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Memorandum

TO: ABL Members
FROM: John Bodnovich
DATE: July 15, 2010
RE: Washington, D.C. Legislative Update

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Swipe/Interchange Fees Legislation PASSES; Heads to President's Desk

This morning, the Senate voted to invoke cloture on the Conference Report after weeks of vote-counting and lobbying. A vote to officially pass the bill by the whole Senate took place this afternoon, with the legislation passing 60-39. It now heads to the President's desk to be signed into law.

Back on May 13, the Senate passed an amendment to the Restoring American Financial Stability Act of 2010. Included in the bill was an amendment introduced by Senate Majority Whip Dick Durbin (D-IL), which itself received strong bipartisan support in a 64-33 vote to add it to the larger bill. The Durbin amendment has two key provisions:

- First, it directs the Federal Reserve to issue rules to ensure that debit interchange fees are reasonable and proportional to the processing costs incurred. Visa and MasterCard currently charge debit interchange fees of around 1-2% of the transaction amount. These fees are far higher than the actual cost of processing debit transactions, and they mean that small businesses and merchants always get shortchanged when they accept a debit card for a sale.
- Second, the Durbin amendment prevents card networks like Visa and MasterCard from penalizing sellers for offering discounts to customers. The amendment allows sellers to offer discounts for customers to use competing card networks and for customers to pay by cash, check or debit card. The amendment also allows sellers to choose to decline credit cards for small dollar purchases (because interchange fees often exceed profits on such sales).

This is a great victory for ABL, its members and the retail community as a whole. Congratulations to all those who did their part – writing, calling, faxing or emailing their members of Congress; talking to media about interchange fees; and educating their customers and the public about this important issue.

Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010 (H.R. 5034)

On April 15, the [Comprehensive Alcohol Regulatory Effectiveness \(CARE\) Act of 2010 \(H.R. 5034\)](#) was introduced in the House of Representatives. Its introduction followed a hearing held by the House Judiciary Committee's Subcommittee on Courts & Competition, focused on "Legal Issues Concerning State Alcohol Regulation". The bill currently has [125 cosponsors](#) and there not been a version introduced in the Senate

There are strongly opposing intra-industry views relative to the CARE Act. Supporters of the bill claim that the bill is sorely needed as a means of clarifying congressional intent as to states having primary authority to regulate alcohol, thereby preventing further erosion of state-based alcohol regulation and strengthening the presumption of validity of state laws. Those in opposition warn that the legislation would destroy the careful balance of regulation at the federal, state and local levels enjoyed successfully by the industry for over 75 years and would have harmful unintended consequences.

The following are links to various viewpoints and positions on the CARE Act:

April 16, 2010 - ["WSWA Applauds Congressional Legislation to Halt Alcohol Deregulation"](#)

April 16, 2010 - ["NBWA Applauds Introduction of Legislation to Reaffirm States' Authority to Regulate Alcohol"](#)

April 27, 2010 - ["WSWA President Urges Congress to Ignore the Hyperbole and Misinformation, Support States' Rights and Curb Deregulation of Alcohol by Litigation"](#)

May 3, 2010 - [DISCUS Letter to Congress - "Controversial "State-Based Alcohol Regulation" Bill Will Undermine Longstanding Framework of Alcohol Control \(H.R. 5034\)"](#)

May 17, 2010 - [Wine America & Wine Institute Letter to Congress - "Oppose H.R. 5034 - Wholesalers Monopoly Protection Bill"](#)

June 11, 2010 - ["NABCA Voices Support for Congressional Action to Strengthen States Ability to Regulate Alcohol"](#)

June 21, 2010 - NABI Statement - "Opposition to HR 5034 - Comprehensive Alcohol Regulatory Effectiveness Act of 2010"

June 23, 2010 - ["Major Alcohol Supplier Trade Associations Oppose Wholesaler Monopoly Protection Bill \(HR 5034\)"](#)

ABL remains officially neutral on H.R. 5034 but remains engaged in active discussions with representatives of the varying viewpoints and will continue the process of studying the issue in depth. ABL is strongly supportive of the Three-Tier System and states' rights to implement beverage alcohol distribution and sales policies they deem the most effective, efficient and responsible. It is our consideration that all parties have similar and basic goals with regard to the future of our industry. We strongly urge proponents and opponents of this legislation to join together in an effort to resolve their differences as to how best to proceed as a unified industry.

Should you have any questions or concerns pertaining to this matter please contact the ABL office. If contacted by other parties inquiring as to your position on this federal legislation, please feel free to refer such overtures to your national representatives here in the ABL office.

Ignition Interlock Legislation

ABL continues to work with allied industry groups and third parties to prevent an all-offender ignition interlock mandate from being included in surface transportation legislation, as a stand alone bill or in another legislative vehicle. Staff has met with the office of Sen. Jim Inhofe (R-OK) and continues to make out outreach to other Senate offices to voice its objection to interlock sanction legislation ([S.2920](#)) offered by Sen. Frank Lautenberg (D-NJ).

ABL is seeking support for the Congressional Budget Office to identify S.2920 as a mandate under provisions in the Unfunded Mandate Reform Act of 1995 (UMRA), which calls for intergovernmental mandates with project cost burdens on state, local and tribal governments in excess of \$70 million over five years to be eligible for a point of order and subsequent scoring. If passed, the mandate is estimated to cost states nearly \$500 million in monitoring and compliance costs. It is possible that the language in S. 2920 will be folded into a

Senate transportation bill later this fall, though the ever-tightening legislative calendar and the November mid-term elections may delay this action.

The ROADS SAFE Act ([S.3039](#)), a bill introduced by Sens. Mark Udall (D-NM) and Bob Corker (R-TN), calls for \$12 million/year in funding for anti-drunk driving technology through the DADDS program. It recently received the backing of Senator Chuck Schumer (D-NY) and has picked up 12 cosponsors.

Estate/Death Tax Negotiations Continue

Work continues in the Senate to find a compromise that would prevent the Estate tax – known to many as the Death Tax – from returning in 2011 with a vengeance, with the latest proposal backed by Sens. Jon Kyl (R-AZ) and Blacnhe Lincoln (D-AR). Kyl and Lincoln suggest that their death tax motion be included in the process of moving a small business bill (HR5297), though this path has proven difficult due to the lack of consensus on the death tax, fights over amendments and scheduling challenges.

Under their proposal, the top tax rate would drop to 35 percent, the per-person exemption would be set at \$5 million and indexed it to inflation. Though the Senate adopted a similar measure as an amendment to its budget resolution in 2009, that version did not get the 60 votes needed to overcome a filibuster.

“In just six short months, American taxpayers will face the largest tax hike in history unless Congress acts,” said Kyl. “It is estimated that more than a half-million American families will pay the estate tax over the next decade, and the lack of congressional action creates a tremendous amount of uncertainty for these families, small-business owners and farmers. This uncertainty is one of several factors acting to prevent a strong economic recovery from taking hold.”

The House of Representatives and the White House favor an approach embodied in a bill the House passed last December, HR 4154, that would set the death tax at permanently at 2009 levels: a 45 percent top rate, with a \$3.5 million per-person exemption.

Currently the death tax is on a one-year hiatus following the expiration of the tax on December 31, 2009. The 2001 tax cut law phased out the estate tax over the past decade, but not permanently. The tax is set to return on Jan. 1, 2011, with a top rate of 55 percent and only a \$1 million per-person exemption.

Though discussions about how to permanently fix the death tax conundrum have been ongoing for the better part of the year, a variety of procedural and budgetary hurdles have prevented much progress from being made. These same hurdles may trip up the Kyl/Lincoln proposal, including the pay-as-you-go law enacted this year. Without an emergency declaration or a change to the pay-as-you-go law, both bills would trigger mandatory rescissions if enacted.

Reminder – New FDA Regulations for Tobacco Sales NOW IN EFFECT

Retailer specific regulations and rules from the “Tobacco Act”, which was signed into law last year, took effect on June 22, 2010. These new regulations will impact any retailer of tobacco products. The new rules:

- Prohibit the sale of cigarettes or smokeless tobacco to anyone under 18 (if the minimum age in your State is more than 18, you must comply with the State age requirement).
- Prohibit the sale of single cigarettes (“loosies”) or packs with fewer than 20 cigarettes.
- Limits tobacco product sales to direct, face-to-face exchanges (mail order is an exception). Vending machines and self-service displays are prohibited except in places where nobody under 18 is allowed to enter.
- Prohibits the sale or distribution of items such as hats and t-shirts with tobacco brand names or logos.

More information also be found at <http://www.fda.gov/protectingkidsfromtobacco>; by phone: 1-877-CTP-1373; or by email: AskCTP@fda.hhs.gov

TTB User Fees Proposal Still Under Consideration

(Editor's Note: There has been little to no movement on this issue in recent months, but it remains a priority for ABL and therefore warrants inclusion in this update.)

With the unveiling of the President's budget in February came the following revelation: "The Treasury department is also reviving a proposal from last year to fund the \$106.2 million operations of the Alcohol and Tobacco Tax and Trade Bureau with user fees, instead of paying for it out of the general budget." This proposal would amount to a re- imposition of the Special Occupational Tax (SOT), the permanent repeal of which was successfully passed in 2005.

ABL has joined a group of beverage alcohol industry groups in a letter to the Chairman and Ranking Member of the Senate Subcommittee on Financial Services and General Government Chairman, Senators Dick Durbin (D-IL) and Susan Collins (R-ME); and the Chairman and ranking Member of the House Subcommittee on Financial Services and General Government, Representatives Jose Serrano (D-NY) and Jo Ann Emerson (R-MO), expressing strong opposition to the proposal. ABL is hopeful that those who opposed the SOT will reject this new fee structure.