



WineAmerica

The National Association of American Wineries

January 2006 Newsletter

In This Issue

- From the President's Desk
- 2006 Wine & Grape Policy Conference
- 2006 Direct Shipping & Self-Distribution Bills Introduced in State Legislatures
- EU-US Bilateral Wine Agreement About to be Signed
- New Tools Make Participating in WineAmerica Trailblazers Easier Than Ever!
- DC Restaurant Makes Commitment to Support Wine Industry
- From the COLA to the Shelf: Tips for getting your labels out the door
- WineAmerica Staff Contacts
- Advertising

From the President's Desk

This year starts out with a most remarkable challenge to state winery laws. Driven by concerns that the *Granholm* decision opens to debate all advantages enjoyed by in-state wineries that are not extended to wineries in other states, wholesalers and retailers are now examining wine laws that have been in place for many years. While the actual Court decision was restricted to direct shipping, lawyers and companies (Costco) have taken it as precedent to attack distribution laws in states that extend the privilege only to in-state wineries.

The *Costco* case, which questioned Washington state law allowing only in-state wineries to self-distribute, was decided in favor of Costco on December 21, 2005. However, the judge suggested leveling down if the legislature fails to act. Now, other states are raising the issue. Louisiana was ahead of the decision when it removed self-distribution rights last July. A report on current activity appears later in this newsletter.

The enormous growth of wineries throughout the country, almost a three fold increase in the last generation, has been accomplished because states have been willing to revise their archaic winery laws and allow in-state wineries the ability to service their customers through direct sales, sales to restaurants and retailers and through wholesalers when that option made business sense. Most established wineries with statewide markets use wholesalers. Serious challenges to vital winery marketing rights exploding in so many states threatens the progress American wineries have made in familiarizing consumers throughout the country with wine, its production, and its importance to the rural economy. It is critical that wineries organize, publicize their role in agriculture, highlight the monopolistic practices and designs of the wholesalers, and lobby their legislatures for solutions that preserve their vital marketing capabilities.

In November 2005, the WineAmerica Board passed the following resolution that summarizes the stance of the Association:

WineAmerica and its 800 winery members support laws and regulations at the state and national level that resolve constitutional issues while recognizing that the states have a legitimate and substantial interest in the benefits to consumers, agriculture, manufacturing, tourism, and land use created by the growth of the wine industry. The capital risk and economics of winery investment are best supported by implementing and maintaining statutes and regulations that foster the growth of domestic state wine industries.

The current movement to reform winery laws to meet with recent court decisions will continue to affect wineries in all states. We encourage you to remain vigilant and to continue to update WineAmerica on the happenings in your state.

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Contact Us

www.wineamerica.org

info@wineamerica.org

2006 Wine & Grape Policy Conference

March 26-29, 2006
Washington Court Hotel
Washington, DC

Please Join Us!

This conference is a great opportunity to meet with your peers and discuss industry issues. Attendees will participate in Capitol Hill visits, receive briefings on important industry issues, and enjoy the popular "Taste the Wines of America" Congressional reception.

The meeting is open to all WineAmerica members and State Association Council members. Please visit www.wineamerica.org to view photos from the 2005 conference!

"Taste the Wines of America" Congressional Reception

Be sure to showcase your wines at this event, sponsored by WineAmerica & Winegrape Growers of America. This popular event allows WineAmerica members the opportunity to pour your wines for Members of Congress and their staff. This is a great way to highlight the diversity and geographical reach of the America wine industry and to expand the audience for your wine. There's no better way to get to know your elected officials and to discuss important industry issues!

Even if you cannot attend the conference, we would love to showcase your wine at this event. Donation forms will be available in February 2006.

Tentative Meeting Agenda

Sunday, March 26

3:00-5:00 PM Executive Committee Meeting
5:00-7:00 PM WA/WGA Informal Welcoming Reception
7:00-10:00 PM No-Host Dinners

Monday, March 27

8:00-10:00 AM Concurrent WGA & WineAmerica Board Sessions

10:00-12:00 AM Joint WA & WGA Issue Briefings for Hill & Agency Visits
12:00-1:30 PM Policymaker Luncheon
2:00-5:30 PM USDA/Industry Meetings
6:30-9:00 PM State Associations Council Dinner

Tuesday, March 28

7:30-8:30 AM Policymaker Breakfast
8:30-10:00 AM Concurrent WGA and WineAmerica Board Sessions
10:30-5:30 PM Hill Visits
6:00-8:00 PM "Taste the Wines of America" Congressional Reception

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New York Wine & Grape Foundation
Lew Parker
Willowcroft Farm Vineyards, VA

Wednesday, March 29

7:30-12:00 NOON State Associations Council Meeting

11:00-1:00 PM Informal Buffet Lunch

12:00-5:00 PM Hill Visits—Continued

[Click Here to Register Online](#)

Or

[Click Here to Download Registration Forms to Mail in with your Fee](#)

We hope to see you in March!!

2006 Direct Shipping & Self-Distribution Bills Introduced In State Legislatures

While 2005 saw much action on the parts of wineries fighting for shipping rights following the decision of the Supreme Court in the *Granholm* case, many more state legislatures will take up the issue this year. However, due to the summary judgment ruling in the *Costco* case, the right to self-distribute is now another issue that wineries must be prepared to deal with as wholesalers seek to protect their third-tier status.

The following is a quick lay of the shipping and distribution legislative landscape as we enter the 2006 legislative sessions.

Costco

In December 2005, a federal court judge in Washington State heard arguments for summary judgment on a suit brought by big box retailer Costco challenging many aspects of Washington regulations governing sales to retailers by wineries and wholesalers. The case, *Costco Wholesale Corp. v. Hoen*, questions whether those regulations violate the Commerce Clause because Washington Costco stores can buy directly from in-state wineries, but not from wineries located in other states. The case also identifies other regulations which constitute possible anti-trust violations because of excessive regulation and state sanctioned anti-competitive practices.

At the end of December, the court ruled that the discrimination in distribution laws was unconstitutional. However, Judge Pechman stayed her judgment in order to give the legislature until April 14, 2006 to decide how to treat in-state and out-of-state producers in an even handed manner. If the legislature fails to act, the court order will deny in-state producers the ability to self-distribute their wine and beer. A majority of other states have similar laws allowing only in-state wineries to self-distribute. Now, the Washington state legislature, as well as many state legislatures, must consider what sort of precedent is set by the *Costco* ruling and whether they want to level up or level down during this legislative session.

Lawsuits

Many states are still in the stage where lawsuits have been filed that challenge the constitutionality of their shipping laws. Rulings have yet to be made on any of these cases, though it is likely that rulings will come this year. However, in

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many of these states, the legislatures are also contemplating bills that will create new statutes complying with the *Granholm* ruling. This will render the lawsuits void. States with lawsuits: Arizona, Arkansas, Delaware, Indiana, Kentucky, Maryland, Minnesota, New Jersey, Pennsylvania.

Legislation

Many bills that have been introduced continue to deal with opening up states to in and out-of-state shipping to consumers. A few have added language to allow in-state and out-of-state wineries to distribute directly to retailers. This continues to be a hard battle and wineries are looking to size or quantity limit options as a method of compromise with the wholesalers. Many wineries are also finding that the most effective strategies for gaining support for their legislation are through consumer participation and media presence. Getting wine clubs involved in reaching out to their local legislators and urging them to support direct shipping is a good way to push for passage of pro-winery legislation. As several legislatures have not yet convened for the 2006 session, the list of bills currently introduced will change. Currently, the following states are considering shipping and distribution laws: Arizona, Colorado, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Mississippi, New Jersey, Ohio, Oklahoma, Pennsylvania, Virginia, Washington, Wyoming.

Arizona – currently two bills have been introduced (HB 2500, SB 1276) that create versions of permit systems allowing wineries to ship directly to consumers. The bills allow for in and out-of-state wineries producing up to 50,000 gallons annually to apply for a shipping license.

Colorado – HB 1120 creates a direct shippers permit for wineries that must then keep and file records and pay applicable taxes; no permit fee has yet been assigned.

Delaware – A bill has been introduced (HB 336) that eliminates winery rights to self-distribute to retailers.

Florida – Four bills were introduced in 2005 and will likely be considered this year. Each of the bills creates a \$100 annual shippers permit, but one bill requires the use of age-verification programs (SB 282), one contains quantity limits and states that the consumer must have made the original purchase on-premises (SB 944), and two have no limitations (HB 247, SB 144).

Hawaii – Two bills were introduced in the 2005 session and held over to the 2006 legislative session (HB 1385, SB 1528). These companion bills eliminate the state's reciprocal shipping privileges, therefore banning all direct shipping.

Illinois – Illinois wineries filed HB 4444 to allow for direct to retail sales and the creation of an out-of-state shippers permit (\$100 for permit & can ship not more than 3 cases per month to consumers). Wholesalers have also filed bills to repeal direct shipping; they don't address self-distribution at this time (HB 4350, SB 2180).

Indiana – A similar battle is being fought in the Indiana legislature. Wholesalers have introduced HB 1190 that would prohibit wineries from selling directly to the holder of a retail permit. Indiana wineries have introduced three similar pieces of companion legislation that create a permit system - \$100 permit, \$50 renewal fee; winery can ship 24 cases annually per consumer.

Kansas – Though a bill has been introduced that would create a \$25 annual permit system to allow shipping directly to consumers, the bill creates an unworkable system where a winery must deliver the wine to a wholesaler, who then delivers it to a retailer, and the consumer must pick it up at the retail premises (SB 370). A hearing has been scheduled for January 24th.

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Elizabeth Slater

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Kentucky – Two bills have been introduced, SB 40 and SB 82, that ban wineries from self-distribution, but allow wineries producing up to 50,000 gallons annually to ship two cases directly to a consumer if the purchase was made on-site.

Maine – HB 1341 has been introduced and creates a \$100 annual permit for direct to consumer shipping. Hearings have been tentatively scheduled for early February.

Massachusetts – In 2005, the Massachusetts legislature passed a permit direct shipping bill that allowed wineries producing up to 30,000 gallons annually to ship to consumers. The Governor vetoed the bill, calling it anti-consumer. On January 19, the Governor introduced a new bill that creates a \$100 permit and allows wineries to ship directly to consumers with no size or quantity limits attached (SB 2335).

Mississippi – A wholesaler backed bill, SB 2454, has been passed out of committee and moved to the floor with a do-pass recommendation. This bill puts into statute the regulation that permits in-state wineries to only sell to consumers on-premises. The legislation also bans winery rights to self-distribute.

New Jersey – SB 179 allows plenary wine licensees to direct ship and self-distribute and grants out-of-state wineries a plenary license if their state licensing laws are substantially similar to NJ; plenary licenses are for wineries that grow or cultivate at least 3 acres of grapes/fruit.

Ohio – In 2005, a court order opened the state to direct to consumer shipping. At that time, several bills were pre-filed for the 2006 session that would put into statute either a permit shipping system or ban shipping altogether (SB 179 – allows, SB 300 bans). It is unclear at this time whether the legislature will decide to take up this issue or let the court order stand as is.

Oklahoma – Companion House and Senate Joint Resolutions have been introduced that will create a constitutional amendment to allow wineries to sell directly to consumers and retailers (SJR 41, HJR 1055). HB 2918 deletes the felony ban on direct shipping.

Virginia – Virginia's distribution laws were overturned in a lawsuit filed in 2001. The wineries have filed a bill this session that creates small producer distribution license for in and out-of-state wineries. The size limit in the bill is based on the Federal Small Producer Tax Credit. On January 31st, the bill was tabled in committee and the wineries are exploring other options on moving forward.

Washington – Following the Summary judgment in the Costco case, the legislature will have to address self-distribution, but a bill has not yet been introduced. However, companion bills have been introduced that would change the state's currently open shipping system to a permit system with no quantity limits and a fee yet to be determined (HB 2561, SB 6537).

Wyoming – HB 4 allows wineries to ship no more than 18 liters to a consumer annually and allows unlimited sales to retailers.

We will keep you updated as these bills and court cases begin to move and more legislation is introduced. In the meantime, if you have information or questions on any of these states or you are facing your own legislative battle that has not yet been mentioned, please contact WineAmerica.

Quick Tip:

** WineAmerica adds new functionality to Members Only page with "Quicklinks".

As a new feature of the "Members Only" page, "Quicklinks" organizes key links to enrolling in the FedEx and IDlive programs, checking the status of your labels, viewing wine news and much more at the click of a button.

To use this new feature, log into the "Members Only" section of the website and find what you need today!

EU-US Bilateral Wine Agreement About to be Signed; Last Chance to Ensure Semi-Generic Labels are Correct

Semi-generic names of geographical significance* are about to be prohibited by the EU-US Bilateral Wine Agreement. WineAmerica expects the signing of the agreement to happen any day now, so it is important that your labels with semi-generic terms are correct.

Important Information is as follows:

- ✓ **There is an exception for grandfathered labels already approved that display the semi-generic on your TTB COLA.**
- ✓ If you have a semi-generic listed under a "Fanciful Name," you will lose the right to make changes to the label if you plan on continuing use of the semi-generic.
- ✓ **WineAmerica strongly urges you to immediately resubmit any labels that have a semi-generic name listed under "fanciful names" by switching the semi-generic into a class/type designation.**

(Example. If you use "Port" as a type designation and have been grandfathered for that, you should be able to use a modified type designation in the future, such as "White Port," under your grandfather provision. However, if you use the term in a fanciful name, e.g. "Pink Champagne," then you will not be able to make any changes in the fanciful name in the future.)

- ✓ By leaving the "Fanciful Name" box empty, you may be able to make future changes to your label under the class/type designation.

(Example. If you make "Pink Champagne" and list "Pink" as the Fanciful Name and "Champagne" under the class/type designation you will not be able to make changes to your label. However, if you list "Pink Champagne" under the class/type designation you may be able to make adjustments subject to the review of the TTB.)

- ✓ Your COLA must be approved before the signing of the agreement in order to be protected by the grandfather clause. Label submissions received by the TTB but not approved by the signature date will not be grandfathered.
- ✓ Fanciful Names can be found on the TTB COLA form as box number 6. If you have a semi-generic listed in box number 6, you will need to resubmit the label and place the semi-generic name on your label as a Class/Type Designation if you want to make future changes. Please note that no box exists to list your Class/Type Designation, but all TTB COLAs require a copy of your label displaying your Class/Type Designation.
- ✓ The deadline to resubmit could be any day.
- ✓ Any label submissions are subject to the discretion and approval of the TTB.

***The semi-generics are as follows: Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Malaga, Marsala, Moselle, Port, Retsina, Rhine, Sauterne, Sherry, and Tokay**

Please contact WineAmerica immediately with any questions regarding this deadline.

New Tools Make Participating in WineAmerica Trailblazers Easier Than Ever

Participating in the WineAmerica Trailblazers program has never been easier!

This unique program gives consumer members the opportunity to explore wineries across the nation. For an annual fee of \$25, these consumer members receive a wide range of benefits including: VIP treatment at participating WineAmerica wineries, access to an exclusive WineAmerica membership roster, a member's only Calendar of Events, and up to the minute wine news.

These qualified consumers want to know more about your winery and products!

WineAmerica has provided a range of easy to use, free tools to help promote your winery to these new customers.

To take advantage of this unique consumer outreach initiative, log onto the "Members Only" section of the WineAmerica website and click on the link to enter the wineries access page for WineAmerica Trailblazers. Within this page you can **download the WineAmerica Trailblazer brochure for your tasting room, download the Trailblazer logo to post on your website, add events to the Calendar, and provide a link to the Trailblazer program** to let qualified consumers know that you want their business.

Additionally, if you have current customers and want to let them know about the WineAmerica Trailblazer program, you can use the new "Tell a Friend" feature by going to www.americanwineries.org and clicking on "Share the Gift of VIP Benefits, Tell a Friend about WineAmerica Trailblazers..." under the Featured Items section. Simply enter the name and email of your friend to let them know about Trailblazers!

As these are qualified consumer members who have an interest in wineries and the Association, it is critical that we treat them with a high level of service. We encourage you to offer special incentives for these new WineAmerica members (i.e. tasting room discounts, barrel tasting, private tours, etc.) and to alert your tasting room staff to this program.

It's simple, easy to use, and best of all participation is free to all winery members!!! All you have to do is give these members the special treatment that you provide to all of your customers, and any frills you add on will serve as an added incentive to draw the Trailblazers to your door. So be on the lookout in the upcoming months for the WineAmerica Trailblazers as they find the path to your winery!

Please contact Jenny Mattingley (jmattingley@wineamerica.org) or Kelly Rusk (krusk@wineamerica.org) with any questions about this exciting program.

Charlie Palmer Steak Continues to Support American Wine Industry

In 2005, Charlie Palmer, owner of Charlie Palmer Steak in Washington, DC, was presented with the WineAmerica award for Outstanding Support of the Wine Industry. This year he is continuing to show his support of American wines with a unique marketing program.

Starting in January and continuing throughout the year, Charlie Palmer Steak will host "Wine Wednesdays" to highlight a wine from a different state. The restaurant will start with a wine from Alabama and go from there. The sommelier has compiled a list of wines from both large producers and boutique wineries.

"As a restaurant whose menu features some of the best American products available, it is very important to me to offer our customers new culinary and wine experiences from around the country," said Chef Palmer. "Plus, they get to sample wines from all over the United States that they might not yet have had the opportunity to try."

This is a great example of a business reaching out to the American wine industry and really making a commitment to promote American wines. We hope to see more of these partnerships in the future across the country and are delighted that a WineAmerica award recipient continues to be a supporter of the industry.

From the COLA to the Shelf

Tips for getting your labels approved and out the door

The label application process is complicated and making your way through all of the TTB regulations can be challenging. Here are some tips to think about when creating your labels.

- **The TTB is now advising 15-20 business days for processing label applications. Please plan accordingly, and submit your labels early.**
- The range for Table Wine is 7%-14%; wines that have an alcohol content outside of this range may not use Table Wine as either the Class/Type Designation or as the alcohol content.
- Please do not submit anymore than three copies of a given COLA application as it creates confusion for the TTB.
- For organic wines, it has been taking slightly longer for the TTB to process organic COLA applications over standard applications, please ensure that labels are submitted well before the bottling deadline for all organic labels to ensure that they have cleared the process.
- **Absolutely do not bottle or label prior to label approval.**
- When submitting duplicates of labels, do not staple them; please only use paper clips or binder clips to hold applications together.
- If you plan on sending your label images via e-mail and your COLA applications through the mail, please let the label specialist know what to expect.
- If you plan on sending a large batch of labels for approval, more than 20, please call or e-mail the label specialist to let her know what's coming, and be advised that batches of more than 35 labels will be submitted in groups of roughly ten at a time until the whole batch has been submitted to the TTB.

WineAmerica Staff Contacts

Bill Nelson, President

bnelson@wineamerica.org

Kelly Rusk, Director of Operations & International Affairs

krusk@wineamerica.org

Jennifer Montgomery, Director of Grassroots & Political Affairs

jmontgomery@wineamerica.org

Jenny Mattingley, Director of Communications & Membership Services

jmattingley@wineamerica.org

Kari Den Otter, Label Compliance Specialist

labels@wineamerica.org