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MEMORANDUM

TO: Don Bishoff, Legislative Assistant, Senator Bill Morrisette

FROM: Rob Bovett, President, OADEC

DATE: February 2, 2007

RE: Notes on the unfair laws proposed to be repealed by Senate Bill 502

The front page article in the Sunday *Oregonian* on October 08, 2006, entitled "Beer, Wine Lobby's Big Clout," did an excellent job summarizing and telling the story of the unfair laws proposed to be repealed by Senate Bill 502, as well as their human impact. The full article is at: <http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/116020594689840.xml&coll=7>

In order to explain Senate Bill 502, I will pull quotes from that article, and then provide Oregon Revised Statute (ORS) and legislative references, as well as some brief comments.

The article starts out:

The clout of Oregon's beer and wine distributors hit brewer Lonnie Clement like a loaded delivery truck.

With sales tanking last spring, Clement felt abandoned by Gold River Distributing Inc., the wholesaler that had exclusive rights to put his beer in pubs and restaurants. But when he tried to dump the Medford firm, Clement got a rude surprise: Under state law, the only quick way out was to hand Gold River a fat check.

Clement's tiny Klamath Basin Brewing Co. coughed up \$12,000 -- and learned a lesson.

The law's all in the protection of the distributor, Clement said, and not for the brewery at all.

When it comes to the law, the Oregon Beer and Wine Distributors Association is used to getting its way.

The first law referenced a few pages into the article, and the first law proposed to be repealed in SB 502 (what I call the "cash on the barrelhead" law), is an historic anomaly from the prohibition era. It may have had justification during organized crime involvement in illicit alcohol distribution during prohibition in the 1920s and 1930's, but it simply makes no sense today (other than to create an unequal balance of power in favor of the distributors). As referenced in the *Oregonian* article:

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Rescue. Defend. Shelter. Support.

Reformers, aiming to keep the mob from driving saloons into debt, required that distributors be paid cash-on-delivery -- a law that stands today.

The law is ORS 471.485. There have been repeated attempts to reform that archaic law, all of which failed. A few recent examples:

- 2003 HB 2690, http://pub.das.state.or.us/LEG_BILLS/PDFs/HB2690.pdf
- 2001 HB 3690, <http://www.leg.state.or.us/01reg/measures/hb3900.dir/hb3960.intro.html>
- 1999 HB 3145, <http://www.leg.state.or.us/99reg/measures/hb3100.dir/hb3145.int.html>
- 1997 HB 3386, <http://www.leg.state.or.us/97reg/measures/hb3300.dir/hb3386.int.html>
- 1995 SB 11, <http://www.leg.state.or.us/95reg/measures/sb0001.dir/sb0011.int.html>

The second set of laws referenced in the *Oregonian* article involve exclusive brand distribution territories, which effectively creates territorial monopolies in favor of the distributors, and to the detriment of the manufacturers and retailers. As referenced in the *Oregonian* article:

In 1981, lawmakers also gave distributors exclusive rights to sell individual beer brands in their delivery territory. A tavern in a given area of Southeast Portland can buy Pabst only from Mt. Hood Beverage, for example, and Coors and Corona only from another distributor.

The statutes are ORS 474.105 and 474.115 (formerly 471.502 and 471.503), enacted by 1981 Oregon Laws, Chapter 917 §§ 2 and 3.

The third set of laws referenced in the *Oregonian* article are essentially one-sided contract terms enacted into law. Apparently, getting a monopoly was not good enough - they wanted permanent one-sided contract provisions as well. Wouldn't we all like such unilateral contract help from our lawmakers? As referenced in the *Oregonian* article:

Romain cemented his influence in 1989, when he negotiated with big brewers to write the law that governs Oregon's beer trade -- the statute that, among other things, makes it difficult for producers to dismiss a distributor. He takes credit for getting many of the contractual terms between distributors and suppliers enshrined in the law.

The unfair one-sided contract provisions are ORS 474.005 to 474.095, enacted by 1989 Oregon Laws, Chapter 529, §§ 1-12.

All of these laws are unfair, monopolistic, anti-competition, and inappropriately give distributors an unfair amount of power and control over the rest of the industry. These offensive laws need to be repealed.

NOTE: They also may violate federal antitrust law. In April of 2006, a federal district court judge struck down the State of Washington's similar scheme. That case is now on appeal to the 9th Circuit Court of Appeals. See *Costco v Hoen*:

<http://www.beerinsights.com/pdf/Costco%20Decision.pdf>