



State Update

WV Business and Industry Council's Legislative Conference Highlights Accomplishment and Outlines Priorities

More than 120 elected officials, business leaders, economic development experts and other key stakeholders gathered in Charleston this month for the West Virginia Business and Industry Council's Pre-Legislative Session Conference. This was the 9th BIC session held throughout the State. President Jim Cunningham attended the Huntington session. The event featured briefings on topics ranging from challenges facing the coal industry and the need to develop and diversify the state's economy to the widespread problem of methamphetamine use to the state's regulatory environment and workplace freedom legislation.

Senate President Bill Cole joined with House Speaker Tim Armstead to provide attendees with an outline of the leadership's plan for the upcoming legislative session, including:

- Passing a state budget without any new taxes
- Passing workplace freedom (right to work) legislation
- The need for the lease integration of our natural gas industry
- Improving the state's education system
- Investing in infrastructure, which should result in significant opportunities for savings in the DOH audit
- Reforming our regulatory climate.

Cole also mentioned some of the successes from the previous legislative session including tort reform, which has directly caused an 11% decrease in premiums from Progressive Insurance.

Cole said Armstead and he are determined to get West Virginia back to work, and the historic trend of avoiding controversial topics during an election year won't play a factor with this leadership team. "West Virginia is worth fighting for, and if we all get sent home for doing the right thing just because it's an election year, then so be it," said Cole. "Voters are not stupid – they can remember from one year to the next, so we do not plan on shying away from the tough issues just because it's an election year. That may be the way things used to be done, but that is not what is right for West Virginia. We cannot afford to wait – the time to starting moving West Virginia forward is now."

After the presentation by the legislative leaders, Senate Majority Leader Mitch Carmichael spoke on the topic of much-needed regulatory reform. In November, a public opinion survey went out to ask West Virginians what regulations need a closer look and according to Carmichael the response has been overwhelming. The 17 question survey produced 142 responses from the business community. 75% of those respondents said that complying with state laws and regulations cost more than the benefits they produce while nearly 36% said they make it difficult to start a new business in West Virginia.

The legislative leadership will take a hard look at our state's regulations to determine which are outdated, redundant and overly burdensome to West Virginia businesses and industry.



From the Director

As 2015 comes to an end, we would like to take this opportunity to thank you for your continued support of WVWA. If there are ways that we can improve or issues we need to address, please do not hesitate to let us know.

It appears that tax reform and education are at top of the agenda of House and Senate leadership for the **2016 Legislative Session**. On the Governor's agenda is balancing the budget. Five years ago we thought if we could make it to 2016 that our economic woes would be over but now with revenues from coal and natural gas down so much we are really struggling and predictions are that the State will have a deficit of between \$230 and \$450 million. It may be very difficult this session for us to defend no new taxes on our industry.

We will once again host our **Legislative Day and Legislative Reception** at the State Capitol and Governor's Mansion on **February 17th**. Please mark your calendar and plan to attend.

We billed **annual membership dues** this week. We would like to thank every company who is a member of the WV Wholesalers Association. We appreciate the trust you have placed in us and we look forward to serving you in 2016.

The new **WVWA Membership Directory** is at the printer. Members will receive their copy in January.

Please mark your calendar for the **Mid-Atlantic Legislative Conference**, which will be held **June 1 - 3** at The Greenbrier. Information will be distributed to members early in 2016.

We look forward to working with you in the coming year and many years to come. We wish you, your employees and families a very prosperous 2016.

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Low Energy Prices Continue to Drag Down State Tax Collections

Low energy prices continued to drag down state tax collections in November, and Deputy Revenue Secretary Mark Muchow said there's no sign that will improve for the foreseeable future. Some facts from his report:

- ♦ For Natural gas, the state collected a total of \$290 million in tax revenue, which was \$22.9 million, or 7 percent, below estimates, and \$4.67 million, or 2 percent, below November 2014 collections. However, 2015 collections are actually worse than what those numbers show. Through the first five months of the 2015-16 budget year, the state has collected \$1.52 billion, \$114.5 million short of estimates, and down \$82.83 million from the same period last year.
- ♦ The state is on pace to have its third budget year of the past five where state revenue collections declined from the previous year.
- ♦ In light of falling tax collections, Gov. Earl Ray Tomblin in October ordered most state agencies to cut spending by 4 percent, which will save about \$95 million. However, the shortfall is now larger than these cuts. The administration has also identified about \$40 million of unexpended funds that could be "swept" out of various state accounts next session to go toward filling the funding deficit, but that likely won't be enough to balance the budget.

- ♦ The state Road Fund, which has outperformed estimates for three years, is experiencing a downturn. Because a portion of the state's wholesale gasoline tax adjusts based on prior year's gas prices, low gas prices in 2014 caused the tax to drop 1.1 cents a gallon this year. This has meant \$8 to \$9 of savings for average drivers, but will cost the Road Fund \$15 million this year. Because of even lower gas prices this year, the wholesale tax will drop another 1.4 cents a gallon on Jan. 1, which will add up to \$35 million of lost Road Fund collections next year, he said.
- ♦ Severance tax collections of \$33.98 million were \$10.4 million below estimates, and about \$2.9 million below November 2014. Year-to-date, severance tax collections of \$74.3 million are \$78.8 million below projections. That's also a drop of 41 percent from last year, driven primarily by a 60 percent plunge in natural gas prices.
- ♦ Personal Income Tax collections of \$122.1 million were \$5.1 million below estimates and \$6 million below November 2014, driven in part by a 1.5 percent drop in payroll withholding taxes.
- ♦ Consumer sales taxes fared comparatively better in November, with collections of \$103.89 million exceeding November 2014 collections by \$2 million, although coming in about \$5.5 million short of projections.

State Government Personnel Changes

Gale Given has been promoted to West Virginia's deputy secretary of administration. Acting Cabinet Secretary **Jason Pizatella** announced the move recently.

Pizatella says in a news release that Given will continue to serve as the state's chief technology officer.

Pizatella says Given's insight is needed as the state addresses threats to its cyber security, along with the challenges of expanding access to broadband Internet services and upgrading its technology infrastructure.

Pizatella also announced the appointment of **Brian Pratt** as director of Division of Information Services and Communication, which handles data processing and telecommunications for various state agencies. Pratt has 35 years of experience in information technology and has worked as a manager and director in the state information services and technology offices.

Governor Tomblin Appoints Martin "Rick" Atkinson III to 11th District House of Delegates Seat

Gov. Earl Ray Tomblin has announced the appointment of Martin "Rick" Atkinson III to represent residents of the 11th District in the West Virginia House of Delegates. Atkinson's appointment fills the vacancy created when former Delegate Bob Ashley was appointed to the West Virginia Senate on Sept. 15.

Atkinson, a West Virginia University graduate, retired from BPB-Stella Jones in 2013 and currently serves as director of sales for Mountain State Log Homes.



Have some good news to share?

Let WVWA know and you could be featured in our next newsletter!

WV Senate President & House Speaker Honored for Civil Justice Reform

During the 2015 West Virginia legislative session, Senate President Bill Cole and House Speaker Tim Armstead led the effort to enact numerous landmark legal reform laws. Reforms that many thought were impossible to ever pass in the Mountain State. Recently, the two legislative leaders received the 2015 State Legislative Achievement Award at the U.S. Chamber Institute for Legal Reform's 16th Annual Legal Reform Summit in Washington, DC.

"Tim and I might be the ones listed for this award, but we take our hats off to the Legislature. We all worked hard on these bills and they passed with bipartisan support to move our state forward," explained President Cole.

Speaker Armstead added, "We have a good team, and we all rolled up our sleeves and went to work. We knew this was an area holding our state back. Our chief goal is to put people back to work and this is an area that has a true impact on how many jobs are in our state ... more than what most people realize."

New Judicial Climate Ranking - WV Off ATRA Hellhole List

The American Tort Reform Association (ATRA) released its list on December 17th and for the first time in 10 years West Virginia is not considered a location that burns business interests with its court system. But ATRA has kept the state on its 'Watch List' because it wants to see how the state's highest court responds to the new laws.

West Virginia's ability to stay off the Judicial Hellhole list will depend on what the state Supreme Court does with the more than dozen measures passed by the legislature and signed into law earlier this year.

State Senate President Bill Cole and House of Delegates Speaker Tim Armstead held a news conference at the state capitol recently praising the movement from the hellhole list. "It's been a thorn in the flesh of us attracting job creators to our state and families to come and locate here," Armstead said. "We really feel this is an important step to say to the rest of the country that West Virginia has a lot to offer."

Armstead added judicial reform favors both the defense and plaintiffs in a lawsuit. "When you walk into that courtroom you should start with a clear slate no matter which party you are," he said. "It should only be the evidence that tips the scales in favor of one or the other party."

The next step toward judicial reform may be discussion of creating an intermediate court in West Virginia.

State Home Rule Board Approves Amendment for Several WV Cities

The city of South Charleston will impose a 0.5 percent increase in the city's sales tax raising the tax up to 1 percent for all city residents by next year. It will generate approximately \$4.3 million in additional revenue according to City Attorney Michael Moore. Their plan also includes an annual reduction of \$366,263 in the city's business and occupation tax for utilities. The plan will be submitted to city council for a first reading on Dec. 3 and a second reading on Dec. 17. A final approval could be made at the time of the second reading. If approved, Moore said the tax would be implemented July 1, 2016.

The board also approved a one percent sales tax increase for the city of Bridgeport.

Elkins' plan to permit the city to participate in the Home Rule program was approved by the board except for one section of the amendment that dealt with the purchase of dilapidated properties.

Weirton City Council has approved the final readings to ordinances that amended the business and occupation tax – eliminating the wholesale tax – and creating a 1-percent sales tax under home rule during Monday's council meeting.

On December 17th, the City of Clarksburg has again approved an ordinance that will implement a one percent sales tax within city limits. The city voted earlier this year to eliminate its B&O tax to align with its Home Rule application. Generated revenue is estimated to be around \$2.7 million, taking into account the sales tax collection and the loss of the B&O. July 1 is the implementation date for the sales tax.

The 1-percent tax will be in addition to the 6-percent sales tax levied by the state and will be collected and sent to Charleston. The West Virginia Department of Taxes will then separate the city's 1-percent tax and return it. Although the new taxes should be in effect by Jan. 1, the city likely won't receive the first revenue from the taxes until July.

We continue to see additional home rule requests so that cities can increase their sales tax. The reduction in B&O taxes is not as much as we had hoped for. We will continue to work on getting B&O taxes reduced.

Legislative Interims and Tax Reform Update

During Interim Meetings in November, the top issues were Right to Work, pooling and AST rules.

Workforce Freedom

A hearing was held on Right to Work to a packed committee room on Sunday, November 15th. The arguments for and against were made. WVU economics researcher John Deskins reported his findings in relation to the differences between right-to-work and non-right-to-work states. Some of those are as follows:

- ♦ States with right-to-work promote a worker's right not to be required to join a labor union.
- ♦ Output has grown a lot faster in our Right to Work states compared to non-Right to Work states," Deskins said. "What we're estimating is Right to Work lowers memberships about one-fifth; from 10 percent average down to about 8.1 percent.
- ♦ The study found that employment growth in manufacturing, construction and mining sectors has specifically been stronger in Right to Work states compared to non-right-to-work states.
- ♦ After looking at 48 states over two decades, we find that right-to-work does decrease union membership by about one-fifth, it does increase employment growth and it does increase output growth.

Twenty-five states have right-to-work. The closest state to West Virginia that does have right-to-work laws is Virginia. Ohio and Kentucky have had similar discussions on whether to implement such laws.

A new poll, conducted by Norman Analytics & Research on behalf of the newly launched West Virginia Workplace Freedom Coalition, an initiative of the West Virginia Business & Industry Council, found that 57 percent of West Virginians would support a law which lets workers keep their job in a company regardless of whether or not they join a labor union.

The study, conducted between Sept. 17-23, found registered independents are the most supportive of right-to-work or Workplace Freedom legislation, with over 77 percent favoring such a law in West Virginia. Sixty-one percent of republicans and 49 percent of democrats surveyed support the legislation. These results are in line with similar polls conducted in West Virginia recently demonstrating broad based support for passage of a Workplace Freedom law. The poll can be found online at www.protectwvfreedom.com.

There were no interim meetings in November. The next interim meetings will be held in January.

Tax Reform

The committee met for the last time in October. The committee aims to have legislation drafted and ready for the on-set of the session. There are no rumors as to what the proposed legislation will be. A preliminary report will be presented during the January interim meetings. We expect little or no reform in taxes this year because of the economic downturn of the State.

Federal Update

Deeming Update: The Fight Continues

Though the public comment period for the U.S. Food and Drug Administration's (FDA) proposed "deeming" regulations ended some 16 months ago, manufacturers, retailers and anti-tobacco groups alike are actively weighing in.

According to The Hill, since the White House Office of Management and Budget (OMB) received the FDA's final deeming regulations in October, 21 meetings have been held to discuss the matter, with at least another dozen held in December.

The much-contested regulations, which would "deem" that the FDA has authority over previously unregulated tobacco segments such as cigars and electronic cigarettes, were originally intended to be finalized this summer. A formal rulemaking agenda from the FDA later pushed that deadline back to Nov. 30, 2015. With that date having coming and gone, The Hill reports it "appears unlikely" the regulations will be published this year.

E-vapor manufacturers and advocates, including the Smoke-Free Alternatives Trade Association (SFATA) and Bill Godshall of Smokefree Pennsylvania, have called meetings to discuss the potentially devastating effects the pre-market tobacco product application (PMTA) requirement will have on the tobacco industry. Under the proposed regulations, any product that wasn't on the market by Feb. 15, 2007, would be required to submit a time-and-cost-consuming PMTA—which Godshall likened to an outright ban of most vapor products.

"The FDA has failed miserably on both sides of their cost/benefit analysis of deeming's impact on vapor products," Godshall posted to the E-Cigarette Forum. "FDA failed to quantify any benefit of banning the products, and FDA have either not quantified at all, or dramatically under counted on the cost side as well as their assessment of impacts on small businesses."

Groups like the Campaign for Tobacco-Free Kids, however, argue that the OMB should be considering health, not economics.

"E-cigarette companies say it will put them out of business, but this law is about protecting kids and public health," Vince Willmore vice president of communications for the Campaign for Tobacco-Free Kids, told The Hill. "It's not about protecting the ability of manufacturers to sell candy flavored e-cigs and cigars."

Though the OMB does not comment on pending reviews or meetings, individuals and groups who have met with the OMB expressed optimism about the process.

NATO Representatives Meet with OMB Officials on Deeming

Since October, officials from the White House Office of Management and Budget (OMB) have been meeting with interested parties that want to provide feedback and/or concerns about the Food and Drug Administration's (FDA) proposed tobacco deeming regulations. This OMB regulatory review process involves analyzing the economic benefits and costs of proposed federal regulations.

On Friday, December 4th, NATO President Mary Szarmach and NATO Executive Director Thomas Briant met with OMB officials to discuss NATO's concerns with the FDA deeming regulations. One of the key issues discussed was the requirement that literally thousands of cigars, pipe tobacco products, and electronic cigarette and vaping products would not remain on the market because of the requirement that a Pre-Market Tobacco Application (PMTA) be filed with the FDA for each product SKU.

Under the Family Smoking Prevention and Tobacco Control Act, the law that authorized the FDA to regulate tobacco products, a new tobacco product that is not virtually identical to an existing product already on the market as of Feb. 15, 2007, would need to file a PMTA application for each product SKU. This Feb. 2007 date is known as the “predicate date” or “grandfather date.” Since most cigars, pipe tobacco, and now electronic cigarettes have either changed in composition, blends, or are simply newer products, a PMTA application would need to be compiled and filed for most cigar, pipe tobacco and e-cigarette product SKUs.

Given this requirement to file a PMTA on thousands of cigar, pipe tobacco, and e-cigarette and vapor products, the concern expressed to the OMB is that a significant number of these products would be removed from store shelves because of the high cost of compiling and filing a PMTA. In July of this year, a Wall Street Journal article reported that a single PMTA application could cost \$2 million or more. This means that many small to medium size manufacturers would simply not have the financial resources to file PMTA’s with the FDA for each of their product SKUs and would be required under the law to remove products from store shelves within twenty-four months after the deeming regulations become effective.

In fact, in the FDA’s own economic analysis, the agency states that considerable product exit would occur, meaning products would be taken out of the marketplace. The FDA’s report quantifies this product loss by estimating that 50% to 90% of handmade cigar products would remain on the market. Stated differently, this means that 10% to 50% of handmade cigar products would be removed from the market. That is a significant reduction in the number of products and would lead to reduced retail sales and lost retail and manufacturing jobs.

Based on her store sales, NATO President Mary Szarmach provided OMB officials with estimates of lost cigar, pipe tobacco, and e-cigarette/vapor sales. Hundreds of SKUs could be lost and this she said would result in an anti-competitive marketplace. If only the largest of manufacturers have the economic ability to pay for PMTA applications, then the removal of so many tobacco products made by small-to-medium-size companies would potentially leave very few manufacturers left to make these various tobacco products. A competitive free market economy better serves consumers as opposed to a marketplace with only several manufacturers.

In addition, NATO questioned the FDA’s statement in its fiscal analysis that “for the nation as a whole, employment gains from spending on other products would offset any employment losses from reduced spending on tobacco products.” In other words, NATO provided comments to the OMB officials that the deeming regulations would likely result in significant job losses, especially if the Feb. 15, 2007, predicate/grandfather date is not changed. The FDA referenced an article published in 2000 by Frank Chaloupka and Kevin Warner titled “The Economics of Smoking” source for this no-net job claim.

The OMB continues to schedule meetings with interested parties and there is no set or definite timetable for the agency to complete its review and recommendations regarding the FDA’s deeming regulations.

FDA Issues First-Ever No-Tobacco-Sale Order

Recently, the U.S. Food and Drug Administration (FDA) issued its first-ever No-Tobacco-Sale Order (NTSO) against eight retailers for selling tobacco to minors, among other transgressions.

In 2009, The Family Smoking Prevention and Tobacco Control Act amended the Federal Food, Drug & Cosmetic Act (FD&C Act) to give the FDA important new authority to regulate the manufacture, marketing and distribution of tobacco products.

Under the law, the FDA may pursue an NTSO against retailers that have a total of five or more repeated violations of those restrictions during compliance inspections within 36 months. As of October 1, 2015, the FDA has conducted more than 508,000 inspections of tobacco product retail establishments; issued more than 35,700 warning letters to retailers for violating the law; and, initiated more than 5,200 civil money penalty cases.

Three Issues From CTP Director Zeller's NACS Show Appearance

Zeller 'Very Interested' in Retail Perspective on E-Cigs

The long-awaited final deeming regulations were front and center during Mitch Zeller's first-ever appearance at the NACS Show. Zeller is director of the U.S. Food and Drug Administration's (FDA) Center for Tobacco Products (CTP).

There were three issues that garnered a lot of attention from Zeller, NACS' Lyle Beckwith, and National Association of Tobacco Outlets (NATO) executive director Thomas Briant during the "Vapor Smoke and Mirrors" educational session. They included:

1. Not Substantial Equivalence Stop-Sale Orders

In the wake of the agency's 'not substantially equivalent' (NSE) order for four Reynolds' cigarette products, Briant asked if the FDA would consider the 30-day grace period for retailers to get the product off shelves.

"It doesn't happen overnight," Briant said, pointing out that some retailers might still be unaware of the NSE order and that others likely have taken the products off their shelves but are still waiting to return them—something that has previously resulted in violation letters from the FDA.

"Once the agency makes this NSE determination, those products immediately become adulterated and misbranded products," Zeller said. "The 30-day exercise of enforcement discretion only applies to retailers—and we will enforce at retail as soon as that 30-day grace period ends."

In other words, no, there will not be an extension to the grace period—which ends next week.

"Hopefully by the time the inspectors come, those products will be gone," Zeller said, adding that violations will be handled on a case-by-case basis.

2. Tribal Tobacco Compliance

New York Association of Convenience Stores (NYACS) president Jim Calvin expressed immense frustration with the hypocrisy of inspecting and penalizing mainstream retailers while retailers on Indian reservations operate without any oversight, often not collecting any excise taxes and failing to check IDs.

"We're doing the best that we can to start a tribal inspection program, but it's slow," Zeller admitted. "We have our first contracts in place for reservation tobacco compliance. It's taken a lot of time."

Beckwith brought up that the contracts the FDA has negotiated will allow tribal officials to handle inspections, likening it to having Joe Sheetz in charge of inspecting Sheetz stores.

"We are well aware of your concerns," Zeller said, refusing to comment further.

3. The Problem of Social Sources

For all the work the FDA does in ensuring retailers are not selling to minors, data suggests that most minors are getting their cigarettes from non-brick-and-mortar sources. According to a Journal of School Health study, just 14.1% of minors obtain cigarettes through retail purchase—with 85.9% getting their cigarettes through "social sources" like friends and family.

When asked what the FDA was doing to tackle this problem, Zeller said the agency was working on communicating the message of social sources through anti-tobacco commercials, though not directly tackling it yet.

AGs Call for Immediate FDA Action on Liquid Nicotine

Top law officials in a majority of states are pushing the Food and Drug Administration (FDA) to require nicotine e-liquids to carry warning labels.

Thirty-three attorneys general sent a letter to the agency urging regulators to action in a bid to stop the liquid nicotine poisoning among children.

Specifically, the letter asks the FDA to require appropriate warning labels on liquid nicotine, nicotine-containing e-liquids and novel tobacco products such as dissolvables, lotions, gels and drinks.

The attorneys general also urge the FDA adopt or establish standards for child-resistant packaging for liquid nicotine and novel tobacco products.

"As more and more Americans — especially young people — take up e-cigarettes, it is more important than ever that the FDA ensures our children are protected from the dangers of liquid nicotine," said New York Attorney General Eric Schneiderman. "Child-resistant packaging and health warnings are an essential step to keeping these potentially lethal toxins out of the hands of our children. The FDA must step up and regulate the sale and packaging of these dangerous products before any more kids are harmed."

The letter cites a recent study that found 87 percent of adult respondents supported FDA requirements for child-resistant packaging for all e-cigarettes and liquid nicotine refills.

In addition, according to the letter, there were 3,783 reported exposures to liquid nicotine, just over half of which involved a child under the age of six, in 2014. Compared to the number of liquid nicotine exposures in 2012, these 2014 figures represent a more than an 800-percent increase in such exposures. As of June 30, there were 1,732 reported cases of liquid nicotine exposures this year.

In January, New York passed legislation requiring that liquid nicotine be sold in child-proof packaging. In July, following an investigation, Schneiderman announced agreements with four e-liquid manufacturers and retailers whose product was being sold in New York in violation of the new legislation.

The attorneys general push comes as the FDA closes the public comment period on an Advance Notice of Proposed Rulemaking (ANPRM) on Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s) and Other Tobacco Products.

As CSNews Online previously reported, the agency is seeking comments, data, research and/or other information related to nicotine exposure warnings and child-resistant packaging for liquid nicotine, nicotine-containing e-liquid(s) and potentially for other tobacco products including but not limited to novel tobacco products such as dissolvables, lotions, gels and drinks.

If the agency decides to issue a rule, the first step in the process is to issue a Notice of Proposed Rulemaking in the Federal Register, which gives the public an opportunity to comment on the proposal.

The letter to the FDA was signed by attorneys general of the following states, territories and District of Columbia: Alabama, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Washington, and Wyoming. **WV Attorney General Patrick Morrisey was not included in this letter.**

All Politics Are LOCAL - We Need Your Help!

It appears that everyday municipalities and counties across West Virginia are getting more and more into the regulation of our businesses. We need your help! We can't possibly keep track of everything at the city and county level. If you hear of an issue please advise us so that we can get involved.

Together we can make a difference!

Senators Introduce Legislation to Raise Smoking Age to 21

U.S. Senators Dick Durbin (D-IL), Brian Schatz (D-HI) and Sherrod Brown (D-OH), along with seven other senators, have introduced the Tobacco to 21 Act (S.2100), legislation that would prohibit the sale of tobacco products to anyone under the age of 21.

"Thanks to tobacco control measures like banning smoking in public places and placing warning labels on cigarette cartons, far fewer people smoke now than did 50 years ago," said Durbin in a press release. "We can help prevent a new generation from falling prey to this deadly epidemic by passing another commonsense measure to reduce youth tobacco use: raising the minimum tobacco age of sale to 21."

According to a study released this summer, three out of every four American adults favor increasing the minimum age to purchase tobacco from 18 to 21. "This year, Hawaii became the first state in the nation to raise the minimum smoking age to 21," said Schatz. "It was an historic public health achievement that we should adopt nationwide."

"The harder it is for children and teenagers to get their hands on tobacco products, the easier it will be to keep our next generation from becoming hooked on nicotine," added Brown. "Our country has come a long way on tobacco products—we've banned the marketing of cigarettes to children, we've prohibited the sale to minors, and we've helped people find ways to quit once they are hooked—but we need to do more to keep people from becoming addicted in the first place."

Senators co-sponsoring the bill are: Ed Markey (D-MA), Barbara Boxer (D-CA), Jack Reed (D-RI), Elizabeth Warren (D-MA), Mazie Hirono (D-HI), Richard Blumenthal (D-CT) and Sheldon Whitehouse (D-RI). Companion legislation was introduced in the House of Representatives by Reps. Diana DeGette (D-CO) and Mark Takai (D-HI).

West Virginia Compliant with Federal Youth Tobacco Sales Regulations for 16th Straight Year

The West Virginia Department of Health and Human Resources announced Dec. 9 that the state is in compliance with federal regulations on tobacco sales to youth.

According to a news release, 92 percent of retailers that were inspected did not sell tobacco to youth in 2015.

"The partnership between the Bureau for Behavioral Health and Health Facilities, the West Virginia State Police and BBHFF grantees reduces the availability of tobacco products to youth," said Vickie Jones, Commissioner of BBHFF in a news release. "I am proud of our teamwork and commend the retailers and employees who contribute to the State's tobacco prevention efforts by not selling tobacco products to youth under the age of 18."

States whose non-compliance rates are higher than 20 percent miss out on \$3.5 million in treatment and prevention funding.

This is the 16th year in a row the state has been compliant.

FDA Authorizes Marketing of New Tobacco Products

Following a rigorous, science-based review, the U.S. Food and Drug Administration announced November 10th, that for the first time it has authorized the marketing of new tobacco products through the premarket tobacco application (PMTA) pathway. This action permits the tobacco products to be sold in the United States, but does not mean that they are safe or "FDA approved."

"The law is clear. Companies must apply to the FDA first, and then the FDA uses a rigorous scientific review to determine if new tobacco products should come to market under this pathway. [Yesterday's] action demonstrates that the premarket tobacco application process is a viable pathway under which products can be marketed as long as the public health can be protected," said Mitch Zeller, director of the FDA's Center for Tobacco Products, in a press release. "As other manufacturers seek to market new tobacco products, the FDA will remain committed to upholding the important public health standards under the law."

Under the PMTA pathway, manufacturers must demonstrate to the agency, among other things, that marketing of the new tobacco product would be appropriate for the protection of the public health. That standard requires the FDA to consider the risks and benefits to the population as a whole, including users and non-users of tobacco products.

The marketing orders are for eight Swedish Match North America Inc. snus smokeless tobacco products under the General brand name. The PMTA decisions for these products reflect evidence showing that these products, marketed as described in the manufacturer's application, would result in a low likelihood of new initiation, delayed cessation or relapse. The FDA's review also determined that these products would likely provide less toxic options if current adult smokeless tobacco users used them exclusively. The marketing orders are product-specific and do not apply to other tobacco products.

The law also makes clear that companies cannot say or imply that their products are "FDA approved," and a company must apply for—and receive—a separate modified risk tobacco product (MRTTP) authorization in order to market a product with claims of reduced exposure or reduced risk.

U.S. Government Bans E-Cigarettes in Checked Bags

The U.S. Department of Transportation (DOT) issued an interim final rule (IFR) yesterday that prohibits passengers and crewmembers from carrying battery-powered portable electronic smoking devices (e-cigarettes) in checked baggage and bans passengers and crewmembers from charging the devices and/or batteries on board the aircraft.

"We know from recent incidents that e-cigarettes in checked bags can catch fire during transport," said Transportation Secretary Anthony Foxx. "Fire hazards in flight are particularly dangerous. Banning e-cigarettes from checked bags is a prudent safety measure."

According to the DOT, on Aug. 9, 2014, at Boston's Logan Airport, an e-cigarette that was in a passenger's checked bag in the cargo hold of a passenger plane caused a fire that forced the evacuation of the aircraft. And on Jan. 4, 2015, at Los Angeles International Airport, a checked bag that arrived late and missed its connecting flight caught on fire when an e-cigarette inside the bag overheated.

Passengers may continue to carry e-cigarettes for personal use in carry-on baggage or on their person but may not use them on flights. The DOT's current regulatory ban on smoking of tobacco products on passenger flights includes the use of electronic cigarettes. However, to prevent passenger or crewmember confusion, DOT has proposed to amend its existing airline smoking rule to explicitly ban use of electronic cigarettes aboard aircraft.

House Committee Reviews Joint Employer Standard

On September 29th, the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor and Pensions held a hearing on a proposal to roll back a recent National Labor Relations Board (NLRB) decision related to when an employer can be considered a "joint employer" for purposes of the National Labor Relations Act (NLRA).

Last month, the NLRB adopted a more expansive definition of "joint employer" under the NLRA. Under the new standard, adopted in a case against Browning Ferris Industries, the NLRB rejected the requirement that a joint employer possess and exercise "direct and immediate control" over terms and conditions of employment, ultimately finding that simply possessing the authority to control terms and conditions of employment, even if that authority is never used, is sufficient.

Under the new definition, employees may have the ability to directly bargain not just with the company for which they work, but with a company that contracts with their employer. The new definition also means that franchisors and contractors may be liable for the labor practices of their franchisees and subcontractors.

The subcommittee hearing examined the NLRB's recent decision in *Browning Ferris*, and it discussed the Protecting Local Business Opportunity Act (H.R. 3459), a bill introduced by Committee Chairman John Kline (R-MN). Identical legislation to H.R. 3459 has been introduced in the Senate by Senate Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN). The legislation reaffirms the traditional standard that an employer must have "actual, direct, and immediate" control over an employee to be considered a joint employer. The witnesses included academics, small business owners, and a former member of the NLRB.

Subcommittee Chairman Phil Roe (R-TN) began the hearing by emphasizing the implications of the NLRB's decision, which "blurred the lines of responsibility for decisions affecting the daily operations of countless small businesses, including the nation's 780,000 franchise businesses and countless contractors, subcontractors, independent subsidiaries, and more." Committee Republicans agreed with Roe's sentiment and made a point to ask the small business owners about their largest concerns, which include the case-by-case standard of review, the practical difficulties imposed by the joint employer designation, and the uncertain future of how the *Browning Ferris* decision will impact the franchisor-franchisee relationship.

However, Democrats on the subcommittee, with the support of the two academic witnesses, vehemently disagreed. They argued that the impact of the *Browning Ferris* decision has been exaggerated both because the decision has no stated impact on the franchisor-franchisee relationship and is consistent with the common law and the statutory language. In their questioning, the Democrats focused on the potential for the legislation to negatively impact the rights of workers to collectively bargain by effectively establishing a broad loophole for companies to hide behind to avoid negotiating with their employees. At the close of the hearing, Subcommittee Ranking Member Jared Polis (D-CO) remarked that while no one on the committee wants to make it harder for smaller businesses to succeed, now is an inopportune time to "prejudge the NLRB's motives or undermine its authority."

Senate Passes Bill to Repeal Much of Obamacare

On December 4th, under the budget reconciliation package, the Senate voted 52-47 by a simple majority to repeal large portions of Obamacare. The bill is a symbolic victory for Republicans, as it is the first time they have been able to accomplish this after five years of failed attempts. The Senate bill repeals the employer mandate penalty and repeals the authority for healthcare exchanges. The Senate bill will now head to the House for passage which only requires a simple majority. The House has already passed its bill which repeals certain provisions in Obamacare including the individual and employer mandates, the medical device tax, and the "Cadillac" tax, which is an excise tax on expensive healthcare plans provided by employers to their employees. The vote comes at a time when some plans sold via Obamacare insurance exchanges have been struggling with weak enrollment, higher-than-expected medical costs and increased premiums.

The legislation will certainly face a veto from President Obama, his signature law. Therefore, it would force the Senate to come up with 67 votes and 290 votes would be required in the House, a highly unlikely outcome.

10 Challenges Distributors Will Face in 2025

The October 27th CDA webinar by Dr. Tony Vercillo, CEO, IFMC, Inc., focusing on 10 key challenges that distributors will face over the next decade, drew rave reviews from CDA members who attended.

Rob Sincavich, president, Team Sledd, Wheeling, WV, and CDA's 2015 chairman, called the content presented by Vercillo "excellent and timely." Sincavich said that as 2016 planning is now underway at his company, he will share the content with his entire leadership team.

"From a strategic and operational planning standpoint, all the challenges that Tony brought forth should be anticipated in our forward planning by all departments," said Sincavich. "Tony did a great job of tying together the future impact of many dynamics we are seeing transpire in our current environment. Thanks for a well thought through presentation that will provide value for us over the coming years. The action plan items that Tony brought forth in his concluding remarks are all on point."

The list of challenges were:

- What will the distribution workforce look like in 2025?
- What will be the carbon footprint expectation for your fleet?
- How will the future distribution truck differ from today's vehicles?
- How will technology change over the next 10 years?
- How will governmental regulations impact your business in 2025?
- How will globalization impact your business?
- How will remote asset tracking help with inventory control?
- What is meant by an Untethered Workforce?
- How will the speed of travel and telecommunication change our world?
- What will the warehouse of the future look like?

Paula Glidewell, vice president at Glidewell Distributing Co., Fort Smith, AR, said the webinar was well worth her time. "I got a lot of useful information from the seminar. I took notes all the way through. It was good to see we are on the right track at Glidewell pursuing more social media interaction and C-Store connectivity."

Added Martha Doan, president, F. McConnell & Sons., Inc., New Haven, IN, "Thanks, Tony. The webinar was good and informative."

CDA members can read more on CDA's IdeaXchange Open Forum by visiting www.ideaxchange.cdaweb.net or by logging in at www.cdaweb.net and clicking on the IdeaXchange tab at the top left corner of the home page. You also can view the recorded webinar by logging on to CDA's home page, www.cdaweb.net, and visiting the webinar page.

Americans' Outlook for Economy Holds Close to a 13-Month Low

One in five Americans in November said the economy is improving, matching the smallest share in two years and keeping a monthly gauge of expectations close to a 13-month low.

The measure tracking the economic outlook was little changed at 42.5 last month after the October reading of 42, which was the lowest since September 2014, data from the Bloomberg Consumer Comfort Index showed Nov. 19. While 20% of respondents said the economy was getting better, 45% viewed it as staying the same, the largest share since February 2012.

Bloomberg's weekly gauge of consumer sentiment also was little changed — 41.2 in the period ended Nov. 15 compared with 41.6 the prior week. A measure of confidence among full-time workers was the weakest in about a year, which is at odds with the latest payrolls report that showed employers in October added the most jobs this year.

The share of respondents in the survey who said the economy was improving fell from 23% in the previous month. With 35% viewing it as getting worse, negative expectations have outweighed positive outlooks for the past seven months.

The report stands in contrast to the University of Michigan's preliminary consumer sentiment index, which advanced to a four-month high in November.

Bloomberg's weekly sentiment gauge, which includes current views of the economy, personal finances and buying climate, has declined in four of the past five weeks and is holding just above this year's low of 40.1, reached in early June.

Consumers' attitudes about spending retrenched after jumping the previous week. The buying climate index, which measures whether consumers think it is a good time to purchase goods and services, dropped by 1 point to 37.

The measure of how households perceive their personal finances has continued to deteriorate. The measure declined to 54.4, its lowest level since August, from 55.1. The gauge has lost 6.1 points since mid-October.

The index measuring sentiment about the current state of the economy was little changed.

Sentiment declined last week in five of the seven income brackets, with households making less than \$15,000 feeling less optimistic after the index rose to an almost four-month high the prior week.

Miscellaneous

Cigarette Sales On the Rise

The Alcohol and Tobacco Tax and Trade Bureau is reporting that cigarette sales are back on the rise. Sales for the first six months of 2015 increased over the same period in the prior year, marking a reversal of a declining trend that began in 2006. Experts think that lower gasoline prices are freeing up dollars for the purchase of tobacco products.

PA Governor Proposes \$1.00 Increase in State's Tobacco Tax

Pennsylvania Governor Tom Wolfe has included a \$1.00 increase in the state's tobacco tax in his budget proposal. This would take the state's tax to \$2.60 per pack of cigarettes. The Pennsylvania Legislature has failed to reach an agreement on Governor's proposed budget and most likely won't before Christmas.

Boston Votes to Raise Minimum Legal Age for Tobacco Purchases to 21

The Boston Board of Health voted to approve amendments to the City of Boston's tobacco regulations which raise the minimum legal age for purchasing tobacco products, including electronic cigarettes, from 18 to 21, increase the age for admission to adult-only retail tobacco stores and smoking bars to 21 and streamline existing regulations.

Additionally, the amendments will limit the sale of flavored tobacco and nicotine products other than menthol to adult-only retailers.

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Why should you attend the Mid-Atlantic Legislative Conference?

Rob Sincavich of Team Sledd says about this event: "The Mid-Atlantic Legislative Conference consistently provides the highest level of important information on products that are the lifeblood of the wholesaler. It's tailored to the wholesale community uniquely and is instrumental for decision making with products and allied manufacturers as we move forward into uncharted regulatory waters."

What do attendees say about this conference?

Dave Riser with R. J. Reynolds Tobacco Company says about this event: "If you are interested in understanding the legislative and regulatory landscape – what you need to know and what issues affect your business – then every wholesaler should attend the Mid-Atlantic Legislative Conference".

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