requirements, however, remain in effect. For more information visit [http://ttb.gov/tax\\_audit/repeal-sot.shtml](http://ttb.gov/tax_audit/repeal-sot.shtml)

TTB Hosting Summer COLA Online Workshops. Charlottesville, VA (July) and Boston, MA (August) will be the sites for two day-long sessions on federal label approvals. To learn more and to register, go to [http://www.ttb.gov/labeling/cola\\_online\\_workshops.shtml](http://www.ttb.gov/labeling/cola_online_workshops.shtml)

## B. THE STATES

### Distribution and Franchise:

#### **Georgia**

Signed into law, H.B. 393 allows farm wineries to engage in retail and wholesale sales and limited direct shipment of wine.

#### **Illinois**

Passing both chambers of the legislature, Senate Bill 2754 amends the definition of "successor brewer" in the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

#### **Maryland**

Signed into law by the Governor, H.B. 205 requires a successor beer manufacturer who terminates an agreement with a beer distributor to remunerate the beer distributor a sum equal to the fair market value calculated from the date of the termination for the sale of the beer and requires a successor beer manufacturer to give notice to a surviving beer distributor before termination of specified agreements.

#### **Massachusetts**

Senate Bill 199 requires any manufacturer, winegrower, farmer-brewer, importer or wholesaler which obtains or acquires in any manner the right to sell, ship or distribute any such brand item

to stand in the place of, and be subject to all of the rights, privileges, duties and obligations of its predecessors from whom such brands items were obtained or acquired.

### **Oklahoma**

S.B. 995, signed by the Governor, creates the ability for wineries producing no more than 10,000 gallons annually to self distribute its products to licensed retail package stores and restaurants, but precludes the simultaneous use of a wholesaler.

## **Direct Shipping:**

### **Florida**

Two House bills (693 and 1293) and two Senate bills (1096 and 2608) dealing with the direct shipment of wine have failed to pass and have died for the current session.

### **Georgia**

Legislation (H.B. 393) providing for a special order shipping license, which allows the holder to ship up to 12 cases of wine annually to an individual consumer, has been signed by the Governor.

### **Illinois**

Illinois Governor Rod Blagojevich has signed legislation allowing direct-to-consumer wine shipments from both out-of-state and in-state wineries. Effective June 1, properly licensed wineries may ship up to 12 cases of wine annually to adult residents. Additionally, both in-state and out-of-state wineries producing under 25,000 gallons per year may self-distribute up to 5,000 gallons annually to Illinois retailers.

### **New Jersey**

Legislation allowing the direct shipping of wine to consumers has been introduced (A.B. 2656 and S.B. 1810).

### **Oklahoma**

Senate Joint Resolution 29 calls for a ballot initiative for a Constitutional amendment to allow the direct shipment of wine. The amended resolution has passed the House and Senate.

## **Taxation:**

### **Maine**

Petitions are now circulating to repeal recently passed increases to the taxes on beer, wine and soft drinks. Supporters of repeal must submit more than 55,000 valid signatures by July 14 in order to stop the new taxes from taking effect.

### **Maryland**

Legislation allowing flavored malt beverages to continue being taxed as beer (9 cents/gallon) rather than distilled spirits (\$1.50/gallon) will become effective without the Governor's

signature. Although he declined to veto the bill, the Governor expressed his belief that the legislature needs to revisit the issue next session.

### **North Carolina**

In his budget proposal, Governor Mike Easley seeks to raise the tax on beer and wine to fund mental health services. The proposal would raise the tax on beer by about 43 cents per gallon.

### **Trade Practice & Other:**

#### **California**

A.B. 2294 would allow on-premise retailers to display alcoholic beverage ads on dedicated video screens, thereby requiring an exception from the California tied-house law. The bill continues under committee consideration.

Assembly Bill 3071 extends an existing tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturers so that manufacturers may purchase advertising from on-sale retail licensees in order to promote "safe ride home programs" at certain stadiums and arenas. The bill has passed the Assembly and is under Senate consideration.

Signed into law by the Governor, S.B. 607 authorizes a person to manufacture wine for personal or family use in an amount not to exceed 100 or 200 gallons per household per calendar year without the need for a license or permit. This bill also allows a person to offer their wine for tastings, or judgments at exhibitions or competitions.

A.B. 1245 allows a beer manufacturer to furnish, give, rent, loan, or sell advertising specialties to a retailer, provided those items bear conspicuous advertising required of a sign and the total value of all retailer advertising specialties furnished by a beer manufacturer, directly or indirectly, to a retailer do not exceed fifty dollars (\$50) per brand in any one calendar year per retail premises. Additionally, there is no dollar limit for items of less than \$5.00 per unit cost. *The California Small Brewers Association is opposed to this legislation.*

Passing the Senate, S.B. 1246 allows a beer manufacturer or wholesaler to sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises at no less than cost.

#### **District of Columbia**

City Council is exploring a city-wide ban on the sale of off-premise single servings of beer and malt liquor. Such bans already exist in several DC wards.

#### **Kansas**

Among several provisions, H.B. 2908 removes the requirement currently in the licensing statutes for in-state microbreweries (producing not more than 15,000 barrels annually) that not less than 50 percent of the agricultural products used in the manufacturing of domestic microbrewery beer be grown in Kansas. The bill has been signed into law.

### **Minnesota**

Signed by the Governor, Senate Bill 3455 prohibits scrap metal dealers from purchasing or receiving refillable metal beer kegs from anyone except the manufacturer of the keg, the brewer of the beer or an authorized representative of the manufacturer or brewer.

### **Missouri**

With the signing of S.B. 1034 into law, scrap metal dealers are prohibited from knowingly purchasing or possessing a whole or partial metal beer keg on premises used by the dealer to alter scrap metal, unless the keg is purchased from a brewer or brewer's representative.

### **New York**

Assembly Bill 5973 adds fermented agricultural products to the definition of farm and food products eligible for agriculture direct marketing assistance programs operated by the NYS Department of Agriculture and Markets. The legislation has passed both chambers of the legislature.

Legislation has been introduced (A.B. 10415) authorizing the operation of home wine makers centers as food processing establishments under the jurisdiction of the department of agriculture and markets. Such centers are places where individuals pay a fee to use space and equipment for the purpose of making wine for personal household use and not for resale. Under provisions of the bill, wineries, farm wineries and micro-wineries are authorized to operate such a business.

S.B. 7145 allows wholesalers to sell cider to licensed beer, wine and liquor retailers. Passing the Senate, the bill is now under Assembly consideration.

Continuing to advance in the Senate, S.B. 7178 would give the State Liquor Authority, in addition to its existing function of regulating and the manufacture and sale of alcoholic beverages, the tools that they need to consider the economic development and job opportunities that can be created by promoting the prudent expansion of the manufacture of beer, wines, and liquors.

### **Oklahoma**

Under the provisions of S.B. 1453 junk/salvage dealers are prohibited from buying, among other items, metal beer kegs that are clearly marked as being the property of the beer manufacturer unless proof of ownership is provided at the time of sale. The Governor has signed the bill into law.

### **South Carolina**

Legislation providing for an exception to the Sunday prohibition on the sales of alcohol beverages for wine harvested, processed, fermented, bottled and sold at the same contiguous location, has been signed by the Governor (S.B. 1048).

### **Utah**

Citing the benefits to tourism, Utah's Governor has indicated he would like to abolish the private club system where patrons must pay a fee before they can be served an alcoholic beverage.

**Vermont**

Signed by the Governor, H.B. 94 raises the limit on the percentage of alcohol allowed in malt beverages from 8% to 16% and permits these beers to be sold in typical retail channels rather than exclusively through the state liquor outlets.

Senate Bill 324, allowing malt beverage tastings in the same manner as wine tastings are permitted, has also been approved by the Governor.

# Government Affairs & Legal Update - July 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

FTC Affirms Industry Advertising Standard. Following a lengthy study, the Federal Trade Commission has decided that the alcohol beverage industry's self-imposed standard that requires audiences for ad placements be made up of at least 70% adult viewers is an acceptable benchmark.

A-B Buckles Under AG Pressure. Following a request by a group of 16 state Attorneys General that the federal Tax and Trade Bureau investigate ingredient and marketing claims associated with caffeinated malt beverages produced by several big brewers, A-B agreed to a reformulation of its products to meet concerns with alcohol content and caffeine levels.

TTB Hosting COLA Online Workshop in August. Boston, Massachusetts will be the site for this day-long session on federal label approvals. To learn more and to register, go to [http://www.ttb.gov/labeling/cola\\_online\\_workshops.shtml](http://www.ttb.gov/labeling/cola_online_workshops.shtml)

## B. THE COURTS

Costco Quits. In a letter dated June 10, Costco's legal counsel notified the Washington State Attorney General's office that they would not seek a hearing before the Supreme Court of the United States. This follows the decision of the U.S. Court of Appeals for the Ninth Circuit not to rehear an Appeals Court ruling upholding seven of the nine Washington State provisions governing the sale and distribution of beer and wine challenged by Costco's original antitrust lawsuit.

## C. THE STATES

### Distribution and Franchise:

#### **Illinois**

Awaiting action by the Governor, Senate Bill 2754 amends the definition of "successor brewer" in the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

#### **New York**

Passing both the Assembly and Senate, A.B. 9055 to allow small brewers a degree of exemption under current franchise law. Under provisions of this legislation, brewers who produce less than 300k barrels a year and whose sales to a particular distributor are less than 3% of that

distributor's sales volume is allowed to “terminate an agreement with any beer wholesaler without having good cause for such termination....provided that, prior to the effective date of the termination, the brewer pays the beer wholesaler the fair market value of the distribution rights which will be lost or diminished by reason of the termination.” The bill awaits the governor's signature.

## **Taxation:**

### **California**

With the approval of the state’s Office of Administrative Law, flavored malt beverages have been reclassified and can now be taxed as distilled spirits - that’s a 1,650% increase from the 20 cents per gallon malt beverage rate to the \$3.30 per gallon spirits rate. A court challenge of the ruling has already been filed by the Flavored Malt Beverage Coalition, an industry group of suppliers, and Diageo.

Of special note for brewers: the ruling carries a presumption that, effective October 1, any alcohol beverage sold in the state (with the exception of wine) is presumed to be a distilled spirit unless the manufacturer rebuts the presumption that it contains more than 0.5% ABV contributed by flavors or ingredients containing alcohol obtained from the distillation of fermented agricultural products. Manufacturers may rebut this presumption before the effective date, however at this time the required form is not yet available. For more information visit the California Board of Equalization flavored malt beverages web page <http://www.boe.ca.gov/sptaxprog/alcoholicbeverage.htm> and particularly the Special Notice dealing with the distilled spirits presumption <http://www.boe.ca.gov/sptaxprog/pdf/1195.pdf>

### **Delaware**

A proposal to increase alcohol excise taxes by almost 50% was defeated in the Senate, largely due to the work of a coalition of small and large brewers as well as Delaware beer activists of the Support Your Local Brewery network.

## **Trade Practice & Other:**

### **California**

Assembly Bill 3071 extends an existing tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturers so that manufacturers may purchase advertising from on-sale retail licensees in order to promote "safe ride home programs" at certain stadiums and arenas. The bill has passed the Assembly and is under Senate consideration.

A.B. 2426 establishes a new tied-house exemption in the Alcoholic Beverage Control Act (ABC) that authorizes a person who operates both a winery and a distillery in another state to obtain a license to operate a brewpub-restaurant in California. The legislation continues to move through the Senate.

Having passed the Assembly in January and now having been sent to the Senate floor for a vote, A.B. 1245 modifies an existing provision of the Alcoholic Beverage Control Act to allow beer manufacturers to give adult consumers promotional advertising items valued up to five dollars. The legislation provides a "phase-in" schedule for bringing the amount up to five dollars over a three year period *The California Small Brewers Association is opposed to this legislation.*

A.B. 2293 adds a new "tied-house" restriction to the Alcoholic Beverage Control (ABC) Act that permits distilled spirits manufacturers and winegrowers to provide their product offerings directly to consumers (for free, if they so choose) during invitation-only events on premises for which there is a caterer's permit. The bill has passed the Assembly and is under Senate committee consideration.

### **Illinois**

Passing both legislative chambers and awaiting gubernatorial action, House Bill 4668 provides that a recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer or the manufacturer's authorized representative.

### **Michigan**

Companion bills H.B. 6187 and S.B. 1351, to allow a not-for-profit organization that is made up primarily of micro-brewers and brewpubs to purchase beer directly from brewpubs (Class C Liquor Licenses) for the purposes of conducting up to 12 licensed events a year (beer festivals), have passed their respective chambers.

### **New York**

A.B. 10116, permitting persons licensed to sell wine at retail for consumption on the premises to sell certain low alcohol beverages that contain no more than twenty-four % ABV, and that are produced from agricultural products, has passed the Assembly.

Legislation authorizing the sale of wine and beer in movie theaters (A.B. 10826) is under consideration in an Assembly committee.

# Government Affairs & Legal Update - August 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

The Nuances of Beer. Recently-issued Tax and Trade Bureau (TTB) Ruling 2008-3 addresses federal agency jurisdictional issues and the classification of “beer” and “malt beverages.” The ruling makes clear that a product made without malted barley and/or hops remains “beer” if it contains more than 0.5% alcohol by volume. Such products would be subject to the excise tax provisions on beer contained in the Internal Revenue Code, but would not fall within the definition of a “malt beverage” and therefore would not be regulated by TTB under the agency's Federal Alcohol Administration Act authority. Additionally, such products would not be subject to TTB labeling rules, the COLA requirement, or TTB's trade practice authority. Instead, such products would fall within the Food & Drug Administration's labeling authority, and would not be subject to any federal tied house or similar restrictions.

The full ruling may be accessed at <http://www.ttb.gov/rulings/2008-3.pdf>

Non-Compliant Flavored Malt Beverages. TTB has also issued TTB Industry Circular 2008-3, outlining the agency's policies concerning flavored malt beverages found to violate the published formulation rules.

The circular may be accessed at [http://www.ttb.gov/industry\\_circulars/archives/2008/ic2008\\_03.html](http://www.ttb.gov/industry_circulars/archives/2008/ic2008_03.html)

## B. THE STATES

### Taxation:

#### **California**

As included in the July update, the state of California has approved a regulation that assumes all alcoholic beverage products (except wine) are distilled spirits, and hence will be taxed as such. Traditional beer products will be liable for the \$3.30/gallon distilled spirits taxation rate effective October 1, 2008 unless that presumption is rebutted by completing and signing a form provided by the State of California affirming that the beer “contains less than 0.5 percent alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products...”.

To rebut the presumption that particular beers are distilled spirits for taxation purposes, brewers need to access California Board of Equalization form BOE-505 ALCOHOLIC BEVERAGE TAX REPORT FOR REBUTTING REGULATION 2559 PRESUMPTION, available at [www.boe.ca.gov/sptaxprog/alcoholicbeverage.htm](http://www.boe.ca.gov/sptaxprog/alcoholicbeverage.htm) Full background material on the issue may also be accessed through a variety of links at this site, particularly the Special Notice dealing with the distilled spirits presumption <http://www.boe.ca.gov/sptaxprog/pdf/1195.pdf>

## **Maine**

More than 90,000 signatures have been submitted to the Secretary of State in the effort to repeal recently passed increases to the taxes on beer, wine and soft drinks. Supporters of repeal claim that 80% of those signatures have been verified, ensuring that the issue appears on the next ballot for a statewide vote.

## **Trade Practice & Other:**

### **California**

Assembly Bill 3071 extends an existing tied-house exception pertaining to the general prohibition against advertising arrangements between retail, wholesale, and manufacturers so that manufacturers may purchase advertising from on-sale retail licensees in order to promote "safe ride home programs" at certain stadiums and arenas. Additionally, the bill creates a new exception to the general prohibition against the consumption of alcoholic beverages on publicly owned school property by allowing alcoholic beverages to be possessed, sold and consumed in connection with "special events" (including festivals) held at the facilities of a public community college in Los Angeles County. The bill continues under Senate consideration after having passed the Assembly.

### **Delaware**

H.B. 517, seeking to change the license fees of those manufacturing and selling alcohol beverages (including beer and bottling of beer), has failed to pass the legislature.

Legislation allowing the sale of alcoholic liquors in establishments licensed for off-premise consumption sales on all election days (S.B. 195) has been signed into law by the Governor.

### **Michigan**

Signed into law and working in tandem, S.B. 1351 and 1352 amend the Michigan Liquor Control Code to allow the issuance of a license for a beer festival, and allow a brewpub to sell beer to the holder of such a license. "Beer festival" is defined as an event at which the various types and kinds of beer and the production of that beer are showcased to the general public and at which the general public can purchase and sample that beer for consumption on the licensed premises.

House Resolution 401, designating July 2008 as Michigan Craft Beer Month and commending the Michigan craft brewers, has been adopted by that chamber.

### **New Hampshire**

H. B. 1346 provides that no licensed junk or scrap metal dealer shall purchase any metal malt beverage keg or pieces of such metal keg, unless the seller is the brewer whose name or marking appears on the keg. If the brewer's name or marking has been removed or obliterated, the licensee shall not purchase the keg. The legislation has been signed into law.

### **New York**

Awaiting the Governor's signature, S.B. 6262 permits a manufacturer or wholesaler of alcoholic beverages to participate in or support bonafide retailer association activities.

**Montana**

A rule proposed by the state Department of Revenue seeking to change existing brewery tap room operating hours has been withdrawn. Currently, tap rooms must cease serving at 8:00 PM, but patrons may remain to finish their last beer. The proposed rule would have tightened that restriction to make it illegal to consume or possess a beer after 8:00 PM. The Montana State Brewers Association, composed of the state's small brewers, successfully negotiated the rule's retraction.

**Nebraska**

The Nebraska Liquor Control Commission is considering a proposal to classify all alcohol beverages according to federal standards unless those classifications conflict with Nebraska law. The issue arose following a suit brought by the anti-alcohol group Project Extra Mile in which the state's classification of flavored malt beverages as beer was challenged.

**Utah**

The Utah Alcoholic Beverage Control Commission voted to forward draft legislation to the legislature which would ultimately eliminate private club membership fees for those wishing to buy alcoholic beverages.

# Government Affairs & Legal Update - September 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

Under 21 Picks Up Steam. The recently launched Amethyst Initiative, encouraging informed public debate on the 21 year-old drinking age issue, is composed of about 100 American college and university presidents who believe that current public policies regarding this issue are not in line with reality. These leaders believe that the problem of irresponsible drinking by young people continues despite the minimum legal drinking age of 21, engendering a culture of dangerous binge drinking on many campuses. They further call upon elected officials to “weigh all the consequences of current alcohol policies and to invite new ideas on how best to prepare young adults to make responsible decisions about alcohol use.”

## B. THE COURTS

About Face on Direct Wine Shipping Requirements. A U.S. Court of Appeals decision has reversed a lower court’s ruling that had thrown out Indiana’s requirement that a face-to-face transaction occur prior to wineries direct shipping wine to consumers. The Appeals Court judge cited concerns that minors had easier access to alcohol without the face-to-face provision in effect.

## C. THE STATES

### **Distribution and Franchise:**

#### **Illinois**

Signed into law by the Governor, Senate Bill 2754 amends the definition of "successor brewer" in the Beer Industry Fair Dealing Act to: any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

### **Direct Shipping:**

#### **Oklahoma**

A ballot measure clarifying the procedures for the direct shipment of wine and providing for winemakers to sell directly to retail establishments will be placed before the voters on November 4th.

### **Taxation:**

## **Maine**

The grassroots coalition Fed Up With Taxes has submitted in excess of 17,000 signatures beyond the required 55,000 necessary to place a beer, wine and soda tax repeal measure on the November 4 ballot.

## **Trade Practice & Other:**

### **California**

Assembly Bill 3071 allows beer wholesalers to pick up beer whenever there is a recall by the supplier in order to expedite the process in the event of future product recalls. Additionally, the bill creates a new exception to the general prohibition against the consumption of alcoholic beverages on publicly owned school property by allowing alcoholic beverages to be possessed, sold and consumed in connection with "special events" (including festivals) held at the facilities of a public community college in Los Angeles County. The bill has passed both Assembly and Senate and awaits the Governor's signature.

Passing the legislature and on its way to the Governor's desk for his signature, A.B. 346 provides that any container of beer or alcoholic beverage, other than sake, that is approved for labeling as a malt beverage under the Federal Alcohol Administration Act (FAAA), that derives 0.5% or more of its alcoholic content by volume from flavors or other ingredients containing distilled alcohol and that is sold within this state on or after July 1, 2009, shall bear a distinctive, conspicuous, and prominently displayed label, or firmly affixed sticker, containing the following information:

- (1) The percentage alcohol content of the beverage by volume.
- (2) The phrase "CONTAINS ALCOHOL" in bold capitalized letters at least three millimeters in height and which is distinguishable from the background and placed conspicuously in either horizontal or vertical lettering on the front of the brand label.

A.B. 2426 creates an exemption to the tied-house rules in the Alcoholic Beverage Control Act (ABC Act) to authorize a person who operates both a winery and a distillery in another state to obtain a license to operate a brewpub restaurant in California. The bill has passed both chambers of the legislature.

A.B. 1245 modifies an existing provision of the Alcoholic Beverage Control Act to allow beer manufacturers to give adult consumers promotional advertising items valued up to three dollars. The bill also specifies that consumer advertising specialties furnished by a beer manufacturer are intended only for adults of legal drinking age and that items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer. The bill has passed both Assembly and Senate.

***The California Small Brewers Association remains opposed to this legislation, specifically with regard to the allowable item value as it represents a significant increase from the current 25 cent value cap.***

## **Mississippi**

Citing concerns over the high alcohol content and the effects on young consumers, the state's Attorney General is seeking documents relating to MillerCoors marketing strategy for Sparks Red, the brewer's yet-to-be released caffeinated, 8% abv alcohol beverage.

**New York**

Becoming law with the Governor's signature, S.B. 6262 permits a manufacturer or wholesaler of alcoholic beverages to participate in or support bonafide retailer association activities.

# Government Affairs & Legal Update - October 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

Federal Arbitration Legislation Unveiled. U.S. Representative Zack Space of Ohio (D) has introduced H.R.7076, exempting alcohol beverage distributors from the Federal Arbitration Act. Introduced in the wake of MillerCoors efforts to establish new distribution agreement provisions, including contractually mandated arbitration, the bill's language states that whenever an alcoholic beverage franchise contract provides for the use of arbitration to resolve a dispute between the parties to the contract, arbitration may only be used to settle the dispute after all parties consent in writing to use arbitration.

Shortly after the bill's introduction, MillerCoors announced several changes to those new agreements among which was giving up the mandatory arbitration provision.

Feds Celebrate State-Based Alcohol Regulation. A House of Representatives resolution celebrating effective state-based alcohol regulation since the passage of the 21st Amendment has passed the House and moved on to the Senate. H. Con. Res. 415 expresses support for policies that allow states to effectively regulate alcohol and recognizes the 75 year history of successful alcoholic beverage regulation, distribution, and sale by the states.

## B. THE COURTS

Michigan Violates the Commerce Clause...Again. A district court in Michigan has decided that out-of-state retailers may ship direct to consumers, ruling the state was engaging in unlawful restraint of commerce by requiring retailers to have a physical location within Michigan before they could obtain the necessary license to sell. As in the Supreme Court's *Granholm* decision, the ruling invokes the "level playing field" rationale for how in-state and out-of-state entities are allowed to conduct business. In the same vein, the state also failed to explain how the system regulating direct shipping by out-of-state wineries could not be effectively applied to retailers.

Ohio Leads the Way. Two Ohio distributors have filed suit in a Columbus federal district court seeking injunctions against MillerCoors to stop the brewer from terminating their distribution agreements. The suits challenge the assumption that the MillerCoors joint venture qualifies as a successor brewer under the provisions of the Ohio franchise law, and so are in direct violation of that statute.

Sparks Continue to Fly. The Center for Science in the Public Interest (CSPI) filed suit in the Superior Court of the District of Columbia in an attempt to stop MillerCoors from selling its alcoholic energy drink, Sparks. The suit references the product's "higher than regular beer" alcohol content and the fact that it contains "unapproved" additives, such as caffeine and guarana. Twenty-five state Attorneys General have also written to MillerCoors calling for the brewer to drop plans to sell Sparks Red. For its part, MillerCoors points to the fact that TTB has approved labels and formulas for the entire family of Sparks beverages.

## C. THE STATES

### **Distribution and Franchise:**

#### **New York**

After passing the Assembly and Senate, the Governor has vetoed A.B. 9055. This bill sought to allow small brewers a degree of exemption under current franchise law and would have allowed brewers who produce less than 300k barrels a year and whose sales to a particular distributor are less than 3% of that distributor's sales volume to “terminate an agreement with any beer wholesaler without having good cause for such termination....provided that, prior to the effective date of the termination, the brewer pays the beer wholesaler the fair market value of the distribution rights which will be lost or diminished by reason of the termination.”

### **Trade Practice & Other:**

#### **California**

With the Governor's signature, A.B. 346 has become law. The bill provides that any container of beer or alcoholic beverage, other than sake, that is approved for labeling as a malt beverage under the Federal Alcohol Administration Act (FAAA), that derives 0.5% or more of its alcoholic content by volume from flavors or other ingredients containing distilled alcohol and that is sold within this state on or after July 1, 2009, shall bear a distinctive, conspicuous, and prominently displayed label, or firmly affixed sticker, containing the following information:

- (1) The percentage alcohol content of the beverage by volume.
- (2) The phrase “CONTAINS ALCOHOL” in bold capitalized letters at least three millimeters in height and which is distinguishable from the background and placed conspicuously in either horizontal or vertical lettering on the front of the brand label.

A.B. 1245 modifies an existing provision of the Alcoholic Beverage Control Act to allow beer manufacturers to give adult consumers promotional advertising items valued up to three dollars. The bill also specifies that advertising specialties furnished by a beer manufacturer are intended only for adults of legal drinking age and that items that appeal to minors or underage drinkers may not be used in connection with the merchandising of beer. The bill has been signed into law.

Also receiving the Governor's signature, A.B. 2293 adds a new provision to the Alcoholic Beverage Control Act (ABC Act) that permits a manufacturer of distilled spirits, winegrower, rectifier, or distiller, or its authorized agent to provide their product, as well as entertainment and food free of charge to consumers over 21 years of age during invitation-only events.

A.B. 2426 creates an exemption to the tied-house rules in the Alcoholic Beverage Control Act (ABC Act) to authorize a person who operates both a winery and a distillery in another state to obtain a license to operate a brewpub restaurant in California. The bill passed both chambers of the legislature and has been sent to the Governor.

S.B. 1420, sent to Governor Schwarzenegger for signature, would require by January 1, 2011, every food facility in this state that operates under common ownership or control, with at least 19 other food facilities with the same name and that sell substantially the same menu items, to disclose to consumers specified nutritional information for all standard menu items.

### **Illinois**

With both legislative chambers overriding the Governor's veto, House Bill 4668, providing that a recyclable metal dealer may not purchase metal beer kegs from any person other than the beer manufacturer or the manufacturer's authorized representative, has become law.

### **New York**

A.B. 5973 seeks to amend the agriculture and markets law, in relation to including fermented agricultural products within the definition of a farm and food product for purposes of direct marketing and to authorize the commissioner of agriculture and markets to cooperate with private business organizations for purposes of direct marketing. The bill has been sent to the Governor for his signature.

# Government Affairs & Legal Update - November 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

Ignition Interlocks Endorsed. The National Safety Council, a not-for-profit, charitable organization dedicated to educating and influencing people to prevent accidental injuries and deaths, announced support for requiring the use of ignition interlocks (devices that analyze the alcohol level of a breath sample before allowing the engine to be started) for all convicted drunk drivers and encouraged states to pass legislation to this effect.

## B. THE COURTS

Tennessee Wins and Loses. The U.S. Court of Appeals for the 6th Circuit has ruled that the state's prohibition of shipping wine direct to consumers may stand based on "level playing field" considerations, i.e. both in-state and out-of-state wineries are prohibited from direct shipping. However, a provision allowing Tennessee residents to buy wine at in-state wineries meeting certain production conditions has been disallowed based on the same "level playing field" criteria.

## C. THE STATES

### Distribution and Franchise:

#### **Oklahoma**

Voters approved by a wide margin a ballot measure giving in-state and out-of-state wineries producing 10,000 gallons or less annually the ability to sell their products directly to retail liquor stores and restaurants.

### Taxation:

#### **Arkansas**

The Arkansas Task Force on Substance Abuse Prevention has recommended taxing flavored malt beverages at distilled spirits rates.

#### **Maine**

A People's Veto Question appearing on the ballot asking voters if they want to repeal tax increases on certain beverages, including beer, passed by the legislature and signed into law by the Governor earlier this year, has overwhelmingly passed. The Brewers Association's Support Your Local Brewery grassroots activist network was mobilized in support of this measure.

### Trade Practice & Other:

## **California**

The following bills have all been signed into law by Governor Schwarzenegger:

S.B. 1420 requires by January 1, 2011 every food facility in the state that operates under common ownership or control, with at least 19 other food facilities with the same name and that sell substantially the same menu items, to disclose to consumers specified nutritional information for all standard menu items.

Assembly Bill 3071 allows beer wholesalers to pick up beer whenever there is a recall by the supplier in order to expedite the process in the event of future product recalls. Additionally, the bill creates a new exception to the general prohibition against the consumption of alcoholic beverages on publicly owned school property by allowing alcoholic beverages to be possessed, sold and consumed in connection with "special events" (including festivals) held at the facilities of a public community college in Los Angeles County.

A.B. 2426 creates an exemption to the tied-house rules in the Alcoholic Beverage Control Act (ABC Act) to authorize a person who operates both a winery and a distillery in another state to obtain a license to operate a brewpub restaurant in California.

S.B. 157 clarifies that nothing in state law precludes beer and wine wholesalers from donating or selling wine and beer at reduced prices to organizations defined as non-profits by the federal Internal Revenue Code.

Senate Bill 1211 expands the Alcoholic Beverage Control Act to authorize the issuance of a caterer's permit to any on-sale beer and wine licensee.

## **Nebraska**

The Nebraska Liquor Control Commission has adopted a rule that confirms Nebraska's current classification of flavored malt beverages as beer and is in keeping with the federal standards for classifying such beverages.

## **New Jersey**

Legislation has been introduced (S.B. 2098) to allow both retail consumption and retail distribution licensees to conduct beer, wine and spirits tasting and sampling events.

## **New Mexico**

In the name of reducing underage drinking, the state Attorney general has announced plans to propose a ban, when the Legislature reconvenes in January, on all caffeinated alcohol beverages being sold in New Mexico.

## **New York**

A.B. 5973 seeks to amend the agriculture and markets law, in relation to including fermented agricultural products within the definition of a farm and food product for purposes of direct marketing and to authorize the commissioner of agriculture and markets to cooperate with private business organizations for purposes of direct marketing. Receiving the Governor's signature, the bill has become law.



# Government Affairs & Legal Update - December 2008

## A. FEDERAL / NATIONAL / INTERNATIONAL

Beer Institute Seeks Moderation in Global Alcohol Policy. As the World Health Organization develops its global alcohol policy strategy, input is being received from a broad spectrum of alcohol and anti-alcohol interests. Beer Institute is the latest to weigh in, urging that consideration be given to the fact that moderate alcohol consumption has documented health benefits. BI emphasized that any policy should key on problem and harmful drinking behaviors, and that policies targeting all drinkers, such as across the board tax increases, are simply not effective in altering the problems associated with alcohol abuse.

FDA Petitioned on Energy Drinks. A group of scientists and physicians have written to the federal Food and drug Administration to ask that strict regulation of caffeinated energy drinks be instituted. Citing the high risk to young drinkers of both caffeine intoxication and higher probabilities of alcohol-related injuries, the petition calls for a limit on the amount of caffeine allowed in such beverages, a warning label and caffeine content labeling.

## B. THE COURTS

Direct Ship Ruling Appealed in Michigan. The Michigan Attorney General's office will appeal the U.S. District ruling that struck down the state's wine shipping laws as unconstitutional. That ruling found a violation of the Commerce Clause existed in the ban on out-of-state retailer direct shipping. The state, however, believes the ruling jeopardizes the entire retailer licensing system because they have no control over the licensing of out-of-state retailers.

Direct Shipping Door Opened Wide in Massachusetts. A U.S. District Court ruling found the Massachusetts law governing the direct shipping of wine flawed through its inherent discrimination against out-of-state wineries. With a production cap of 30,000 gallons (all MA wineries under that limit) and a direct shipping prohibition on any winery producing more than 30k gallons that has a wholesaler in the state, the law clearly favored in-state interests and so violated the Commerce Clause.

## C. THE STATES

### Direct Shipping:

#### **Michigan**

Passed by the House, H.B. 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:

**California**

A proposal by Governor Arnold Schwarzenegger to impose a 5 cent per drink tax on all alcohol beverages, has failed to garner the necessary support in the legislature for passage. The proposal is expected to resurface when the legislature reconvenes in 2009.

**New York**

A New York Metropolitan Transportation Authority board member has suggested a 30% increase in alcohol and tobacco excise taxes as a means to fund state revenue shortfalls for the Authority's subway, rail and bus lines.