

H B

406

A M E N D M E N T

OFFERED IN THE ^{Senate} HOUSE:

By: _____

To: _____ HOUSE BILL No. CS for HB406 (HESS)

SENATE BILL No. _____

PAGE: 1

LINE: 21-23, 24, 26, 27, 28, & 29

Delete Sec. 2. (b) in its entirety. [A licensee may not knowingly purchase alcoholic beverages from a wholesaler who has not purchased the alcoholic beverages from a primary source of supply.]

Renumber Sec. 2 (c) to Sec. 2 (b) line 24

Renumber Sec. 2 (d) to Sec. 2 (c) line 26

Renumber Sec. 2 (e) to Sec. 2 (d) line 28

Insert in Section 2. (c) the following:

[(d)] (c) This section does not apply to the sale or purchase of alcoholic beverages that are not available to any Alaska wholesaler from a primary source of supply.

Insert in Section 2. (d) the following:

[(e)] (d) For the purposes of this section,

(1) "primary source of supply means the distiller, vintnor, brewer, producer,

A M E N D M E N T

OFFERED IN THE SENATE:

By: _____

To: _____ SENATE BILL No. _____

HOUSE BILL No. ~~CS for HB406 (HESS)~~

PAGE: 2

LINE: 2, 3 and 4

beginning with page 2, line 2:

product, [and] the bottler, prime importer, trademark owner, or
brand owner. (end line 2)

[or a person who is authorized in writing to act as the exclusive agent
of a distiller, producer, owner, or bottler;] (end lines 3 & 4)



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

FEBRUARY 10, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 610 - "An Act relating to smoking in public places."

HB 406 - "An Act relating to sales of alcoholic beverages to and by licensed wholesalers."

SB 626 - "An Act relating to certificates of birth."

The meeting of the Senate Judiciary Committee was called to order by acting Chairman Ray at 1:40 P.M. Committee members present were: Senators Ray, Bennett, and Parr. Senator Rodey was absent.

Acting Chairman Ray first brought before the committee SB 610. Joseph Geldhof, representing the Tobacco Institute, testified against the bill.

Dr. Rabeau, Department of Health & Social Services, addressed the committee on the health ramifications to nonsmokers when smoking is permitted in crowded public places.

After brief discussion, Senator Parr suggested moving the bill from committee with individual recommendations. This action failed; Senators Parr and Bennett voting to move the bill, Senator Ray voting against moving the bill.

Acting Chairman Ray next brought HB 406 before the committee. Doug Metz, Wine and Spirits Wholesaler of America, Inc., and Russel Shannon, Distilled Spirits Council of the U.S. Inc., testified in favor of this bill.

Mr. Hanford, representing Odom Corporation, offered amendments to HB 406 without testimony.

Next, Joe Donohue, Department of Revenue, addressed the committee and offered his assistance to the committee on any questions which he could help answer. The Department had no recommendation on the bill.

Acting Chairman Ray next called Mr. King, representing the Juneau Retail Dealers Assoc., to testify. Mr. King expressed the local retailers

opposition to HB 406, stating that it would only cause an increase in prices to the consumer. Mr. Thibideau and Mr. Tallman, both local retailers, joined Mr. King and stated their opposition to this legislation.

Maurice Druhe, representing DISCUS, testified in favor of HB 406.

After discussion, acting Chairman Ray asked if any member of the committee wished to suggest action on the bill. There was no motion.

SB 626 was not addressed by the committee today.

Acting Chairman Ray adjourned the meeting at 2:50 P.M.

TELEGRAM

ALASCOM, INC.

PHONE: 580-6442

JUNEAU, AK 99802

#

02082 ANCHORAGE AK 50 02-09 144P AST

PMS SEN PAT RODEY

JUNEAU

0953

WE ARE STRONGLY OPPOSED TO THE PRIMARY SOURCE SPECIAL INTEREST
LEGISLATION. ANTI-FREE ENTERPRISE. ANTI-CONSUMER. UNFAIR TO
ALASKAN BASED WHOLESALERS. PRIMARY SOURCE IS NOT A POPULAR
ISSUE IN THE LOWER 48 DUE TO DEREGULATION. KEEP THE FREE
ENTERPRISE SYSTEM WORKING.

ED ONEILL, PRESIDENT BROWN JUG INC

272-7517 OR 276-4483

BOX 2000 ANCHORAGE AK 99510

Baranof Liquor Store	586-1050✓
Billikan Liquor Store	586-2761✓
Budget Liquor Division of Mark n' Pak	789-4251✓
Commercial Liquor Store	586-2232✓
DeHart's Auke Bay Store	789-7342✓
Home Liquor & Deli	586-2415✓
Liquor Mart	586-3660✓
Liquor Nook	586-1065✓
Percy's Liquor Store	586-2320✓
Tribodeau's Liquor & Deli	586-6657✓
Valley Liquor Mart	789-0770✓
Village Liquor Store	789-9290✓

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

January 12, 1982

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Room 125 - Capitol Building
Juneau, AK 99811

Dear Senator Rodey:

Re: CS for House Bill No. 406 (HESS)

CS for House Bill No. 406 (HESS), an Act relating to sales of alcoholic beverages to and by licensed wholesalers, was introduced in the Senate on June 4, 1981, and was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary 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:jas

Enclosure

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner, Taxation
Department of Revenue

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

I. REQUEST
 Bill/Resolution No. CSHB 400 (HESS)
 Title Relating to sales of alcoholic beverages to and by licensed wholesalers
 Requested by House Rules Committee Date May 29, 1981

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 and brands purchased from those sources.

IV. DATE December 16, 1981 PREPARED BY Patrick L. Sharrock
 AGENCY Alcoholic Beverage Control Board
 PHONE 277-8638

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

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

May 16, 1981

The Honorable Donald E. Clocksin, Chairman
House HESS Committee
Pouch V
Juneau, Alaska 99811

Re: HB 406

Dear Mr. Chairman:

House Bill No. 406 would ban anyone other than a "primary source" from selling alcoholic beverages to an Alaska wholesale licensee, would forbid Alaska wholesalers from buying from anyone other than a "primary source" and would make it illegal for an Alaska retail licensee to purchase alcoholic beverages knowingly from a wholesaler that had not purchased the beverages from a "primary source." Violations of these requirements would be punished by a suspension of the violator's license for up to one year.

This Bill appears to have the support of the large wholesalers serving the Alaska market. It is in response to a situation in which at least one fairly large Anchorage retailer is or has been involved. I recall that, two or three years ago, the Kut Rate Kid liquor store was retailing Kahlua at \$8.88 a fifth. I was told at the time by friends who worked with a competing retailer that their wholesale cost was more than \$9 a fifth from the wholesaler having the "exclusive" Kahlua franchise for Alaska. In other words, Kut Rate Kid was selling Kahlua to the public at a lower price than his competition could get it for from the Alaska wholesaler. The reason, I was told, that Kut Rate Kid could afford to sell at such a low price was that he had bought it through Oklahoma, which I understand allows Oklahoma wholesalers to resell liquor in interstate commerce to wholesalers licensed in states other than Oklahoma. Presumably, some Alaska wholesale licensee other than the one with the Kahlua "exclusive" was cooperating

with Kut Rate Kid in bringing the liquor into the state.

I know that the retailer where my friends were working complained to the Alaska-franchised wholesaler in an attempt to get a lower wholesale price that would allow the retailer to retail competitively with Kut Rate Kid. I do not know whether the franchised wholesaler did lower the price for Kahlua, but I am quite sure that no retailer was ever able to match Kut Rate Kid's price and still make money. Certainly the retailer my friends worked for was never able to do it.

It is argued in support of the "primary source" legislation that franchise distribution agreements between suppliers (the would-be "primary sources") and wholesalers enhance competition by stimulating vigorous interbrand competition. I cannot disagree with this proposition. However, I think the Kut Rate Kid example that I just gave suggests that there may well be some cost to the consuming public in fostering competition through a "primary source" law, which would confer a statutory dimension to such franchise agreements.

A better argument in favor of HB 406 is that it will help ensure that the state's liquor excise taxes are paid for all alcoholic beverages brought into Alaska and sold. While the Bill would not augment the deterrents to bootlegging that already exist in present law,* it would eliminate opportunities for would-be bootleggers to engage in that practice.

Shipments coming into Alaska from Outside are typically in sealed containers, which are opened upon delivery. For someone being supplied by an Outside wholesaler (say, one in Oklahoma), the opportunity could exist to fill an otherwise partially filled container with unreported alcoholic beverages, which would escape the tax. The Oklahoma wholesaler may be much more willing to aid (or turn a blind eye to) such bootlegging than would one of the wholesalers franchised in Alaska, because the latter is subject to our laws and could lose his license if he is caught. The Oklahoma wholesaler, in contrast, is outside Alaska's jurisdiction, and proving a federal case against him might become considerably complicated since the container will surely have been consigned to one or more intermediaries en route to Alaska (the Oklahoma wholesaler probably is not licensed to do business outside Oklahoma). He would doubtless assert in his defense that one of those intermediaries was responsible,

* AS 43.05.290 provides criminal sanctions for a number of kinds of violations of Alaska's tax laws. In addition, the Alcoholic Beverage Control Board can suspend or even revoke the license of anyone convicted of violating the state's liquor excise tax laws. As a deterrent to bootlegging, these existing provisions go beyond the penalty proposed in HB 406 (namely, a license suspension for up to a year). The penalty in HB 406 would be a new penalty only to a non-bootlegger who pays his state taxes but does not buy his alcoholic beverages from a "primary source" or from a wholesaler franchised by a "primary source."

and to win a conviction we would have to prove beyond a reasonable doubt that he was the miscreant and that they weren't.

Under HB 406 it would no longer be necessary to catch the Alaskan bootlegger in the act, as it seems to be in order to win a conviction for tax evasion. It would only be necessary to establish that he was selling alcoholic beverages that had not been brought into the state directly from a "primary source" or by a wholesaler franchised by the "primary source." While this would still not help in getting a conviction against an Outside wholesaler supplying a bootlegging operation, it would facilitate shutting such operations down by putting their Alaska end out of business.

Thus, HB 406 would aid the enforcement of Alaska liquor excise tax laws in two ways. First, it would limit the wholesalers bringing alcoholic beverages into the state to those who are subject to Alaska's laws and would find it in their own self-interest to ensure that the state's taxes are fully reported and paid for the alcoholic beverages they bring into the state. Second, it would simplify the closing down of any bootlegging operation by putting the Alaskan end out of business upon a showing that they were not being supplied from a "primary source" or by a wholesaler franchised by a "primary source."

In summary, then, it appears that HB 406 would limit competition in the marketing of certain nationally advertised brands, such as Kahlua, which can currently be brought into the state from Oklahoma at lower prices than those offered by the wholesalers franchised to supply those brands to Alaska. This might well result in higher prices to the consumer for these products. To be balanced against this consideration, however, is the possibility that Alaskans may not enjoy as wide a variety of brands in the future without HB 406 as they do now, because the Alaska-franchised wholesalers may have to limit their inventories of less profitable merchandise in order to be able to afford to meet the competition from the Oklahoma wholesalers. In addition, there is the likelihood that HB 406 would cut down the amount of alcoholic beverages being bootlegged into this state, which must be balanced against the question of how serious that problem is.

Before closing I would like to add one personal comment. I enjoy fine wine. Older vintages of fine wine are generally not available through channels like those being contemplated in HB 406. When such wines become available, it is often through an auction or the liquidation of the cellar of a collector or wine merchant. It would be most unusual for these to be "primary sources" as that term is defined in HB 406. Rather than cut Alaska off from access to such wines as they become available, perhaps HB 406, if it is to pass, could be amended appropriately to accommodate this admittedly limited situation.


Hon. Donald E. Clocksin

May 16, 1981

Page 4

Thank you for this opportunity to express my views on this Bill to you and your committee. Please do not hesitate to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas K. Williams".

Thomas K. Williams
Commissioner

TKW:tw

cc: Patrick L. Sharrock
Director, ABC Board

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 items, 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 14,883 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.

May 5, 1981

TESTIMONY OF

RICHARD LOEB, PRESIDENT

ALASKA DISTRIBUTORS CO.

RE: HOUSE BILL 406

The first thing that I would like to discuss is what primary source isn't. Primary source is not franchise protection legislation. There is nothing in this bill that prevents the supplier from changing, at any time he wants, the wholesaler representation that he has in the state of Alaska. The misconception that primary source is a franchise protection bill for the wholesaler is something that should be laid to rest right now.

At least 23 states have laws or regulations which directly or indirectly require that alcoholic beverages imported into the state must come from the original or primary source of supply.

The purpose of primary source laws, the first of which was enacted in Texas in 1971, is to require licensed wholesalers to purchase alcoholic beverages for resale only from the primary American source of supply. As stated in House Bill 406, "The primary source of supply is the distiller, producer, or owner of the alcoholic beverage at the time it becomes a marketable product and the bottler, prime importer, trademark owner, brand owner or person who is authorized in writing as the exclusive agent of a distiller, producer, owner or bottler."

The 21st amendment, federal law and state law, all recognize that alcohol is a unique commodity, the distribution and consumption of which has social implications. Each state has the power to control alcoholic beverage trade under this amendment, within its borders. States set up requirements for the

licensing and operation of wholesalers and many control the types of people allowed to engage in the business. An effective primary source law channels the traffic of beverage alcohol from this primary source, through a wholesaler licensed in the state, thus enabling the state to control the traffic more effectively in accordance with the goals of the local statutes and regulations. More importantly, all states impose tax and derive substantial revenue from the sale of alcoholic beverages. It is in this specific field that primary source laws give the state much greater control over the flow of the product and make it much more difficult for alcohol to move into the state without payment of all applicable taxes.

Primary source legislation further guarantees that the wholesale operations will be carried out by those wholesalers licensed by the state and not from without the state. Wholesale operations presently in the state of Alaska employ many hundreds of people and it has been proven that in states where goods have come in outside of the normal wholesaler channels, many jobs have ceased to exist.

While at the outset of my testimony I pointed out that this legislation does not effect franchises, I am certain there are those who will differ with me. Let me point out, however, that there is no federal law that requires that all liquor wholesalers have access to the purchase of all liquor brands. The Sherman Act does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business the freedom to exercise its own independent discretion as to parties with whom he will deal. In the United States versus Arnold Schwinn & Co., the Supreme Court reiterated the freedom of a supplier to select his customers and to sell only to them. The Court recognized that the exclusive practice can enhance competition overall

by heightening the thrust of supplier's product in inter-brand competition with those of competing suppliers. The Court, in this case, also found this allowed the manufacturer to achieve certain efficiencies in the distribution of his products.

A few years ago, people in Minnesota thought that there was monopoly in exclusive distributorships because eight wholesalers controlled 70% of the volume. A law has been passed that outlawed exclusive distributorships. What happened? Four wholesalers now control 90% of the volume.

In Oklahoma, every wholesaler has the right to purchase any brand sold to any other wholesaler in the state. The wholesaler chooses what he wants. Under this no franchise arrangement thousands of brands available elsewhere are not available in Oklahoma. New brands introduced elsewhere are not introduced in Oklahoma. The number of wholesalers in Oklahoma has declined from more than 20 to only six, Only those who are extremely strong financially continue to survive.

The same effect takes place in the retail segment of the business as the wholesaler does not have the resources to service all accounts in the same manner that he did previously. Retailing becomes concentrated in the hands of the major stores and the small outlets suffer and many close. In summary, persons who thought the no exclusive franchise type of law would be pro-consumer have now realized that it is anti-consumer.

May 5, 1981

Primary source will insure that this does not happen in the state of Alaska.
Primary source will protect the large and small wholesaler and retailer. House
Bill 406 will protect the revenue due the state of Alaska.

I strongly urge the passage of House Bill-406 for the good of all concerned.

BENEFITS OF PRIMARY AMERICAN SOURCE LAWS

✓
X
The first primary source of supply law was enacted in Texas in 1971. Following an unsuccessful attempt in 1972, a primary source law was finally enacted in Louisiana in June 1973. Similar requirements are now in effect, either by statute or regulation, in Arizona, Arkansas, California, Colorado, the District of Columbia, Florida, Kansas, Maryland, Nebraska, North Dakota, Rhode Island and Wisconsin. Primary source laws were passed in Massachusetts but vetoed, and a primary source law is being proposed in Missouri.

DISCUS has supported each of these primary source laws. This is a summary of the benefits that result from such statutes, which are the reasons for DISCUS' support.

I.

PRIMARY SOURCE OF SUPPLY LAWS FOSTER COMPETITION

The supplier level (manufacturers and importers) of the distilled spirits industry is highly fragmented. There are a large number of small companies and tens of thousands of brands. The wholesaler level of the industry, however, is relatively concentrated in most states. It is the public policy of all

license states to preserve and regulate the wholesale segment of the industry and to maintain effective competition among wholesalers. Competition at the wholesale level will ultimately result in better service and prices for both retailers and consumers.

An effective primary source law discourages undue concentration at the wholesale level. Allowing suppliers to select the wholesalers of their products assures that there will be a larger number of wholesalers competing with each other, and that the less popular brands will have an opportunity to compete with the industry leaders.

Without a primary source law, the interaction of laws of the various states would make it possible for the most powerful wholesalers to obtain the most popular brands from out-of-state wholesalers. By concentrating on large-quantity purchases of these few brands, these powerful wholesalers would be able to use their superior economic resources to cripple weaker wholesalers selling those same brands. If these practices are permitted to continue for a sufficient time, they will lessen both the number of wholesalers and the number of brands in the state.*

In the long run, such practices would lessen wholesale competition at the expense of both retailers and consumers.

* In this respect, the situation would be similar to that in Kansas, Minnesota and Oklahoma, where all wholesalers can obtain all brands directly from the suppliers. The number of wholesalers has shrunk significantly, concentrating that level of the industry in the hands of a few powerful wholesalers.

widely from state to state, most state laws have as one of their primary purposes the encouragement of temperance. An effective primary source law channels the traffic in beverage alcohol from properly licensed suppliers through a wholesaler properly licensed in the state, thus enabling the state to control that traffic more effectively in accordance with the social goals of local statutes and regulations.

III.

PRIMARY SOURCE LAWS FOSTER
MORE EFFECTIVE TAX COLLECTION

All states impose substantial taxes and derive significant revenue from the sale of beverage alcohol. Primary source laws give the state greater control over the flow of beverage alcohol into the state and make it more difficult for beverage alcohol to move into the state without payment of all applicable taxes.

Further concentration at the wholesaler level can only weaken the smaller suppliers, making it more difficult for them to find wholesalers willing and able to handle their products. This could result in the failure of small suppliers and greater concentration at the supplier level with attendant anti-competitive results.

The Federal Alcohol Administration Act reflects the philosophy of the antitrust laws and contains provisions designed to foster competition at both the supplier and wholesaler levels. By promoting competition and preventing concentration at the wholesaler level, primary source laws further this policy.

II.

PRIMARY SOURCE LAWS FOSTER MORE EFFECTIVE BEVERAGE ALCOHOL REGULATION

The 21st Amendment and federal and state statutes all recognize that beverage alcohol is a unique commodity, the distribution and consumption of which has important social implications. Under the 21st Amendment, each state has the power to control the alcohol beverage trade within its borders. Each state has set up detailed requirements for the operations and licensing of wholesalers and controlling the types of people allowed to engage in the business. Although the types of social goals sought to be accomplished by these requirements vary

DRAFT MEMORANDUM

RE: PRIMARY AMERICAN SOURCE OF SUPPLY

The purpose of primary source of supply laws and/or regulations is to require wholesalers to purchase alcoholic beverages for resale only from the primary American source of supply. The primary American source of supply is defined as the owner of a particular brand of liquor at the time it first becomes a marketable product in the United States.

These laws have become necessary in some states in order to protect local wholesaler's legitimate franchise; to distribute particular brands of alcoholic beverages. Due to a unique provision of the laws of the State of Oklahoma an Oklahoma wholesaler can, in effect, export his purchases to out-of-state buyers. Sales representatives of an Oklahoma wholesaler call on out-of-state wholesalers and offer to sell them merchandise for which they (the out-of-state wholesalers) do not have distributional franchises--to the great detriment of those who do.

Due to the great ^{buying} power and lack of overhead expense of the Oklahoma seller, the non-franchised buyer of his goods can usually afford to under-sell (to local retailers) the legitimate franchisee and thus destroy his market and his business. The authorized franchise distributor has spent a great deal of his time and his money to build up his business; he has hired salesmen and other personnel, spent advertising and promotional money, invested heavily in his warehouse; inventory and his delivery trucks. The non-franchised dealer who now carries the same merchandise has not invested a penny yet he reaps the rewards of the authorized franchise's labors.

To permit such a practice is unconscionable. Liquor franchises are a legitimate and proper means of liquor wholesale distribution and they are

recognized as valuable property rights. To permit the destruction of franchised liquor distribution is to create utter chaos in a market that public interest demands be kept orderly. To permit out-of-state interests to destroy an existing stable market is obviously contrary to the best interests of all concerned, the dealer, the state, and the consuming public.

Since the inauguration of this franchise-breaking practice many states have been quick to take corrective action. Primary source of supply laws or regulations are now in effect in Arkansas, California, Colorado, the District of Columbia, Louisiana, Maryland, Nebraska, and Texas. Additionally, the states of Massachusetts, Rhode Island, and Wisconsin now have such laws or regulations pending for adoption.

Primary source of supply laws appear to be the most effective means of combatting this grossly unfair method of competition and preserving a healthy and orderly economic climate in the liquor market. Failure to adopt such a law can only result in irreparable harm and injury to local wholesale business interests.

The state, too, has a vital interest in this matter. Carried to its logical conclusion, the liquor wholesale function will no longer remain vested in Minnesota business interests. It will be completely controlled by Oklahoma interests over which the State of Minnesota has no jurisdiction. As the Oklahoma distributors are not distillers themselves, their own supplies are of at least questionable duration. It is thus quite possible for severe shortages of particular brands to occur in Minnesota, and for both Minnesota authorities and distillers to be powerless to prevent it.

Once the control of liquor distribution falls into out of state hands, the beverage authority's control of the state liquor traffic has been very gravely compromised.

BENEFITS TO THE PUBLIC OF PRIMARY AMERICAN SOURCE LAWS

It protects the interests of the states. Under the 21st Amendment each state has the power to control the alcohol beverage trade within its borders. Each state has set up detailed requirements for the operations and licensing of wholesalers and control the types of people allowed to engage in the business. Without a primary source law out-of-state wholesalers not subject to the state's control, are free to sell into the state either to local licensed wholesalers or in effect directly to retailers in those states where a retailer can hold a wholesaler's license.

All states impose heavy taxes and derive substantial revenue from the sale of alcohol beverages. Primary source laws give the state better control over the flow of alcohol beverages into the state and makes it more difficult for alcohol beverages to move into the state without paying taxes, e.g. from a low tax to a high tax state.

It is the public policy of all license states to preserve and regulate the wholesale segment of the industry and to maintain effective competition among wholesalers. Without a primary source law it becomes possible for one or two powerful wholesalers to obtain all the popular brands from out of state wholesalers and eventually cripple weaker wholesalers who are franchised to sell these brands. In the long run such practices would lessen competition at the expense of both retailers and consumers. An effective primary source law discourages undue

concentration at the wholesale level. For example, in Minnesota and Kansas where all wholesalers can obtain all brands, the number of wholesalers has shrunk significantly so that all power at that level of the industry is concentrated in a few hands.

The 21st Amendment, Federal law and state law all recognize that alcohol is a unique commodity, the distribution and consumption of which has serious social implications. Most state laws have as one of their primary purposes the encouragement of temperance to the extent that a primary source law enables a state more effectively to regulate the trade. The state is better able to carry out its policies concerning alcohol.

The supplier level (manufacturers and importers) of the industry is highly fragmented. There are a large number of small companies and tens of thousands of brands in the market place. The wholesale level of the industry, however, is relatively concentrated in most states. For the concentration at the wholesale level can only weaken the smaller suppliers making it less easy for them to find wholesalers willing and able to handle their products.

Thus concentration at the wholesale level may lead to the failure of small suppliers and greater concentration at the supplier level with attendant anti-competitive results.

Legislative
Policy and relevant history of the Federal Alcohol Administration Act reflect the philosophy of the antitrust laws in the United States and contain provisions designed to maintain competition in the industry horizontally on the supplier and wholesale levels, and vertically by preventing suppliers and wholesalers from having "any interest in any licenses with respect to the permits of a retailer" "or by otherwise gaining control of a retailer." (Section 5(b))

To the extent that primary source laws prevent competition on the wholesale level they further the policies of the antitrust laws and the Federal Alcohol Administration Act. *and prevent competition*

Competition at the wholesale level ultimately will result in better service and prices for both retailers and wholesalers.

CSNB 406

1.) Mr. Metz } WINE AND SPIRITS WHOLESALERS OF AMERICA

PROTECT EFFICIENT DISTRIBUTION / TAXATION
(WHOLESALE → DISTRIBUTION → RETAILER)
(DISTILLER → WHOLESALE → RETAILER)
ANTI TRUST - TEMPERANCE - TAXATION
1971 - 1985 (1st) 2nd now have 3rd and 4th provisions

2.) MR. SHANNON - DISTILLED SPIRITS COUNCIL OF THE UNITED STATES
IN FAVOR - TAXATION - SWANNECK
BREWING INTERESTS PROTECTED - PRICES HAVE STAYED DOWN
3 tier system - IN SEPARATE
PROTECTS BRAND COMPETITION, QUOTES RETAILER ON PRODUCTS

* PAGE

FRANCHISED STATES PROMOTE TEMPERANCE, NOT A MONOPOLY BILL.

~~WINE~~ COTE SYLVANIA INTERBRAND COMPETITION NOT INTRA-BRAND
(SUPPORTED BY RETAILERS!)

3.) BROOKS HANFORD - OFFERS AMENDMENTS

4.) JOE DONOHUE - DEPT. REVENUE - NO POSITION ON BILL
DON'T GIVE MUCH WEIGHT TO ARGUMENT OF BOOTLEGGING PROBLEM.

5.) CLARK KING - QUOTED LIQUOR MERCHANTS
OPPOSES BILLS: BELIEVES MONOPOLISTIC, ANTI CONSUMER
ANTI FREE ENTERPRISE

6.) KEN TRUMFAN -
KEN TIBBETOU - NO LUMP SUMS OF LIQUOR.
MONOPOLY ON ALL FOREWARDS

Mary Drew - DISCUSS

2b IS DELETED

Sec. 3