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| *www.IowaABD.com* | *Lynn M. Walding, Administrator* |

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| *October 8, 2004* |

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**1. New Drink Mixes Beer With Herbs, Caffeine**

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| http://www.indystar.com/images/pics2/image-183885-1594.jpg |
| Anheuser-Busch's B-to-the-E, or B(E), is infused with caffeine, guarana and ginseng and is balanced with select hops and aromas of blackberry, raspberry and cherry. It will debut next month. -- Photo submitted by Anheuser-Busch |

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*Associated Press*

October 5, 2004

ST. LOUIS, MO -- In an effort to revive flattening sales and attract new drinkers, Anheuser-Busch is unveiling a new concoction -- a fruity-smelling beer, spiked with caffeine, guarana and ginseng.

The world's largest brewer said Monday its planned offering -- pronounced B-to-the-E, with the "E" denoting something "extra" and shown as an exponent of B -- should appeal to 20-something consumers looking for something zippy.

The St. Louis-based brewer said the new beverage -- pending governmental approval -- should debut in November against the backdrop of the company's existing line of Bacardi liquor-branded flavored malt beverages. The drink also faces competition from the ever-increasing line of alcohol-free energy drinks, such as Red Bull, often used as mixers in clubs.

B-to-the-E will be slightly sweet but tart, coming in the aromas of blackberry, raspberry and cherry.

Anheuser-Busch trumpeted itself as the first major brewer to infuse beer with caffeine, ginseng and guarana, a caffeine-bearing herb.

The brewer did not specify possible pricing for the new beverage, suggesting only that the "very unique product" would fetch slightly more than Budweiser as a premium product.

**2. Dram Shop Law Didn't Apply to Miller Case**

By Jeff Abell – *The Hawkeye*

October 6, 2004

BURLINGTON, IA -- A recent case involving the stabbing death of a Burlington woman has sparked renewed interest in the state's dram shop law.

Tom Miller, 33, of Burlington, allegedly consumed six to 18 beers before arriving at Hot Toddies the evening of Oct. 24. He continued to drink at the tavern before returning to his apartment to drink some more.

Early on the morning of Oct. 25, a Burlington woman lost her life.

Miller claimed the amount of alcohol he consumed, along with other factors, led to the death of Janet McCammant, 58.

Miller was found guilty of second–degree murder Sept. 27.

Despite Miller's reported alcohol use the night of her death, McCammant's family would find it difficult to collect a claim under current dram shop guidelines.

"In the Miller case, it would be hard to make a dram shop claim," said Lynn Walding, administrator for the Iowa Department of Alcoholic Beverages. "A bar fight with a beer bottle would potentially be covered by dram shop insurance. So would someone killed by a drunk driver, but it doesn't cover what happened to McCammant."

Dram shop regulations were established more than 40 years ago as a way to protect tavern owners from injury or wrongful death claims.

Under the law, dram shop is defined as "a term referring to liability of establishments arising out of the sale of alcohol to obviously intoxicated persons or minors who subsequently cause death or injury to third parties as a result of alcohol–related crashes."

Dram shop claims are monitored by the Iowa Department of Alcoholic Beverages. All establishments serving alcohol in Iowa are required to carry the minimum amount of dram shop insurance.

Claims are only paid out if an innocent third party is involved in an alcohol–related accident, according to Walding.

Dram shop insurance is viewed by bar owners as a necessary evil.

Tavern operator Pam Wilson said high insurance costs have placed an additional financial burden on already cashed–strapped drinking establishments.

Wilson, owner of North Hill Tavern, pays roughly 25 percent of her yearly income toward dram shop insurance.

"We have never had a claim made against us, but we get full coverage anyway. After paying my insurance, Uncle Sam gets his cut," said Wilson. "We don't have a lot left after that."

Taverns who operate without dram shop insurance are shut down and cited, according to Maj. Dan Luttenegger of the Burlington Police. In recent years, several Burlington bars have been closed due to lack of insurance, but none have been fined.

"There have been times when owners have forgotten to renew their insurance and were shut down. When this happens, they usually take care of it right away," Luttenegger said.

In 2002, the amount victims could collect in dram shop cases was increased. Individuals meeting dram shop guidelines are eligible to receive $50,000 in compensation, compared to $10,000 prior to 2002.

Two or more individuals involved in a dram shop claim can receive $100,000, compared to $20,000 prior to 2002.

"We raised the compensation after the death of a little girl by an 18–year–old drunk driver. The rate hadn't been increased in four decades," said Walding. "The law is fair to both victims and tavern owners."

**3. Jack Daniel's Proof Lowered**
By David Goetz **-** *The Courier-Journal*

October 5, 2004

**Brown-Forman ads won't address issue**

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| **http://www.courier-journal.com/business/news2004/10/05/10-05-2004_D1_biz_1005jack05b.jpg**Associated Press photos**Peggie Jean Bean inspected bottles of Jack Daniel's whiskey before they were boxed at the distillery in Lynchburg, Tenn., last week. Brown-Forman has lowered the proof on Jack Daniel's sold in the United States from 86 proof to 80 proof.** **http://www.courier-journal.com/business/news2004/10/05/10-05-2004_D1_biz_1005jack05a.jpgFrank Kelly Rich is editor of the online Modern Drunkard Magazine, which expressed outrage over the lower proof.**  |
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Brown-Forman Corp. says it will rely on the reputation of its flagship Jack Daniel's brand to weather complaints about watering down its popular Tennessee whiskey.

"Anyone who's written us directly, we will respond to them individually," said Mike Keyes, global general manager for Jack Daniel's, but Brown-Forman won't address the issue in its advertising.

The company has been fielding complaints since an Internet publication called Modern Drunkard Magazine expressed outrage that Brown-Forman lowered the proof on Jack Daniel's sold in the United States from 86 to 80 proof, or 43 percent alcohol content to 40 percent.

The magazine initiated an Internet petition against the change that has gathered more than 5,700 signatures.

"You can't screw with a legend like that and get away with it," said Frank Kelly Rich, editor of the magazine.

It's still too early to tell if the flap will impact sales, Keyes said, but he called it "a little disheartening" that the company is on the defensive, even in markets where Jack Daniel's has been sold at 80 proof for years.

"This story broke in the (United Kingdom), and people think we've changed our whiskey there," Keyes said. "We've been selling the same (80 proof) whiskey there for 15 years. It's the number one whiskey (in bars) in the UK."

The less-potent version was tested in three U.S. markets last year and sold better, so the company began the changeover in the rest of the United States in February. Brown-Forman spokesman Phil Lynch said it kept the same flavor profile by using more mature whiskey.

Jerry Rogers, owner of the Party Mart store on Brownsboro Road in Louisville, said he's heard nothing about the change from customers.

Nearly all whiskeys are sold at 80 proof, Rogers said. "It's more user-friendly."

The lower alcohol content offers some savings in excise taxes and production costs, said Lynch, but Brown-Forman has spent more than that on increased marketing for Jack Daniel's.

The Associated Press contributed to this story.

**4. 21-Only for 25 Years**

By [Vanessa Miller](http://www.press-citizen.com/apps/pbcs.dll/personalia?ID=221) - *Iowa City Press-Citizen*

October 4, 2004

**Ames officials discuss effect of bar entry age**

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| http://vh10018.v1.moc.gbahn.net/apps/pbcsi.dll/bilde?Site=D5&Date=20041004&Category=NEWS01&ArtNo=410040305&Ref=AR&Profile=1079&maxw=250&border=1Trent Fichter, assistant manager of Welch Ave. Station, checks the IDs of Julie Robertson and Justin Althaus on Sept. 29 at the entrance of the bar in Ames. Ames has restricted people under the age of 21 in its bars since 1979.  **Ames Tribune / Nirmalendu Majumdar** |

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AMES, IA -- When Hilary Rinnels wants to go to the bars, she comes to Iowa City.

That's more than a two-hour drive from her home in Ames, but the 20-year-old Iowa State University junior cannot hit the late-night alcohol-serving venues near her campus.

"I don't go because I can't get in ... that's why I go to your bars," Rinnels said, adding that she still finds ways to get alcohol despite being younger than the state's legal drinking age of 21. "There are house parties every weekend here ... and there are a lot."

Which sets up the question Iowa City councilors, police officers, business owners, students and residents are left to ponder with officials once again considering a law to ban those younger than 21 from entering bars: What kind of effect would increasing the bar entry age have on Iowa City?

"Enacting a 21-only policy to control avenues of consumption will not reduce the level of consumption ... consumption will explode in unsafe venues," according to the University of Iowa Student Government's position statement on the issue. The statement later reads: "The decentralization of consumption will only lead to uncontrolled house parties in neighborhood areas."

Ames has restricted bar entry to those who legally can drink since 1979 and simultaneously dealt with sizable house parties in its neighborhoods, but Ames officials are not sure there is a correlation.

"Our problem seems to be with off-campus parties ... you'll find that many times the real problem is not with young people in bars; most of them come out of there in good shape," Ames Mayor Ted Tedesco said, adding that he doesn't think the residential parties are a result of the stricter bar ordinance. "We had problems in the neighborhoods before the ordinance."

That's why, in addition to bar entry age restrictions, Ames officials have enacted other alcohol-related laws geared toward controlling residential consumption. For example, it is illegal to offer an unlimited amount of alcohol for free to someone who has purchased a cup or paid a cover charge, and it is unlawful for a person, other than a licensed beer permit holder on a licensed property, to host an event with more than one keg tapped at a time without a special permit.

Ames limits the number of kegs allowed on a premise during an event based on the number of people attending the occasion and its duration. One keg is allowed for a party of 200 people lasting one hour, or for a gathering of 40 people lasting five hours. At an event for 600 people lasting eight hours, 24 kegs can be on site.

Officials also have passed a nuisance party law prohibiting any social gathering that results in public intoxication, underage drinking, unlawful alcohol sales, littering, public urination, loud noise, fighting, property damage, or parked cars obstructing the flow of traffic.

Ames Police Commander James Robinson said any person hosting a party is responsible for preventing underage drinking and will be held liable for the actions of those attending the gathering.

"We've had parties grow in size to where they become unmanageable. So we try to keep them from growing to that size by sending in a team to break up the party," Robinson said, referencing Iowa State's VEISHA festival in April that culminated with riots in neighborhood streets. "We are going to have house parties with the 21-only ordinance or not. I don't know if they would be less if there was no law."

Iowa City councilors began taking a more active role in 2001 to regulate alcohol use by banning some drink specials and taking authority to revoke or suspend alcohol licenses. They continued their push to curb underage drinking last year by enacting a law banning those under age 19 from entering bars after 10 p.m. That law was the result of a compromise made with UI students and business owners who argued that restricting underage patrons would hurt the downtown economically and bring about more house parties.

The council, however, is reconsidering a 21-only law after receiving information from the Police Department that fewer people under age 19 have been charged with alcohol possession since the 19-only law was enacted Aug. 1.

"The Iowa City Police Department ... supports expansion of the prohibition to under 21 years of age with the caveat that the potential for increased unlawful activity in places other than the bars continue to be monitored and assessed," according to the Sept. 22 city staff report on the 19-only ordinance enacted in August 2003. "Setting the age of bar entry at 21 would also have the added benefit of being consistent with the state's legal drinking age."

That is why Tedesco said he would never consider lowering the bar entry age in Ames.

"We will stick with 21 because it's the law. You can't serve them, so why allow them in there," Tedesco said. "You increase the cost for bars (by allowing underage patrons) because more people are necessary to monitor. And when you violate the law, you can lose your license, then you can't make any money."

On Thursday, with about five hours standing between him and a flood of thirsty patrons clamoring for a beer in Welch Ave. Station -- one of about 12 bars near the ISU campus -- manager Mike Adams said he thinks Ames' 21-only law means less underage drinking.

"My gut says yes, underage drinking is less because of the 21-only law," he said. "They are not so easily exposed to it as they are in Iowa City."

While only a dozen bars sit near the ISU campus, more than 35 fill Iowa City's central business district. Adams credits that proliferation to the lower bar entry age.

"If Ames went to 19-only, more bars would open because there would be more business to be had," he said. "Some businesses find it hard to stay open with the 21-only law. The more you cater to people underage or those just turning of age, the harder it is to do business."

And while Adams said underage drinking might happen less in Ames, he said it does still happen.

"There is still plenty of drinking going on, just not in the bar," he said, conceding that in addition to house parties, some underage patrons manage to enter bars despite the law. "Some people alter their IDs, and most have a brother or sister that looks like them."

Rinnels, who rarely visits bars because of the house parties every weekend, said she thinks consuming alcohol in a bar might be safer.

"But house parties are not dangerous," she said. "I've never felt scared."

Because she frequently keeps her of-age friends from hitting the bar scene, Rinnels said she would like to see Ames lower the bar-entry age. Erin Callinan, however, said she likes it the way it is.

"I really do think they are too young to be in a bar. It's unbelievable how much you change from 19 to 21. You think you know, but you have no idea," said the 22-year-old Iowa State senior who works at People's Bar and Grill, adding that she thinks going to house parties when you're younger is part of the college experience. "Once you get to 21, all you do is go to bars."

**5. Hansen: Flying Cans, Drunken Kids - and This is an Improvement**

By Marc Hansen – *Register Staff Writer*

October 5, 2004

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I made a huge mistake. I asked a friend about his weekend in Iowa City.

The friend was visiting his daughter at college on a gorgeous football Saturday. A bustling, buzzing campus. A great town.

What could be better than sharing the experience with your college-age kid - this suddenly grown-up person who was driving you crazy one minute and leaving you forever the next?

So, I said, you had a wonderful time. Tell me about it.

"No," my friend said. "It wasn't a wonderful time. It was awful. You couldn't go anywhere without running into a mob of sloppy-drunk college students. Everybody's walking around or standing in the street with a beer. I don't look forward to going back."

Don't look forward to Iowa City? I was shocked.

Four of us were sitting around talking. Another dad whose daughter goes to Iowa was anything but shocked. He said he was hit by a beer can and dodged a few others last time he was there on a game day.

Someone else mentioned a sister-in-law who walked into a downtown establishment and noticed a kid slamming one shot after another. At one point, the kid leaned over, threw up, wiped his chin and started tossing them back again.

They all agreed. It's an ugly scene when the entire campus is tying one on and you're in the way.

Hey, sorry I brought it up. Everybody knows binge-drinking is a big problem at every college or university in the country. Everybody knows you don't have to be 21 to get into a bar in Iowa City, which doesn't help.

Still, I couldn't believe it was so much worse now. This just in: College students will drink. Always have, always will.

Ames tries to contain the damage by keeping anyone under 21 out of the bars. This seems to work fairly well except during Veishea week, when Iowa State bans alcohol on campus for all students.

The kids respond by drinking at house parties. Last spring, some rowdy house parties escalated, with some help from the police, into the Veishea riot of 2004. Ironhanded policy isn't the answer, either.

Ironhanded is not the word that pops to mind when discussing the law in Iowa City, where an 18-year-old can legally walk into a bar without Mom or Dad and stay until 10 p.m. A 19- and 20-year-old can stay till closing.

You still have to be 21 to buy or drink alcohol in an Iowa City bar - that's state law - but it isn't much of a hurdle for an illegal freshman or sophomore. Just have your legal junior or senior friend buy the drink for you.

Which means the drinking age is really 18, which means Iowa City is extremely popular with underage drinkers across the state and beyond, which means business is booming.

The city council is thinking about changing the law. Council members were scheduled to discuss the issue in their Monday night work session.

Iowa happens to be one of 10 schools taking part in an American Medical Association field study whose goal is reducing high-risk drinking among students.

The schools adopting more of the "Matter of Degree" program's recommendations are showing significant reduction in high-risk drinking and the negatives that follow.

Richard Yoast is the program director. I was sure Iowa was one of the schools not implementing the program recommendations. I was wrong.

"Iowa is actually one of the schools that has had success following the recommendations," Yoast said. "The university and the city are starting to see this as a community-wide issue. They've eliminated many of the drink specials. They've closed the campus pub. They've tried to reduce the alcohol advertising and promotion on campus. They've looked at having more alternatives to drinking activities."

All that progress and fathers are still getting conked with beer cans.

"We hear that from all over the country," Yoast said. "It's coming as a shock to parents going to school. I'm hearing it from some of my colleagues at AMA. Drinking among college students is different than it used to be. Not the amount of drinking, but the intent. Drinking not just to have fun, but to get smashed."

Truly enforcing the law is one possible solution in Iowa City. Making like Ames and raising the entry age to 21 might work, unless you're talking about profit margins.

Iowa City has become a great place to open a watering hole.

"Great proliferation of bars," Yoast said, "makes it harder to attract other kinds of business. People that don't drink and their families don't want to be there."

Fathers visiting daughters can relate.

**6. City Council Delays 21-Only Talks**

By [Vanessa Miller](http://www.press-citizen.com/apps/pbcs.dll/personalia?ID=221) - *Iowa City Press-Citizen*

October 5, 2004

**Downtown bar owners want to form a self-governing board**

IOWA CITY, IA -- It is happening again.

With the Iowa City Council poised Monday night to discuss upping the bar entry age from 19 to 21, downtown business owners requested the discussion be postponed, giving them time to develop an alternative plan to reduce underage drinking in the community.

A council majority agreed to wait until its Oct. 18 informal meeting to return to the issue, mirroring their decision made last year that allowed business owners and students time to develop an alternative solution to a law that would ban those younger than 21 from entering bars after 10 p.m.

"I'm willing to listen," Councilor Connie Champion said Monday after the council's informal meeting during which they had planned to discuss enacting a stricter ordinance. "They are getting a group together to try and come up with yet another proposal different from last year."

When the council looked to pass a 21-only law last spring, business owners and University of Iowa students countered with a recommendation to restrict bar entry after 10 p.m. to those 19 and older. Under that proposal, bar and student representatives vowed to step up self-regulation efforts including mandating additional training for bar employees, hiring extra bar monitors, providing free non-alcoholic beverages to patrons and using a unified marking system to identify underage patrons.

"One year ago they proposed to go to 19 with additional things they suggested they would do to address the issue," Mayor Ernie Lehman said. "Most, if not all, of those things have not occurred. So I'm interested to see what they will propose. But we owe it to them to hear what they have to say."

Jim Clayton, co-director of the Stepping-Up Project, a community coalition against binge and underage drinking, agreed that bar owners and student leaders fell short of fulfilling the promises made last year in conjunction with the 19-only proposal.

"They got the 19-only law passed and stopped doing anything ...," Clayton said Monday night after reading the sign posted outside the council chambers that read, "Alcohol discussion deferred to 10/18 work session."

"What is it the kids say? 'Been there, done that?'" he said. "It doesn't surprise me that they would come up with an initiative. They are desperate. This is an indication that they are profiting by selling alcohol that is consumed by underage people."

Leah Cohen disagreed.

Cohen, who owns Bo-James Restaurant, 118 E. Washington St., was the business representative who submitted the request for a delay, asserting that several bar owners are working to establish a self-governing board.

"What we are looking at is setting up a governing board that would set guidelines for bars to follow," she said. "There would be no legal authority, but we are hoping it would work with peer pressure."

The board, which likely will consist of five to seven bar owners of establishments that already voluntarily ban those younger than 21, would develop strategies to ensure reduction in underage drinking.

"We would do our own compliance checks, and the City Council would like to see less drink specials in the paper," Cohen said. "There are lots of things that can be done. And if we don't do them, we might have to go to 21, but we feel we've made a lot of good strides."

Cohen said bar owners are against moving the bar entry age to 21 because of the economic repercussions it would have on the downtown. Although underage patrons are not allowed to buy alcohol, she said most 19-only establishments charge an entrance fee.

"It will put some places out of business, and it will change the climate of downtown," Cohen said. "We don't want to become Ames, Iowa."

Although the self-governing board of bar owners would not have any legal power, Cohen said it would ensure compliance with the regulations through peer pressure, notification letters and citizen complaints to the Police Department. Cohen said bar owners are meeting Wednesday to formulate the board and move forward with the proposal they plan to present to council in two weeks.

Clayton said he does not think the bar owners' proposal will result in less underage drinking, adding that plans to form new committees and boards are not unlike previously tried efforts.

"They are coming up with old wine in new bottles," he said. "I'm fairly optimistic this time that the majority of council will decide it's time to take that step and go 21. Part of my optimism is based on the fact that it is a science. Alcohol reduction is based on access and availability."

**7. Liquor License Moratorium Stays on Track**

By Tom Saul - *Quad City Times*

October 4, 2004

DAVENPORT, IA -- Davenport aldermen agreed to table a partial overhaul of a city law that regulates operation of stores that sell alcohol, but will move forward with a vote on a moratorium that would bar for six months the issuance of new liquor licenses for package stores.

The moratorium is meant to give the city an opportunity to control the growth in the number of so-called “liquor marts” that have begun to spring up in neighborhoods around the city. A second mart in a troubled area west of the downtown is expected to get approval from the City Council on Wednesday.

“The city has an interest in controlling the number of liquor marts we see and want in our community,” said Alderman Jamie Howard, at-large, who asked for the moratorium. “In the past year, we’ve seen an increase in the number of them in the community. I don’t think it is unreasonable to regulate the number of them in the city.”

The moratorium would affect new applications for stores that sell packaged liquor for off-premises consumption, Corporation Counsel Mary Thee told the council’s Committee of the Whole. It would have no impact on stores that are already operating under a valid license.

In the meantime, aldermen voted to table changes in a city law that regulates the distance sellers of alcohol can be located from schools and day-care centers. In 1999, aldermen voted to reduce the distance from 500 feet to 300 feet to accommodate a Schnuck’s grocery store that was proposed for property at Kimberly Road and Sturdevant Street. The store was never built.

Some alderman want to increase the distance back to 500 feet, but Thee said the change as written would not address exceptions that allow hotels and restaurants within 300 feet of schools and day cares to serve alcohol. Off-premises consumption of alcohol sold at grocery stores and conveniences stores located within 300 feet of schools and day cares also would not be affected.

Howard also wants regulation of signs posted in the windows of stores that would keep clear the areas near cash registers to allow police and citizens to see inside to help prevent robberies and sale of alcohol to underage people.

Aldermen agreed to send the changes back to the council’s Public Safety Committee to deal with concerns regarding the exceptions and the placement of signs in windows.

**8. Row Looms as Diageo Orders Another Round of ‘Pure Malt’**

By [Ian Fraser](http://www.sundayherald.com/np/Ian-Fraser.shtml)*, Financial Editor*

October 3, 2004

Diageo, theworld’s largest drinks company, believes it can avoid a repeat of last year’s Cardhu Pure Malt debacle despite the major worldwide launch this month of another “pure malt” Scotch whisky.

The company is seeking to fuel sales of the fast-growing malts category with the launch of Johnnie Walker Green Label (JWGL).

An extension of the world’s top-selling Scotch, this blend of malts is initially being promoted via a trade advertising campaign.

Early shipments of JWGL, bottled at Diageo’s Kilmarnock plant, are making their way to the US and Taiwan and will be launched in several other markets including Thailand, Germany, Greece and Britain over the next few weeks.

The dominant product description on JWGL labels is “blended malt scotch whisky” but the controversial phrase “pure malt” also makes a less prominent appearance on both bottle and carton.

The company acknowledges this may have to be changed in line with revised Scotch Whisky Association (SWA) guidelines, which have yet to be finalised.

But industry experts expressed concern about the continued use of the “pure malt” description.

Alan Gray, analyst at Sutherlands said: “That is an emotive phrase, a loose definition that I personally believe should be outlawed. They would have been better advised not to have used that again.”

Diageo was forced to withdraw Cardhu Pure Malt – with which it unsuccessfully sought to rewrite the whisky marketing rule book – in March.

Clare Dimond, Diageo’s super deluxe director, said: “There is no concern at all [about another industry row]. We have set out our plans to the SWA and continue to work very closely with them. We’re being as transparent as possible in terms of ‘desciptors’ and packaging.”

Referring to the SWA’s drive to revise definitions in the market, she said: “We want to make sure Diageo takes a leading role in that.”

JWGL is effectively a relaunch of Johnnie Walker Pure Malt, which first hit the shelves in 1997 and which has won a string of industry awards.

The blend of Caol Ila, Talisker, Linkwood and Craggan more malts has, until now, had only limited distribution but Diageo is rolling out into more than 20 countries in Asia, South and North America and Europe. Bartle Bogle Hegarty’s ad campaign features the slogan “The best kept secret is shared”.

The 15-year-old whisky is being priced at between £26 and £28 in duty-free markets Stephen Morley, global brand director, hopes JWGL will quickly sell 100,000 cases a year, rising to 300,000 thereafter.

While Dimond would not say what the marketing spend would be for JWGL brand, Johnnie Walker’s annual advertising and promotional spending is around £125m. Overall, the Johnnie Walker brand is showing strong growth.

It recorded 9% growth in 2004. Since its “Keep Walking” campaign was launched in 1999, annual sales of the brand have grown from 9.7 million cases to 11.7 million.

Meanwhile, final bids for Glenmorangie plc are due in on Friday, with the distiller expected to fetch around £300m. The auction to buy the company – owner of Glenmorangie, Ardbeg and Glen Moray malts – is now said by analysts to be a two-horse race between US drinks giants Bacardi and Brown-Forman.

**9. Suspension of Alcohol Beverage SOT in Corporate Tax Bill**

By: James M. Goldberg - *Goldberg & Associates, PLLC*

October 7, 2004

A three-year suspension of the special occupation tax (SOT) currently imposed on all segments of the alcohol beverage industry was included in a corporate tax bill (H.R. 4520) approved on Wednesday by a House-Senate conference committee.

Both chambers are expected to approve the massive bill before adjourning Friday to resume campaigning.

Under current law, all producers, importers, wholesalers and retailers of alcohol beverages pay the annual SOT levy, which is due July 1 of each year.  Producers pay $1,000, wholesalers $500 and retailers $250 annually.  The suspension would be in effect for the 2005-2007 tax years, expiring on June 30, 2008.  The cost of the suspension is estimated by Congressional tax writers at $234 million.

Repeal or modification of the SOT has been sought by retail groups for more than a decade, following an increase in the retailer levy from $55 to $250 a year.

An outright repeal of the SOT was inserted into the Senate-passed version of a highway reauthorization bill, which has been stalled in a conference committee.  That provision is now expected to be dropped.

Dropped from the corporate tax bill was a provision in the House-passed version which would have provided an income tax credit to alcohol beverage wholesalers for the cost of carrying inventory on which the federal excise tax had already been paid.  The Wine and Spirits Wholesalers of America had been urging modification of the rules applicable to wholesalers for several years.

**10. Direct Shipping Finds Friends for Supreme Date**

Source: *San Francisco Chronicle*

October 7, 2004

Three Nobel Prize-winning economists, 20 members of Congress and Internet auction house EBay are among the heavy hitters to submit pro-wine legal briefs in the direct-shipping case now before the U.S. Supreme Court.

"Friend of the court," or amicus curiae, briefs authored by interested parties are a routine part of Supreme Court proceedings. But their quantity and quality in this case was striking.

"It's an indication of how much visibility this case has and how important it is around the country" that so many people were willing to sign on, says Washington, D.C., attorney Kenneth Starr (yes, that Kenneth Starr), one of two lawyers who crafted the amicus strategy for the pro-grape Coalition for Free Trade.

Among the 10 amicus briefs filed in late September:

-- Seven respected economists, including three Nobel laureates -- two from UC Berkeley -- argued that barriers to direct-to-consumer wine shipping distort free-market activity by giving wholesalers a near-monopoly in liquor transportation.

-- A bipartisan group of U.S. legislators from New York, California and Oregon, including California Democratic Sens. Dianne Feinstein and Barbara Boxer, asserted that Congress never intended to let state laws discriminate against products from other states.

-- Small wineries told of the importance of direct-to-consumer shipping for their businesses.

-- Trucking companies like UPS argued that state laws preventing direct wine shipping put a "substantial burden" on them.

-- A coalition of consumer groups and Internet concerns including EBay complained that "discriminatory state barriers are restraining the growth of e- commerce."

"It's a broad coalition with a national scope," says William Kinzler, a pro-wine attorney based in Benicia. "It's impressive. And it certainly makes it look like (wine interests) care a lot and they wanted to put their best foot forward."

At issue is whether the U.S. Constitution allows state regulators to prohibit direct-to-consumer shipments of wine from out of state if they allow in-state wineries to ship to residents. Currently 24 states forbid direct shipping and 26, including California, allow it.

Appellate courts have issued split decisions on the topic and two of the cases, Michigan's Granholm vs. Heald and New York's Swedenburg vs. Kelly, are scheduled to be heard together by the high court in oral arguments Dec. 7.

Whether the big dump of pro-wine amicus briefs will weigh heavily or lightly with the Supreme Court is hard to say. Ultimately this case could come down to whether a majority of justices favor free trade or lean toward states rights -- in particular the right to regulate beverage-alcohol transport.

Pro-wine forces fear a split decision tilted against direct shipping, given the philosophical leanings of the justices. Chief Justice William Rehnquist, a conservative, and Justice John Paul Stevens, a liberal, grew up during Prohibition and have consistently ruled that states have absolute authority under the 21st Amendment to regulate beverage alcohol within their borders. Justice Clarence Thomas, an avid states-rights advocate, and Justice Sandra Day O'Connor are also expected to oppose legalized direct shipping, so the pro-shipping forces would need to convince all five of the other justices.

Starr and Coalition for Free Trade legal director Tracy Genesen began crafting their amicus strategy in the summer. They made a list of every point they wanted to make, then sought out the people who could most effectively make it.

"You need to give the court enough depth to be able to make a well- reasoned, comprehensive decision," says Genesen, with the Sacramento law firm Nossaman, Guthner, Knox & Elliott.

The Coalition for Free Trade lobbied hard on Capitol Hill and among state attorneys general to attract as many signatories as possible. The response from attorneys general was disappointing -- only five, from California, Oregon, Washington, New Mexico and West Virginia, favor direct shipping, versus 33 who signed on with the wholesalers against it.

Anti-shipping briefs were filed by conservative-values groups such as the Eagle Forum and organizations concerned about alcohol abuse such as the National Conference of State Liquor Administrators and the Michigan Association of Secondary School Principals, as well as wholesaler trade associations.

Viet Dinh, a consultant to the wholesalers and a professor at the Georgetown University Law Center, said that while amicus briefs can be influential, the pro-wine briefs are "simply irrelevant" because legal precedent supports the right of states to regulate alcohol as they see fit.

