



# THE NATIONAL WINE POLICY BULLETIN

MAY 2013

These are a number of issues we are following on our member's behalf, with talking points, as well as a round-up of state issues from around the country. Please feel free to contact us with your questions and concerns.

## FEDERAL

**Taxes:** The Senate easily passed the Marketplace Fairness Act (S. 743) last week which would allow states to collect sales and use taxes from online sellers with \$1 million or more in annual gross sales. The bill still faces hurdles in the House, but may ultimately pass. If asked:

- *Wineries already pay sales tax on most wine shipped direct-to-consumer*
- *We would welcome changes that simplified payment of state sales taxes*

**Estate Tax:** The President's budget proposed changes to bring the estate tax back to a \$3.5 mil. (non-indexed) exception rather than a \$5 mil. exception (indexed to inflation) that became law in December. The President would also raise top rates from 40% to 45%.

The President's proposal is unlikely to become law. If asked: *We'd prefer repeal, but failing that we would accept the compromise reached in the fiscal cliff negotiations: \$5 mil. indexed, with maximum rate of 40%.*

**TTB:** In November, TTB issued rules allowing wineries to vintage date wines bearing a country appellation of origin. Still yet to issue allergen and serving facts rules. If TTB continues to fail to act their jurisdiction could erode. See

notes on FDA and FTC to understand why this is a growing problem.

**FDA:** Still yet to issue rules dealing with nutritional information, including calorie counts, on chain restaurant menus, but rules are expected in the near term. FDA has extended its comment period for proposed food safety rules which to date largely exempt wineries until September 16.

**FTC:** In February, FTC issued a decision requiring the producers of Four Loko to disclose alcohol serving facts on all product labels. The company was given 90 days (or May) to seek TTB approvals with the required disclosures.

**Direct Shipping:** Bills that would give the US Postal Service (USPS) the ability to deliver wine and beer (HR 630, HR 1718, S 316) have been introduced.

WA took a wait and see approach to the USPS bill last year. This position likely still makes sense given the current political environment. If asked: *"We support giving USPS the ability to deliver wine so long as they're subject to the same state laws as other common carriers."*

## THE STATES

### NEW YORK

**Regulations:** Governor Andrew Cuomo's Wine, Beer & Spirits Summit in late October has led to many improvements in regulations governing all

the beverages (and hard cider); and the New York State Liquor Authority, the regulatory body which has long been the bane of our industry's existence, has become an amazing partner of the industry. Also, the New York Wine & Grape Foundation (Jim Trezise) has created an informal



but active “Farm-based Craft Beverage Coalition” with leadership of the respective groups consulting on joint promotions and policy.

**Industry Funding:** The Foundation also took the lead (with the coalition) in developing a comprehensive promotion proposal for \$1 million committed by Governor Cuomo, with some programs starting in May and others later in the year. Separately, the Foundation received \$1 million for its various research and promotion programs, along with about \$400,000 of federal MAP funds for export and \$200,000 from another source for a New York City promotion.

**Marketing and Promotion:** The Foundation’s two-part strategy is, “Bring the people to the wine, and take the wine to the people”—i.e., tourism combined with market promotions, particularly in New York City. The export program includes the United Kingdom, continental Europe, and Asia. Jim Trezise is orchestrating a major “over the top blow out event” later this year in New York City with Governor Cuomo, the glitterati, famous chefs, and others, as well as New York Farm Day on September 17 in Washington, DC.

**Land Use:** While vineyard acreage is growing slowly, the number of wineries, now at 335, is exploding and spreading to unlikely places like Manhattan, Brooklyn and Queens and very cold regions like the Thousand Islands, Adirondacks, and Champlain where the very cold-hardy Minnesota varieties are thriving and making some very good wines. There are now wineries in 55 of New York State’s 62 counties, which provides a lot more attention and clout in the halls of legislatures both State and national.

**Direct Shipping:** SLA Administrative decision could limit ability of wineries to use third party marketing portals by: (1) requiring sales to be made only on winery websites (not through marketing portals); and (2) prohibiting marketing portals from accepting payment based on sales.

## NORTHEAST

*Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont*

### MARYLAND

**Winery Licensing:** New law (HB 978) expands winery privileges at farmers’ markets and events.

**Direct Shipping:** HB 1420 would have banned wineries from “transmitting” internet sales through marketing portals, wholesalers or retailers.

### MASSACHUSETTS

**Direct Shipping:** Shipping bill (HB 294) would create legal structure for wine shipment.

### PENNSYLVANIA

**Direct Shipping:** Shipping closely tied to privatization effort.

**Regulation:** Senate privatization hearings being held after House passed a Governor approved measure (HB 790). Governor motivated to pass privatization, but Senate politics and dynamics are slowing the process and could derail enactment.

## GREAT LAKES

*Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin*

### MICHIGAN

**Regulation:** Movement on “Wine at Farmers Markets” Senate Bill 79. Permits for very small wineries (<5000 gallons annually).

**Regulation:** SB 216 was introduced. It includes many of the changes recommended in the Office of Regulatory Reinvention report on Liquor Laws – published July 2012. However, there is not a lot of support for an omnibus type bill with so many changes.

MINNESOTA

**Taxes:** Alcohol excise tax increase proposed by House (HF 677). Governor has expressed a willingness to accept increases. Not clear the increase would have support in the state Senate (SF 552). Bill now in conference.

MIDWEST

*Arkansas, Iowa, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas*

TEXAS

**Industry Stats:** The Texas wine industry is enjoying a \$1.8B economic impact on the Texas economy.

**Direct Shipping:** TABC poised to issue administrative decision dealing with third party marketers.

MISSOURI

**Anticompetitive Barriers:** Changes that would tighten existing state franchise law seem to be poised to fail in a complex legal and policy environment.

NORTH DAKOTA

**Distribution:** New law (HB 1077) allows limited self-distribution for wineries producing less than 50,000 gallons annually.

**Direct Shipping:** New law (SB 2147) creates a fulfillment house license.

NEBRASKA

**Direct Shipping:** New law (LB 230) requires brand registration for all wines shipped into the state, remittance of sales tax and various notifications to ABC and wholesalers.

ROCKY MOUNTAIN

*Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Utah*

IDAHO

**Taxes:** House Bill 87 which requires the Wine Excise Tax to be paid based upon the actual sale of wine and not based on the transfer of wine was signed into Law by the Governor.

**Regulation:** Senate Bill 1025 which increases the maximum container size of wine from one to 15-gallons just passed the House on a 56-6 vote with 8 absent.

COLORADO

**Winery Licensing:** The Liquor Enforcement Division is creating a moving target for remote manufacturer sales room licensing: Ostensibly the issues surrounding wineries signing a lease based on a percentage of sales has been resolved provided that the percentage of total sales from all sources remains below 10% paid to a landlord, which is the threshold at which an investor or anyone with a financial interest must be identified on the license application and go through fingerprint and background checks.

LED insists they can control any person or entity who does business with a winery in such a way that could be viewed as a financial interest in any way. However, now they are being overly strict about the licensee maintaining sole and complete control of licensed premises. To quote from a recent e-mail response to a request for a temporary tasting room license in an art gallery: "the wine has to be served and consumed in your tasting area only. You cannot allow anyone to leave your "licensed area" to walk around the gallery. There is no mixing of businesses. Not even to the restrooms."

While they have a legal basis for this interpretation, it is not enforceable in any practical way. As none of these policies and

interpretations have been put in writing, the CWIDB is developing some regulatory language to propose to LED so that we are all in understanding of the rules and LED won't keep changing their application.

**Winery Licensing:** We are seeing more inspections by either the State Health Department or the Feds. One inspector brought his supervisor from Salt Lake City. While the inspections at this level have not proved too onerous, other than to insist that wineries move case goods a minimum of 6" from the wall for pest control purposes, they seem to be emboldening the local health inspectors. Several wineries have reported local inspectors insisting on changes and licenses for serving packaged food that seem inappropriate and excessive. The CWIDB has requested a review of statutes and jurisdictions for state and local health inspections over wine, to help provide some clarity for the local government and set clear expectations for wineries.

**Research & Grants:** Colorado State University received a license for Ram's Point teaching and research winery in Grand Junction.

**Marketing & Promotions:** Coordinated effort, headed by CWIDB, to have wineries submit samples to the Wine Spectator has resulted in the first wave of 80-point scores for Colorado wines in the past few weeks. Perfectly fine scores, but we are generating more attention. This was a program stolen from the Finger Lakes Association.

## CALIFORNIA

**Excise Tax:** No excise tax increase is actively considered for the wine industry this year. There are other fee proposals and proposed changes to the parcel tax passage threshold. Business interests continue to monitor legislation for fees and taxes, as well as an extension of authority to tax to local governments. With the passage of Proposition 30 last November and a slow rebound in the state's economy the California budget situation

has become less crisis driven. Revenues are up and Governor Brown's budget for 2013-14 is fairly lean. Higher revenues in the May revision will put additional pressure on lawmakers to restore many of the billions of dollars in cut to social services made over the past several year.

The biggest unknown is what the California Legislature, with super majorities in both chambers, will do as the session unfolds. To date there has been a certain amount of restraint, but political pressure to deliver for key Democrat constituency groups will mount as the months pass. We expect the final month of the session to be busy and complicated with late blooming interest group bills. Over 2,200 bills were introduced for in the first year of the session. FWC has identified close to 50 that could have some impact on its members and the wine industry. Most of the policy committee hearings will conclude in the first week of May and that will help winnow down the bill load.

**Regulation:** Chief among the measures Family Winemakers is lobbying are bills to grant some Proposition 65 relief for wineries required to post warning notices (AB 227), a bill to expand to hotels where private event brand promotions can take place (AB 1116), and a bill that would potentially restrict the sale of alcohol if mitigation measures outlined in a public health impact report prepared by wine, beer and spirits manufacturers weren't effective (SB 747).

**Water Rights:** FWC is closely monitoring bills and regulations that deal with hydraulic fracturing because of the potential impact on water availability and water quality for winegrape growers.

## OREGON

**Regulation:** New law (HB 2443) explicitly allows consumers to refill growlers at local retailers and wineries.

## WASHINGTON

**Retailer Licensing:** HB 1001- Creates a wine and beer license for theaters with up to four screens. Supported by WWI, passed by the Legislature, and now await the Governor's signature.

Retailer Licensing: HB 1351- Allows wineries to contract with grocery stores and specialty wine shops for private labels (current law allows contracts for private labels only with restaurants). Supported by WWI, passed by the Legislature, and now await the Governor's signature.

Retailer Licensing: SB 5517- Changes the criteria for the beer and wine tasting endorsement for grocery stores to include stores who do not meet the current law requiring 50% of sales to be food (like Cost Plus World Market). Supported by WWI, passed by the Legislature, and now await the Governor's signature.

Retailer Licensing: SB 5674 - Permanently allows wine and beer tasting at farmer's markets. Supported by WWI, passed by the Legislature, and now await the Governor's signature.

Retailer Licensing: SB 5774 - Creates a permit to allow students in community college "culinary, wine technology, beer technology or spirituous technology" courses to taste but not consume alcohol as part of a supervised program. Supported by WWI, passed by the Legislature, and now await the Governor's signature.