# CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT

## WITH REGULATIONS AND RELATED STATUTES

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## 2015

Statutes Include Amendments through Chapter 931 of the 2014 Regular Session and Resolution Chapter 1 of the Second Extraordinary Session of the 2013-2014 Legislature and all Propositions approved by the Electorate in 2014.

Amendments to Regulations Updated Through Register No. 48
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# PREFACE

We are pleased to present the 2015 Edition of the California Alcoholic Beverage Control Act. This compilation of selected laws incorporates all changes required by legislative enactments up to and including Chapter 931 of the 2014 Regular Session and Resolution Chapter 1 of the Second Extraordinary Session of the 2013-2014 Legislature and all Propositions approved by the Electorate in 2014.

We appreciate the opportunity to work with the California Department of Alcoholic Beverage Control to create this publication. The Department's regulations, contained in Division 1 of Title 4 of the California Code of Regulations, are also set out in this edition.

Included herein is a Table of Sections Affected which may be utilized to facilitate research into recently enacted legislation affecting these Codes. Through the use of state-of-the-art computer software, attorney editors have created the comprehensive descriptive word index to include the enactments of the 2014 legislature.

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January 2015

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# CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT

# CONSTITUTION OF THE UNITED STATES OF AMERICA

## AMENDMENT 21



**Sec. 1. [Repeal of Eighteenth Amendment.]**

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

**Sec. 2. [Intoxicating liquors, shipment into dry territory prohibited.]**

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

**Sec. 3. [Ratification, time limit.]**

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Explanatory notes:**

The Twenty-first amendment to the Constitution of the United States was submitted to the several states by the Seventy-second Congress on February 20, 1933, and was declared, in a proclamation by the Secretary of State, dated December 5, 1933, to have been ratified by the following states: Alabama, August 8, 1933; Arizona, September 5, 1933; Arkansas, August 1, 1933; California, July 24, 1933; Colorado, September 26, 1933; Connecticut, July 11, 1933; Delaware, June 24, 1933; Florida, November 14, 1933; Idaho, October 17, 1933; Illinois, July 10, 1933; Indiana, June 26, 1933; Iowa, July 10, 1933; Kentucky, November 27, 1933; Maryland, October 18, 1933; Massachusetts, June 26, 1933; Michigan, April 10, 1933; Minnesota, October 10, 1933; Missouri, August 29, 1933; Nevada, September 5, 1933; New Hampshire, July 11, 1933; New Jersey, June 1, 1933; New Mexico, November 2, 1933; New York, June 27, 1933; Ohio, December 5, 1933; Oregon, August 7, 1933; Pennsylvania, December 5, 1933; Rhode Island, May 8, 1933; Tennessee, August 11, 1933; Texas, November 24, 1933; Utah, December 5, 1933; Vermont, September 23, 1933; Virginia, October 25, 1933; Washington, October 3, 1933; West Virginia, July 25, 1933; Wisconsin, April 25, 1933; and Wyoming, May 25, 1933.

Ratification was completed on December 5, 1933.

The amendment was subsequently ratified by Maine, on December 6, 1933, and by Montana, on August 6, 1934.

The amendment was rejected, and not subsequently ratified, by South Carolina on December 4, 1933.

**NOTES:**

**Research Guide:**

**Federal Procedure:**

1 Administrative Law (Matthew Bender), ch 2, Preemption § 2.02.

**Am Jur:**

16A Am Jur 2d, Constitutional Law § 419.

45 Am Jur 2d, Intoxicating Liquors §§ 21, 35, 50.

**Immigration:**

1 Immigration Law and Procedure (rev. ed.), ch 2, The Development of the Immigration Laws § 2.04.

**Corporate and Business Law:**

1 Kintner, Federal Antitrust Law (Matthew Bender), ch 5, The Constitutional Basis and the Constitutionality of the Sherman Act § 5.3.

10 Kintner, Federal Antitrust Law (Matthew Bender), ch 75, Miscellaneous Exemptions § 75.4.

10 Kintner, Federal Antitrust Law (Matthew Bender), ch 76, State Action Doctrine § 76.12.

**Labor and Employment:**

3 Larson on Employment Discrimination, Sex Differentiation § 41.02.

3 Larson on Employment Discrimination, State Protective Laws § 44.01.

**Annotations:**

Supreme Court's views as to extent of states' regulatory powers concerning or affecting intoxicating liquors, under Federal Constitution's Twenty-First Amendment. 134 L Ed 2d 1015.

Construction and Application of Sherman Act, 15 U.S.C.A. §§ 1 et seq. [15 USCS §§ 1 et seq.]--Supreme Court Cases. 35 ALR Fed 2d 1.

Construction and Application of Dormant Commerce Clause, U.S. Const. Art. I, § 8, cl. 3--Supreme Court Cases. 41 ALR Fed 2d 1.

Protection of Out-of-State Sellers from State Income Tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384 [15 USCS §§ 381-384]). 182 ALR Fed 291.

Interplay Between Twenty-First Amendment and Commece Clause Concerning State Regulation of Intoxicating Liquors. 116 ALR5th 149.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

State power to regulate price of intoxicating liquors. 14 ALR2d 699.

**Texts:**

Cohen's Handbook of Federal Indian Law (Matthew Bender), ch 13, Federal Indian Liquor Laws § 13.02.

1 The Law of Advertising (Matthew Bender), ch 4, The Federal Power to Regulate Advertising § 4.05.

3 The Law of Advertising (Matthew Bender), ch 51, Alcoholic Beverage Advertising §§ 51.01-51.03.

3 The Law of Advertising (Matthew Bender), ch 53, Cable Television Advertising § 53.03.

**Law Review Articles:**

Skilton. State Power Under The Twenty-First Amendment. 7 Brooklyn L Rev 342.

Day. The Expanded Concept of Facial Discrimination in the Dormant Commerce Clause Doctrine. 40 Creighton L Rev 497, April 2007.

De Ganahl. The Scope of Federal Power Over Alcoholic Beverages Since The Twenty-First Amendment. 8 Geo Wash L Rev 819.

Hart. Retail Price Maintenance for Liquor: Does the Twenty-First Amendment Preclude a Free Trade Market? 5 Hastings Const L Q 507, Winter 1978.

The Evolving Scope of State Power Under The Twenty-First Amendment: The 1964 Liquor Cases. 19 Rutgers L Rev 759, 1967.

Supremacy Clause vs. Twenty-First Amendment: Low Cost Military Liquor Over State Antidiversion Regulations in United States v. North Dakota. 63 St John's L Rev 83, 1989.

Baker; Levinson. Twenty-Year Legacy of South Dakota v. Dole [97 L Ed 2d 171]: Dole Dialogue. 52 SD L REV 468, 2007.

Kallenbach. Interstate Commerce in Intoxicating Liquors Under The Twenty-First Amendment. 14 Temp LQ 474.

Yablon. The Prohibition Hangover: Why we are Still Feeling the Effects of Prohibition. 13 Va J Soc Pol'y & L 552, Spring 2006.

Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552, 1976.

The Twenty-First Amendment Versus The Interstate Commerce Clause. 55 Yale LJ 815.

**Interpretive Notes and Decisions:**

**I. IN GENERAL**

**1. Generally**

Neither expressly nor impliedly was war power abrogated or limited by Twenty-first Amendment. Jatros v Bowles (1944, CA6 Mich) 143 F2d 453.

When Secretary of State of United States received duly authenticated official notice from requisite number of states, ratification of Twenty-first Amendment was consummated and became, to all intents and purposes, part of Federal Constitution; Secretary's proclamation certifying states which had ratified Amendment was official notice to world of what had happened and was conclusive upon courts, so as to preclude judicial review of validity of action of state convention called to consider Amendment. Chase v Billings (1934) 106 Vt 149, 170 A 903.

**2. Effect of repeal of Eighteenth Amendment**

Repeal of Eighteenth Amendment rendered National Prohibition Act unconstitutional and inoperative, even as to pre-existing offenses. Massey v United States (1934) 291 US 608, 78 L Ed 1019, 54 S Ct 532.

Qualifications placed on Tenth Amendment by adoption of Eighteenth Amendment have been abolished. United States v Constantine (1935) 296 US 287, 56 S Ct 223, 80 L Ed 233, 35-2 USTC P 9655, 36-1 USTC P 9009, 16 AFTR 1137 (ovrld on other grounds as stated in United States v Smith (1952, SD Cal) 106 F Supp 9, 42 AFTR 437); United States v Kesterson (1935) 296 US 299, 56 S Ct 229, 80 L Ed 241, 35-2 USTC P 9656, 36-1 USTC P 9010, 16 AFTR 1143.

Repeal of Eighteenth amendment by Twenty-first Amendment deprived Congress of power to legislate on subject of Eighteenth Amendment or to continue in force statutes based thereon, and repeal being without savings clause, pending prosecutions, either in trial court or on appeal, were suspended. Green v United States (1933, CA9 Idaho) 67 F2d 846.

Conviction under count not based on National Prohibition Act was not annulled by repeal of Eighteenth Amendment. Kajander v United States (1934, CA5 Fla) 69 F2d 222; Shelton v United States (1934, CA5 Fla) 69 F2d 223, cert den (1934) 293 US 574, 79 L Ed 672, 55 S Ct 85.

Repeal of Eighteenth Amendment pending appeal from conviction for violating National Prohibition Act required reversal of conviction. Kajander v United States (1934, CA5 Fla) 69 F2d 222; Shelton v United States (1934, CA5 Fla) 69 F2d 223, cert den (1934) 293 US 574, 79 L Ed 672, 55 S Ct 85; Warren v United States (1934, CA4 Va) 70 F2d 105; Short v United States (1934, CA4 Va) 70 F2d 105.

Repeal of Eighteenth Amendment did not affect prosecutions under revenue laws. Benton v United States (1934, CA4 NC) 70 F2d 24, cert den (1934) 292 US 642, 78 L Ed 1494, 54 S Ct 778; Deutsch v Aderhold (1935, CA5 Ga) 80 F2d 677.

Repeal of Eighteenth Amendment had no effect upon prosecutions under Tariff Act. United States v Merrell (1934, CA2 NY) 73 F2d 49, cert den (1934) 293 US 627, 79 L Ed 713, 55 S Ct 346.

Sections of National Prohibition Act relating to permits for specially denatured alcohol were not repealed with Eighteenth Amendment. Helvering v Druggists' Specialties Co. (1935, CA3 Pa) 76 F2d 743.

Vessels licensed for coasting trade could not be seized for carrying liquor subsequent to repeal of Eighteenth Amendment. The Pueblos (1935, CA2 Conn) 77 F2d 618.

Where judgment for violation of National Prohibition Act was rendered prior to repeal of Eighteenth Amendment, commitment entered subsequent to such repeal was valid. Odekirk v Ryan (1936, CA6 Mich) 85 F2d 313.

Repeal of Eighteenth Amendment has no bearing on question whether Puerto Rican statute should be construed as exempting product of brewery in Puerto Rico from taxation in violation of statute precluding tax discriminating against imports into Puerto Rico. Sanacho v Corona Brewing Corp. (1937, CA1 Puerto Rico) 89 F2d 479, cert den (1937) 302 US 699, 82 L Ed 540, 58 S Ct 18.

Repeal of Eighteenth Amendment and adoption of Twenty-first Amendment did not terminate liability of permittee for use of specially denatured alcohol in manufacture of industrial products for breach of bond prior to such repeal. United States v Glidden Co. (1941, CA6 Ohio) 119 F2d 235, 41-1 USTC P 9408, 27 AFTR 83, cert den (1941) 314 US 678, 62 S Ct 182, 86 L Ed 542.

Repeal of Eighteenth Amendment did not make void conviction and sentence under National Prohibition Act which had become final prior to effective date of repeal. United States ex rel. Randall v United States Marshal, etc. (1944, CA2 NY) 143 F2d 830.

Nothing in Twenty-first Amendment invalidates conviction of conspirators under 15 USCS § 1 for price-fixing, uniform closing hour agreements, and boycott to enforce conspiracy with respect to those engaged in sales of malt beverages for home consumption. United States v Erie County Malt Beverage Distributors Asso. (1959, CA3 Pa) 264 F2d 731.

**3. Congress' right to legislate in field of intoxicants**

Notwithstanding claim of violation of First and Fourteenth Amendment guarantees of freedom of expression, regulations by state department of alcoholic beverage control, prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs, were not unconstitutional, in view of state's regulatory powers under Twenty-first Amendment; although some performances to which regulations addressed themselves were within limits of constitu-tional protection of freedom of expression, state did not forbid such performances across board, but merely proscribed such performances in establishments which it licensed to sell liquor by the drink; department's conclusion, embodied in regulations, that certain sexual performances and dispensation of liquor by the drink ought not to occur simultaneously at premises which had licenses, was not irrational one. California v La Rue (1972) 409 US 109, 93 S Ct 390, 34 L Ed 2d 342, reh den (1973) 410 US 948, 93 S Ct 1351, 35 L Ed 2d 615 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 116 S Ct 1495, 134 L Ed 2d 711, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J & B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (ovrld in part as stated in WFO Corp. v Ohio Liquor Control Comm'n (1996, Ohio App, Franklin Co) 1996 Ohio App LEXIS 4788) and (ovrld in part as stated in Goldrush II v City of Marietta (1997) 267 Ga 683, 482 SE2d 347, 97 Fulton County D R 874)

and (ovrld as stated in J.L. Spoons, Inc. v City of Brunswick (1998, ND Ohio) 181 FRD 354) and (ovrld in part as stated in Purple Orchid v Pennsylvania State Police, Bureau of Liquor Control Enforcement (1998, Pa Cmwlth) 721 A2d 84) and (ovrld in part as stated in Salt Lake City v Wood (1999, Utah App) 991 P2d 595, 381 Utah Adv Rep 33) and (ovrld in part as stated in El Marocco Club, Inc. v Richardson (2000, RI) 746 A2d 1228) and (criticized in Giovani Carandola, Ltd. v Bason (2002, CA4 NC) 303 F3d 507) and (ovrld in part as stated in Rising Sun Entm't, Inc. v Bureau of Liquor Control Enforcement (2003, Pa Cmwlth) 829 A2d 1214) and (ovrld in part as stated in Odle v Decatur County (2005, CA6 Tenn) 421 F3d 386, 2005 FED App 368P) and (ovrld in part as stated in Giovani Carandola, Ltd. v Fox (2005, MD NC) 396 F Supp 2d 630) and (ovrld in part as stated in 181 South Inc. v Fischer (2006, CA3 NJ) 454 F3d 228) and (ovrld in part as stated in Commonwealth v Jameson (2006, Ky) 215 SW3d 9) and (ovrld in part as stated in Illusions - Dallas Private Club, Inc. v Steen (2007, CA5 Tex) 482 F3d 299) and (Overruled as stated in Hamilton's Bogarts, Inc. v Michigan (2007, CA6 Mich) 501 F3d 644, 2007 FED App 351P).

There is no provision in Twenty-first Amendment which restricts power of Congress over commerce in intoxicating liquors carried on without violation of state laws, or which denies to Congress power to legislate in aid of state prohibitions. Arrow Distilleries, Inc. v Alexander (1940, CA7) 109 F2d 397, cert den (1940) 310 US 646, 84 L Ed 1412, 60 S Ct 1095.

Twenty-first Amendment does not deprive national government of all authority to legislate in respect to interstate commerce in intoxicants. Washington Brewers Institute v United States (1943, CA9 Wash) 137 F2d 964, cert den (1943) 320 US 776, 88 L Ed 465, 64 S Ct 89; Jatros v Bowles (1944, CA6 Mich) 143 F2d 453; State v Hall (1944) 224 NC 314, 30 SE2d 158.

Emergency Price Control Act of 1942 was not unconstitutional under Twenty-first Amendment as applied to intrastate sales of intoxicating liquors. Jatros v Bowles (1944, CA6 Mich) 143 F2d 453; Taub v Bowles (1945, Em Ct App) 149 F2d 817, cert den (1945) 326 US 732, 90 L Ed 435, 66 S Ct 39; Barnett v Bowles (1945, Em Ct App) 151 F2d 77, cert den (1945) 326 US 771, 90 L Ed 465, 66 S Ct 176 and cert den (1945) 326 US 766, 90 L Ed 462, 66 S Ct 168; Dowling Bros. Distilling Co. v United States (1946, CA6 Ky) 153 F2d 353, cert den (1946) 328 US 848, 90 L Ed 1622, 66 S Ct 1120, reh den (1946) 329 US 820, 91 L Ed 698, 67 S Ct 29.

The repeal of Eighteenth Amendment did not utterly deprive Congress of power to legislate in field of intoxicating liquors. Old Monastery Co. v United States (1945, CA4 SC) 147 F2d 905, cert den (1945) 326 US 734, 90 L Ed 437, 66 S Ct 44.

Congress has power to regulate intrastate activities in alcoholic liquor trade because such activities substantially affect interstate commerce. Hanf v United States (1956, CA8 Minn) 235 F2d 710, cert den (1956) 352 US 880, 1 L Ed 2d 81, 77 S Ct 102.

Twenty-first Amendment simply withdraws exclusive control of Congress, under Commerce Clause, over commerce in intoxicating liquors; since police powers of Virgin Islands remain limited by 15 USCS § 3, which is based on plenary power of Congress to govern territories, Virgin Islands Alcoholic Beverages Fair Trade Law which conflicts with 15 USCS § 3 is invalid. Norman's on Waterfront, Inc. v Wheatley (1971, CA3 VI) 444 F2d 1011, 1971 CCH Trade Cases P 73606, 15 FR Serv 2d 184 (criticized in Kendall-Jackson Winery, Ltd. v Branson (2000, CA7 Ill) 212 F3d 995).

State preemption in regulating liquor does not preclude Federal Government from prohibiting extortion that affects interstate commerce under authority of Commerce Clause. United States v Gill (1973, CA7 Ill) 490 F2d 233, cert den (1974) 417 US 968, 41 L Ed 2d 1139, 94 S Ct 3171.

Twenty-first Amendment does not surrender power of Congress to prohibit or regulate transportation of intoxicating liquor in interstate commerce, and Congress has power to enact legislation to execute Amendment and to penalize its violations. Duckworth v State (1941) 201 Ark 1123, 148 SW2d 656, affd (1941) 314 US 390, 86 L Ed 294, 62 S Ct 311, 138 ALR 1144.

Supremacy clause of United States Constitution made tax lien priorities accorded United States under 26 USCS §6323 control over any priority scheme established by state law; statute providing scheme of priorities among private creditors of liquor licensees in no way related to state's interest in regulating consumption and distribution of alcohol, with respect to which Twenty-first Amendment exempted states from traditional commerce clause limitations. Business Title Corp. v Division of Labor Law Enforcement (1976, App) 17 Cal 3d 878, 132 Cal Rptr 454, 553 P2d 614, 76-2 USTC ¶ 9644, 38 AFTR 2d 5734.

## II. STATE POWER TO REGULATE INTOXICATING LIQUORS

### A. In General

#### 4. Generally

Twenty-first Amendment conferred upon state power to forbid all intoxicating liquor importations which do not comply with conditions which state prescribes; state may adopt lesser degree of regulation than total prohibition. State Bd. of Equalization v Young's Market Co. (1936) 299 US 59, 57 S Ct 77, 81 L Ed 38, reh den (1936) 299 US 623, 57 S Ct 229, 81 L Ed 458 and (ovrld on other grounds as stated in Bacchus Imports v Dias (1984) 468 US 263, 104 S Ct 3049, 82 L Ed 2d 200) and (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

Twenty-First Amendment requires presumption in favor of validity of state regulation of establishments licensed to sell intoxicating liquors; wide latitude as to choice of means to accomplish permissible end must be accorded to state agency which is depository of states' power under Twenty-first Amendment. California v La Rue (1972) 409 US 109, 93 S Ct 390, 34 L Ed 2d 342, reh den (1973) 410 US 948, 93 S Ct 1351, 35 L Ed 2d 615 and (ovrld in part by 44 Liq-uormart v Rhode Island (1996) 517 US 484, 116 S Ct 1495, 134 L Ed 2d 711, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (ovrld in part as stated in WFO Corp. v Ohio Liquor Control Comm'n (1996, Ohio App, Franklin Co) 1996 Ohio App LEXIS 4788) and (ovrld in part as stated in Goldrush II v City of Marietta (1997) 267 Ga 683, 482 SE2d 347, 97 Fulton County D R 874) and (ovrld as stated in J.L. Spoons, Inc. v City of Brunswick (1998, ND Ohio) 181 FRD 354) and (ovrld in part as stated in Purple Orchid v Pennsylvania State Police, Bureau of Liquor Control Enforcement (1998, Pa Cmwlth) 721 A2d 84) and (ovrld in

part as stated in Salt Lake City v Wood (1999, Utah App) 991 P2d 595, 381 Utah Adv Rep 33) and (ovrld in part as stated in El Marocco Club, Inc. v Richardson (2000, RI) 746 A2d 1228) and (criticized in Giovani Carandola, Ltd. v Bason (2002, CA4 NC) 303 F3d 507) and (ovrld in part as stated in Rising Sun Entm't, Inc. v Bureau of Liquor Control Enforcement (2003, Pa Cmwlth) 829 A2d 1214) and (ovrld in part as stated in Odle v Decatur County (2005, CA6 Tenn) 421 F3d 386, 2005 FED App 368P) and (ovrld in part as stated in Giovani Carandola, Ltd. v Fox (2005, MD NC) 396 F Supp 2d 630) and (ovrld in part as stated in 181 South Inc. v Fischer (2006, CA3 NJ) 454 F3d 228) and (ovrld in part as stated in Commonwealth v Jameson (2006, Ky) 215 SW3d 9) and (ovrld in part as stated in Illusions - Dallas Private Club, Inc. v Steen (2007, CA5 Tex) 482 F3d 299) and (Overruled as stated in Hamilton's Bogarts, Inc. v Michigan (2007, CA6 Mich) 501 F3d 644, 2007 FED App 351P).

Although case for upholding state regulation in area covered by Twenty-first Amendment is undoubtedly strengthened by Amendment, other constitutional provisions are not rendered inapplicable by amendment. White v Fleming (1975, CA7 Wis) 522 F2d 730, 11 BNA FEP Cas 619, 10 CCH EPD P 10313.

Analysis of validity of state law regulating liquor does not proceed via traditional route for testing constitutionality of state statutes, rather courts must proceed from vantage point of presumed state power and then ask whether there are any limitations to that power, always keeping in mind that where intoxicating liquors are concerned, great deference must be accorded comprehensive state regulatory scheme; federal laws have prevailed over state regulation of intoxicating liquors in only 2 circumstances: (1) where state regulation was repugnant to overriding national concern with due process and equal protection, and (2) where state had sought to invade area of exclusive federal concern such as federally owned installations, regulation of commerce with foreign nations, and taxation of imports from foreign countries. Castlewood International Corp. v Simon (1979, CA5 Fla) 596 F2d 638, vacated on other grounds (1980) 446 US 949, 64 L Ed 2d 806, 100 S Ct 2914.

State law dealing with sale of alcoholic beverages has priority, under Twenty-First Amendment, when in conflict with federal regulation placing burden on commerce and alcohol which state wishes to avoid, absent federal interest of sufficient magnitude. Wine Industry of Florida, Inc. v Miller (1980, CA5 Fla) 609 F2d 1167.

Police power of states over intoxicating liquors was extremely broad prior to Twenty-first Amendment, and broad sweep of that Amendment has been recognized as conferring something more than normal state authority over public health, welfare, and morals. Arizona State Liquor Bd. v Poulos (1975) 112 Ariz 119, 538 P2d 393.

State may absolutely prohibit manufacture, transportation, sale, or possession of intoxicants, and may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect to them. Francis v Fitzpatrick (1943) 129 Conn 619, 30 A2d 552, 145 ALR 505.

On account of inherent and potential menace to public welfare caused by liquor business, police power to regulate it is of far greater scope and power than is directed toward ordinary business activity; Twenty-first Amendment allows exercise of very broad police powers by states with respect to alcoholic liquors; under Twenty-first Amendment, states may either absolutely prohibit manufacture, sale, or possession of such liquors within their borders or may permit these activities under conditions prescribed by their legislatures. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Under Twenty-first Amendment, state may absolutely prohibit manufacture, transportation, importation, sale, or possession of alcoholic liquors irrespective of when or where produced, or use to which they may be put, and may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect to them, and this greater power to prohibit includes lesser power to permit under definitely prescribed conditions. State v Payne (1958) 183 Kan 396, 327 P2d 1071.

State or local regulation in field of alcoholic beverages under Amendment 21 must not be discriminatory and must not conflict with other provisions of Constitution. Baxter Springs v Bryant (1979) 226 Kan 383, 598 P2d 1051.

Power of state to regulate sale of intoxicating liquors under Twenty-First Amendment may be exercised by city in such state through ordinance, unless such ordinance is inconsistent with Federal Constitution. Commonwealth v Sees (1978) 374 Mass 532, 373 NE2d 1151 (criticized in Empress Adult Video & Bookstore v City of Tucson (2002, App) 204 Ariz 50, 59 P3d 814, 387 Ariz Adv Rep 14) and (criticized in City of Bangor v Diva's, Inc. (2003) 2003 ME 51, 830 A2d 898).

Twenty-first Amendment has bestowed upon states broad regulatory powers over liquor importation. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

Under Twenty-first Amendment, state has full and complete control over all matters relating to intoxicating liquors within its borders; it is purely within prerogative of state to say whether or not citizen shall possess or use intoxicating liquor; regulation pertaining to sale, possession, or use of intoxicating liquors does not violate constitutional rights of any citizens. State v Wood (1966, Miss) 187 So 2d 820.

Under § 2 of Twenty-first Amendment, any state can prohibit transportation or importation of intoxicating liquors into its territory. State v Epps (1938) 213 NC 709, 197 SE 580.

Since adoption of Twenty-first Amendment, states may prohibit inhabitants from importing intoxicating liquor for their own use. Riggins v District Court (1935) 89 Utah 183, 51 P2d 645.

**5. Power over lands subject to federal jurisdiction**

Though Twenty-first Amendment may have increased power of states as to regulation of importation of intoxicat-ing liquors, it did not increase jurisdiction of state so as to extend to possession of national government lying within state, jurisdiction over which possession is in national government. Collins v Yosemite Park & Curry Co. (1938) 304 US 518, 82 L Ed 1502, 58 S Ct 1009; Johnson v Yellow Cab Transit Co. (1943, CA10 Okla) 137 F2d 274, affd (1944) 321 US 383, 88 L Ed 814, 64 S Ct 622.

With respect to concessionaire which operated hotels, camps, and stores in national park, exclusive jurisdiction was in United States, so that state was without power to regulate alcoholic beverages and Twenty-first Amendment was not

applicable. Collins v Yosemite Park & Curry Co. (1938) 304 US 518, 82 L Ed 1502, 58 S Ct 1009.

Section 2 of Twenty-first Amendment was designed only to augment powers of state to regulate importation of liquor destined for use, distribution or consumption in its own territory, not to increase its jurisdiction; absent appropriate express reservation, Twenty-first Amendment confers no power on state to regulate, whether by licensing, taxation, or otherwise, importation of distilled spirits into territory over which United States exercises exclusive jurisdiction; state's interest in regulating importation into state of liquor purchased by individuals on military bases did not extend its territorial jurisdiction so as to permit regulation of transactions between distillers and post exchanges, ship stores, and officers' clubs; thus, state lacked power to regulate liquor sold to officers' clubs, ship stores, and post exchanges located on military bases within state under exclusive jurisdiction of United States. United States v State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183.

Twenty-first Amendment does not preclude imposition of state sales tax on liquor sales on military installations within state over which state shares concurrent jurisdiction with United States. United States v Tax Comm'n of Missis-sippi (1975) 421 US 599, 44 L Ed 2d 404, 95 S Ct 1872.

**6. Miscellaneous**

Ohio statutes permitting "local option" elections whereby local voters, via initiative and referendum, may forbid certain sales of alcoholic beverages otherwise authorized by licenses issued by state department of liquor control, did not violate due process and equal protection since no notice or opportunity to be heard need proceed any legislative action of general applicability, local voters possess legitimate interest in regulating types, modes, and circumstances of alcohol sales in their neighborhoods, and local option statutes and referenda which may be adopted under them create sensible legislative distinctions which rationally further legitimate public interests. 37712, Inc. v Ohio Dep't of Liquor Control (1997, CA6 Ohio) 113 F3d 614, 1997 FED App 158P.

Twenty-first amendment had no bearing on constitutional challenges to state requirements for local-option initia-tives regarding whether county would be "wet" or "dry," since purpose of amendment was to create exception to com-merce clause so that it is not relevant to states' power to pass laws that would otherwise violate other constitutional pro-visions. Wellwood v Johnson ex rel. Bryant (1999, CA8 Ark) 172 F3d 1007.

**B. Relationship With Other Laws**

**1. United States Constitution**

**a. Commerce Clause**

**7. Effect of commerce clause**

Twenty-first Amendment sanctions right of state to legislate concerning intoxicating liquors brought from without, unfettered by commerce clause of Constitution (Art I, § 8, cl 3). Ziffrin, Inc. v Reeves (1939) 308 US 132, 60 S Ct 163, 84 L Ed 128 (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263); Jones v State (1939) 198 Ark 354, 129 SW2d 249; Hardin v Spiers (1941) 202 Ark 804, 152 SW2d 1010; State v Andre (1936) 101 Mont 366, 54 P2d 566.

Twenty-First Amendment does not "repeal" commerce clause wherever regulation of intoxicating liquors is concerned, so as to give states complete and exclusive control over intoxicating liquors unlimited by commerce clause, and Congress is left with regulatory power over interstate or foreign commerce in intoxicating liquor. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

Like other provisions of Federal Constitution, Twenty-first Amendment and commerce clause must each be considered in light of other and in context of issues and interests at stake in any concrete case. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

By virtue of Twenty-first Amendment, state is totally unconfined by traditional commerce clause limitations when it restricts importation of intoxicants destined for use, distribution, or consumption within its borders. Heublein, Inc. v South Carolina Tax Comm'n (1972) 409 US 275, 34 L Ed 2d 472, 93 S Ct 483; United States v State Tax Com. (1973) 412 US 363, 37 L Ed 2d 1, 93 S Ct 2183.

Although Twenty-first Amendment primarily creates exception to normal operation of commerce clause (Art I, § 8, cl 3), nevertheless Twenty-first Amendment does not pro tanto repeal commerce clause, but merely requires that each provision be considered in light of other, and in context of issues and interests at stake in any concrete case. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451, reh den (1977) 429 US 1124, 51 L Ed 2d 574, 97 S Ct 1161 and (ovrld on other grounds as stated in Wilson v McBeath (1991, WD Tex) 1991 US Dist LEXIS 21124) and (criticized in UPS Worldwide Forwarding v United States Postal Serv. (1995, CA3 Del) 66 F3d 621) and (criticized in North Shore Concrete & Assoc. v City of New York (1998, ED NY) 1998 US Dist LEXIS 6785).

There is no bright line between federal and state powers over liquor; although Twenty-first Amendment grants states virtually complete control over whether to permit importation or sale of liquor and how to structure liquor distri-bution system, and although states retain substantial discretion to establish other liquor regulations under Amendment, those controls may be subject to federal commerce power under commerce clause of Constitution (Article I, § 8, cl 3) in appropriate situations, and reconciliation of competing state and federal interests in such regard can be made only after careful scrutiny of those concerns in a concrete case. California Retail Liquor Dealers Ass'n v Midcal Aluminum, Inc. (1980) 445 US 97, 100 S Ct 937, 63 L Ed 2d 233, 1980-1 CCH Trade Cases P 63201.

Federal Government retains authority under Commerce clause to regulate even interstate commerce in liquor notwithstanding fact that Twenty-First Amendment reserves to states power to impose burdens on interstate commerce in intoxicating liquors. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

Twenty First Amendment does not entirely remove state regulation of alcoholic beverages from ambit of Commerce clause; question in determining validity of state liquor tax that discriminates against interstate commerce is whether principles underlying Twenty First Amendment are sufficiently implicated to outweigh Commerce clause principles that would otherwise be offended. Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049

(criticized in Ala. Alcoholic Bev. Control Bd. v Henri-Duval Winery, L.L.C. (2003, Ala) 890 So 2d 70).

Twenty-First Amendment does not entirely remove state regulation of alcohol from reach of commerce clause; ra-ther, each of these constitutional provisions must be considered in light of other and in context of issues and interests at stake in any concrete case. Brown-Forman Distillers Corp. v New York State Liquor Authority (1986) 476 US 573, 106 S Ct 2080, 90 L Ed 2d 552 (criticized in Grant's Dairy-Maine, LLC v Commissioner of Me. Dep't of Agric., Food & Rural Resources (2000, CA1 Me) 232 F3d 8).

Although Twenty-First Amendment to Federal Constitution grants states virtually complete control over whether to permit importation or sale of liquor and how to structure liquor distribution system, states' powers under Amendment are circumscribed by other provisions of Constitution, such as commerce clause; in harmonizing state and federal pow-ers, question is whether interests implicated by state regulation are so closely related to powers reserved by Amendment that regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies. 324 Liquor Corp. v Duffy (1987) 479 US 335, 107 S Ct 720, 93 L Ed 2d 667, 1986-2 CCH Trade Cases P 67391.

Twenty First Amendment protects state which chooses to impose burden on sale of alcohol which would be im-permissible under on Commerce Clause if item burdened was not alcohol. Wine Industry of Florida, Inc. v Miller (1980, CA5 Fla) 609 F2d 1167.

Commerce Clause (Art 1, § 8, cl 3) is not violated by portion of state alcoholic beverage code which prohibits holder of package store permit and retail dealer's off-premise license, from selling wholesale quantities of beer to out of state customers for resale out of state, since provisions are consistent with state's authority under Twenty-First Amend-ment. S.A. S.A. Discount Liquor, Inc. v Texas Alcoholic Beverage Com. (1983, CA5 Tex) 709 F2d 291.

Indiana statute, which makes unlawful all direct shipments from out of state to in-state consumers by any person in business of selling alcoholic beverages in another state or country, is not unconstitutional. Bridenbaugh v Free-man-Wilson (2000, CA7 Ind) 227 F3d 848, cert den, motion gr (2001) 532 US 1002, 121 S Ct 1672, 149 L Ed 2d 652 and (criticized in Bolick v Roberts (2001, ED Va) 199 F Supp 2d 397) and (criticized in Dickerson v Bailey (2002, SD Tex) 212 F Supp 2d 673) and (criticized in Swedenburg v Kelly (2002, SD NY) 234 F Supp 2d 231) and (Overruled as stated in Huber Winery v Wilcher (2006, WD Ky) 2006 US Dist LEXIS 4705).

Second Circuit considers scope of grant of authority of U.S. Const. amend. XXI, § 2, to states to determine whether challenged statute is within ambit of that authority such that it is exempted from effect of dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3; inquiry should not allow protective doctrine of dormant Commerce Clause to subordinate plain language of Twenty-first Amendment and should instead be sensitive to manner in which these two constitutional forces interact in light of impact Twenty-first Amendment has on dormant Commerce Clause concerns. Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223, revd, remanded (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263 (criticized in Superior Bev. Co. v Schieffelin & Co. (2005, ND Ohio) 2005 US Dist LEXIS 39612) and motion den, motion to strike den, costs/fees proceeding (2006, ED Mich) 457 F Supp 2d 790.

State has control over intoxicating liquors, and such control is not restricted by Commerce Clause. Dundalk Liq-uor Co. v Tawes (1952) 201 Md 58, 92 A2d 560.

States do not have plenary powers over all of matters relating to alcoholic beverages and when statute enacted pursuant to Twenty-First Amendment conflicts with enactment based on commerce clause, courts must balance policies furthered by each in order to determine which should prevail. Rice v Alcoholic Beverage Control Appeals Bd. (1978) 21 Cal 3d 431, 146 Cal Rptr 585, 579 P2d 476, 1978-1 CCH Trade Cases P 62054, 96 ALR3d 613.

Twenty-first Amendment removes spiritous liquors and alcohol from protection of commerce clause to extent nec-essary to allow states to adopt and enforce appropriate laws and regulations dealing with subject and thus to burden interstate commerce to such extent; state may exercise its power under Twenty-first Amendment to regulate transportation through its territory of intoxicating liquors destined for another state. Atkins v Manning (1949) 206 Ga 219, 56 SE2d 260.

State has power under Twenty-first Amendment to forbid all importations of liquor which do not comply with state regulations, and state is relieved of limitations of Commerce Clause. Ruppert v Morrison (1952) 117 Vt 83, 85 A2d 584.

**8. Laws and regulations related to wine manufacture and distribution**

State law authorizing sale of newly defined wine product in grocery stores if produced exclusively from grapes grown in state is clearly protectionist measure which violates commerce clause and which cannot be saved by § 2 of Twenty-first Amendment. Loretto Winery, Ltd. v Duffy (1985, CA2 NY) 761 F2d 140.

North Carolina's regulatory preference of in-state wine manufacturers discriminates against out-of-state wine man-ufacturers and sellers, in violation of dormant Commerce Clause and preference is not supported by any clear concern of Twenty-first Amendment, and therefore, is not saved by Twenty-first Amendment. Beskind v Easley (2003, CA4 NC) 325 F3d 506, 116 ALR5th 665 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223) and (ovrld in part on other grounds as stated in Brooks v Vassar (2006, CA4 Va) 462 F3d 341) and (criticized in Siesta Vill. Mkt., LLC v Perry (2008, ND Tex) 530 F Supp 2d 848).

Because of absence of identical restriction on Texas wineries, Texas's statutory prohibition against out-of-state wineries directly selling and shipping wine to Texas consumers was constitutionally defective under Commerce Clause, and enjoinment of administrator of Texas Alcoholic Beverage Commission from enforcing challenged provisions was appropriate remedy. Dickerson v Bailey (2003, CA5 Tex) 336 F3d 388 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223).

N.Y. Alco. Bev. Cont. Law §§ 100(1), 102(1)(a), and 102(1)(b), which prohibit out-of-state wine retailers from sell-ing and delivering wine directly to New York consumers, are valid exercise of state's rights under Twenty-first Amendment, U.S. Const. amend. XXI, § 2, and do not violate Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because regulatory scheme mandates that both in-state and out-of-state liquor pass through same three-tier system before ulti-mate delivery to consumer. Arnold's Wines, Inc. v Boyle (2009, CA2 NY) 571 F3d 185.

U.S. Const. amend. 21, § 2 does not allow states to regulate direct shipment of wine on terms that discriminate in favor of in-state producers, and straightforward attempts to discriminate in favor of local producers are not saved by Twenty-first Amendment; so, unless state shows that discrimination is demonstrably justified, statutes regulating alco-hol that discriminate against interstate commerce must be invalidated; however, three-tier system itself is unquestionably legitimate, and state policies are protected under Twenty-first Amendment when they treat liquor produced out of state same as its domestic equivalent. Freeman v Corzine (2010, CA3 NJ) 629 F3d 146.

**9. Other particular cases**

State of New York could not prohibit sale at airport of liquor purchased outside of state to departing international travelers for delivery at their foreign destinations; although state, by virtue of provisions of Twenty-first Amendment, is totally unconfined by traditional commerce clause limitations when it restricts importation of intoxicants destined for use, distribution, or consumption within its borders, nevertheless Twenty-first Amendment does not obliterate commerce clause so far as to empower state to prohibit absolutely passage of liquor through its territory, under supervision of United States Bureau of Customs, for delivery to consumers in foreign countries; state may not totally prevent transactions carried on under aegis of law passed by Congress in exercise of its explicit power under Federal Constitution to regulate commerce with foreign nations. Hostetter v Idlewild Bon Voyage Liquor Corp. (1964) 377 US 324, 12 L Ed 2d 350, 84 S Ct 1293.

State liquor tax that imposes 20 percent excise tax on sales of liquor at wholesale, and from which certain locally produced alcoholic beverages are exempt, violates Commerce clause because it has both purpose and effect of discriminating in favor of local products, and it is not saved by Twenty First Amendment because, while it violates central tenet of Commerce clause, it is not supported by any clear concern of Twenty First Amendment in combating perceived evils of unrestricted traffic in liquor. Bacchus Imports v Dias (1984) 468 US 263, 82 L Ed 2d 200, 104 S Ct 3049 (criticized in Ala. Alcoholic Bev. Control Bd. v Henri-Duval Winery, L.L.C. (2003, Ala) 890 So 2d 70).

Twenty-first Amendment did not immunize state laws from invalidation under Commerce Clause (Art I, § 8, cl 3) when those laws have practical effect of regulating liquor sales in other states, for purposes of state statute requiring brewers and importers of beer to affirm that their posted prices for products sold to in-state wholesalers were as of time of posting no higher than prices at which they sold those products in bordering states. Healy v Beer Inst. (1989) 491 US 324, 105 L Ed 2d 275, 109 S Ct 2491.

States' power to regulate importation of intoxicating liquor under U.S. Const. amend XXI, § 2, does not allow states to ban, or severely limit, direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers in violation of prohibition against discrimination in interstate commerce under U.S. Const. art. I, § 8, cl. 3. Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263 (criticized in Superior Bev. Co. v Schieffelin & Co. (2005, ND Ohio) 2005 US Dist LEXIS 39612) and motion den, motion to strike den, costs/fees proceeding (2006, ED Mich) 457 F Supp 2d 790.

Indiana statute, which makes unlawful all direct shipments from out of state to in-state consumers by any person in business of selling alcoholic beverages in another state or country, is not unconstitutional. Bridenbaugh v Freeman-Wilson (2000, CA7 Ind) 227 F3d 848, cert den, motion gr (2001) 532 US 1002, 121 S Ct 1672, 149 L Ed 2d 652 and (criticized in Bolick v Roberts (2001, ED Va) 199 F Supp 2d 397) and (criticized in Dickerson v Bailey (2002, SD Tex) 212 F Supp 2d 673) and (criticized in Swedenburg v Kelly (2002, SD NY) 234 F Supp 2d 231) and (Overruled as stated in Huber Winery v Wilcher (2006, WD Ky) 2006 US Dist LEXIS 4705).

Local preference provision located in N.C. Gen. Stat. § 18B-1101(3) was declared unconstitutional as discriminatory against interstate commerce in violation of U.S. Const. art. I, § 8, cl. 3, and provision was not saved by U.S. Const. amend. XXI. Beskind v Easley (2003, CA4 NC) 325 F3d 506, 116 ALR5th 665 (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223) and (ovrld in part on other grounds as stated in Brooks v Vassar (2006, CA4 Va) 462 F3d 341) and (criticized in Siesta Vill. Mkt., LLC v Perry (2008, ND Tex) 530 F Supp 2d 848).

Although 21st Amendment empowered state to regulate alcoholic beverage sales within its borders provision did not empower state to favor local liquor industries by erecting barriers to competition in violation of Commerce Clause; hence, state's three-tier alcohol distribution system which banned direct shipment to customers of alcohol from out-of-state sellers was unconstitutional because it did not pass promote 21st Amendment's core goals of temperance, raising revenue, and ensuring orderly market. Heald v Engler (2003, CA6 Mich) 342 F3d 517, 2003 FED App 308P, reh, en banc, den (2003, CA6) 2003 US App LEXIS 23001 and (criticized in Swedenburg v Kelly (2004, CA2 NY) 358 F3d 223) and affd (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263 (criticized in Superior Bev. Co. v Schieffelin & Co. (2005, ND Ohio) 2005 US Dist LEXIS 39612) and motion den, motion to strike den, costs/fees proceeding (2006, ED Mich) 457 F Supp 2d 790.

Because Twenty-first Amendment grants states virtually complete control over whether to permit importation or sale of liquor and how to structure liquor distribution system, and because dormant Commerce Clause only prevents state from enacting regulation that favors in-state producers and thus discriminates against interstate commerce, Personal Import Exception to state's Alcoholic Beverage Control Act, Va. Code Ann. § 4.1-100 et seq., does not violate Commerce Clause. Brooks v Vassar (2006, CA4 Va) 462 F3d 341, cert den (2007) 550 US 934, 127 S Ct 2251, 167 L Ed 2d 1090.

Personal Import Exception to state's Alcoholic Beverage Control Act, Va. Code Ann. § 4.1-100 et seq., is not eco-nomic protectionism but part of state's import regulation, as it provides de minimis exception to state's import regula-tions, allowing consumers to import one gallon or four liters of wine for personal consumption (under no economic construct could such provision be considered economic protectionism of local industry because it actually amounts to disadvantage local wineries whose wine may only be purchased through retailers); accordingly, Personal Import Excep-tion does not violate dormant Commerce Clause. Brooks v Vassar (2006, CA4 Va) 462 F3d 341, cert den (2007) 550 US 934, 127 S Ct 2251, 167 L Ed 2d 1090.

Regulating alcoholic beverage retailing was largely State's prerogative under Twenty-first Amendment, and limited rights Texas gave state-licensed alcoholic beverage retailers

to make deliveries did not transgress Dormant Commerce Clause by requiring that only retailers with physical presence in Texas could deliver to consumers in Texas; court reversed district court's invalidation of requirement that only retailers with physical presence within State could receive retailer permits or deliver to in-state consumers and reinstated Tex. Alco. Bev. Code Ann. §§ 22.03, 24.03, 54.12, and 107.07(f). Siesta Vill. Mkt. LLC v Steen (2010, CA5 Tex) 612 F3d 809, cert den (2011, US) 131 S Ct 1602, 179 L Ed 2d 499.

State statute directing wholesalers to fix and maintain prices at which they will sell retailers alcoholic liquor which has been transported in interstate commerce does not impinge upon Congress' exclusive power to regulate commerce; Twenty-first Amendment accorded to states power to enact such statute unrestricted by commerce clause. Beckanstin v Liquor Control Com. (1953) 140 Conn 185, 99 A2d 119.

Kansas statutes which do not prohibit but only reasonably regulate transportation of intoxicating liquors across state and are not in conflict with any federal statutes regulating interstate shipments of intoxicating liquors, do not violate Commerce Clause or Twenty-first Amendment. State v Goldberg (1946) 161 Kan 174, 166 P2d 664.

**b. Other Provisions**

**10. Effect of Supremacy Clause**

When state regulations squarely conflict with accomplishment and execution of full purposes of federal law, and state's central power under Twenty-First Amendment for regulating times, places, and manner under which liquor may be imported and sold is not directly implicated, balance between state and federal power tips decisively in favor of federal law, and enforcement of state statute requiring cable television operators to delete all advertisements for alcoholic beverages contained in out-of-state signals that are retransmitted is barred by Supremacy clause. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

Supremacy clause of United States Constitution made tax lien priorities accorded United States under 26 USCS § 6323 control over any priority scheme established by state law; statute providing scheme of priorities among private creditors of liquor licensees in no way related to state's interest in regulating consumption and distribution of alcohol, with respect to which Twenty-first Amendment exempted states from traditional commerce clause limitations. Busi-ness Title Corp. v Division of Labor Law Enforcement (1976, App) 17 Cal 3d 878, 132 Cal Rptr 454, 553 P2d 614, 76-2 USTC P 9644, 38 AFTR 2d 5734.

**11. Effect of equal protection clause**

Since adoption of Twenty-first Amendment, equal protection clause of Fourteenth Amendment is not applicable to intoxicating liquor; under Twenty-first Amendment, discrimination against imported liquor is permissible even if it is not incident of reasonable regulation of liquor traffic. Mahoney v Joseph Triner Corp. (1938) 304 US 401, 58 S Ct 952, 82 L Ed 1424 (arguably ovrld as stated in Bacchus Imports v Dias (1984) 468 US 263, 104 S Ct 3049, 82 L Ed 2d 200) and (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

On basis of Twenty-first Amendment, state's discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, is not prohibited by equal protection clause. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 59 S Ct 254, 83 L Ed 243 (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

Invidious gender-based discrimination against males 18-20 years of age contained in state statutes prohibiting sale of 3.2 percent beer to males under age of 21 and to females under age of 18 is not saved from invalidation as denial of equal protection of laws in violation of Fourteenth Amendment by virtue of power of states to regulate alcoholic bever-ages under Twenty-first Amendment, which does not recognize, even indirectly, classifications based upon gender. Craig v Boren (1976) 429 US 190, 50 L Ed 2d 397, 97 S Ct 451, reh den (1977) 429 US 1124, 51 L Ed 2d 574, 97 S Ct 1161 and (ovrld on other grounds as stated in Wilson v McBeath (1991, WD Tex) 1991 US Dist LEXIS 21124) and (crit-icized in UPS Worldwide Forwarding v United States Postal Serv. (1995, CA3 Del) 66 F3d 621) and (criticized in North Shore Concrete & Assoc. v City of New York (1998, ED NY) 1998 US Dist LEXIS 6785).

State statute imposing on nonresident brewers requirements which were not imposed on brewers who resided within state did not violate equal protection clause; classification recognized by Twenty-first Amendment cannot be deemed forbidden by Fourteenth Amendment. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Twenty-first Amendment does not empower state to invade constitutional rights guaranteed by equal protection clause of Fourteenth Amendment; however, failure of state statute dealing with sales of liquor to include wines and malt beverages did not constitute invidious discrimination in violation of equal protection clause. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

**12. Effect of due process clause**

State's exercise of its power under Twenty-first Amendment to prohibit or regulate liquor traffic within its borders, insofar as such regulations discriminate against or impose special burdens on activities and persons involved in such traffic, is not generally limited by due process clause of Fourteenth Amendment, at least where state's regulations are reasonably appropriate to effectuate its Twenty-first Amendment powers. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 59 S Ct 254, 83 L Ed 243 (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263); Ziffrin, Inc. v Reeves (1939) 308 US 132, 60 S Ct 163, 84 L Ed 128 (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263); State v Payne (1958) 183 Kan 396, 327 P2d 1071.

Twenty-First Amendment does not prevent Congress from exercising its spending power in conditioning a portion of state's federal highway funds on state's adoption of minimum drinking age of 21; while amendment in no way increased Congress' authority to legislate with respect to liquor, amendment did not limit or withdraw Congress' ability to exercise authority under its existing delegated powers, including spending power. South Dakota v Dole (1986, CA8 SD) 791 F2d 628, affd (1987) 483 US 203, 97 L Ed 2d 171, 107 S Ct 2793.

Twenty-first Amendment does not empower states to invade constitutional rights guaranteed by due process clause of Fourteenth Amendment; however, statute regulating sale of liquor did not employ constitutionally impermissible presumption violative of due process. Federal Distillers, Inc. v State (1975) 304 Minn 28, 229 NW2d 144, app dismd (1975) 423 US 908, 46 L Ed 2d 137, 96 S Ct 209, 96 S Ct 210.

**13. Effect of export-import clause**

State of Kentucky could not require importer of Scotch whiskey to pay tax of ten cents on each proof gallon of whiskey which it imported from Scotland, which tax was collected while whiskey remained in unbroken packages in hands of original importer and prior to resale or use by importer; export-import clause of Federal Constitution (Art I, § 10, cl 2), which prohibits states from imposing duties or imposts on imports or exports, except as may be absolutely necessary for executing state inspection laws, precludes state from exercising its Twenty-first Amendment powers over intoxicating liquors by imposing tax on imported liquors while in hands of importer in unbroken, original packages, prior to resale or use by importer within state. Department of Revenue v James B. Beam Distilling Co. (1964) 377 US 341, 12 L Ed 2d 362, 84 S Ct 1247.

**14. Miscellaneous**

Notwithstanding claim of violation of First and Fourteenth Amendment guarantees of freedom of expression, regulations by state department of alcoholic beverage control, prohibiting certain sexually explicit live entertainment or films in licensed bars and nightclubs, were not unconstitutional, in view of state's regulatory powers under Twenty-first Amendment; although some performances to which regulations addressed themselves were within limits of constitu-tional protection of freedom of expression, state did not forbid such performances across board, but merely proscribed such performances in establishments which it licensed to sell liquor by drink; department's conclusion, embodied in regulations, that certain sexual performances and dispensation of liquor by drink ought not to occur simultaneously at premises which had licenses, was not irrational one. California v La Rue (1972) 409 US 109, 93 S Ct 390, 34 L Ed 2d 342, reh den (1973) 410 US 948, 93 S Ct 1351, 35 L Ed 2d 615 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 116 S Ct 1495, 134 L Ed 2d 711, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (ovrld in part as stated in WFO Corp. v Ohio Liquor Control Comm'n (1996, Ohio App, Franklin Co) 1996 Ohio App LEXIS 4788) and (ovrld in part as stated in Goldrush II v City of Marietta (1997) 267 Ga 683, 482 SE2d 347, 97 Fulton County D R 874) and (ovrld as stated in J.L. Spoons, Inc. v City of Brunswick (1998, ND Ohio) 181 FRD 354) and (ovrld in part as stated in Purple Orchid v Pennsylvania State Police, Bureau of Liquor Control Enforcement (1998, Pa Cmwlth) 721 A2d 84) and (ovrld in part as stated in Salt Lake City v Wood (1999, Utah App) 991 P2d 595, 381 Utah Adv Rep 33) and (ovrld in part as stated in El Marocco Club, Inc. v Richardson (2000, RI) 746 A2d 1228) and (criticized in Giovani Carandola, Ltd. v Bason (2002, CA4 NC) 303 F3d 507) and (ovrld in part as stated in Rising Sun Entm't, Inc. v Bureau of Liquor Control Enforcement (2003, Pa Cmwlth) 829 A2d 1214) and (ovrld in part as stated in Odle v Decatur County (2005, CA6 Tenn) 421 F3d 386, 2005 FED App 368P) and (ovrld in part as stated in Giovani Carandola, Ltd. v Fox (2005, MD NC) 396 F Supp 2d 630) and (ovrld in part as stated in 181 South Inc. v Fischer (2006, CA3 NJ) 454 F3d 228) and (ovrld in part as stated in Commonwealth v Jameson (2006, Ky) 215 SW3d 9) and (ovrld in part as stated in Illusions - Dallas Private Club, Inc. v Steen (2007, CA5 Tex) 482 F3d 299) and (Overruled as stated in Hamilton's Bogarts, Inc. v Michigan (2007, CA6 Mich) 501 F3d 644, 2007 FED App 351P).

**2. Other Laws**

**15. Miscellaneous**

Statute prohibiting women from tending bar except when they are licensees, wives of licensees, or, singly or with their husbands, sole shareholders of corporation holding license, has nothing to do with flow of alcoholic beverages into state and therefore does not fall within literal language of Twenty-first Amendment; notwithstanding Twenty-first Amendment, state may not prohibit employment of women bartenders, because to do so would violate provision of Federal Civil Rights Act (42 USCS § 2000-2(a)) prohibiting discrimination in employment on basis of sex. Sail'er Inn, Inc. v Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 3 BNA FEP Cas 550, 3 CCH EPD P 8222, 46 ALR3d 351 (criticized in In re Marriage Cases (2008) 43 Cal 4th 757, 76 Cal Rptr 3d 683, 183 P3d 384).

**C. Particular Regulations**

**16. Slate monopoly on importation or sale**

Eleventh Amendment did not bar liquor store's suit seeking declaration that Maryland's regulatory scheme for liq-uor wholesales violated Sherman Act since plaintiff was not seeking damages but declaratory and injunctive relief on basis of violation of federal law, and complaint was sufficiently narrow that it did not impinge on state's sovereignty under Twenty-first amendment. TFWS, Inc. v Schaefer (2001, CA4 Md) 242 F3d 198, 2001-1 CCH Trade Cases P 73183.

In action against Washington State Liquor Control Board by corporation that operated international chain of membership warehouses, district court properly held that post-and-hold scheme under Wash. Rev. Code § 66.28.180(2)(a) and Wash. Admin. Code §§ 314-20-100(2), (5), 314-24-190(2), (5) was hybrid restraint of trade, that it was per se violation of Sherman Act, 15 USCS § 1, that restraint was subject to preemption under Sherman Act, and that provisions could not be saved by operation of Washington's powers under U.S. Const. amend. XXI, § 2. Costco Wholesale Corp. v Maleng (2008, CA9 Wash) 522 F3d 874, 2008-1 CCH Trade Cases P 76021.

Twenty-first Amendment completely removed any possible doubt as to constitutionality of state statute vesting in state liquor control commission power to import liquor into state, and permitting no person to buy or sell liquor except by or through commission. State v Arluno (1936) 222 Iowa 1, 268 NW 179.

In view of Twenty-first Amendment, commerce clause of Constitution was not violated by state statute prohibiting sale of intoxicating liquor by private individuals or corporations, and providing for sale thereof by state through system of stores. State v Andre (1936) 101 Mont 366, 54 P2d 566.

**17. Licenses, permits, fees or taxes**

Under Twenty-first Amendment, state could constitutionally enact legislation providing that only common carriers licensed by state would have right to transport locally manufactured intoxicating liquors out of state. Ziffrin, Inc. v Reeves (1939) 308 US 132, 60 S Ct 163, 84 L Ed 128 (criticized

in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

State statute confining business of transporting intoxicating liquors through state to those who are licensed as common carriers is reasonable regulation. Cartlidge v Rainey (1948, CA5 Tex) 168 F2d 841, cert den (1948) 335 US 885, 93 L Ed 424, 69 S Ct 237.

Although state was operating in its "core" power under § 2 of Twenty-First Amendment to Constitution, it did not retained power to implement laws governing transfer of liquor license despite existence of prior federal tax lien; issue involved primacy of federal tax lien over state license rather than regulation of liquor, and state's ability to regulate delivery or sale of liquor in state, as opposed to licenses, was not impinged. In re Kimura (1992, CA9) 969 F2d 806, 92 CDOS 6090, 92 Daily Journal DAR 9646, CCH Bankr L Rptr P 74773, 92-2 USTC P 50397, 70 AFTR 2d 5414.

Amendment did not give state right to condition transfer of liquor license upon satisfaction of claims of trade creditors prior to federal tax lien; case involved primacy of federal tax lien over state license and fact that license happened to regulate liquor establishment was coincidental. United States v Stone (In re Stone) (1993, CA9) 6 F3d 581, 93 CDOS 7049, 93 Daily Journal DAR 12042, 93-2 USTC P 50635, 72 AFTR 2d 6103, 93 TNT 202-15.

Since state may, under Twenty-first Amendment, prohibit sale, transportation, and storage of liquors altogether, it may fix license which, if burden on interstate commerce at all, is less burden than prohibiting sale and transportation altogether. McCarroll v Clyde Collins Liquors, Inc. (1939) 198 Ark 896, 132 SW2d 19.

Arkansas statute requiring that persons transporting intoxicating liquor through or across state have state permit, and providing for confiscation in event of noncompliance, is valid under Twenty-first Amendment to Constitution of United States. Welborn v Morley (1951) 219 Ark 569, 243 SW2d 635.

State statute prohibiting liquor permittees and permittee backers of one class from being permittees and backers of any other class was constitutional exercise of state's legislative power under Twenty-first Amendment. Ruppert v Liquor Control Com. (1952) 138 Conn 669, 88 A2d 388.

Under Twenty-first Amendment, state legislatures, subject to constitutional restrictions, may lawfully grant right to engage in traffic of liquor to certain class or classes of persons and withhold it from others, and no one may complain because liquor legislation has denied him privilege of engaging in liquor traffic. Brown Distributing Co. v Oklahoma Alcoholic Beverage Control Board (1979, Okla) 597 P2d 324.

Statute establishing special exemption to quota restrictions on liquor licenses was reasonable decision by legislature to increase number of available liquor licenses, within scope of state's broad power over regulation of liquor traffic un-der Twenty First Amendment. Moedern v McGinnis (1975) 70 Wis 2d 1056, 236 NW2d 240.

**Unpublished Opinions**

Unpublished: Where petitioner attorney challenged forfeiture of defendant's liquor license and argued district court erred in finding attorney had no standing under Twenty-First Amendment, argument was rejected because attorney's injury, if any, stemmed from his failure to establish right to license in first instance, not state's inability to regulate alcohol within its borders and attorney's claim fell under 21 USCS § 853, out of Twenty-First Amendment's zone of interests, which was state's interests. United States v Carrie (2006, CA11 Fla) 206 Fed Appx 920, reh den, reh, en banc, den (2007, CA11) 254 Fed Appx 803 and magistrate's recommendation, habeas corpus proceeding (2010, DC SC) 2010 US Dist LEXIS 140386.

**18. Taxes or duties**

State of Kentucky could not require importer of Scotch whiskey to pay tax of ten cents on each proof gallon of whiskey which it imported from Scotland, which tax was collected while whiskey remained in unbroken packages in hands of original importer and prior to resale or use by importer; export-import clause of Federal Constitution (Art I, § 10, cl 2), which prohibits states from imposing duties or imposts on imports or exports, except as may be absolutely necessary for executing state inspection laws, precludes state from exercising its Twenty-first Amendment powers over intoxicating liquors by imposing tax on imported liquors while in hands of importer in unbroken, original packages, prior to resale or use by importer within state. Department of Revenue v James B. Beam Distilling Co. (1964) 377 US 341, 12 L Ed 2d 362, 84 S Ct 1247.

Under Twenty-first Amendment, state could enact statute making it unlawful for any person to evade or attempt to evade payment of tax or duty on alcoholic liquor or to possess any cask or package of such liquor without having thereon each mark or stamp required by law; even if statute was designed only to effectuate collection of taxes and had no relation to protection of public health, safety, or morals, state could, under Twenty-first Amendment, discriminate in favor of alcoholic liquor processed within state as against alcoholic liquor processed elsewhere, and such discrimination was permissible although it was not incident to reasonable regulation of liquor traffic or to protection of health, safety, or general welfare of its citizens. State v Payne (1958) 183 Kan 396, 327 P2d 1071.

**Unpublished Opinions**

Unpublished: District court's determination that certain Maryland liquor regulations did not promote temperance because they did not raise liquor and wine prices was clearly erroneous; determination was based on comparison of wholesale and retail liquor prices in Maryland and Delaware, but district court failed to take into account whether difference in two states' excise tax rates affected price comparison analysis. TFWS, Inc. v Schaefer (2005, CA4 Md) 147 Fed Appx 330, 2005-2 CCH Trade Cases ¶ 74885, corrected (2005, CA4 Md) 2005 US App LEXIS 29555 and on re-mand, injunction gr, motion gr, motion den, judgment entered (2007, DC Md) 2007-2 CCH Trade Cases P 75920, affd (2009, CA4 Md) 572 F3d 186, 2009-2 CCH Trade Cases P 76686.

**19. Place of sale**

Twenty-First Amendment does not justify state statute which vests in governing bodies of churches and schools power effectively to veto applications for liquor licenses within 500 foot radius of church or school, where state has delegated to churches power relating to liquor sales; state cannot exercise its power under Twenty-First Amendment in way that impinges upon establishment clause of First Amendment. Larkin v Grendel's Den, Inc. (1982) 459 US 116, 74 L Ed 2d 297, 103 S Ct 505.

**20.--Airlines**

New Mexico Liquor Control Act, as it governed alcoholic beverage service provided by airline on flights departing from or arriving into New Mexico under N.M. Stat. §§ 60-6E-4, 60-6E-5, and 60-6A-9, was impliedly preempted be-cause it fell within field of aviation safety that Congress intended federal law to occupy exclusively under Supremacy Clause and 49 USCS §§ 44701 and 44728; however, 21st Amendment required balancing of state's core powers and federal interests of FAA. US Airways, Inc. v O'Donnell (2010, CA10 NM) 627 F3d 1318.

**21.--Employment of women**

Statute prohibiting women from tending bar except when they are licensees, wives of licensees, or, singly or with their husbands, sole shareholders of corporation holding license, has nothing to do with flow of alcoholic beverages into state and therefore does not fall within literal language of Twenty-first Amendment; notwithstanding Twenty-first Amendment, state may not prohibit employment of women bartenders, because to do so would violate provision of Federal Civil Rights Act (42 USCS § 2000-2(a)) prohibiting discrimination in employment on basis of sex. Sail'er Inn, Inc. v Kirby (1971) 5 Cal 3d 1, 95 Cal Rptr 329, 485 P2d 529, 3 BNA FEP Cas 550, 3 CCH EPD P 8222, 46 ALR3d 351 (criticized in In re Marriage Cases (2008) 43 Cal 4th 757, 76 Cal Rptr 3d 683, 183 P3d 384).

**22.--Live entertainment**

State statute prohibiting nude dancing in establishments licensed by state to sell liquor for on-premises consump-tion does not violate First Amendment since statute is within state's power conferred by Twenty-First Amendment to regulate sale of liquor within its boundaries; state's power to ban sale of alcoholic beverages entirely includes lesser power to ban sale of liquor on premises where topless dancing occurs and whatever artistic or communicative value that might attach to topless dancing is overcome by state's exercise of its broad powers arising under Twenty-First Amendment. New York State Liquor Authority v Bellanca (1981) 452 US 714, 101 S Ct 2599, 69 L Ed 2d 357, 7 Media L R 1500 (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 116 S Ct 1495, 134 L Ed 2d 711, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (Overruled as stated in Hamilton's Bogarts, Inc. v Michigan (2007, CA6 Mich) 501 F3d 644, 2007 FED App 351P).

City ordinance prohibiting performance of nude or nearly nude dancing on premises of business establishment licensed to sell liquor for consumption on premises is constitutional under Federal Constitution's Twenty-first Amendment, even where it is local voters rather than city or state who have authority under state constitution to determine whether liquor may be sold in city; fact that state has delegated one portion of its regulatory power under Twenty-first Amendment to electorate--power to decide if liquor may be served in local establishments--does not mean that each liquor licensing decision must be made by plebiscite. Newport v Iacobucci (1986) 479 US 92, 93 L Ed 2d 334, 107 S Ct 383, reh den (1987) 479 US 1047, 93 L Ed 2d 862, 107 S Ct 913 and (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131).

Municipal ordinance, banning topless dancing in every "cabaret, bar or lounge, dance hall, discotheque, restaurant or coffee shop within municipal boundaries," was not adequately limited in its impact so as to be validated by Twenty-first Amendment; Amendment does not justify regulatory control over places that serve only food or which provide entertainment but not alcoholic beverages. Salem Inn, Inc. v Frank (1975, CA2 NY) 522 F2d 1045.

County commission had authority to enact ordinance prohibiting nude or seminude dancing under state's delegation of Twenty-first Amendment powers to municipalities and counties; presumption exists in favor of validity of regulation under Twenty-first Amendment, and by enacting ordinance county commissioners did not act with total irrationality or invidious discrimination in controlling distribution and dispensation of liquor within their jurisdiction. Fillingim v Boone (1988, CA11 Fla) 835 F2d 1389.

Under Twenty-first Amendment, town ordinance prohibiting topless dancing in establishments dealing in alcoholic beverages is constitutional; town council's findings provided sufficient rationale for ordinance. Lanier v Newton (1988, CA11 Ala) 842 F2d 253.

Ordinance prohibiting topless dancing in establishments dealing in alcoholic beverages falls within ambit of Twenty-first Amendment and is not unconstitutionally overbroad. Lanier v Newton (1988, CA11 Ala) 842 F2d 253.

Because of state's broad powers under Twenty-first Amendment, ordinance prohibiting exotic dancers in bar did not violate bar owner's First Amendment rights, for purposes of action by bar owner seeking zoning classification which would permit him to display go-go girls in drinking establishment. Walker v Kansas City (1990, CA8 Mo) 911 F2d 80, reh den, en banc (1990, CA8) 919 F2d 1339 and cert den (1991) 500 US 941, 114 L Ed 2d 476, 111 S Ct 2234.

Ordinance prohibiting exposure of certain body parts in establishments dealing in alcohol was properly analyzed under Twenty-First Amendment rather than First Amendment, under municipality's broad powers to exercise regulatory power under Twenty-First Amendment. Geaneas v Willets (1990, CA11 Fla) 911 F2d 579, cert den (1991) 499 US 955, 113 L Ed 2d 484, 111 S Ct 1431.

County ordinance regulating nude dancing in businesses serving liquor was not unconstitutionally overbroad because it required more clothing be worn by erotic dancers in establishment serving liquor than by citizens on street or beaches; state's power to regulate alcohol is broad and outweighs marginal First Amendment interest in totally nude dancing. Dodger's Bar & Grill v Johnson County Bd. of County Comm'rs (1994, CA10 Kan) 32 F3d 1436.

Resolution of board of county commissioners regulating entertainment within 1000 feet of premises licensed to serve alcoholic beverages was within ambit of Twenty-First Amendment and state's police power since there is reasonable relationship between area immediately adjacent to licensed premises and licensed premises. Dodger's Bar & Grill v Johnson County Bd. of County Comm'rs (1996, CA10 Kan) 98 F3d 1262.

Twenty-first Amendment has been recognized as conferring on states something more than normal authority inherent in public power; although amendment did not nullify other provisions of Constitution whenever state seeks to regulate sale of liquor, it did serve to "strengthen" state's

authority in that particular area; however state's authority to control and regulate sale of alcoholic beverages is designed to protect from abuses relating to alcohol consumption and is not license to censor whatever occurs at premises authorized to sell alcohol; therefore, state statute prohibiting topless dancing in licensed drinking establishment is not authorized by state's authority under Amendment. Bellanca v New York State Liquor Authority (1980) 50 NY2d 524, 429 NYS2d 616, 407 NE2d 460, reh den (1980) 51 NY2d 879 and revd on other grounds (1981) 452 US 714, 101 S Ct 2599, 69 L Ed 2d 357, 7 Media L R 1500 (ovrld in part by 44 Liquormart v Rhode Island (1996) 517 US 484, 116 S Ct 1495, 134 L Ed 2d 711, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569) and (ovrld in part as stated in J&B Social Club # 1 v City of Mobile (1996, SD Ala) 966 F Supp 1131) and (Overruled as stated in Hamilton's Bogarts, Inc. v Michigan (2007, CA6 Mich) 501 F3d 644, 2007 FED App 351P).

In view of grant to states by Twenty-first Amendment of substantial power to regulate liquor industry, suspension of tavern liquor license by state liquor control commission for improper conduct in violation of commission regulation, in permitting female to dance with insufficient attire, consisting of pasties which covered only nipple and areola portion of her breasts, overall effect of which was to portray female as dancing in topless state, did not violate licensee's First Amendment rights of free expression. Salem v Liquor Control Com. (1973) 34 Ohio St 2d 244, 63 Ohio Ops 2d 387, 298 NE2d 138 (criticized in Dayton Tavern v Liquor Control Comm'n (1999, Ohio App, Montgomery Co) 1999 Ohio App LEXIS 4006).

**23. Prices and price schedules**

Provision of state liquor control statute, stating that monthly price schedules for sales of liquor to wholesalers filed by liquor producers with state liquor authority must be accompanied by affirmation that prices are no higher than lowest price at which sales will be made anywhere in United States during same month, is not valid exercise of state's powers under Twenty-First Amendment so as to save provision from invalidation under commerce clause, since it attempts to regulate sales in other states of liquor to be consumed in other states. Brown-Forman Distillers Corp. v New York State Liquor Authority (1986) 476 US 573, 106 S Ct 2080, 90 L Ed 2d 552 (criticized in Grant's Dairy-Maine, LLC v Commissioner of Me. Dep't of Agric., Food & Rural Resources (2000, CA1 Me) 232 F3d 8).

Commerce Clause is violated through operation of beer price affirmation provisions of state liquor control act which prevent brewer from selling below state wholesale price to any wholesaler in any neighboring state since effect of provisions is to control minimum price that may be charged by non-state brewer to non-state wholesaler in any sale outside of state; nothing in Twenty-First Amendment permits state to set minimum prices for sale of beer in any other state. United States Brewers Asso. v Healy (1982, CA2 Conn) 692 F2d 275, 1982-83 CCH Trade Cases P 65023, affd (1983) 464 US 909, 104 S Ct 265, 78 L Ed 2d 248, 1983-2 CCH Trade Cases P 65661.

Under 21st Amendment, state, as part of its regulatory scheme for sale of liquor, may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in country. Brown-Forman Corp. v Tennessee Alcoholic Beverage Comm'n (1988, CA6 Tenn) 860 F2d 1354, vacated without op, remanded (1989) 492 US 902, 106 L Ed 2d 559, 109 S Ct 3208.

R.I. Gen. Laws § 3-5-11.1(a), enacted under defendant Rhode Island's power under Twenty-First Amendment to protect consumer choice and ensure equitable pricing of retail liquor products, was economic in nature and did not uti-lize suspect classifications or trench upon fundamental rights; plaintiff package store franchisor failed to show it was irrational for defendant Rhode Island to enact measures aimed at preventing anticompetitive practices by ensuring that holders of Class A liquor licenses operated independently and, thus, district court's denial of preliminary injunction prohibiting enforcement of statute was upheld. Wine & Spirits Retailers, Inc. v Rhode Island (2005, CA1 RI) 418 F3d 36, subsequent app (2007, CA1 RI) 481 F3d 1, cert den (2007) 552 US 889, 128 S Ct 274, 169 L Ed 2d 149 and reh den, reh, en banc, den (2012, CA1) 2012 US App LEXIS 18037.

State statute which directs liquor wholesalers to fix and maintain prices at which they will sell to retailers alcoholic liquor which has been transported in interstate commerce is constitutional under Twenty-first Amendment. Beckanstin v Liquor Control Com. (1953) 140 Conn 185, 99 A2d 119.

Neither Commerce Clause (Art 1, § 8, cl 3) nor Twenty-First Amendment are violated by provision of state's Discrimination in Selling Act, which provides that no brand of alcoholic liquor could be sold by manufacturers to state liquor wholesalers at any price higher than price sold to any liquor wholesaler anywhere in United States or District of Columbia during immediately preceding calendar month. United States Brewers Ass'n v Director of New Mexico Dep't of Alcoholic Beverage Control (1983) 100 NM 216, 668 P2d 1093, 1983-2 CCH Trade Cases P 65750, app dismd (1984) 465 US 1093, 104 S Ct 1581, 80 L Ed 2d 115, 1984-1 CCH Trade Cases P 65902.

If state for its own sufficient reasons deems it desirable policy to standardize price of liquor within its borders, either by direct price-fixing statute or by permissive sanction of such price fixing, in order to discourage temptations of cheap liquor due to cut-throat competition, Twenty-first Amendment gives state such power, notwithstanding commerce clause. Pompei Winery, Inc. v Board of Liquor Control (1957) 167 Ohio St 61, 4 Ohio Ops 2d 29, 146 NE2d 430, cert den (1958) 356 US 937, 2 L Ed 2d 813, 78 S Ct 780, reh den (1958) 357 US 915, 2 L Ed 2d 1163, 78 S Ct 1147.

**24. Advertising**

State's requirement that cable television operators in state delete all advertisements for alcoholic beverages contained in out-of-state signals that they retransmit by cable to their subscribers is pre-empted by federal law, and is not saved from pre-emption by Twenty-First Amendment. Capital Cities Cable, Inc. v Crisp (1984) 467 US 691, 81 L Ed 2d 580, 104 S Ct 2694, 10 Media L R 1873.

State's complete ban on liquor price advertising abridged speech in violation of First Amendment where State failed to carry burden of justifying complete ban, and ban could not be saved by Twenty-first Amendment which does not qualify First Amendment's prohibition against laws abridging freedom of speech, but rather is limit on commerce clause. 44 Liquormart v Rhode Island (1996) 517 US 484, 134 L Ed 2d 711, 116 S Ct 1495, 96 CDOS 3338, 24 Media L R 1673, 9 FLW Fed S 569.

First Amendment rights of state advertising media are not violated by intrastate ban on advertising of alcoholic beverages except for signs in interior of licensed sales premises which are not visible from exterior, since there is sufficient

reason to believe that advertising and consumption are linked so as to justify ban, whether or not concrete scientific evidence exists to that effect. Dunagin v Oxford (1983, CA5 Miss) 718 F2d 738, 10 Media L R 1001, cert den (1984) 467 US 1259, 82 L Ed 2d 855, 104 S Ct 3553, 104 S Ct 3554 and (criticized in United States v Jones (1997, CA6 Tenn) 107 F3d 1147, 46 Fed Rules Evid Serv 885, 1997 FED App 82P).

Twenty-first Amendment gives state power to prohibit advertising of sale of alcoholic beverages, including advertising via television, free of limitations of commerce clause of Constitution (Article I, § 8, clause 3,). Okla. Alcoholic Bev. Control Bd. v Heublein Wines, Int'l (1977, Okla) 566 P2d 1158.

**25. Containers and labels**

Even if distiller of whiskey had met all federal requirements with respect to bottles and labels of liquor moving in interstate commerce, there was no sound reason why additional state regulation of bottles and labels to further legitimate local policy could be said to run afoul of commerce clause, in view of vast reservoir of power bestowed upon states, under Twenty-first Amendment, to regulate liquor traffic and protect against its evils within their borders pretty much as they see fit. Boller Beverages, Inc. v Davis (1962) 38 NJ 138, 183 A2d 64.

State statute prohibiting sale of beer and ale in nonreturnable glass containers was valid under Twenty-first Amendment, even though statute applied to all sales within state without reference to import; it is not necessary that statute contain words "import" or "importation" to come within purview of Twenty-first Amendment. Anchor Hocking Glass Corp. v Barber (1954) 118 Vt 206, 105 A2d 271.

**26. Retaliatory prohibition of importation or sale**

Michigan statute prohibiting local dealers in beer from selling any beer manufactured in state which, by its law, discriminated against beer manufactured in Michigan, was valid; since adoption of Twenty-first Amendment, right of state to prohibit or regulate importation of intoxicating liquor was not limited by commerce clause, and discrimination between domestic and imported intoxicating liquors, or between imported intoxicating liquors, was not protected by equal protection clause. Indianapolis Brewing Co. v Liquor Control Com. (1939) 305 US 391, 59 S Ct 254, 83 L Ed 243 (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

Under Twenty-first Amendment, Missouri could constitutionally prohibit transportation or importation into state, or purchase, sale, receipt, or possession therein by any licensee, of any alcoholic liquor manufactured in state which, by its law, discriminated against liquor manufactured in Missouri. Joseph S. Finch & Co. v McKittrick (1939) 305 US 395, 59 S Ct 256, 83 L Ed 246 (ovrld as stated in In re G. Heileman Brewing Co. (1991, BC SD NY) 128 BR 876, 21 BCD 1469, 25 CBC2d 492, CCH Bankr L Rptr P 74077) and (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

**27. Prohibition of importation of liquor lacking patent registration**

Under Twenty-first Amendment, state could constitutionally prohibit manufacturer or wholesaler from importing any brand of intoxicating liquors, containing more than 25 percent of alcohol by volume, ready for sale without further processing, unless such brand was duly registered in United States Patent Office; although such statute discriminated in favor of liquor processed within state as against liquor completely processed elsewhere, discrimination against imported liquor was permissible under Twenty-first Amendment even if not incident of reasonable regulation of liquor traffic. Mahoney v Joseph Triner Corp. (1938) 304 US 401, 58 S Ct 952, 82 L Ed 1424 (ovrld on other grounds as stated in Bacchus Imports v Dias (1984) 468 US 263, 104 S Ct 3049, 82 L Ed 2d 200) and (criticized in Granholm v Heald (2005) 544 US 460, 125 S Ct 1885, 161 L Ed 2d 796, 18 FLW Fed S 263).

**28. Miscellaneous**

Federal Constitution's Twenty-First Amendment, which reserves power to states to impose restrictions on sale of liquor, does not provide independent constitutional bar to national minimum drinking age statute (23 USCS § 158) which directs Federal Secretary of Transportation to withhold percentage of otherwise allocable federal highway funds from states in which it is lawful for person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage, where statute is otherwise valid exercise of Congress' power under Federal Constitution's spending clause; Twenty-First Amendment does not bar such conditional grant of federal funds, since (1) statute does not induce states to engage in unconstitutional activities, and (2) percentage of highway funds that are withheld from state with drinking age below 21 is relatively small, so that Congress' program does not coerce states to enact higher minimum drinking ages than they would otherwise choose. South Dakota v Dole (1987) 483 US 203, 97 L Ed 2d 171, 107 S Ct 2793.

State liquor reporting and labeling requirement came within core of state's power under Twenty First Amendment, as applied to liquor destined for resale at 2 military bases located within state, over which bases Federal Government and state exercised concurrent jurisdiction. North Dakota v United States (1990) 495 US 423, 110 S Ct 1986, 109 L Ed 2d 420, 36 CCF P 75866 (criticized in Swedenburg v Kelly (2000, SD NY) 2000 US Dist LEXIS 12758).

Twenty-first Amendment does not enlarge state jurisdiction over Indian reservation liquor transactions. Rehner v Rice (1982, CA9 Cal) 678 F2d 1340, revd on other grounds, remanded (1983) 463 US 713, 77 L Ed 2d 961, 103 S Ct 3291, reh den (1983) 464 US 874, 78 L Ed 2d 185, 104 S Ct 209.

Although provision in contract between brewer and beer distributor requiring that all disputes be arbitrated in Poland was invalid under Illinois Beer Industry Fair Dealing Act, 815 Ill. Comp. Stat. Ann. 720/1 -720/9, provision was valid and enforceable under Federal Arbitration Act and Convention on Recognition and Enforcement of Foreign Arbitral Awards, Dec. 29, 1970, 21 U.S.T. 2517, implemented by 9 USCS §§ 201-208, and Twenty-first Amendment did not give state authority to disregard federal statutes or international treaties with respect to liquor business; consequently, forum selection clause was enforceable and district court erred in denying brewer's request to stay litigation while matter was arbitrated in Poland. Stawski Distrib. Co. v Browary Zywiec S.A. (2003, CA7 Ill) 349 F3d 1023, reh den, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 25407 and cert den (2004) 541 US 1010, 124 S Ct 2069, 158 L Ed 2d 620 and (criticized in John G. Ryan, Inc. v Molson USA, LLC (2005, ED NY) 2005 US Dist LEXIS 42973).

Although District of Columbia ordinance forbidding alcoholic beverage licensees from storing beverages outside District is facially inconsistent with commerce clause, it is constitutional as valid exercise of District's core power under Twenty-first Amendment. Milton S. Kronheim & Co. v District of Columbia (1996, App DC) 319 US App DC 389, 91 F3d 193, cert den (1997) 520 US 1186, 137 L Ed 2d 681, 117 S Ct 1468.

**III. PRACTICE AND PROCEDURE**

**29. Miscellaneous**

In contract case in which beer wholesaler appealed district court's dismissal of its case against Russian brewer based on forum selection clause in parties' agreement, wholesaler, on appeal, obliquely suggested that N.Y. Alco. Bev. Cont. Law § 55-c § 55-c was enacted pursuant to powers reserved to states under U.S. Const. Amend, XXI, to promote public's interest in fair, efficient and competitive distribution of malt beverage products via regulating relationship between brewer and distributor; wholesaler's contention concerning Twenty-first Amendment consisted of only one sentence, which was not sufficient to preserve argument for appellate review. S.K.I. Beer Corp. v Baltika Brewery (2010, CA2 NY) 612 F3d 705.