



NCSLA 2018 Annual Conference

Hilton Waikoloa Village, 69-425 Waikoloa Beach Drive, Waikoloa, HI 96738

June 17-21, 2018

Regulatory Strategies for an Innovative Marketplace

SATURDAY, JUNE 16

8:00 am-1:00 pm NCSLA Executive Committee Meeting: Water's Edge Boardroom

SUNDAY, JUNE 17

1:00 p.m.–5:00 p.m. Early Registration: Presidential Suite #7251, Palace Tower

MONDAY, JUNE 18 - General Session: Monarchy Ballroom

7:00 am-5:00 pm Registration/Help Desk: Waikoloa Promenade

8:00 am-10:00 am **Welcome and Opening Ceremony**

Gerald Takase, Director, Liquor Control, County of Hawai'i

Presentation of Flag: Color Guard - 291st Combat Communications Squadron

Pledge of Allegiance

Barbara Kossow, Deputy Managing Director, County of Hawai'i, Mayor's Office

Keith Burt, President, NCSLA

Roll Call: Pam Frantz, Management Consultant, NCSLA

What's Happening with the Volcano?

Storytelling with Joseph Kealoha, former Liquor Control Adjudication Board Member

10:00 am-10:15 am *Morning Break*

10:15 am-11:15 am **PANEL #1: Disruption and the Beverage Alcohol Industry**

Disruption is occurring across all sectors of the economy and, in its wake, established market leaders, products and alliances are being displaced. The beverage alcohol industry, despite insulation provided by a web of federal, state and local regulations, is not immune from the forces of change. Innovation, as well as new technology, products, channels, media, regulations and consumers, are all impacting the business environment and disruptive innovation has become the new norm. What steps are you taking to safeguard your business against, or to even embrace, disruption in the beverage alcohol industry? The future of your business may hang in the balance.

Moderator: LYNN WALDING, Executive Director Control States, Diageo N.A.



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MONDAY, JUNE 18 - General Session (cont.): Monarchy Ballroom

Panelists:

GERARD DEHRMANN, Sr. Vice President, Public Affairs & Government Relations, Walmart

NIDHI KUMAR, General Counsel & Senior Vice President, Drizly

PATRICK MARONEY, Director, Colorado Dept. of Revenue, Liquor & Tobacco Enforcement

11:20 am-12:20 pm **PANEL #2: Through Community Collaboration, Can We Build a Consensus About Alcohol and Public Health?**

Views on alcohol in today's society cover a broad spectrum, from prohibition to unfettered access and everything in between. Whether it is opinions about the potential negative impacts of drinking or the social or health benefits of alcohol use, these views are often influenced by personal experience, findings on the internet, and/or scientific research.

This panel will seek to provide insights that can help to inform both policy and practice for regulators and industry by exploring the reasons for these disparate views through the eyes of regulators, industry members and public health advocates.

Moderator: Captain **ERIK SMOOT**, Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission

Panelists:

RONALD KOHLER, Manager, The Greentree Group

SARAH MARIANI, CPP / Behavioral Health Administrator

LYNNE OMLIE, Senior Vice President, General Counsel and Secretary, Distilled Spirits Counsel of the United States (DISCUS)

MARY SEGAWA, Public Health Education Liaison, Washington State Liquor and Cannabis Board

12:20 pm-1:45 pm *Lunch: Lagoon Lanai*

1:45 pm-2:45 pm **PANEL #3: I Know It When I See It - A Regulator's Guide to Tied House Policy and Things of Value**

Tied house laws serve the following important policy objectives: preventing vertical integration in the alcohol market; prohibiting unfair competition; and protecting revenue. Tied-house laws exist on the federal and state level and each state has its own authority



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(21st Amendment) to enact its own particular variations of the tied-house regulatory scheme. Given that these laws have been around awhile (1933 era laws), many legislatures have created exceptions to the three-tier system for any number of reasons. A multitude of exceptions tends to soften the government's argument that the challenged tied-house law is drawn to achieve the government's substantial interest.

The Panel will engage in a detailed discussion of specific examples in states, the analysis used to determine whether or not something is a thing "of value," and discussion of what types of things have "value"? How is "value" determined? Is the decision of which retailers receive limited product releases a thing of value? Is a retailer being responsible in partnering with suppliers or wholesalers in arranging for paid customer rides home accepting something of value? How difficult is it for national companies to do business in various states with such different requirements and "opinions"? Is Category Management "of value"? When is pricing a thing "of value"?

Moderator: JAMES WEBSTER, Senior Partner, Webster Powell, P.C., Chicago, IL

Panelists:

DONOVAN BORVAN, Former Executive Director, Illinois Liquor Control Commission

JOHN COCCA, Director, Arizona Department of Liquor Licenses and Control

TERI QUIMBY, Commissioner, Michigan Liquor Control Commission

ROBERT WIEST, Deputy Commissioner, Delaware Alcoholic Beverage Control

2:50 pm-3:50 pm

PANEL #4: Direct to Consumer Sales in the Internet Age

Since the U.S. Supreme Court's decision in *Granholm v. Heald*, many states have reviewed and/or modified their laws concerning the out-of-state direct-to-consumer (DtC) shipment of wine from wineries. But the DtC story isn't over...in fact, it's just beginning. Thanks in part to the growth of e-commerce and the increase in small, local suppliers, the conversation about DtC sales and out-of-state DtC shipping continues. In addition to legislative initiatives, the issue is permeating legal and regulatory arenas; the retail marketplace; and amongst common carriers. Enforcement can also be challenging and expensive, but some states have recently signaled their intent to more actively enforce existing laws and address DtC shipping.

This panel will discuss the current state of DtC laws, enforcement, and what the future holds for DtC alcohol sales and shipping. How well are states enforcing their current laws



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for direct shipping and what impact is DtC having on in-state brick-and-mortar retailers? Will there be a “Granolm” case for retail DtC? Will pressure from distillers and new market entrants affect the broader DtC conversation? Will the largest e-retailer, which is also now a national brick-and-mortar grocery retailer, change the calculus? What tools do states have to address these questions?

Moderator: JOHN BODNOVICH, Executive Director, American Beverage Licensees

Panelists:

MATTHEW BOTTING, General Counsel, California Alcoholic Beverage Control

JAKE HEGEMAN, Vice President, Legal and Regulatory Affairs, Wine & Spirits Wholesalers of America, Inc. (WSWA)

DUSTIN PICKENS, Senior Attorney, Regulatory Affairs, Federal Express Corporation

WILLIAM TOMASZEWSKI, General Counsel, Wine.com

3:50 pm-4:00 pm *Afternoon Break*

4:00 pm-5:00 pm **PANEL #5: Preserving Hawaii’s Cultural Heritage and Safeguarding the Future**

As the last state to join the USA, Hawaii’s connection to its melting pot beginnings is immediate, central to its cultural identity, and worthy of preservation for the benefit of future generations. These entities are success stories in the traditional business sense, but also are exemplary in their commitment to serve as *kupuna* – teachers, cultural preservationists, connectors to the past. Each panelist has a fascinating story to tell about their product offerings, and the piece of local culture they are safeguarding for future benefit.

Moderators:

ANNA HIRAI, Assistant Administrator, Liquor Commission, City and County of Honolulu

MAX J. SWORD, President, Max J. Sword & Associates, LLC

Panelists:

BOB GUNTER, President, Koloa Rum Company (Kauai)

PAULA HEGELE, President, MauiWine (Maui)

KEN HIRATA, Founder, Hawaiian SHOCHU Company (Oahu)

DEREK KURISU, Executive Vice President, KTA Super Stores (Hawaii island)



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7:00 am-5:00 pm Registration/Help Desk: Waikoloa Promenade

8:00 am-9:00 am **PANEL #6: Straight from Madam Pele - this year's Hot Topics!**

We've assembled a panel of experts and surprise guests to cover a handful of issues hotter than lava. Join us first thing Tuesday morning for education on emerging issues that you need to know about in 2018 and beyond. Topics covered will include, but not limited to, reemergence of TTB Trade Practice investigations, federal policy on cannabis infused alcoholic beverages, a primer on blockchain and why it matters for alcohol, the impact and implementation of federal tax reform, and retailers pushing new boundaries to stay relevant to consumers.

Moderators:

CAROLINE O'CONNELL, Partner, Lawson & Weitzen, LLP, Boston, MA

KRISTEN TECHEL, Partner, Strike and Techel, San Francisco, CA

Panelists:

JANELLE CHRISTIAN, Industry Outreach Program Manager, Alcohol Tax and Trade Bureau (TTB), Portland, OR

SUSAN DWORAK, CEO, Real Identities, LLC, Portola Valley, CA

SUSAN EVANS, Executive Liaison for Industry and State Matters, Alcohol Tax and Trade Bureau (TTB), Washington, DC

TERRI BEIRNE, Eastern Counsel, Wine Institute, Midlothian, VA

AND SPECIAL GUESTS

9:05 am-10:05 am **PANEL #7: Legal Update with Valerie Haber**

Join Valerie Haber of GrayRobinson for this review of key federal and state judicial decisions that have impacted the regulation of America's alcohol industry. The exact selection of key issues and cases remains to be determined, but focus will be on a limited number of important cases that truly reflect the challenges presented by today's innovative marketplace.

10:05 am-10:15 am *Morning Break*

10:15 am-11:15 am **PANEL #8: Legal Cannabis and Alcohol: Synergy or Discord?**



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This presentation is intended to view cannabis from a variety of perspectives. Now that we have a couple of years of experience with legalized cannabis, and considering that some states are tasking the alcohol regulators with regulating cannabis, it is time to take a hard look at the successes, the challenges, and the socioeconomic impact of recreational cannabis. As more state legislative bodies debate legalizing cannabis, it is incumbent on the NCSLA to provide its membership with whatever resources it can. Today, those resources are our state members and the industry itself. Further, the alcohol and cannabis worlds are colliding as an alcohol supplier enters the cannabis arena. Cannabis-infused beverage alcohol can't be that far behind and the synergism of that combination must be a consideration moving forward.

Moderator: ROBERT J. "RJ" O'HARA, President, Flaherty and O'Hara, P.C., Pittsburgh, PA

Panelists:

ANDY BRASSINGTON, CEO, Evergreen Herbal, Manufacturer/Distributor of cannabis-infused beverages and edibles

DR. BEAU KILMER, Co-Director, RAND Drug Policy Center

STEVE MARKS, Executive Director, Oregon Liquor Control Commission

MATTHEW SALTZMAN, Shareholder, Kolesar & Leatham, Chtd., Las Vegas, NV

11:20 am-12:20 pm PANEL #9: Building Regulatory Continuity Policy into the Three Tier System - Planning for Emergency/Disaster Management

With Superstorm Sandy seemingly fading into the rearview mirror; the historic recent natural disasters, including the destructive California wine country fires and devastating hurricanes in Texas, Florida, and Puerto Rico; and cyber-terrorism a constant threat, regulatory agencies and industry need to build redundancy and alternative means to secure regulatory control and potential interim channels of distribution in times of Emergency/Disaster Crisis to avoid foreseeable market, regulatory and logistic disruptions. The three-tier system is a transparent regulatory distribution system that implements the government's health, safety and welfare policy goals, while protecting revenue.

This panel of regulators will discuss regulatory and distribution issues that arose during these past disasters, preparation for foreseeable disasters, and alternative means that could be, or have been, employed or implemented to prevent market, logistic and regulatory disruptions, divergence of product (health, safety and welfare), and the



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protection of revenue – the core concerns of the Three Tier system as stated by controlling U.S. Supreme Court jurisprudence.

Moderator: JAMES SEFF, Partner, Pillsbury Law Firm, San Francisco, CA

Panelists:

DONOVAN BORVAN, Former Executive Director, Illinois Liquor Control Commission

Captain ERIK SMOOT, Oklahoma Alcoholic Beverage Laws Enforcement Commission

CHRISTOPHER THIEMANN, Distilled Spirits Program Manager, Alcohol and Tobacco Tax and Trade Bureau (TTB)

12:20 pm -1:45 pm *Lunch: Lagoon Lanai*

1:45 pm-2:45 pm **PANEL #10: Private Labels - Legitimate Use of Brands or Undermining Tied House?**

Retailer brands on private label alcoholic beverages have been around for many years, but their use is becoming more prevalent and ubiquitous in the market. Are they really just a simple extension of a retailer's right to benefit from its brand value? Is there something more going on and does it matter, since tied house laws were intended to protect retailer independence? Are retailers benefitting from ambiguity in this area and engaging in activities that warrant concern for regulators about deceptive marketing practices? Is the line between retailers and brand owners or de-facto manufacturers of the products getting blurred and, if so, should regulators be concerned?

Several years ago, California found it to be a violation of its tied-house laws for a manufacturer to produce and sell in the general market a retailer-branded malt beverage product. Other states require that such products be made generally available to other retailers. More recently, the Texas Court of Appeal found a private label agreement to not just be a violation of TABC regulations, but resulted in the retailer exercising indirect control over the manufacturer's business, through such common contract terms such as quality control over alcoholic beverages produced under its brand (among other things).

Join this esteemed panel as they explore the practical implications, legal issues, and regulatory challenges of this growing segment of the alcoholic beverage industry.

Moderator: ART DECELLE, Counsel, McDermott Will & Emery LLP, Washington, DC



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Panelists:

TRACY GENESEN, Vice President and General Counsel, Wine Institute

KYLE V. HILL, Shareholder, Martin, Frost & Hill, P.C., Austin, TX

JO MOAK, Sr. Vice President and General Counsel, Wine & Spirits Wholesalers of America, Inc. (WSWA)

2:50 pm-3:50 pm

PANEL #11: Who is your client anyway? Ethical “watch-outs” for when industry practitioners seek legal advice from regulators.

This panel will discuss a lawyer’s ethical duty to protect their client’s interest – be they an employee of a regulatory agency or an industry member – when giving (or taking) legal advice about the liquor law. The focus will be on identifying the perceived and actual conflicts that arise on both sides of the exchange. Can the agency counsel simply give “free” advice to the industry caller or must there be more clear guidelines, based on the

agency counsel’s duty of loyalty and confidentiality to the regulatory agency? And what guidelines must industry practitioners follow when asking questions of agency counsel and can they reasonably rely on the advice they receive? Does agency counsel have their client’s best interest in mind? Is some form of disclaimer warranted? The ABA Model Rules on Confidentiality (Rule 1.6), Conflicts (Rule 1.7), Zealously represent (Rule 1.3), Organization as Client (Rule 1.13) and others will be used to help guide on this fascinating legal ethics topic. Please join us. 1-hour CLE Ethics credit anticipated.

Moderator: NICHOLAS J. BERGMAN, Partner, Buchman Law Firm, LLP, New York, NY

Panelists:

DEBBI BEAVERS, Director, Kansas Alcoholic Beverage Control Division

KIMBERLY A. FROST, Shareholder, Martin, Frost & Hill, Austin, TX

REBECCA STAMEY-WHITE, Partner, Hinman & Carmichael LLP, San Francisco, CA

GERALD TAKASE, Director, Department of Liquor Control, County of Hawai’i

WEDNESDAY, JUNE 20 - General Session: Monarchy Ballroom

7:00 am-5:00 pm

Registration/Help Desk: Waikoloa Promenade

8:30 am-9:30 am

PANEL #12: When Did Noah Build His Boat? How Regulators Prepared For “Challenge” Management – A Review Of 3 Recent Cases Challenging This Industry’s Regulatory Structure.



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The past year saw three (3) court successes in both federal and state court for regulators who defended their states' regulatory structures. These three decisions add to the 2008 decision of *Manuel v. Louisiana* as tools for every regulator to hold and know how to use.

Panelists will identify the collateral issues that accompany lawsuits, strategies to manage these issues and the impact on regulators. Panelists who "were there" discuss and review the procedural history and positions argued in these cases, including: the California decision in *Retail Digital Network*; the Texas Decision on the so-called 1-share rule (*Cadena v. Texas ABCC*); the Texas Decision on *Private Labels*, and *Manuel v. Louisiana*.

Moderator: JOHN H. CORDREY, Commissioner, Delaware Alcoholic Beverage Control

Panelists:

BRANNON DENNING, Advisor, Center For Alcohol Policy, Constitutional law professor - Samford University's Cumberland School of Law, Birmingham, Alabama. Center For Alcohol Policy Amicus in *Cadena v. Texas ABCC*.

MURPHY PAINTER, former Commissioner, State of Louisiana, Office of Alcohol and Tobacco Control, Past President of NCSLA 2002-2003. Named Defendant in *Manuel v. Louisiana*.

MICHAEL NEWMAN, Partner, Holland & Knight, LLP, San Francisco, CA. Amicus in *Retail Digital Network* case.

9:35 am-10:35 am

PANEL #13: Constitutional Challenges to State Alcoholic Beverage Laws

Early United States Supreme Court opinions held that the Twenty-First Amendment provided states with exceptionally broad constitutional powers to regulate alcoholic beverages within their boundaries. Over time, the Court's opinions have curtailed state Twenty-First Amendment by virtue of other Constitutional provisions. Weakening of state Twenty-First Amendment authority has resulted in an increasing number of Constitutional challenges to state alcoholic beverage laws in Federal courts. This session will discuss the three most common Constitutional challenges to state alcoholic beverage laws: (1) First Amendment challenges; (2) Equal Protection Clause Challenges; and, (3) Commerce Clause Challenges. During this session, our panel of distinguished attorneys will discuss current law, new arguments, and recent Federal court cases across the nation relating to these Constitutional challenges.



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Moderator: CARRIE BONNINGTON, Partner, Pillsbury Winthrop Shaw Pittman LLP, Sacramento, CA

Panelists:

MATTHEW BOTTING, General Counsel, California Alcoholic Beverage Control

J. NEAL INSLEY, Sr. VP/General Counsel, National Alcohol Beverage Control Association

GINNA WINFREE, Associate, Gullett, Sanford, Robinson, and Martin, Nashville, TN

10:35 am-10:45 am *Morning Break*

10:45 am-11:45 am **PANEL #14: Here, There and Everywhere: When Alcohol is the Norm**

Regulatory agencies and state legislatures continue to receive proposals that would expand the sale of alcohol to more and more venues. What factors should be considered when reviewing these proposals? How should economic development and benefits be viewed? This panel will discuss research, social norms, explicit and implicit messaging, public health impacts, and implications for treatment and recovery as they consider the changing landscape of alcohol sales and marketing.

Moderator: JASON KILMER, Ph.D., University of Washington associate professor, with over 20 years affiliation with colleagues at the Addictive Behaviors Research Center and Center for the Study of Health and Risk Behaviors.

Panelists:

RICK GARZA, Director, Washington State Liquor and Cannabis Board

LINDA MAJOR, PhD, Assistant Vice Chancellor of Student Affairs, University of Nebraska-Lincoln, Lincoln, NE

NICOLE REID, Co-owner of The Manifest Honolulu, Hawaii and leader in Chinatown redevelopment

CHRISTINE TROUT VAN TATENHOVE, Commissioner, Kentucky Department of Alcoholic Beverage Control

11:50 am-12:50 pm **PANEL #15: May The Force Be With You - State Task Forces and Their Impact on Alcohol Legislation and Regulation**

"For my ally is the Force, and a powerful ally it is." Many public and private organizations use task forces to complement the work and education of standing committees and agencies. If designed properly and executed well, a task force can be very effective in



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dealing with issues that impact the interests of multiple stakeholders. Without key elements, however, a task force could result in a net loss of confidence and resources. During this session, we will explore the elements critical for building a successful collaboration, possible challenges, and how a task force may be productive by educating a legislature on an issue and guiding it to a desired position. By the session's conclusion, audience members will have a list of lessons learned and best practices.

Moderator: NIDHI KUMAR, General Counsel & Senior Vice President, Drizly

Panelists:

**CHRISTOPHER HERRINGTON, Director of Legislative & Governmental Affairs,
Pennsylvania Liquor Control Board**

**STEVE HUMPHRESS, General Counsel, Kentucky Department of Alcoholic Beverage
Control**

JEFFREY KELLY, Director, Maryland Field Enforcement Division

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|------------------|--|
| 12:50 pm-2:00 pm | LUNCH & NCSLA REGIONAL MEETINGS (<i>States Only</i>) |
| 2:00 pm-3:00 pm | NCSLA ANNUAL BUSINESS MEETING (<i>ALL members welcome!</i>) |
| 5:30 pm-8:30 pm | PRESIDENT'S BANQUET: Kamehameha Court |

CONFERENCE CONCLUDES – ALOHA and A HUI HOU!