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| *November 17, 2006* | |

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**[I. NATIONAL NEWS.](#I)**

**1. Voters Confirm Value of State-Based Alcohol Regulation on Election Day**

*NBWA*

November 10, 2006

ALEXANDRIA, Va. - Election Day 2006 resulted in more than a few changes to the political landscape, but the need for state-based regulation in the sale and distribution of alcohol remains strong. In numerous areas throughout the country, voters were presented with ballot questions regarding alcohol regulation. The outcomes of the proposals varied from locality to locality, showing that people feel very differently about alcohol from one place to the next and thus confirming the need for effective state-based control.

In response to the varying election results as they pertain to alcohol, National Beer Wholesalers Association (NBWA) President Craig Purser made the following statement:

"In Massachusetts, voters rejected a ballot question that would have allowed more food stores to sell wine while in Wolfforth, Texas, voters approved the sale of packaged beer and wine in local stores. In Marion County, Arkansas, voters approved Sunday liquor sales while voters in Baxter County, Arkansas rejected a proposed ordinance to allow Sunday liquor sales. This just goes to show that a one-size-fits-all approach to alcohol regulation simply does not work. The time-tested regulatory system as it relates to alcohol sales is successful because it allows states the flexibility to deal with local circumstances.

Americans know that alcohol is not like other consumer goods. Alcohol beverages are unique, and effective state regulations work to discourage abuse and ensure the product is distributed and sold in a responsible way to those of legal drinking age. As society addresses problems like underage drinking and drunk driving, the importance of maintaining effective state alcohol regulation is critical."

Beer distributors play a vital role in the state-based regulatory structure. The distribution system provides a transparent and accountable chain of custody in the sale of beer, making it easier to enforce state laws and local ordinances. The system also regulates retail sales, ensuring that retailers hold the appropriate license, do not sell to those under the legal drinking age, pay state and local taxes, and generally comply with state and local alcohol beverage laws.



# 2. Testing Breast Milk for Alcohol

By Laura Johannes– *Wall Street Journal*

November 14, 2006; Page D4

A new product allows nursing mothers to test breast milk for alcohol. The company that sells the two-minute assay says it can provide peace of mind for mothers who want to enjoy an occasional drink while breast-feeding infants. Lactation consultants say the new test is overkill for most nursing mothers, and say they fear it will add an unnecessary complication to breast-feeding.

### \* \* \*

A mother's milk provides newborns with the best nutrition for growth and development, as well as protection against disease, studies have shown. The American Academy of Pediatrics recommends babies be breast-fed at least a year, with mother's milk as the only nutrition for the first six months.

However, breast-feeding is often difficult for new mothers. According to a 2005 survey by the Centers for Disease Control and Prevention, 73% of American newborns are breast-fed at some point, but only 40% were still nursing at six months of age and 20% until a year.

**Holiday Tippling**

One source of anxiety for some nursing mothers is whether it is safe to enjoy alcohol. The new test product, called Milkscreen, was invented by two Texas mothers who say it will allow women to enjoy occasional drinks while nursing. The product will provide an alternative for mothers who might have otherwise weaned their babies before the holiday party season or a major celebration such as a wedding, says Julie Jumonville, co-owner of closely held Milkscreen Inc. of Austin, Texas.

The test kit of six white strips retails for $20 to $27. The mother inserts the white strip in a sample of breast milk and the strip reacts to the presence of ethanol, the intoxicating agent in liquors. After two minutes, if there is even a small amount of alcohol present, the strip will change color. In that case, Milkscreen recommends the mother wait an hour and test again; if it's time to feed, she should use stored milk. If the strip remains white, it's safe to nurse, the company says. The test doesn't measure the amount of alcohol in mother's milk -- just whether it's present or not.

**Sensitive Test**

While no one recommends nursing mothers drink heavily, most experts say an occasional alcoholic drink is OK as long as the woman waits two to three hours before feeding the baby. However, since each woman metabolizes alcohol differently, Milkscreen could provide information to those who want to be absolutely sure no alcohol is passed to their babies.

The company says its test detects a concentration of alcohol of as low as 0.05 milligram per deciliter of milk -- so sensitive it would be positive even if a woman ingested merely cough syrup.

Some lactation consultants, however, say the test is an unnecessary expense and an additional hassle.

"There are so many barriers to breast-feeding, why put one more in the way?" says Marsha Walker, a Weston, Mass., nurse and lactation consultant.

Since alcohol is rapidly metabolized by the body, Ms. Walker adds, it's much easier and cheaper for a woman to simply breast-feed the baby immediately before enjoying a drink. By the time the baby is ready to feed again, it will be safe to nurse, she says.

**Unnecessary Concern?**

Some lactation consultants also fear the super-sensitive test will make a nursing mother unnecessarily paranoid.

A number of studies have shown that alcohol in breast milk can be detrimental, but none have established exactly how much is too much. One study, for example, found alcohol in breast milk altered its odor, and caused infants to drink less. Another study found that motor development was lower in infants of nursing mothers who had one or more drinks daily compared with nondrinkers.

However, those studies didn't limit feeding to two to three hours after the alcohol was ingested. So far, no major study has found harm from an occasional drink when the rule is followed.

<http://online.wsj.com/services/article/SB116347948643222494-search.html?KEYWORDS=breast+milk&COLLECTION=wsjie/6month>



**3. Miller Employees Authorize Strike**

By Rich Rovito - *The Business Journal of Milwaukee*

November 15, 2006

Clerical staff and shipping and receiving employees of [**Miller Brewing Co.**](http://www.bizjournals.com/search/bin/search?q=%22Miller%20Brewing%20Co%22&t=milwaukee) on Tuesday night "overwhelmingly" authorized a strike if a new labor agreement can't be reached.

The workers are represented by the [**Office & Professional Employees International Union**](http://www.bizjournals.com/search/bin/search?q=%22Office%20%26%20Professional%20Employees%20International%20Union%22&t=milwaukee) Local 35. The union didn't release the vote tally, but stated that nearly all of the 120 employees in the bargaining unit favored the strike authorization.

A prior contract expired in April. A series of short-term contract extensions have been enacted since then, the most recent of which expires on Wednesday.

A series of contract proposals, which have included a proposed pension freeze, minimal annual pay raises and increased employee contributions for health care insurance, have been deemed unacceptable by the employees' bargaining committee.

"We just can't afford it," said Judy Burnick, Local 35 business manager.

The majority of the employees in the bargaining unit are women who have been employed at Miller for more than 20 years, Burnick said.

Jan Wilson, the union's chief steward and a Miller employee for 29 years, said the proposed pension freeze is the main issue among the union members.

Linda Lokken, an accounts receivable clerk who has worked at Miller for 31 years, has to work nearly 10 more years before becoming eligible to retire, making the pension issue a top concern for her and a main reason she favored authorizing the union to call a strike if negotiations don't progress.

"It seems like the company is telling us that they don't want an older work force," said Lokken, who attended a meeting conducted by the union at a hall at 633 S. Hawley Road Tuesday night.

"After all the time I've given to the company, it's pretty sad," she said.

Miller management has declined to comment on the specifics of the negotiations but has repeatedly stated that it is working toward an agreement that will be satisfactory to both parties and "ensure the long-term success" of the company.

Miller management and the union met with a federal mediator on Nov. 7 and Nov. 8, but the meetings failed to lead to a new agreement.

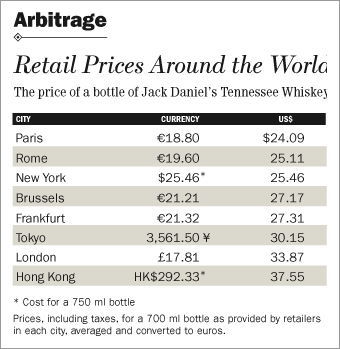
Union leaders stated that they planned to inform the mediator of the results of the vote.

<http://www.bizjournals.com/milwaukee/stories/2006/11/13/daily21.html?f=et68&hbx=e_du>



# 4. Whiskey Prices Wall Street Journal

# November 14, 2006; Page D7





**5. Single-Malt Scotches are Hot**

By Nick Passmore - *Forbes*

November 10, 2006

**Limited editions, special bottlings and other esoteric labels are all the rage**

Ten years ago - even five - if you walked into a bar with any sort of pretensions of being hip you would likely spy, prominently displayed on the back bar, half a dozen bottles of single malt scotch.

These days you are just as likely to see half a dozen bottles from the same distillery.

There are special editions and limited editions, double-vatted malts and single vintage malts and single cask malts, and it's all enough to make your head spin even before you've begun to sample the stuff. What the highlands is going on here?

For one thing, producers have woken up to the fact that there is demand for all these old whiskies that had been languishing in their cellars for years. They also realized that, if approached with sufficient savvy, the market that would pay top dollar for interesting whiskies.

Just as enthusiasts discovered the pleasures of single malts a decade or so ago, they are now looking for more specialized and refined products.

"People's tastes have got more sophisticated," says Mark Izatt, senior brand manager of scotch whisky for Moet Hennessy USA. "The established distilleries, the Glenmorangies and Macallans of the world, have discovered that they are sitting on these rich archives of stock that are getting older and older, and they are finding newer ways of bringing it to the marketplace."

It is part of what I call the "gourmetization" of American taste (think $30 extra-virgin olive oil and $5 loaves of artisanal bread). As Frank Coleman, vice president of the Distilled Spirits Council of America, explains, "It reflects a larger trend across the whole consumer categories, especially in food and beverage products. When it comes to distilled spirits, the most massive growth is occurring at the super premium end, and the scotch producers were there first in terms of these limited edition bottlings and wood finishings and so forth."

And it is a rapidly growing market, at a time when the sales of brown spirits in general are stagnant. According to Ian Millar, chief brand ambassador for Balvenie and Glenfiddich, 20 years ago single malts represented 1 percent of Scotch sales. Now, they are 9 percent. And that's by volume; in terms of dollar value the figure is even higher.

A few words of explanation: A single malt scotch is the product of one single distillery, just as Château Lafite wine comes only from that château. In the past most production was used in blended scotch - Johnny Walker, Chivas Regal, etc. - but these days more and more of it is being bottled single.

But even a single malt is, in fact, a blend. A distillery's cellar will contain thousands of casks of maturing whisky, each one subtly different. The casks are different sizes and different ages. Some have previously held bourbon, some port and some sherry. And they have been stored under different conditions. So no two are exactly alike, and it's the master blender's job to take these endlessly varying ingredients and make a consistent product - the Talisker 10 Year Old, for example.

Increasingly, producers have been experimenting with various special edition bottlings. These might be a single vintage bottling - a blend of whiskies from just one year - or even a single cask version. Then there's the increasingly popular practice of double vatting. This involves taking a cask of unremarkable whisky and finishing it in a second cask that previously held sherry, or rum or a famous wine, in order to add an extra layer of flavor. These bottlings often differ considerably in flavor from the main iteration - and that's the whole point of the exercise.

"Not only are there distilleries that five years ago might have had three different bottlings and now have half a dozen, but some of the more exotic, limited editions change from year to year," observes Jonathan Goldstein of New York City's Park Avenue Liquors. "This is a doubly virtuous approach."

By that he means the PR value that accrues to the brands from these special bottlings. A lot of the motivation for producers to bottle and sell prestige editions is not for the immediate profit from those 720-odd bottles (a tiny volume that will represent less than the rounding error in the accounts) but because it validates the brand and enhances its image. It also creates a buzz in the media, as well as amongst the retailers and bartenders, who in turn influence the consumer who might not be able to afford the $2,000, 30-year-old, limited edition whisky, but is prepared to shell out $40 for the regular 14-year-old version, especially for a special occasion or for a gift.

Speaking of holidays and gifts, in the accompanying slide show I have assembled a selection of 13 superb drams at a wide variety of price points, from all the different regions of Scotland and reflecting the whole panoply of complex and beguiling flavors this most captivating of spirits is capable of.



**6. Move Over Cocaine, GreenCard Latest Controversial Drink in Energy Category**

November 10, 2006

NEW YORK, NY - As the energy drink category expands to the point where every new offering apparently needs an even more controversial stance than its predecessor, one new energy beverage is looking to target an illegal market -- migrant Hispanics illegally crossing the border to the U.S.

GreenCard Energy Drink, made by Z CORP, markets its energy beverage to illegal immigrants on their way to the U.S. It claims that it will give energy to those looking to cross the border and potentially outrun U.S. Border Patrol.

"It's a fact," that people illegally cross the border, president and CEO of Z CORP, Jeff Weiss, told CSNews Online. "If they are going to come to the U.S., I don't want them dying in the desert, I'd rather have them hydrated."

Weiss seriously believes that the beverage will be a big sell in Southwestern c-stores, mainly as a novelty drink. It's Weiss' opinion that he can gain money and publicity through this beverage and its market.

The drink will have a "brand loyalty unique amongst Hispanic energy drinks," Weiss said in a statement, but told CSNews Online that he doesn't feel it is offensive to the group it targets.

It's tagline: "Papers, we don't need no stinkin' papers" -- a clear play on a famous line from the film 'The Treasure of the Sierra Madre.'

Is the c-store industry going to jump on such a beverage? Chances are the beverage will not end up in 7-Eleven's coolers, as it requested the controversial Cocaine energy beverage pulled from shelves of its stores earlier this month, "They just didn't think that the product's name was appropriate for the image we're trying to portray,'' said spokeswoman Margaret Chabris at the time. "Our image is legal," she added.

But Weiss told CSNews Online that he believes that his beverage is less offensive than Cocaine. Its chances in c-stores, however, remain unknown.



7. Former Football Bruiser Prepares to Kick Ass

Panos Kakaviatos – *Decanter.com*  
November 10, 2006

Mike Ditka, a former American football coach known for his tirades on the field, has just launched a new wine – Kick Ass Red.

There is nothing surprising about sports stars launching their own wine brands. What distinguishes the abrasive Ditka – whose aggressive style led the Chicago Bears to Super Bowl victory – is that his wine aims for premium quality, despite its name.

Kick Ass Red – a premium blend of Zinfandel and Syrah from the Parducci Winery in Mendocino, California – will fetch about US$49 retail, according to Parducci's marketing company, Big Dog Marketing.

'Mr. Ditka came to the winery one weekend and tasted wines from the tanks at Parducci, and was happy with what he tasted,' Big Dog Marketing partner Jan Metler told **decanter.com**.

'Some people do wonder about the wine decision – they ask, “Why not beer?” But Mike is a real wine lover,' she added.

'Looks can be deceiving,' Ditka told the Chicago Sun-Times. 'I've drunk red wine my whole life. There's no wine ever made that I didn't try.'

Wine retailers seem bemused. 'He has a passion for drinking, certainly,' remarked Charles Stanfield of Sam's Wine and Spirits, a top Chicago-based wine store.

'I think you have to look at this with both eyes open, and a wink,' Stanfield told **decanter.com**. 'I am a Chicago Bears fan, but I would have to taste the wine before buying it. Still, it would sell itself if we brought it into the store. Marilyn Merlot sells, so why not Kick Ass Red?

Ditka's wine line will also include Merlot, Pinot Grigio, Chardonnay and Cabernet Sauvignon made at the Parducci Winery, which is part of the Mendocino Wine Company.

<http://decanter.com/news/100287.html>



## 8. Bacardi Edges Towards Full Takeover of Vodka Maker

November 11, 2006

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| http://www.stuff.co.nz/inl/images/null.gif |

**More shareholders in the vodka company 42 Below have accepted Bacardi's takeover offer.**

The Baker Investment Trust, a 13.1 per cent stake owned by Grant and Donna Baker and Paul Smithie, has accepted the drinks giant's offer of 77c a share.

Mr. Baker is a director of Viking Capital which committed its 3.28 per cent stake to the deal yesterday.

Managing director and director Geoff Ross has done the same with his family trust's 25.4 per cent holding.

The acceptances are dependent on whether Bacardi hits the 90 per cent compulsory takeover target.

Mr. Ross said so far Bacardi had snared 64.25 per cent of shares.

Bacardi made its $139 million bid for 42 Below in late September. The offer opened on Monday.

<http://www.stuff.co.nz/stuff/0,2106,3856859a13,00.html>



**9. SAB Miller: Brewer Taking Action on Weak US Sales**

By: By Jenny Wiggins,Consumer Industries Correspondent - *Financial Times*

November 10, 2006

Rising beer sales in all regions except North America helped raise interim pre-tax profit at SABMiller by 22 per cent to $1.38bn (£725m).

Profit for the six months to September 30 exceeded analysts' expectations as the London-based brewer produced surprisingly good results in Europe and South Africa.

Shares in SABMiller rose 39p to close at £10.96p.

In Europe, which accounts for about 16 per cent of group earnings, profit rose 28 per cent to $485m. SABMiller's operations are focused in central and eastern Europe, giving it exposure to developing beer markets.

Analysts had been worried about the performance of the group's South African business, in part due to the devaluation of the rand. But the brewer managed to put through price increases on lager, achieving a 10 per cent profit rise to $411m.

The group's weak spot remains North America, where it has been battling a poor market for domestic beers and price discounting by rival Anheuser-Busch.

North American lager sales to retailers dropped 3 per cent by volume.

Graham Mackay, chief executive, said getting the US business back on track was his key priority. "Obviously, the US is a worry."

But Mr Mackay forecast that North American sales would improve over the next six months as the brewer adapts its portfolio to sell more craft and imported beers. "We certainly expect a stronger performance," he said.

Group revenues rose 33 per cent to $9.3bn and earnings per share were up by 3 per cent to 52.9 cents. An interim dividend of 14 cents (13 cents) is planned.

**FT Comment**

SABMiller's shares trade at a p/e ratio of 17 times 2007 earnings, in line with Heineken and Carlsberg. They are cheap. Although its competitors, which are restructuring mature European businesses, have more cost-saving opportunities, SABMiller will benefit from its exposure to fast-growing emerging markets.



10. Crown Royal's 'Safe Rides Home' Designated Driver Program Comes to Phoenix International Raceway

*PR Newsire-First Call*

November 9, 2006

Partnership with Designated Drivers Events, Inc. Offers Area Race Fans Free, Safe Rides Home from Track this Weekend

PHOENIX, Nov. 9 /PRNewswire-FirstCall/ -- Race fans attending this weekend's activities at Phoenix International Raceway (PIR) will have a safe alternative to getting behind the wheel if they've had too much to drink. Between November 10-12, Crown Royal Championship Racing's "Safe Rides Home" program is partnering with Designated Drivers Events, Inc. to provide trained, licensed and insured drivers to offer fans safe transportation home from PIR -- in the fan's own vehicle and at no charge.

To sign up for a ride or to obtain more information, fans can visit the specially-marked kiosk located at the Crown Royal Experience tent at the track or call 877-456-RIDE (7433). Rides will be offered from PIR during each day's activities over the weekend and briefly after the track's closing, and residents and hotel guests in the greater Phoenix area that are 21 years of age or older are eligible.

"I would rather see all those NASCAR fans having a great time at PIR rather than time that won't be any fun at all at Tent City. I fully support Crown Royal's program coming to the Phoenix area to help promote responsible decision-making," said Maricopa County Sheriff Joe Arpaio.

Since its inception in 2003, Crown Royal and its parent company Diageo, have brought the "Safe Rides Home" program to numerous NASCAR race markets.

The program, created by Diageo to reinforce the importance of responsible decision making, assigning designated drivers and getting home safely, has already provided rides for hundreds of patrons and NASCAR fans.

"The fan turnout and success of previous 'Safe Rides Home' initiatives helped make the decision to bring this program to Phoenix an easy one," said Jim Lorenz, Senior Brand Manager, Crown Royal. "With another great season of racing drawing to a close, we want to remind fans once again about the importance of responsible drinking, and remember to always 'Be A Champion. Drink Responsibly."

Crown Royal's integrated motorsports marketing plan includes primary race team sponsorship at 18 races during the 2006 NASCAR NEXTEL Cup season. The brand continues to capitalize on its sponsorship on several additional levels throughout the season, including consumer promotions and retail events, dedicated print and broadcast advertising to promote responsible drinking, licensing, online consumer promotions, public relations and hospitality.

Crown Royal also continues to engage race fans across the country with its title sponsorship of the Crown Royal International Race of Champions (IROC) series. In addition, the Crown Royal Special Reserve brand is presenting sponsor of the Grand American Rolex Sports Car Series, and Crown Royal served as title sponsor in 2006 for the Crown Royal Grand American Challenge of Long Beach, CA on April 8 and will serve as the sponsor for the Crown Royal 200 at Watkins Glen, NY on August 11.

<http://biz.yahoo.com/prnews/061109/nyth189.html?.v=37>



**11. Craig Wolf Named New President & CEO Of Wine & Spirits Wholesalers Of America, Inc.**

*WSWA*

November 13th, 2006

Washington, D.C. (November 13, 2006)-Wine & Spirits Wholesalers of America, Inc. Chairman Stan Hastings announced today that Craig Wolf has been selected as WSWA's new President and CEO. Wolf-who has held the position in an interim capacity-will formally assume the permanent role immediately. The change was prompted when the former President and CEO Juanita D. Duggan announced her resignation in July.

"The selection committee felt strongly that Craig's intimate knowledge of the industry and first hand experience in addressing our issues over the past seven years made him a clear choice," Hastings said. "We are entering a dynamic era, and the membership has every confidence that Craig, along with his talented staff, will effectively advance the wine and spirits wholesalers' interests to policy makers and the general public during this period of increasing attacks seeking the deregulation of alcohol in this country."

Wolf joined WSWA in January of 2000 as General Counsel, and maintained that position while also managing the organization's operations as the interim President and CEO. He has been responsible for managing 21st Amendment litigation throughout the country and has positioned the organization as a resource for information and counsel through the ongoing efforts to deregulate alcohol sales.

"America's wine and spirits wholesalers are indispensable to the regulated alcohol distribution system in this country. We bring an amazing selection and availability of fine products from across this country and around the world, as well as provide local control and regulation to a socially-sensitive product," Wolf said. "We will be looking for new ways to communicate the value of our role in the distribution process-thousands of well-paying American jobs, sophisticated, consumer-oriented business services and other important contributions to communities throughout the nation."

Prior to joining WSWA, he served as counsel to the Senate Judiciary Committee, specifically to the Chairman, Senator Orrin Hatch (R-Utah), and before that served as both a federal and state prosecutor.

Wolf is also a Captain in the United States Army Reserve JAG Corps. He lives in Maryland with his wife and two children.



**12. Czech Brewer Registers Trademark in China, Despite Challenge from Anheuser-Busch**

*The Associated Press*

November 15, 2006

Czech brewery Budejovicky Budvar NP said Wednesday it has had its trademark registered in China, despite a legal challenge from U.S. beer giant Anheuser-Busch Cos Inc.

China's High People's Court, in Beijing, on Oct. 18 rejected an Anheuser-Busch appeal against Budvar's registering the "Budejovicky Budvar" trademark, and upheld a previous court decision allowing Budvar to use both a written and a graphic version of its trademark in China, the Czech company said.

Budvar said it was informed about the decision by its lawyers on Tuesday.

According to the Chinese court, Budvar's trademark cannot be confused with Anheuser-Busch's trademarks registered in China, Budvar said.

The ruling, which Budvar said was final, was the latest development in a centurylong global trademark dispute between the two breweries, and gives to the Czech company a green light to sell its lager on the fast growing Chinese market for the first time.

"The trademarks' registration enables us to start exports of our beer to China without risks," Budvar spokesman Petr Samec said. "In the long term, we consider the Chinese market a good business opportunity."

Budvar exports its production to 50 countries worldwide.

"We are disappointed the Beijing High Court has decided that the trademark Budejovicky Budvar may be registered," said Stephen Burrows, president and chief executive officer of Anheuser-Busch International, in a message e-mailed to The Associated Press.

"This decision has no effect on Anheuser-Busch's business in China or anywhere else. Our trademarks for Budweiser and Bud remain valid and unchallenged in China, and we will continue to sell our flagship brand there as we have for years," Burrows said.

He said Anheuser-Busch entered the Chinese market in 1995.

The legal dispute in China began in 1997, when Budvar first applied to register its trademark.

Anheuser-Busch - the largest brewer in the United States - has been battling with Budejovicky Budvar for the exclusive rights to the Budweiser name and others - such as Budvar - for over a century. Currently, they are involved in some 40 lawsuits worldwide.

Budejovicky Budvar was founded in 1895 in Ceske Budejovice - called Budweis by the German-speaking people that populated the area at the time. Beer has been brewed there since 1265.

The founders of Anheuser-Busch used the name Budweiser for their product because it was well-known in their German homeland. The St. Louis brewery got its start in 1852. It began producing Budweiser, America's first national beer brand, in 1876.

Since 2001, Budvar has exported to the United States under the name Czechvar.

Among recent legal rulings, the Czechs won judgments in Portugal and Finland, while Anheuser-Busch has won in Swedish and Hungarian courts.



**13. WSWA Applauds U.S. House of Representatives for Passage of STOP Act: Urges Senate Passage to Authorize Funds to Prevent Underage Drinking**

Source:  *WSWA*

November 14, 2006

Washington, DC (November 14, 2006)-The Wine and Spirits Wholesalers of America, Inc. (WSWA) applauds the U.S. House of Representatives for their overwhelming support of H.R. 864-The "Sober Truth on Preventing (STOP) Underage Drinking" Act-and its 373-23 vote this afternoon.

"The wine and spirits wholesalers are dedicated to providing responsible access to alcohol-which all should recognize is a unique product-and must be controlled in such a manner so that it doesn't fall into our children's hands," WSWA President and CEO Craig Wolf said. "Our members are a part of an essential state-based regulatory system that serves as a vital line of defense safeguarding our communities, and The STOP Act recognizes that system's importance and relevancy in the prevention of underage drinking."

WSWA encourages the Senate to follow the leadership of champion Representative Lucille Roybal-Allard (D-Calif.) and her colleagues in the House and pass this legislation.

"There has been an unprecedented, unified effort behind The STOP Act that includes support from the National Beer Wholesalers, The Beer Institute, The Distilled Spirits Council of the United States and The Wine Institute, along side advocacy groups and members of the community. This wide-spread support indicates the importance of this legislation, and should prompt the Senate to take action," Wolf said.

Elements of H.R. 864 include incentives to local, state and federal governments to reduce illegal underage consumption of alcoholic beverages through efforts such as addressing access to alcohol concerns and education initiatives, as well as reaffirming the state's rights to regulate the sale and distribution of alcohol.



**14. NBWA Praises House Passage of the STOP Act**

Source: *NBWA*

November 14, 2006

ALEXANDRIA, Va. - Today, the National Beer Wholesalers Association (NBWA) praised the U.S. House of Representatives for passing H.R. 864, the "Sober Truth on Preventing (STOP) Underage Drinking Act."

This meaningful legislation addresses the serious health and safety issues involved with underage drinking while providing the necessary tools to government at the federal, state and local levels to help stop alcohol consumption by those who are not of a legal drinking age.

"The beer industry remains committed to fighting underage drinking," said NBWA President Craig Purser. "House passage of the STOP Act is a good first step and the beer industry will continue to put the necessary resources into seeing that everyone who consumes our products are of a legal drinking age."

Beer distributors and their brewer partners spend tens of millions of dollars each year promoting responsible consumption of their products by those of legal drinking age and reminding parents to talk to their children about making responsible choices.

"The Senate can do its part by passing this legislation so the President can sign it into law," Purser concluded.

The NBWA Board of Directors' Management Committee overwhelmingly passed a resolution in support of a version of the "STOP Underage Drinking Act" in July. The group also held to its pledge to work closely with industry partners to gain support for the legislation. The amended STOP Act has the support of the Beer Institute, the Brewers Association, the Wine & Spirits Wholesalers of America, The Wine Institute and the Distilled Spirits Council of the United States.

The Association represents 1,900 beer distributors nationwide and the Beer Institute, representing brewers, importers and industry suppliers. Beer distributors play a critical role in the transparent movement of beer from thousands of brewers to a vast network of licensed retailers.



# 15. "STOP" Underage Drinking Act Passes House

*The Chattanoogan*

November 14, 2006

A bill aimed at preventing underage drinking passed in the House of Representatives on Tuesday.

Rep. Zach Wamp said the bill, introduced in 2005, "has 85 cosponsors from across the political spectrum indicating the need to better understand and prevent the frightening spread of underage drinking in America."

He said, "We, as policy-makers, community leaders and, most importantly, as parents, still need to address the growing problem of alcohol abuse by our children. As this is an illegal use of a legal product, the government needs accurate research and information to attack this prevalent anddevastating problem."

The Sober Truth on Preventing Underage Drinking Act - or "STOP" Underage Drinking Act establishes a guide to federal underage drinking policy and program development; requires annual reports from states regarding programs, efforts, and laws preventing underage drinking; develops outcome measures including reports on minimum-age compliance checks and law enforcement; funds and oversees underage drinking public service announcements; awards grants to reduce underage and binge drinking on college campuses; and supports studies on the impact of alcohol on the adolescent brain.

"We should be proud of the bipartisan effort and hard work that has gone into this bill," Rep. Wamp said. "I am glad that we have an opportunity to vote on this legislation before we adjourn for the year."



**16. The Craze for Pricey Sippin' Whiskey**

By Ron Givens - Special to *Newsweek*

November 13, 2006

**The liquor industry gets a huge boost from the sale of high-end whiskey**

Dave Gonano loves to drink whiskey and talk whiskey. He has traveled several times from his hometown of Baldwin, Md., to Kentucky for bourbon festivals and distillery tours, chatting up whiskey makers and collected some 300 bottles along the way. On a recent Monday night he could be found in the middle of a crowded Manhattan hotel ballroom having a very good time, enough fun to justify a three-hour train ride and a $145 entry fee. Gonano was drinking a smooth, rich and spicy rye whiskey-21-year-old Rittenhouse-with the man who made it, Parker Beam, the second-generation master distiller at Kentucky's Heaven Hill Distillery. Beam is a member of the first family of American distilling, but he has nothing to do with the company that makes Jim Beam bourbon, whose master distiller is now a man named Dalton. "I like to tell people," Parker Beam joked with a thick-as-molasses drawl, "that every bottle of whiskey from Heaven Hill has been made by a Beam, and that's more than you can say about Jim Beam."

Gonano and about 2,500 other booze lovers jammed long tables on the fifth floor of the Marriott Marquis for the ninth annual WhiskyFest New York, holding out small glasses shaped like hurricane lampshades for short shots of whiskey from the U.S. and Ireland and wee samples of whisky from Scotland, Japan and Canada. (American and Irish distillers generally spell the word with the "e," while Scottish, Canadian and Japanese producers usually don't.) Some hopped from one table to another to get their money's worth-about 1,800 of them paid $105 for the 3½ hour event, while another 600 or so put up $40 more to get an extra hour-but others took their time and chatted as much as sipped. The crowd, like the typical buyer of these top-shelf brown spirits, was mostly white and mostly male, although there seemed to be more women at this year's Fest. "I think we caught the wave of increased interest in whiskey nine years ago," says John Hansell, editor of Malt Advocate magazine and the man who, with his wife, Amy Westlake, produces the WhiskyFests. "People are drinking less, but they're drinking better."

Thanks to a boom in high-priced hooch, the WhiskyFest business is booming: three years ago, a second annual event was started in Chicago, and a third will be launched in San Francisco next October. Since 2002, sales of expensive whiskey have grown by 56 percent, according to the Distilled Spirits Council of the United States, which represents big spirits companies. Single-malt Scotches are doing very well, and so are small-batch and single-barrel American whiskeys. Last year, sales of Jim Beam-brand bourbons were about the same as the year before, while the company's Small Batch Bourbon Collection jumped 13 percent, according to trade publishers the Adams Beverage Group. "U.S. society has become obsessed with quality and luxury goods," says Frank Coleman of the Distilled Spirits Council. "People might not be able to afford a new BMW, but they can buy a $100 bottle of Scotch at Christmas time. It's an affordable luxury."

Some of that luxury truly tastes better. Single malts, for example, have iconoclastic personalities because they reflect the styles of the region where they're made (Islay, off the west coast of Scotland, gives us robust, peaty drams) and the specific whiskey-making DNA of the individual distillery that produces them (taller pot stills put forth lighter and more subtle spirits). But spirits companies use all the cachet they can muster to sell their products, which explains the profusion of kilts being worn by Scots, and a few Americans as well. This Fest included, for the first time, "experience rooms" for a handful of distillers. A fog machine created a "smoky" atmosphere for the formal presentation by Highland Park, a robust single malt Scotch that hails from the far-northern Orkney Islands, while Glenmorangie went against its rural Highlands image with urban music, cute young hostesses and a velvet rope at the door. "It was a little bizarre," said Warren Becker, a Manhattan whiskey lover. "The room was more show than substance."

To attract the high-end whiskey dollar-Scotches that can go for hundreds of dollars, bourbons that approach and surpass the $100 mark-companies have introduced any number of older and rarer spirits. Highland Park, located in the northern Scottish archipelago, the Orkneys, added to its range of 12-, 15-, 18- and 25-year-old bottlings last year with a 30-year-old. (Longer aging in casks will usually give the spirit a greater smoothness and complexity as the spirit and the wood interact, but this can be overdone.) Some distilleries have resorted to out-and-out esoterica. Last year saw the arrival of Woodford-Reserve Four Grain Bourbon, the first commercial whiskey to be distilled from corn, barley, wheat and rye-all others use wheat or rye, but not both, in addition to corn and barley-since at least before Prohibition, and maybe ever. Some 3,000 bottles were released last year and another 12,000 or so came out in August-both allotments sold out quickly, in part because Woodford does not plan to make it again.

Before the current boom, distillers focused on "core" offerings-standard drams that were the same year in and year out. Consistency was paramount and brand loyalty was considered to be the profitable result. Spirits that are different-probably because of the barrel in which they matured-are now considered treasures rather than outcasts, candidates for special editions that come with big price tags. "These are the 12 casks in the back of the second floor that Old Willie the warehouse manager has been hiding," says Jack Robertiello, who edits the Web site for Adams Beverage Group, "and they can do something exciting about it."

Pricey stuff can help sales of cheaper stuff: Old Forester Birthday Bourbon, an annual limited edition, seems to have revived the Old Forester brand, for example. But the limited availability of these bottlings can frustrate consumers and retailers. LeNell Smothers runs a Brooklyn, New York, store, LeNell's Ltd., that's a magnet for whiskey lovers, because she has booze that can't be found elsewhere. But when Buffalo Trace in Frankfort, Kentucky, recently introduced Thomas H. Handy Rye Whiskey as part of its 2006 "Antique Collection," she was able to grab less than 20 bottles-about a fifth of what she could have sold to people on a waiting list. "We put more time and effort into dealing with the waiting list than we'll be making from the sale of the Thomas H. Handy," says the retailer, who worries that some of her regular customers may take offense if they don't get the goods. But Smothers is fighting rye with rye. At WhiskyFest the other night, she was pouring samples of LeNell's Red Hook Rye, a high-octane whiskey that has been produced exclusively for her. It goes on sale this December. "It's a limited edition," says Smothers with a smile, "and it's all mine."

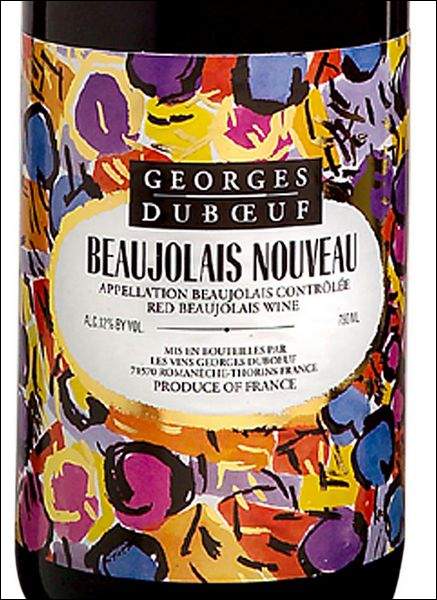


**[II. IOWA NEWS.](#II)**

**17. Sip That Beaujolais Now, S'il Vous Plait**

By Erin Crawford, Staff Writer – *Des Moines Register*

November 16, 2006

Beaujolais Nouveau is the FedEx of wine. It arrives today, lightning-fast and just in time for the holidays.

"It's light and fruity and works with holiday meals," said Howard Bernstein, owner of Casa Di Vino in Johnston. "You drink it through the holiday season and then you're done with it."

Thanks to wine marketer extraordinaire Georges DuBoeuf, the annual release of Beaujolais Nouveau on Nov. 16 has turned into something of a national holiday in France and abroad.

In Iowa, Beaujolais orders are up 80 percent over last year.

"It's a very, very big time for us," said Blake Krynicky, regional manager of wine importer W.J. Deutsch & Sons, which has exclusive rights to Georges DuBoeuf wines.

"It's an event, a celebration of the harvest."

Made from grapes harvested in September, Beaujolais is fermented using a method called carbonic maceration, where grapes release carbon dioxide and ferment inside their skins. The speedy process creates a wine with fewer tannins, creating a fresh, fruity flavor.

DeBoeuf markets Beaujolais Nouveau as "the red that drinks like a white." True to that statement, Beaujolais can be served chilled.

Adding to its popularity is its affordability. Expect to pay between $8.99 and $16.99 for a bottle.

"I celebrate (the Beaujolais Nouveau release) at home, and I've done it for clients," said Alex Strauss, chef and owner of Sans Souci catering, who'll be teaching a class on cooking with Beaujolais Nouveau on Friday.

"It's a great way to kick off the holiday. Everyone puts all that pressure on Thanksgiving and this is something you can do with friends prior to the holiday. It's another reason to party."

Beaujolais works well with heavy holiday foods, such as turkey. Strauss recommends drinking it with a cheese fondue.

At the class, his wife will poach pears in Beaujolais and serve them in a red wine caramel sauce.

It's a crowd pleaser, this wine, partly because it's not very winey, meaning people who aren't normally into wine may enjoy it.

The one thing Beaujolais doesn't handle well is time. Store extra bottles for no longer than six months.

"Don't buy a case," Strauss said.

<http://desmoinesregister.com/apps/pbcs.dll/article?AID=/20061116/ENT02/611160394/1048>



**18. Colleges Target Outdoor Smoking**

By Lisa Rossi, *Register Ames Bureau*

November 12, 2006

**Several schools aim to reduce secondhand smoke**

Ames, Ia. - The days when college students can roam campus clutching a cigarette might be near an end.

The University of Iowa, Des Moines Area Community College and Drake University are contemplating all-campus smoking bans, while Iowa State University is poised to strengthen its outdoor smoking rules. They follow campuses nationwide that have made their grounds smoke-free zones.

Campuses in Iowa would be some of the largest no-smoking zones in the state if the policies are enacted, supporters say.

Anti-smoking advocates say college smoking bans are one more step toward removing secondhand smoke from society. Student smokers object to the proposed policies as excessive.

###### RODNEY WHITE/THE REGISTER

Luci Van Scoy, 19, a sophomore at Iowa State University in Ames, holds a cigarette on the campus Monday. ISU is considering tightening its rules on smoking outdoors.

"I completely disagree," said ISU junior Amanda Elmore, who is from Minnesota. "If you are outside, you should be able to smoke."

Thirty-four campuses nationwide prohibit smoking both indoors and out, according to the American Nonsmokers' Rights Foundation, a lobbying organization based in Berkeley, Calif.

In Iowa, the Maharishi School of Management in Fairfield, and Des Moines University, a medical and health science school in Des Moines, have banned smoking on their grounds. Smoking is also already banned inside the residence halls of the three public universities in Iowa and in most, if not all, indoor areas.

Campus discussions about smoking bans come on the heels of a U.S. surgeon general report released in June that asserts there are no risk-free levels of exposure to secondhand smoke.

George Weiner, director of the Holden Comprehensive Cancer Center, a cancer research and care center at the University of Iowa, said that even though it's more difficult to study the effects of secondhand smoke outdoors, he believes nonsmokers there can face toxic effects similar to what they experience from indoor smoke. He also said outdoor smoke can be irritating to those with asthma.

**Apprehension at ISU**

Most smokers interviewed at ISU said that they could handle rules that push them farther away from building entrances but that an all-campus ban could hurt recruitment efforts to the university.

"They'd get less people interested in coming here," said ISU junior Derick Lester of Estherville, who is 21.

New data released this fall by the Centers for Disease Control and Prevention show that smoking is more common among young adults ages 18 to 24 than it is for any other age group.

A committee at ISU has mulled pressing for an all-campus smoking ban.

Earlier this month, members of the Professional and Scientific Council at ISU backed off the all-campus smoking ban idea and instead endorsed a ban on smoking within 25 feet of occupied university buildings.

That recommendation is more stringent than rules being considered by a different campuswide task force that recommends smoking bans within 25 feet of certain areas of buildings and within 10 feet of others.

Cathy Good, the president of the Professional and Scientific Council at ISU, said more than 300 people on campus recently responded to an online poll organized by the council regarding smoking.

Of those, 248 voted in favor of eliminating smoking near building entrances on campuses.

However, those voters did not endorse an entirely smoke-free campus, with 102 voting against that idea, versus 182 who voted for it.

It's "just that smokers have rights too, and (in) encouraging diversity, we need to be considerate of all people," said Good, summarizing some of the reasons people voted against an all-campus ban.

**Discussions elsewhere**

DMACC and Drake University leaders said they will be seeking campus input to test support for all-campus smoking bans. A committee at the University of Iowa is also studying the option.

Drake leaders have asked the American Lung Association to talk with students, faculty and staff after the organization approached the 150-acre campus in urban Des Moines last week about becoming tobacco-free.

At the University of Iowa, a 1,900-acre campus in Iowa City, a committee is studying whether to recommend an all-campus smoking ban and whether the school should revoke a few exceptions to the no-smoking-indoors policy.

Those debates have emerged after the U of I's University Hospitals and Clinics implemented a smoking ban on its grounds in July.

The university's five health science colleges followed, promising to go smoke-free in April 2007.

The campus has an interim rule that bans smoking within 25 feet of any entrance or exit to any campus building.

The smoking-policy committee plans to submit a recommendation to the president's office by the end of the month, said Sue Buckley, one of the committee's leaders.

DMACC President Robert Denson said the community college's leaders will also meet with groups on campus starting around January to talk about the possibility of going completely smoke-free.

The community college, which has 18,608 students, already bans smoking indoors and 25 feet from every door. If approved, the ban would apply to all of DMACC's eight campuses, which cover a total of 457.5 acres.

"Everybody we talk to says there is no acceptable level of secondhand smoke," Denson said.

**PUBLIC INPUT SOUGHT**

The Smoking Policy Development Task Force at Iowa State University is gathering public input from the campus community during the entire month of November on its proposed smoking policy.

**OPEN FORUMS:** There will be two open forums Nov. 14 in the Memorial Union. One is scheduled for noon in the Cardinal Room; the second is set for 7 p.m. in the South Ballroom.

**LEARN MORE:** The smoking policy this task force has drafted can be found in the left-hand column at policy.iastate.edu.

**WHAT’S NEXT:** After the committee gathers input, the draft will be revised, and a final version of the policy will be sent to Warren Madden, vice president for business and finance, and to Gregory Geoffroy, ISU president, for their approval.

<http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2006611120345>



# 19. Ban Smoking in More Places?

### *Des Moines Register*

###### November 13, 2006

  
**The issue:** Earlier this month, Des Moines City Councilwoman Christine Hensley announced plans to pursue a ban on smoking in municipal parking garages. Hensley said she receives frequent complaints from people who dislike walking through secondhand smoke to get to or from their cars. The city banned smoking in municipal buildings, but not the garages, in 1988.

That was part of a flurry of smoking-related news in Iowa recently.

In their campaigns, both Governor-elect Chet Culver and his opponent, U.S. Rep. Jim Nussle, said they supported allowing local communities to decide whether to ban smoking in bars and restaurants. (Ames and Iowa City had passed ordinances to prohibit smoking in restaurants, but they were struck down by the Iowa Supreme Court in 2003. The court said the local ordinances were not permitted under state law.)

###### RODNEY WHITE/REGISTER FILE PHOTO

Penny Harwick, left, and Debbie Gray, both working for ING, take a smoke break Nov. 1 in the public parking ramp in the 800 block of Grand and Locust, just off the skywalk into the ramp.

Meanwhile, some college and university campuses in Iowa are considering further restricting smoking on campus or banning it altogether.

### Curb smoking in parking ramps

The Des Moines Register recently ran a story about banning smoking in city parking garages. This came about as the Des Moines City Council was reviewing our parking-garage system.  
  
Since that time we have received numerous e-mails and calls regarding this issue, and 95 percent or better applaud the efforts the city of Des Moines is undertaking to review whether smoking would continue to be allowed in our parking garages.

Reasons to look at this issue include, first and foremost, concern about secondhand smoke. Because most companies have banned smoking in their buildings and on their property, smokers choose to go to the parking garages for their smoke breaks. We have received more and more complaints about the smoke filling cars as people drive through the smokers, the smell penetrating their clothes when they walk through the smokers to the skywalk and the large groups gathering at many of the skywalk entrances, causing safety concerns.

When a cigarette is smoked, about half of the smoke is inhaled/exhaled by the smoker, and the other half floats around in the air. Secondhand smoke is a toxic cocktail consisting of poisons and carcinogens. There are more than 4,000 chemical compounds in secondhand smoke, 200 of which are known to be poisonous, and upward of 60 have been identified as carcinogens. No one should be forced to breathe in air tainted with cigarette smoke.

Another issue of concern is the cigarette butts that are thrown on the ground and not in the ashtrays or receptacles provided. These butts do not disintegrate, and they make our city appear dirty, especially to our out-of-town guests. This has become so much of an issue that the parking management company is required to hire the equivalent of a fulltime employee to go through the garages daily and pick up the butts.

We understand that smokers have their rights; however, they should not infringe on others’ rights and endanger their health or litter parking garages or other public places. We believe we can all work together to designate smoking areas in public places that will accommodate smokers, but will not endanger others.

— **CHRISTINE HENSLEY** is a member of the Des Moines City Council. This essay was also signed by council members Chris Coleman, Michael Kiernan and Bob Mahaffey.

### Smoking outdoors poses no public threat

At first, I thought maybe Christine Hensley was trying to protect smokers from the double-whammy of smoking while inhaling toxic fumes from car exhaust. Then, my more cynical side told me it must be a ploy to make smoking bans in bars and restaurants sound more reasonable. (“Keep the ramps, just give us the bars!”)

Whatever the case, the fact remains that brief exposure to secondhand smoke may be irritating to some, but it is not a public-health issue, despite what the George W. Bush-appointed surgeon general claimed last summer.

Fortunately, there are a few brave souls in the science and medical community who have dared challenge the “science” of the anti-smoking hysteria sweeping the country. Dr. Simon Chapman, editor of Tobacco Control journal, has stated outdoor smoking bans are baseless. “For some rare individuals with exquisite sensitivity,” he states, “an acute exposure (to SHS) might precipitate an adverse episode. Similar claims are made about a large range of environmental agents. But, in general, public policy is not based on cocooning such people from exposures that are inconsequential to nearly everyone.”

Dr. Michael Siegel, current professor of public health at Boston University and a former scientist at the Centers for Disease Control’s Office on Smoking and Health, has repeatedly stated that “these policies (outdoor smoking bans) are not supported by scientific evidence.” He calls such non-science-based policies “social engineering at its worst. It treats smokers as social pariahs, demonstrates intolerance, and takes tobacco control out of the realm of public health, turning it instead into a non-evidence-based moral crusade.”

In short, if you hate something badly enough, you’ll believe just about anything. This type of blind-faith thinking has gotten our country into all kinds of trouble, including our current mess in Iraq.

So, what’s the endgame here? How much segregation will be enough? How much are we, as a society, willing to compromise civil liberties and further marginalize 22 percent of the adult population in the name of “public health”?

— **RICHARD MAYNARD** of Indianola is the Iowa Coordinator for The Smoker’s Club Inc., an international nonprofit organization formed to counter the intrusion on personal choice and civil liberties by the anti-smoking movement. The club neither advocates smoking nor is it funded by the tobacco industry.

### Cigarettes to be snuffed on campus?

Several of Iowa’s colleges and universities are considering tightening restrictions on smoking or enacting campuswide bans.

According to the American Nonsmokers’ Rights Foundation, 34 campuses nationwide have banned smoking on campus, inside and out, including Des Moines University, a medical school.

In July, the University of Iowa Hospitals and Clinics banned smoking on its grounds. The five health-science colleges have pledged to follow suit next year.

A U of I committee is now studying a campuswide ban. Des Moines Area Community College and Drake University also plan to consider bans.

At Iowa State University, a ban was considered, but committees instead have recommended bans on smoking within 10 or 25 feet of buildings. Examples from a draft smoking policy: Smoking would be prohibited within 25 feet of building entrances, operable windows and fresh air intakes. It would be prohibited within 10 feet of outdoor eating areas. It would be allowed in designated private apartments in university housing. Read a copy of the smoking policy at <http://policy.iastate.edu/policy/smoking/20061101/>. Comments on the policy should be submitted to [smokingpolicy@iastate.edu](mailto:smokingpolicy@iastate.edu) by Nov. 30.

Forums on the draft policy will be conducted from noon to 1 p.m. Tuesday in the Cardinal Room of the Memorial Union and from 7 p.m. to 8 p.m. Tuesday in the South Ball Room.

<http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2006611130316>



**20. Panel Supports Ban on Smoking in D.M. Garages**

By Jason Clayworth, Staff Writer – *Des Moines Register*

November 16, 2006

**But the city is urged to help find other sites for smokers or promote quitting the habit.**

A smoking ban in Des Moines' public garages was recommended to the City Council on Wednesday by the city's parking advisory committee.

If approved, the ban would probably begin next year, city leaders said.

"Once this hit the papers, I've just been amazed at the response I've gotten," said Des Moines City Councilwoman Christine Hensley, a member of the committee who proposed the ban this month.

People who use the city's eight parking garages have increasingly voiced complaints about others who use the structures for a quick puff, city leaders have said.

Hundreds of cigarettes are smoked in the garages each day, according to a count done this week by a company that manages the garages for the city. The company emptied ash trays in the garages at the beginning of Monday and Tuesday, then counted discarded cigarettes in them at the end of the day. At least 1,500 were counted Monday and about 1,300 Tuesday. Cigarettes tossed on the ground weren't counted.

The number of smokers in city garages is believed to have increased as companies phase out their own smoking areas. Some nonsmokers are upset that they have to walk through a cloud of secondhand smoke, particularly near the entrances of the city's skywalk system.

Des Moines banned smoking in municipal buildings, but not the garages, in 1988.

The parking advisory committee, made up largely of business representatives, gave the thumbs-up to the ban. The group also advised the council to work with downtown companies to help promote alternatives such as quitting smoking or using an outdoor area far from sidewalks or public entrances for smoking.

Advisory member Scott Carlson, managing partner of Court Avenue Restaurant and Brewery, cast the lone vote against the recommendation.

"You're dealing with people's rights," Carlson said, noting that smoking is legal.

Kerry Wise, a project associate with the American Lung Association of Iowa, attended Wednesday's meeting. Her group supports the garage smoking ban. She believes that working with businesses to find alternative locations will create problems similar to those that exist now.

"What happens is that it may work for a very short time, and then it trickles out," and people are again smoking near public common areas, Wise said.

<http://desmoinesregister.com/apps/pbcs.dll/article?AID=/20061116/NEWS05/611160417/1001/NEWS>



**21. Upcoming Legislative Session Must Address Public Safety, State Smoking Ban**

*DI Editorial Board*

November 14, 2006

On Monday, the Iowa City City Council met with state legislators, kicking off what we hope will be continued open dialogue between the city and state regarding specific issues that must be addressed when the Legislature convenes for the 2007 session in January.

This Editorial Board would like both the city and the state, in particular, to pay special attention to three issues we feel are most important in the upcoming year: increased funding for public safety, a statewide smoking ban in restaurants, and more responsible use of tax-increment financing.

Since Sept. 17, 10 sexual assaults have been reported to Iowa City police, with the latest occurring in the early morning hours on Sunday. Time and time again, we have called for an increase in police patrolling of residential areas, but more funding from the state for public safety would allow the city to hire more officers and create a wider, more comprehensive watch of both the downtown and residential areas.

The Iowa City Fire Department is also in need of more funding to build a fire station in northern Iowa City and hire additional firefighters to the inadequate number of 57 full-time positions.

The passage of a statewide smoking ban in restaurants should also be a goal for state lawmakers. In July 2003, Iowa City was forced to rescind its attempt at a restaurant smoking ban after the Iowa Supreme Court ruled that city-adopted smoking bans were unconstitutional.

The detrimental health effects of secondhand smoke have been proven again and again, and the EPA classifies secondhand smoke as a "Group A carcinogen," meaning it is a known cause of cancer. It is time for the state to recognize the health consequences of secondhand smoke and ban smoking in restaurants across Iowa.

Finally, the use of TIF money has again become an issue; the City Council approved its use for the Hieronymus Square Project, a 13-story residential and commercial tower to be constructed on the southeast corner of Burlington and Clinton Streets. An estimated $16.4 million of the estimated $40 million project will be financed by TIFs, and though this is purported to benefit the local economy, this argument doesn't hold up under scrutiny.

A study by two Iowa State University professors, reported in the DI Oct. 12, ("TIF tiff rolls along"), revealed that this project yields "virtually no statistically meaningful economic, fiscal, and social correlates with [TIF districts] … the overall expected benefits do not exceed the public's cost." In September, Johnson County Supervisor Rod Sullivan also spoke out against using TIF, saying, "The bottom line is simple: We don't have to have a new building. It may be a great thing, but we don't need to offer incentives for something the market can handle." The decision to use this tax incentive must be made more responsibly in the future.

We feel each of these issues merit immediate attention and hope legislators take action in January to address these important concerns.

<http://www.dailyiowan.com/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=75d524e5-2129-4d67-9e2c-e03889377c33>



**22. How I Quit**

By Dawn Sagario, Staff Writer - *Des Moines Register*

November 16, 2006

### Seven former smokers share their strategies for beating the tobacco habit

For many smokers trying to quit the habit, the road to being tobacco-free often involves more than one attempt.

Some individuals say they've tried everything, finding success for short stints of time but eventually relapsing.

Today marks the 30th Annual Great American Smokeout, a national event to help smokers give up smoking. John Lowe of the College of Public Health at the University of Iowa says these issues must be overcome:

- Physiological. People will experience withdrawal symptoms.

- Psychological. Quitters need to find new ways to cope with life.

- Habitual. Because smoking becomes comfortable, the habit must be completely broken.

"The program that works the best is the one way that you like," Lowe said. Here's how seven Iowans kicked the smoking habit:

**Bob Rounds, 69, Perry**

Rounds smoked for 50 years. He tried to quit twice.

The first time, he cut back the number of cigarettes he smoked daily, from a pack a day to four or five cigarettes a day.

For the second attempt, he went cold turkey. Both times he stayed cigarette-free for several weeks.

When Rounds was diagnosed with diabetes, he decided to quit for good. The smell of his clothes and the cost also played a role in his decision, he said.

Rounds quit Thanksgiving Day 2004, after signing up for a smoking-cessation class at Dallas County Hospital.

The class didn't have to quit smoking until the third week of the program, but Rounds decided to drop his habit the first day of class.

"I went to the class more or less for reinforcement, more than anything else," he said. "I think it's all mental. Half of the urge to smoke is the habit, or something to do with your hands."

Rounds said he was given prescriptions for nicotine inhalers and lozenges, but he never had to use them.

As a reward, Rounds "paid" himself $100 a month for a year. That sum is the amount he would have spent on cigarettes.

He bought woodworking tools and a digital camera with the saved money. In June, he took the camera with him to Alaska.

**Ron Eklund, 65, West Des Moines**

A combination of Christian faith and the buddy system prompted Eklund to smoke his last cigarette more than 20 years ago.

"I actually went to a smoking clinic and it was one of those where they have you smoke a lot of cigarettes - more than you really want to," Eklund said.

He went with a friend who also wanted to quit.

"Basically, what made me want to quit was not letting my friend down," said Eklund, who had smoked for 25 years.

The friends threw away their cigarettes after the clinic. "Neither one of us wanted that poor testimony."

Eklund had smoked three packs a day for several years, so it was particularly tough to quit.

"You wonder when you first quit smoking, 'What am I gonna do with my hands?'" Eklund said. "You just don't know what you're gonna do with yourself for a while."

*(For rest of story, click on the link provided below)*

<http://www.dmregister.com/apps/pbcs.dll/article?AID=/20061116/LIFE02/611160396&lead=1>



**23. Tell the Kids: It’s ‘Smokeout’ Day**

By Dawn Sagario, Staff Writer – *Des Moines Register*

November 16, 2006

For 25 years, Alyssa Frideres tried to kick smoking.

“Every Great American Smokeout, I would try to quit,” said Frideres, 45, of Des Moines. She finally broke the cycle in 2004 and ditched tobacco for good.

Today marks the 30th annual Great American Smokeout, a national event to encourage smokers to give up cigarettes.

Older smokers in Iowa seem to be getting the message. Their numbers are on the decline.

The number of younger smokers, however, seems to be stuck. The proportion of middle-schoolers in Iowa who smoke is smaller than the U.S. average but remained unchanged at 7 percent from 2002 to 2004.

“We’re really concerned that we’re going to see it stagnate,” said Bonnie Mapes of the Iowa Department of Public Health. Mapes is the division director for tobacco use prevention and control.

Budget cuts to the youth tobacco-use prevention program Just Eliminate Lies is one reason for the lack of progress, she said. In 2003, the program’s budget was cut from $3.8 million to $1.2 million. “There’s a real clear correlation between the number of exposures that kids get to a message and their changes in behavior,” Mapes said.

In contrast, the share of Iowa high school students who smoke cigarettes dropped from 27 percent to 20 percent from 2002 to 2004.

High school and middle school smoking rates in Iowa are still lower than national rates – 10 percent for middle-schoolers and 22 percent for high school students in 2004, Mapes said.

Preliminary 2006 data from the Iowa Adult Tobacco Use Survey show that 18 percent of Iowa adults currently smoke. Between 1988 and 1996, the share of smokers hovered between 20 percent and 24 percent, before showing a steady decline from 1997 to 2004.

The state’s 2004 Adult Tobacco Use Survey found that a huge majority – 82 percent – said they wanted to stop smoking. That compared with 69 percent in 2002.

Nationally, the percentage of adult smokers 18 and older dropped steadily for 40 years, then remained unchanged from 2004 to 2005, according to an October report by the U.S. Centers for Disease Control and Prevention.

Nationwide in 2005, about 21 percent of adults – or about 45 million people – were smokers, according to the CDC report. The rate was the same in 2004.

Increased funding to promote Quitline Iowa, a statewide smoking-cessation hot line, will help inform more people about the free resource, according to Mapes.

Trained counselors help create individualized plans to quit, discuss the health consequences of tobacco use and offer ongoing support through optional follow-up calls.

Only about 5 percent of adults in iowa who wanted to quit using tobacco had heard of the hot line, according to the Iowa Adult Tobacco Use Survey from 2004.

A University of Iowa professor said it generally takes three to five attempts before smokers ultimately do quit.

But John Lowe, a professor in the College of Public Health and director of the Iowa Tobacco Research Center, said some may use that as justification for being unsuccessful.

Quitters may find a new prescription drug called Chantix helpful. It blocks the effects of nicotine, “so you don’t get the buzz,” Lowe said.

<http://www.dmregister.com/apps/pbcs.dll/article?AID=/20061116/LIFE02/611160414>



**24. Two DM Men Arrested in Bar Fight That Went Mobile**

By Kate McGinty, Staff Writer – *Des Moines Register*

November 17, 2006

A barfight Thursday night escalated to a chase through Des Moines streets, an assault that police tried to stop with mace, and serious charges against two men.

Kile Lesley, 25, and Jonathan Stevens, 25, both of Des Moines, were arrested and face several charges. Lesley was out of the Polk County Jail by this morning; Stevens is scheduled for a court hearing this morning, but is being held on a $46,073 bond.

The incident began with a fight at about 10:30 p.m. at Manning’s bar at 2102 Indianola Ave.

Two Des Moines men, James Petefish, 26, and Brandon Smith, 19, said they left after the fight. They jumped into a car driven by their friend, Staci Wolfe, 25.

As they drove away, Lesley and Stevens followed them in a Jeep and forced them to turn onto Olinda Avenue, police said. The Jeep then raced in front of Wolfe’s car, forcing her to stop.

Lesley and Stevens jumped out of the Jeep and ran to the passenger side of Wolfe’s car. They broke out the car window and began hitting Petefish, police said. Pieces of a broken chair were used in the assault.

The assailants then tried to pull Petefish out of the car by his feet, an observing officer said. Lesley pulled Petefish’s shoe off and threw it at him, according to the report. The police officer then sprayed mace in Lesley’s face to try to stop the assault, the report said.

Stevens ran back to the Jeep and jumped in the driver’s seat, according to police. The officer smashed out his car window and yelled for Stevens to stop but he drove away.

Lesley then took off running through back yards. He eventually arrested him behind a house on Fulton Drive.

Lesley was charged with first-degree burglary, assault with a motor vehicle and interference with police acts.

Another officer saw the Jeep around the 300 block of Hartford Avenue and pulled it over. Stevens then was arrested and charged with first-degree burglary, simple assault, interference with police acts and driving without a license.



**[III. OTHER STATE NEWS.](#III)**

**25. Local Brewer Pulls Out of Illinois Market (Illinois)**

By Jane C. Parikh - *Kalamazoo Gazette*

November 12, 2006

The Illinois beer market accounts for about 11 percent of Bell's Brewery Inc. business, but owner Larry Bell said Friday that he's pulled out of that market because he doesn't want to do business with new distributors of his product.

``My choices were to be sold to people I didn't want to do business with, be sued, or get out,'' Bell said Friday via telephone from Florida.

Bell's beers were being distributed by Indianapolis-based National Wine and Spirits Inc., which sold the distribution rights to his beers to Chicago Beverage Systems, one of the Midwest's largest distributors, according to Bell.

Bell, 48, who founded his microbrewery in downtown Kalamazoo in 1985, said he was concerned that his products would not receive the same amount of attention from Chicago Beverage as the Miller brands, which Chicago Beverage also distributes.

Representatives of Chicago Beverage could not be reached for comment.

A spokeswoman for National Wine & Spirits said her company would not comment on Bell's situation because of ongoing litigation with another wholesaler who has a financial stake in her company.

Bell's Kalamazoo Brewing Co. had $12 million in sales last year. Bell said Illinois has been his company's fourth-largest market.

Under Illinois' Beer Industry Fair Dealing Act, on the books since 1982, manufacturers are legally bound to have their product distributed by a particular distributor. Their only recourse is to have their contract with a distributor bought out by another distributor, or have a judge rule that there is sufficient case for a separation.

Bell said his last beer shipments to Illinois were on Oct. 9. He said his decision to step away from Illinois won't result in any of his 70 Kalamazoo-area employees losing their jobs or decreases in beer production, all of which is done in Comstock Township.

``It's probably going to impact the growth number for the fourth quarter,'' he said of sales, ``but beyond that I don't see a huge impact. We've been running pretty hard and fast.''

Had the company continued to distribute in Illinois, Bell said, it could have seen a 20 percent increase in sales in October compared to sales in October 2005. Instead, he said, October sales managed only a 7 percent increase.

But year-to-date sales for Bell's Brewery Inc. are up 23 percent, Bell said. He said he is now distributing his beers in Iowa and just made a first shipment to Washington, D.C. Also, he said, he just signed contracts to distribute his beers in North Carolina and Virginia.

Bell's beers also are distributed in Indiana, Kentucky, Minnesota, Missouri, Ohio and Pennsylvania.

``We've already seen a spike in our business along the Illinois-Wisconsin border,'' Bell said.



**26. Alcohol Commission Rejects Proposal to Let Stores Offer Coupons (North Carolina)**

*Herald Sun*

November 10, 2006

RALEIGH, N.C. -- The state's Alcohol Beverage Control Commission has rejected a plan that would allow retailers to offer frequent-shopper discounts and coupons for beer and wine.

The commission's 2-1 rejection came Thursday after North Carolina First Lady Mary Easley, national co-chairwoman of Leadership to Keep Children Alcohol Free, wrote a letter to commissioners.

"I believe this proposal is socially irresponsible and dangerous," Easley wrote.

Darrell Jernigan, director of the Governors Highway Safety Program, also criticized the proposal, saying it would undermine efforts to curb drunken driving.

Retailers had sought permission to offer coupons on beer and wine just as they do with other goods. A similar proposal failed to pass through the state Legislature earlier this year.

"I'm not sure where we go from here," said Andy Ellen, a lobbyist for the North Carolina Retail Merchants Association.

Commissioners encouraged the retailers to modify the plan, perhaps by limiting the coupons to wine.



**27. Court Overturns $39M Decision Against Outback (Indiana)**

INDIANAPOLIS (Nov. 9) - The Indiana Supreme Court has overturned a $39 million decision against Outback Steakhouse Inc., now known as OSI Restaurant Partners Inc., that was originally handed down in a 2003 trial involving an intoxicated patron of the chains Muncie, Ind., unit.

In 1997, the individual had consumed free and discounted drinks during the stores grand opening, then driven his car into a motorcycle being ridden by a couple, who were severely injured. A jury decided in the 2003 trail that the unit was liable because it served drinks free or for a nominal charge, and awarded the couple $39 million.

Last year, an appeals court refused to overturn the decision. But the Supreme Court voted 5-0 to reverse the lower courts decision, noting that the plaintiffs attorney in the original trial had failed to forewarn Outbacks lawyers about a witness, a server who testified the driver had drunk. It ordered that a new trial be convened to re-hear the matter.



**28. Uncap Beer Tax? (Oregon)**

By Joe Mosley- *The Register-Guard*

November 12, 2006

EUGENE, OREGON -- The 2007 Oregon Legislature will be under Democratic control for the first time in 18 years, potentially opening the door for a state beer tax increase that has been locked out for 20 years by Republican leaders.

Oregon's beer tax, among the lowest in the nation, has not been adjusted since 1976.

But an aura of invulnerability surrounding the state beer tax was shaken this fall by a controversy involving several state legislators' expense-paid trips to Hawaiian conferences sponsored by the state's top beer-industry lobbying group.

And Tuesday's election results have led to downright optimism among proponents of a beer tax increase, which would provide a financial shot in the arm for prevention and treatment programs for those with alcohol or drug abuse problems.

"With a Democratic House, Senate and governor, I think we can pass the bill," says state Sen. Bill Morrisette, D-Springfield, who already is working on a draft bill to increase the Oregon beer tax to a total of about 10 1/2 cents per 12-ounce glass, from its current rate of about three-quarters of a penny. The proposed new rate would be the nation's highest.

"It has to be introduced in the House, and we have never been able to get a hearing," Morrisette says. "It can be a bipartisan approach, but the leadership in the House is what's killed this."

With last week's election giving Democrats a 31-29 margin in the Oregon House and maintaining their comfortable margin in the Senate, prospects have brightened.

"It's a huge issue," says Morrisette, who teamed with Rep. Jackie Dingfelder, D-Portland, on unsuccessful attempts to raise the beer tax in 2001 and 2003. "To me, it's at the top of the list of things to do this time."

Morrisette and other proponents of the increase maintain that rising costs associated with substance abuse in Oregon have left the taxes that might pay for prevention and treatment programs far behind.

As many as 75 percent of the inmates at Oregon's prisons committed crimes related to alcohol or drug abuse, he says. Mental health programs, hospital emergency rooms and family relationships have been hit hard as support for counseling programs has dwindled in the past couple of decades.

"I think it's just terrible we're not putting more money into the prevention and treatment end of it," Morrisette says. "There's such a disparity between (money spent on prisons) at the end of the whole process rather than (prevention) at the beginning."

Pam Erickson, deputy director of Oregon Partnership, says the current tax of $2.60 per 31-gallon barrel of beer is out of proportion to alcohol's toll on public dollars.

Erickson - former director of the Oregon Liquor Control Commission - says her agency and others that promote early-stage prevention and treatment for alcohol and drug abuse would benefit greatly from the legislation being discussed for 2007.

While the current beer tax is expected to raise $14.6 million in the biennium after next year's legislative session, the proposed "Malt Beverage Cost Recovery Fee" would raise an additional $109.8 million in the two-year period.

Erickson says the sale of hard liquor in state-controlled stores generates a reasonable amount of money for the state through markups, and Oregon's wine tax falls in the middle range among other states.

"But the (existing) beer tax is so low it's almost not worth collecting," she says. "It just is totally out of proportion to the cost to the public of alcohol. And the primary alcohol that Oregonians drink is beer. The beer industry just isn't paying its fair share of the cost to the public."

Paul Romain, executive director of the Oregon Beer and Wine Distributors Association, says he is ambivalent about a beer tax increase. "The people that are pushing it are very well-meaning."

Romain points out that while beer manufacturers, who are the ones that would have to pay the tax, are adamantly opposed to an increase - which would raise prices and could dampen sales - the wholesalers he represents actually would profit because they add a percentage markup to their total acquisition cost.

For example, if the cost of a product is $100 and markup is 10 percent, the wholesaler would get a $10 profit; but if a new tax pushed the product cost to $105, the wholesaler's profit on a 10 percent markup would be $10.50.

"The reason the beer tax hasn't gone up in Oregon has nothing to do with me," says Romain, who is generally credited with holding sway over legislation related to the beer industry. "It's the Oregon brewer - nobody wants to tax the Oregon brewer. Eleven to 13 percent of all beer sold in this state is microbrew, which is astronomical (compared with other states). That's why the tax hasn't gone up."

He contends that most of the opposition to a tax increase has come from brewers - primarily the big three of Anheuser-Busch, Miller and Coors, but also the Northwest microbreweries that could be affected.

As for the consumer, nobody really knows at this point what the final increase would amount to, Romain says.

The current proposal exempts breweries that produce fewer than 200,000 barrels per year from the new tax. That would ease the pinch for most of the state's homegrown brewers. But its largest, Widmer Brothers Brewing in Portland, is above the exemption limit and Deschutes Brewery in Bend is close.

"We're under it for the moment, but we're rapidly approaching it," Deschutes President Gary Fish says. "If (a tax increase) comes up again, we will be opposed to it because we have to be - we don't have a choice.

"The whole thing won't raise much money ... and you'll devastate a homegrown Oregon industry. To me, the whole thing seems pretty absurd."

Fish says his brewery is operating on a thin margin, and already has had to absorb cost increases - from health insurance to glass to utilities - of 6.6 percent in the past five years. During the same period, Deschutes has been able to justify product price increases of just 1.4 percent, he says.

Fish says that a 10-cent-per-glass tax increase that was proposed in the 2005 Legislature would have amounted to about $2 million per year in new taxes for his company.

"The idea that money exists, or that we could just pass that along to consumers is patently false, and it would have a devastating impact on our company," Fish says.

"We expect that a beer tax increase will come up (next year) because it does every session," he says. "Now, with the swing in the Legislature, maybe it will have more legs. I don't know why that is - why it's a Democratic or a Republican issue - but apparently it is."

Proponents say they're determined to keep trying, because Oregon's tax is so low and has been unchanged for so long.

Missouri, home of Anheuser-Busch, has a 6-cents-per-gallon beer tax that is the country's second-lowest - behind only Wyoming (2 cents), which also exempts personal and corporate income from taxation.

Wisconsin, where Miller Brewing Co. is headquartered, comes next in the beer tax rankings at 6.5 cents per gallon.

Then it's Colorado (Coors Brewing Co.), Oregon and two other states at 8 cents per gallon.

Oregon's beer tax - which equates to about three-quarters of a penny per 12-ounce glass - has not been increased since 1976, despite attempts to raise the tax in each of at least the last 10 sessions of the Oregon Legislature.

"It's the large, out-of-state alcohol interests," says Erickson, of Oregon Partnership.

"They control the lobbyists, and tell them what their marching orders are,"

she says. "Up until recently, their marching orders have been, 'Don't give an inch,' and they've been enormously effective at shutting down even any public discussion of the issue."

Seven state legislators - five Republicans and two Democrats - have acknowledged this fall that they accepted expense-paid trips to Hawaii in 2002 and 2004 for conferences sponsored by the Oregon Beer and Wine Distributors Association, and failed to report the gifts to the state ethics commission as required by law.

The ensuing controversy may cause the beer lobby's supporters to be more circumspect, tax proponents say, and has drawn a spotlight to the lobby's influence.

"It's raised it to a new level of awareness," says Morrisette, the Springfield Democrat.

The proposed tax increase would raise Oregon's total beer tax to just more than $1.11 per gallon - replacing Alaska, at $1.07 per gallon, as the country's highest. The median rate for all 50 states and the District of Columbia is just less than 19 cents per gallon.

Erickson says she's not so sure proponents of an increase will get everything they're asking for, but feels the stage is set for a move in that direction.

"I can't imagine that a tax that is highest in the nation would actually pass," she says. "You often start high, and that leaves you room for negotiation.

"But I think my organization would probably consider anything less than 5 cents (per glass, or 53 cents per gallon) not worth bothering with. It needs to get up to a reasonable level. This is ridiculous."

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STATES WITH THE HIGHEST EXCISE TAX ON BEER Rates are per gallon

Alaska: $1.07

Hawaii: $0.93

South Carolina: $0.77

Alabama: $0.53

North Carolina: $0.53

STATES WITH THE LOWEST

Kentucky: $0.08

Oregon: $0.08

Pennsylvania: $0.08

Missouri: $0.06

Wisconsin: $0.06

Wyoming: $0.02

- Federation of Tax Administrators



# 29. Alcohol Coupons? North Carolina ABC Commission Rejects Stores' Proposal (North Carolina)

*Associated Press*

November 10, 2006

The state's Alcohol Beverage Control Commission has rejected a plan that would allow retailers to offer frequent-shopper discounts and coupons for beer and wine.

The commission's 2-1 rejection came Thursday after North Carolina First Lady Mary Easley, national co-chairwoman of Leadership to Keep Children Alcohol Free, wrote a letter to commissioners.

"I believe this proposal is socially irresponsible and dangerous," Easley wrote.

Darrell Jernigan, director of the Governors Highway Safety Program, also criticized the proposal, saying it would undermine efforts to curb drunken driving.

Retailers had sought permission to offer coupons on beer and wine just as they do with other goods. A similar proposal failed to pass through the state Legislature earlier this year.

"I'm not sure where we go from here," said Andy Ellen, a lobbyist for the North Carolina Retail Merchants Association.

Commissioners encouraged the retailers to modify the plan, perhaps by limiting the coupons to wine.

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# 30. Texas High Court Reverses Direction on Liquor Liability (Texas)

By John Council – *New York Law Journal*

November 14, 2006

The Texas Supreme Court recently dealt a blow to third-party plaintiffs who file dram shop suits against alcohol retailers by reversing a decision the court made just two years earlier.

On Sept. 3, 2004, the court originally affirmed a $35 million judgment against a liquor store in F.F.P. Operating Partners v. Xavier Duenez et al., but seven months later, after three justices who voted with the majority left the court, the justices voted to rehear the case.

As a result of the rehearing, on Nov. 3 the court released another opinion in Duenez, which some plaintiffs lawyers believe guts the Texas Dram Shop Act and protects alcohol retailers from liability to innocent third parties, such as victims of drunk drivers. But some appellate lawyers say the high court merely interpreted the 1987 law the way the Legislature intended.

According to the opinion, the facts are as follows: The Duenezes filed a negligence suit against F.F.P. Operating Partners and F.F.P.'s store, Mr. Cut Rate #602, after a clerk in the store sold a 12-pack of beer to Roberto Ruiz. Ruiz had entered the store after consuming a case and a half of beer. He then got into his truck, opened a beer, drove down the highway and swerved, hitting the Duenezes' car. Police arrested Ruiz at the scene of the accident. He subsequently pleaded guilty to intoxication assault and was sentenced to prison, according to the opinion.

The Duenezes sued F.F.P., Ruiz and several other parties but eventually nonsuited all of the defendants except F.F.P.

F.F.P filed a cross-action naming Ruiz as a responsible third party, and the trial court severed the cross-action from the Duenezes' suit.

The Duenezes obtained a partial summary judgment, in which the trial judge ruled that Texas Civil Practice & Remedies Code Chapter 33's proportionate responsibility statute did not apply to their innocent third-party plaintiff suit and that the Dram Shop Act's exclusive remedy provision did apply.

Chapter 33 governs the apportionment of responsibility generally and applies to "any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of harm." It makes parties responsible only for their proportionate share of damages awarded. The Dram Shop Act's exclusive remedy provision assigns all liability to providers of alcohol "for the actions of their employees, customers, members or guests who become intoxicated ... in lieu of common law or other statutory law."

At trial, the jury found for the Duenezes, awarding $35 million. Since Chapter 33 did not apply, under the Dram Shop Act, F.F.P. was liable for the full amount of the judgment, even though Ruiz caused the accident.

The 13th Court of Appeals affirmed the trial court ruling, holding that Chapter 33's proportionate responsibility statute did not apply to the case, and upheld the jury verdict.

In its September 2004 opinion, a 5-4 high court found that the proportionate responsibility statute did apply in an innocent third-party case such as Duenez. Under Chapter 33, that would have meant F.F.P. was only liable for its share of the verdict, Justice Harriet O'Neill wrote for the majority. But the jury never apportioned responsibility.

The majority concluded that the trial court should have submitted the question of Ruiz's percentage of responsibility to the jury. O'Neill found that the fact-finder should apportion responsibility between the dram shop and the intoxicated patron, but with a caveat: "The resulting judgment should aggregate the dram shop's and driver's liability so that the plaintiff fully recovers from the provider without assuming the risk of the driver's insolvency. The dram shop may then recover from the driver based upon the percentages of responsibility that the jury assessed between them."

Nonetheless, the majority affirmed the trial court's ruling, because F.F.P. "is responsible to the Duenezes for its own percentage of the liability and that of Ruiz and because there is nothing that would prevent a jury from fairly apportioning responsibility between F.F.P. and Ruiz in the severed action."

Although the high court majority agreed with the first Duenez decision that Chapter 33 applied, on Nov. 3 it rejected how the original majority applied proportionate responsibility to the Dram Shop Act -- points that were hotly debated in dissents by O'Neill and Chief Justice Wallace Jefferson.

"The legislative intent to protect the public and provide a neutral remedy against an alcohol provider does not equate to a guarantee of recovery against a provider by an injured party," Justice Dale Wainwright wrote for the 7-2 majority. "While the dissents' positions might express sound public policy, we are constrained to conclude that neither correctly applies the legislature's statutory proportionate responsibility scheme. Both read more into the Dram Shop Act than the words chosen by the legislature can bear."

In her dissent, O'Neill pointed out the curious circumstances in which the court reversed her 2004 majority opinion -- including that the court voted to rehear the case only months after three justices who voted with her in that majority left the court. The three departing justices were Chief Justice Thomas Phillips and Justices Michael Schneider and Steven Wayne Smith.

"The motion for rehearing raises no new issues; every point was thoroughly considered by the court in its prior decision," O'Neill wrote. "While the motion for rehearing was pending, the legislature convened without taking any action to alter this court's original interpretation. Nevertheless, the court today withdraws the prior opinion, reaches the opposite result, and accomplishes judicially what the legislature itself declined to do."

In his dissent, Jefferson noted that the Legislature intended for alcohol providers to pay for the damages caused by a drunk driver when it created the Dram Shop Act.

"The dram shop thus has a perverse incentive to establish at trial that its customer was in such a drunken state that selling him 'one for the road' could not have contributed to the harm his intoxication later caused," Jefferson wrote. "I cannot agree that the legislature intended as a defense to liability proof that the dram shop complete a sale that the statute quite sensibly forbids."

**NUMEROUS AMICI**

John Griffin, a partner in Victoria, Tex.'s Houston, Marek & Griffin who represents the Duenezes, believes that the high court has rendered the Dram Shop Act ineffective as applied to alcohol retailers.

"They've made it virtually impossible for them to be liable under the statute," says Griffin, who plans to ask the court to reconsider the case a third time. "The liquor store can always say, 'It's the drunk's fault.' I'm not sure the majority has an appreciation for how this is going to work. Because you don't think they want to judicially veto a carefully worded statute."

But Russell "Rusty" McMains, a Corpus Christi solo who represents F.F.P., says the opinion will take the Dram Shop Act back to how courts viewed it two years ago when applied to innocent third parties.

He believes the decision will not have a dramatic effect at the trial court level, because juries found alcohol providers liable before the first Duenez opinion, and they will continue to do so in the future.

"Juries didn't have any trouble at all allocating responsibility in part to the provider -- including sometimes more than 50 percent," McMains says.

While O'Neill's dissent questioned why the court reconsidered the case when there were no new issues presented, the high court was free to do exactly what it did, says Alan Daughtry, an appellate partner in Jackson Walker's Houston office who is not involved in the case.

"It's not like they are reversing course on prior law. They still have plenary power, and they are still considering this case," says Daughtry, who notes that the reversal on rehearing is not a sign the high court is willing to ignore stare decisis, which requires a court to abide by its previous rulings.

"Stare decisis is not terribly compelling in that type of circumstance. They are always free to change their mind on rehearing," Daughtry says. "And sometimes they do when more compelling arguments and practical points are raised in amicus briefs."

The court heard from numerous amici in Duenez. Many were alcohol sellers who feared they would lose their insurance coverage if the original 2004 opinion stood. One of the only amici to urge the court to stand by its previous decision was Mothers Against Drunk Driving (MADD).

Oscar H. Villarreal, a partner in San Antonio's Villarreal & Moreno who filed MADD's amicus brief, is disappointed the court changed its opinion.

Notes Villarreal, "It's come to the point where the law is only what five guys say it is at any given time."



# 31. City of Haverhill, MA Warns Bars, Restaurants Liquor Sales Will Be Monitored (Massachusetts)

By Shawn Regan - *Eagle-Tribune*

November 13, 2006

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HAVERHILL - City officials are vowing to watch downtown bars and restaurants closely this holiday season.

The License Commission has warned the business owners that city inspectors will watch them to make sure they are not exceeding occupancy limits or serving alcohol to drunk or unruly customers.

Chairman Joseph Edwards said the commission has received several recent complaints of "unruly situations" caused by overcrowding, insufficient crowd control and overserving of customers at downtown bars.

The warning letters, which were mailed last week to about 50 bars and restaurants with liquor licenses, include notice that commission members, as well as police, fire officials and city inspectors will make surprise visits during the holiday season to establishments that serve alcohol.

"We urge you to strictly obey and abide by the terms of your licenses to sell and dispense alcohol," the letters reads. "Fighting and any kind of unruliness will not be tolerated."

The stepped-up monitoring comes in the wake of two downtown stabbings in August - including the brawl at River City Billiards that erupted at the end of a party to celebrate local boxer Jeff "Hell Raza" Fraza's appearance on ESPN's reality TV show "The Contender." The fight ended with two men stabbed and several others injured.

Since then, downtown business owners have organized to address safety issues and promote the growing Washington Street restaurant district, and the mayor and police chief have promised additional attention and resources to the area.

Alan Boisvert, owner of Keon's restaurant at 105 Washington St., said he received the commission's letter and that he was surprised by it.

"I haven't seen or heard of any trouble since River City," he said referring to the high-profile Aug. 23 incident. "And I'm in the downtown until midnight or later every night.

"The streets are quieter and there's a lot less loitering," added Boisvert, who has recently hosted meetings of downtown businesses to address safety and related issues. "There's a much stronger and more visible police presence now."

The License Commission has focused much of its scrutiny on the downtown's two largest and busiest night spots - River City Billiards at 83 Washington St. and Cheerleaders Sports Bar and Grill at 46 Washington St. Both establishments were cited earlier this week for exceeding their occupancy permits and warned to start operating more as restaurants and less as bars.

Cheerleaders owner Tom Murphy said he has been told that the commission expects him to generate at least 60 percent of his business receipts from food sales. He said has been given 90 days to hit that mark or face additional enforcement measures.

"I'd love to be able to run the place as a restaurant and turn a profit," Murphy said. "But it's going to be tough. We want to work with the city to do whatever they ask us to do. We want to cooperate and we're going to try (to start serving more food)."

Boisvert, of Keon's restaurant, said he believes it will be almost impossible for Murphy to make food sales the bulk of his business.

"He's asked me for some ideas on how he can sell more food so I know he's going to try, but I don't see how he can do it," Boisvert said of Murphy. "I think it's unfair for the city to force him to be a restaurant when they've known from the beginning his place is a sports bar.

"The downtown needs a mix of restaurants and bars, and right now there's really only three bars," Boisvert added, referring to River City, Cheerleaders and the Chit Chat Lounge at 103 Washington St.

Murphy said his business had fewer than the 100 customers he is allowed to have inside the building during the commission's recent inspection that found him in violation of his occupancy permit. But he said the commission counted his employees, which put him over his limit.

The commission's warning letters to bar and restaurant owners specify the number of occupants, including "you, your employees and any entertainers as well as your customers."

River City exceeded its occupancy permit by about 30 people, city officials said. That bar served a self-imposed two-week shut-down in September, rather than face a public hearing on accusations that underage customers and security personnel were drinking alcohol the night of the August brawl.

Since re-opening, the bar has instituted a number of new security measures, including banning habitual troublemakers, implementing a dress code to keep out gang members, and providing additional security personnel on weekends. "No loitering" signs are also posted outside the business and last call for alcohol is 15 minutes earlier in the night.

The commission's tougher stance with downtown bars was recently called into question by a member of the Police Department, who said the commission is being inconsistent in how it deals with establishments with liquor licenses.

Detective Sgt. John Arahovites criticized the commission's decision earlier this week to take no action against the Veterans of Foreign Wars Lorraine Post 2, after a woman recently pleaded guilty to selling cocaine and painkillers out of the Kenoza Street club for a year. Police wanted the VFW's liquor license suspended for at least a few days, Arahovites said.



# 32. State Fights to Stop Underage Drinking (Missouri)

Heather Hubbs, Reporter - *KTVO.com*  
November 13, 2006

 (MACON, Mo.)  State senators met with key leaders in the fight against underage drinking in Macon Monday.

Senator Michael Gibbons of Kirkwood hosted a roundtable discussion, taking feedback from law enforcement officials, educators, liquor control and community advocates to discuss whether or not a senate bill passed in 2005 has helped to curb underage drinking, or if further steps need to be taken.

One of the main concerns of those at the meeting was how minors are obtaining the alcohol in the first place.

In Adair County, the number of charges against minors who purchase or attempt to purchase alcohol has tripled over the past two years, numbers that are two to three times higher than surrounding counties

A recent sting conducted by the Missouri Division of Alcohol and Tobacco Control found that nine out of 11 convenient stores in Kirksville sold to a minor.

"Some establishment or their employees just don't care, but the vast majority is they just don't look at the driver license, the I. D.," said Pete Lobdell, state supervisor of Alcohol and Tobacco Control.

Possession by a minor is a class a misdemeanor punishable by up to a year in jail and a $1,000 fine, and the same penalty for a clerk or a bartender who sells to a minor.



# 33. Santa Clara County Targets Flavored Alcohol (California)

*Mercury News*

November 14, 2006

Joining a movement across the nation to curb teenage drinking, Santa Clara County officials say they will sue the state Board of Equalization in an attempt to hike the tax on ``alcopops'' -- flavored alcoholic drinks -- at a rate equivalent to distilled spirits and not beer.

If the lawsuit is successful, the sweetened drinks made from malt would be taxed at a rate of $3.30 per gallon compared with the 20 cents per gallon rate for beer.

County officials, who contend alcopops are distilled alcoholic drinks, could not be reached to comment on a planned Wednesday press conference to announce the lawsuit.

Board of Equalization spokeswoman Anita Gore said the agency's policy toward taxing alcopops mirrors a state Alcoholic Beverage Control's classification of them as beer. ABC spokesman John Carr says state policy follows the federal Tax and Trade Bureau, which categorizes alcopops as flavored malt beverages, taxing them at the same level as beer and wine.

Jim Mosher, director for the Felton-based Center for the Study of Law and Enforcement Policy, said boosting the prices of the drinks, which come in fruit, tea or cola flavors, will deter kids from purchasing them. The drinks particularly appeal to teenage girls, Mosher said.

Two years ago, an American Medical Association survey showed that approximately one-third of teen girls reported trying alcopops, and one out of six within the prior six months.

Mosher estimated reclassifying the drinks -- such as Smirnoff Ice, Bacardi Silver, Skyy Blue and Mike's Hard Lemonade -- would raise its price from $2 to $3 per six-pack.

A reclassification would also limit the locations where the drinks are now sold. Merchants with a wine and beer license, such as convenience stores, would be prohibited from selling the ``alcopops.''

The beverage is brewed like beer, but its beer-like taste, color and some of its alcohol content is removed and fortified with sweeteners and distilled alcohol.

Maine has raised taxes on alcopops, and last month a Omaha mother filed a lawsuit asking a Nebraska court to order state officials to tax alcopops as liquor.

Last year, Gov. Arnold Schwarzenegger vetoed a bill that would have kept alcopops in the same tax category as beer.



34. One Word, Different Views of State Law on Campus Alcohol (Mississippi)

*Northeast Mississippi Daily Journal*

November 16, 2006

OXFORD - Although they admit they have not been able to enforce it, University of Mississippi officials have long interpreted state law as clearly banning alcohol consumption on their campus.

When the university's new alcohol and drug abuse task force met for the first time recently, university attorney Lee Tyner reaffirmed that understanding to Chancellor Robert Khayat.

Mississippi State University officials see it otherwise, based on the lack of one word - "universities."

State law 67-1-37 prohibits "the sale or consumption of alcoholic beverages in or on the campus of any public school or college, and no alcoholic beverage shall be for sale or consumed at any public athletic event at any grammar or high school or any college."

Same law, different reading

Ole Miss interprets "college" in the law to include public universities.

But MSU officials have said another section of the same law specifies both "college" and "university." The omission on the second reference, they say, leaves university campuses open for legal alcohol consumption.

"Universities are subject to the laws of the municipalities and counties in which they are located," said Dr. Bill Kibler, MSU's vice president for student affairs.

"It has been my understanding that whatever the local municipality or county allows in terms of beverages, it is not against the law for someone of age to be in possession of (that) permitted form of alcohol on the campus," he added.

Liquor and wine are legal in Oktibbeha County, where most of the MSU campus lies. Beer is legal only in Starkville, with a small part of the campus in its borders.

Who can settle the disagreement? A spokesman from the Mississippi Attorney General's Office said no official opinion has been given to any university regarding campus alcohol possession. The Daily Journal has requested that Attorney General Jim Hood issue such an opinion. It was unclear why a state university has not done so yet.

Under the MSU interpretation, wine and distilled liquors may be consumed openly on its campus by people age 21 and older, except at athletic events, which are covered by a Southeastern Conference ban on alcohol. Most of the campus - including residences other than Fraternity Row and a few sorority houses - lies outside Starkville city limits and within Oktibbeha County, where beer is illegal.

Dr. Bob Collins, chairman of the MSU Student Affairs alcohol task force, said Monday some at the university have even considered seeking resort status for the campus. Such a designation would allow all forms of alcohol to be served by properly licensed caterers, and hours of service could be extended.

**IHL review**

Wednesday, university presidents from throughout the state began to grapple with the realities of campus alcohol consumption. In the past few weeks, Ole Miss has been the target of criticism after the death of a campus policeman on a traffic stop with a student, who toxicology reports show had drugs and alcohol in his system. Two other students have died in alcohol-related accidents near campus since 2003 - and several others away from campus.

At the monthly meeting of the board of Mississippi Institutions of Higher Learning, each president was asked to present a synopsis of his university's alcohol policy.

Policies ranged from absolute bans on alcohol possession by anyone to general acceptance of consumption by people over 21 except "in plain view."

Khayat has openly acknowledged the Ole Miss policy, which prohibits all alcohol possession, is not well enforced - an issue being considered by his recently chartered alcohol and drug abuse task force.

Although MSU contends it is governed by the local option laws of Oktibbeha County, its campus police department thinks otherwise - reflected in "Frequently Answered Questions" on its Web site www.msstate.edu/dept/police/faqs.

The fourth question on the page asks, "I am of legal age to consume an alcoholic beverage. May I do so on campus?"

Campus police answer, "No. State code ¤67-1-37 prohibits the consumption of alcoholic beverages on the campus of any public school or college. Additionally, university policy and rules prohibit alcoholic beverage possession and/or consumption. Individuals found violating this law and rules are subject to arrest and/or referral to the Dean of Students."

**Campus alcohol policies:**

- Alcorn State University prohibits faculty, staff and students from possessing alcohol on campus.

- Delta State University prohibits "the unlawful possession, use or distribution" of alcohol.

- Jackson State University prohibits all possession of alcohol, paraphernalia or containers.

- Mississippi State University forbids students "to unlawfully possess, consume, sell, distribute or use alcohol on campus."

- Mississippi University for Women prohibits all possession of alcohol.

- Mississippi Valley State University prohibits all possession of alcohol.

- University of Mississippi "prohibits the possession, sale, distribution and consumption of alcohol on campus. É This applies to students and visitors of any age."

- University of Southern Mississippi "prohibits the unlawful possession, consumption and distribution of alcoholic beverages by students and employees on its campus. It further considers the possession or consumption of alcoholic beverages of any kind in plain view to be a violation of its policy."



**35. Court Rules Against Liquor Store Owner in Pricing Dispute With Distributors (New York)**

By Joel Stashenk - *The Business Review*

November 16, 2006

Albany, NY -- Craig Allen cannot sue over pricing irregularities in the New York state liquor industry.

The owner of All Star Wine & Spirits in Latham lost Thursday before the state's highest court, the Court of Appeals, in his bid to collect damages from the Albany liquor wholesaler Service-Universal Distributors Inc.

For more than two years, Allen has been seeking a day in court to argue how his business was damaged by liquor wholesale pricing practices. He contended that wholesalers were not selling their products to all retailers at the same price, as he said State Liquor Authority rules stipulate.

He also contended that some retailers were getting gifts, trips and other benefits from wholesalers to stock certain brands that other retailers were not getting.

The Court of Appeals, however, said Allen doesn't have a case. In an unsigned ruling, the judges in Albany said unanimously that a consent decree the SLA and state Attorney General Eliot Spitzer signed with major liquor wholesalers in September effectively ended the practices that Allen was complaining about. The judges said that agreement had rendered his suit "academic."

The court also said Allen failed to prove he could bring his lawsuit under the state's General Business Law because he couldn't show that consumers had been harmed by pricing practices.

Allen said he was "dumbfounded" by the ruling.

"I took the moral high road," he said. "I challenged the distributors and what I said was found to be true. In the end, I got stuck with the legal bills and now I have a name like a rat, like I am the whistleblower, like I did something wrong."

Allen said he feels like a "fool" and that part of him wishes he had taken incentives from the wholesalers like other retailers appear to have done. He has estimated that his legal bills from the litigation approach $200,000.

As part of the consent decree, the liquor wholesalers agreed to pay $1.6 million. Spitzer subsequently signed another agreement with suppliers of wine and other alcoholic beverages under which the companies agreed to post their price lists on the Internet.

Spitzer said he is continuing to investigate retailers in the liquor industry in New York.

During oral arguments in Allen's case in October, Andrew Gilchrist, lawyer for Service-Universal Distributors, told the Court of Appeals that Allen had effectively won his case by the signing of the consent decree and he said the liquor store owner doesn't have any reason to pursue his suit.



**36. Suit Seeks Higher Tax on Drinks Aimed at Teens (California)**

By John Coté, Staff Writer - *San Francisco Chronicle*

Thursday, November 16, 2006

**'Alcopop' so cheap because it's rated as beer, county says**

Santa Clara County sued the state tax collection agency Wednesday to force it to raise taxes on "alcopop" -- sweet-tasting alcoholic drinks that county officials contend are improperly marketed to teenagers.

The lawsuit, filed in San Francisco Superior Court, says California loses more than $40 million a year because the state Board of Equalization improperly taxes the drinks as if they were beer, at 20 cents a gallon, rather than as distilled spirits, which are taxed at $3.30 a gallon.

That misclassification allows the drinks to be sold cheaply and broadly, including in convenience stores, making them easier for minors to obtain, the lawsuit said.

"The county is simply asking that the board do its duty and properly classify the alcopops," county counsel Ann Miller Ravel said. "Our hope is -- and it's a grand hope -- but we would like to see underage drinking eliminated in the state of California, and at the same time increase revenues to the state."

Anita Gore, a spokeswoman for the Board of Equalization, said she could not comment on pending litigation but maintained that the agency is complying with state law.

The Department of Alcoholic Beverage Control has classified the drinks as beer, and Board of Equalization officials say they lack the expertise to determine the type of alcohol contained in a particular beverage, according to the lawsuit.

County officials, however, maintain that the board has broad investigatory powers to subpoena witnesses and demand records to determine tax liability, and should do so here.

State Attorney General Bill Lockyer told both state agencies in separate letters in May 2005 that the drinks should be classified as distilled spirits and taxed accordingly.

"This is a very sophisticated marketing strategy that is putting our young people at risk," Jim Mosher, a director at the Pacific Institute for Research and Evaluation, said at a news conference Wednesday announcing the lawsuit at which drinks such as Smirnoff Ice and Mike's Hard Lemonade were displayed.

"They pretend this is beer," Mosher said. "They start with beer and they strip all of the taste, color, alcohol and carbonation out of the beer. ... Then they add sugar, fruit juice, fruit flavors and distilled spirits.

"Then they have the audacity to say to our regulators, 'This is not a distilled spirit, it's a beer,' " Mosher said.

Alcohol company officials could not be reached by e-mail or phone for comment.

