

HB
406

COMMITTEE REPORT

HOUSE

3/25/81

FURTHER:

(5)

Date: May 26, 1981

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had HB 406

"An Act relating to sales of alcoholic beverages to and by licensed wholesalers."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 406 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] - no rec

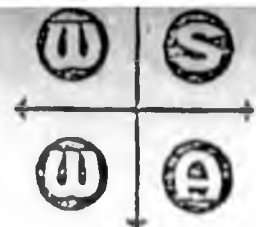
[Signature]

[Signature]
 CHAIRMAN

FEB 81 2: 43

membership bulletin

2033 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036
293-6220 AREA CODE 202



WHOLESALERS OF AMERICA, INC.

Membership Bulletin #81-2

February 16, 1981

JUSTIFICATION FOR PRIMARY SOURCE LAWS

The membership may find the attached material prepared by WSWA helpful in explaining, defending and seeking primary source protection.

Attachment: "The Crisis in Beverage Alcohol Distribution:
The Public Need for Primary Source Protection

THE CRISIS IN BEVERAGE ALCOHOL DISTRIBUTION:
THE PUBLIC NEED FOR PRIMARY SOURCE PROTECTION

THE PROBLEM

In every state where beverage alcohol is distributed by private enterprise, except Oklahoma and Minnesota, distribution is by brand franchise agreement between suppliers and wholesalers. The wholesaler gives financial, service and marketing support to a brand in return for the brand owner's promise to sell the brand to him alone in his primary zone of responsibility. The U.S. Supreme Court, in its Sylvania decision, has found franchise agreements of this type to be pro-competitive by stimulating vigorous interbrand competition.

One State Frustrates the Right of Brand Owners and Wholesalers to Offer Consumers the Competitive Advantages of Franchised Distribution.

The peculiar laws of Oklahoma, however, not only prohibit franchising of beverage alcohol, require suppliers to sell at the lowest national price to any Oklahoma wholesaler, but permit resale and transshipment of liquor in interstate commerce to non-franchised wholesalers in other states. Out of the many thousands of wines, spirits and malt beverages offered to consumers, these non-franchised wholesalers, with no franchise investment and brand-building obligations, "cherry pick" only the highly advertised national brands and discount them heavily to carefully selected and generally large retailers. Faced with reduced margins on his leading brands, the franchised, full-service wholesaler -- obligated, typically, to carry two to three thousand other brands in inventory and to serve both large and small retailer accounts -- must cut costs, services, inventory and personnel. Thousands of jobs in distribution are in jeopardy. At stake is the ability of a dynamic and competitive industry to continue to offer consumers a variety of existing and new brands of wines, spirits and malt beverages at prices which for a decade have lagged far behind increases in the consumer price index.

A Majority of States Have Taken Action to Protect Competition, Consumer and State Revenue

A majority of license states, in order to defend the efficiencies and consumer advantages of the franchised method of distribution and to protect state alcoholic beverage revenue and the public health, have enacted primary source laws. These laws require, in effect, that all beverage alcohol imported into the state must come from the primary, licensed and regulated source of supply, i.e., the manufacturer or, in the case of imported beers, its designated U.S. agent. Because of a recent upsurge in

transshipments of beverage alcohol from one state -- Oklahoma -- the value of franchises and the consumer benefits of interbrand competition are being undermined and destroyed in many markets lacking primary source protection.

A State Court has Cast a Cloud on the Right of States to Protect their Interests in Beverage Alcohol Distribution

A California state court has ruled that California's wholesaler designation statute offends national antitrust laws. This decision has spawned similar challenges in other states, and is now before the U.S. Supreme Court on petition for certiorari. The high court recently affirmed a Kansas Supreme Court decision holding that a similar and more stringent statute presented no substantial federal question.

Unless further legislative action is taken at the federal and state levels, the vital interests of consumers, wholesalers, retailers, suppliers, and government officials charged with maintaining orderly, regulated markets for this socially sensitive product and collecting huge sums of taxes from the sale of alcoholic beverages will be jeopardized.

PRIMARY SOURCE IS PRO-CONSUMER

- By protecting the franchised method of distribution, a primary source requirement assures the consumer of convenient access to thousands of competitively priced brands of alcoholic beverages to meet his or her preferences.
- In Oklahoma, which prohibits franchises, hundreds of brands sold in other states are unavailable to consumers. New brands introduced elsewhere are not distributed in Oklahoma. The number of wholesalers in competition for the retail trade has declined from twenty to not more than six, two of whom account for 60 percent of all sales in that state. Posted wholesale markups have become identical.
- In contrast, Kansas, which prohibited franchises until 1979, enacted a system mandating exclusive franchises together with a primary source requirement. The U.S. Supreme Court upheld this law in 1980. Within one year after its enactment, the number of line items of alcoholic beverages increased from 4,366 to 14,823 and the number of wine and spirits suppliers furnishing these items from 99 in 1979 to 169. According to

a study made by the Kansas Attorney General, prices on selected popular brands declined significantly and -- became more competitive in a majority of instances with prices in Missouri, an adjoining state.

- For consumers, beverage alcohol is one of the most dynamic industries in America -- marked, for example, by the explosion of interest in wine and the entrance of hundreds of entrepreneurs to the marketplace offering new brands and products. When deprived of the opportunity and commercial right of franchised distribution, producers will have little incentive to bring new products to market and to support secondary brands.
- By requiring that all beverage alcohol imported into a state originate from the primary source of supply, consumers are further protected against misbranded, illegal and impure beverages. This danger increases with thousands of federal permits being issued for "backyard" distillation of alcohol for gasohol.

PRIMARY SOURCE IS ANTI-INFLATIONARY

- Primary source laws protect the consumer from monopolistic pricing which inevitably follows when a few highly advertised brands which survive a chaotic market are offered consumers by a few high volume retailers, capable of dictating the terms of trade to suppliers.
- Primary laws, by protecting the right of franchised distribution, foster vigorous interbrand competition, which has made liquor the best bargain on the consumer price index for over 10 years.

PRIMARY SOURCE SIMPLIFIES AND REDUCES THE COST OF REGULATION

- Based on historical experience and political realities, liquor, because of the potential for abuse and serious social consequences, will continue to be regarded as a "sensitive" commodity, subject to public regulation. The challenge, in a climate of deregulation, is to minimize regulatory cost and to maximize public protection. Primary source laws offer this opportunity.
- By requiring that all beverage alcohol imported into a state originate with the licensed manufacturer or his authorized agent, government's task of collecting billions of dollars of tax revenue is simplified. Similarly, the task of enforcing liquor control, health and consumer protection laws is facilitated by a system which holds manufacturers and their distributors fully accountable for compliance.

- Primary source laws help hold down the cost of regulation by reducing the universe of licensees to be controlled, establishing clear and easily verifiable paper audit trails of all merchandise sold and distributed under license, and minimizing the need for personal government inspection of liquor shipped into a state.

BOTH STATE AND FEDERAL ACTION ARE NEEDED

- Pending remedial federal action, states lacking primary source protection should enact primary source laws to protect consumers, interbrand competition, and state revenues.
- For similar reasons, and to prevent the laws of one State from overriding the public policy of another state which may favor the franchised method of distribution and regulation, the Congress should require that all purchases of beverage alcohol in interstate commerce be from licensed suppliers.

*Proposed
intent*

It is the declared policy of the state to prohibit the purchase, sale, or delivery for sale or shipment, or otherwise introduce for use in this state, any alcoholic beverages, except in conformity with the Alcoholic Beverage Laws of this State and such regulations as may be prescribed; to protect the Public Health and Safety by safeguarding against products which are falsely or deceptively advertised, mislabeled, misbranded, adulterated, counterfeited, or illegally produced or diverted, ~~(including alcohol produced for fuel purposes;)~~ to promote vigorous inter-brand competition among such product to provide consumers with the widest choice of brands and sizes; to aid in the control and protection of tax revenue; and to provide for the orderly marketing of such products and the efficient and effective administration of the Alcoholic Beverage Laws of the State.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

May 5, 1981

The Honorable Donald E. Clocksin
Chairman
House Health, Education and Social
Services Committee
Room 112 - Capitol Building
Juneau, Alaska

Dear Mr. Clocksin:

Re: House Bill No. 406

House Bill No. 406, an Act relating to sales of alcoholic beverages to and by licensed wholesalers, was introduced in the House on March 25, 1981 and was referred to the House Health, Education and Social Services Committee.

I am enclosing a copy of a Fiscal Note prepared by Mr. Patrick L. Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

RDS/rdh

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick L. Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB406
 Title Sales of Alcoholic Beverages to and by Licensed Wholesalers
 Requested by House Health, Education & Social Services Committee Date 4/28/81

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Enactment of this legislation will not have any impact on this BRU.

COMMENT/SUGGESTION:

Because wholesale licensees and all other licensees who purchase from wholesalers are charged with purchasing primary source products, it would seem appropriate that wholesale licensees be required to post in their licensed premises and file with the board the names of each primary source from whom they purchase alcoholic beverages.

Patrick L. Sharrock

IV. DATE April 28, 1981

PREPARED BY Patrick L. Sharrock, Director
 AGENCY Alcoholic Beverage Control Board
 PHONE 277-8638

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)