



Serving the Vending, Coffee Service and Foodservice Management Industries

January 18, 2008

## **LEGISLATIVE REVIEW AND 2008 OUTLOOK**

### **OVERVIEW**

Forty-four states, the U.S. Congress and Washington D.C. will hold regular legislative sessions this year. Unless special sessions are held state legislatures in Arkansas, Montana, North Dakota, Nevada, Oregon and Texas will not meet during 2008. More than 95,000 bills are expected to be introduced in 2008 along with more than 70,000 still carrying over from 2007. The number of bills dealing with food and beverage issues alone this year will exceed 3,000 across the country.

With economic conditions expected to weaken states will face budget concerns during 2008. Sales tax collections in particular could be a trouble spot and the vending industry could face particular challenges with tax and revenue bills this year. Other proposals on legislative agendas will deal with environmental issues, health concerns and consumer protection matters. The continued focus on obesity in America will result in more calls to prohibit trans-fats in food, label products for health reasons, and restrict items sold in schools or other locations.

For the vending industry coinage/currency, and safety and energy issues will also be featured on the legislative landscape.

### **COIN AND CURRENCY ISSUES**

#### Coin Legislation

Vending machines on federal property accepting nothing higher than the \$1 bill need not be modified to dispense dollar coins in change under recent legislation signed into law by President Bush. Public Law No. 110-147 became effective on December 21, 2007. Machines that accept bills greater than \$1 are still subject to \$1 coin dispensing guidelines.

Some agencies previously interpreted the Presidential Dollar Coin Act of 2005 to require all vending machines on federal property to dispense dollar coins. Modifying machines accepting nothing higher than the \$1 denomination to dispense dollar coins would have entailed millions of dollars in needless equipment costs. NAMA worked strongly with Treasury Department officials to clarify the scope of the 2005 law. And NAMA cooperated with members and other groups such as the American Beverage Association to support the 2007 statutory amendment.

H.R. 3956, known as the "Coin Modernization and Taxpayer Savings Act of 2007," remains

in the House Committee on Financial Services. This legislation would allow the Secretary of the Treasury to choose new, less expensive materials to make circulating coins. Changing the content of coins could cause expensive retooling for the industry. Working directly with Members of Congress, NAMA members and other interested parties, NAMA is seeking to amend this legislation to require the selection of new metals that will lead to no equipment modification costs to the industry.

### Currency Matters

A decision is expected in the first half of 2008 in the matter of *The American Council of the Blind v. Paulson*. NAMA has filed two amicus briefs on behalf of the vending industry in connection with this case, which was brought by the American Council of the Blind (ACB). The ACB argued that U.S. currency needed to be redesigned to eliminate discrimination against people with visual disabilities. A U.S. District Court agreed and NAMA's appellate brief supports a government request that this decision be overturned. Redesign of currency, particularly if the size is altered, would be very costly for the industry. About half of all paper money consists of \$1 bills. Changing the size of \$1 bills would require adjustment, if not replacement, of every bill acceptor in the field.

New \$5 bills will start appearing in commerce during March 2008. NAMA opposed redesigning the \$5 bill, but the Secret Service insisted the redesign was necessary because counterfeiters have been bleaching the \$5 bill white and overprinting the \$100 bill. Treasury officials have told us this is the last redesign of the \$5 bill. Operators can contact their equipment manufacturers for ways to modify bill acceptors, particularly older ones, to recognize the new \$5 notes.

Other currency developments may also affect how bills are accepted in vending equipment. The Bureau of Engraving and Printing will begin using new presses to print currency in the first half of 2008. These new presses will print currency faster and use less ink. However, some sample notes printed on the new presses have experienced unusually high rejection rates in bill validators. NAMA has been assured that the BEP is working with manufacturers to correct these problems before currency from the new presses is issued to the public.

## **SAFETY AND ENERGY**

### Safety Legislation

A bill currently pending in Congress would authorize the Consumer Product Safety Commission to issue a consumer product safety rule to help prevent injuries to users of vending machines. Representative Juanita Millender-McDonald (D-California) sponsored U.S. House Bill 1173. The legislation cites several injuries to children. Some of the injuries involved crane type amusement machines. Other injuries included 43 reported accidents resulting in personal injuries to the arms and hands of vending machine users, many of whom were children. The bill remains pending in the House Energy and Commerce Committee. NAMA will monitor this legislation closely.

## Energy

Proposed tax holidays for Energy Star products are being considered in some states - most recently in Pennsylvania. Because vending machines can now qualify as Energy Star products this presents an opportunity for vending to receive an energy "credit" for purchasing efficient equipment if the authorizing legislation includes commercial equipment. And some state utility companies may offer incentives. For example recently in Wisconsin utility companies offered cash incentives to encourage the use of energy efficient vending machines - \$100 per machine incentive for Energy Star vending machines or \$15 or \$60 for energy controls on snack machines or cold beverage machines.

The U.S. Department of Energy is in the process of establishing a rule to govern energy efficiency for refrigerated vending machines. NAMA is working to bring industry representatives together with government officials to develop a negotiated rule. An advanced rulemaking notice is expected next month.

Last year Texas enacted a measure requiring energy saving devices on certain vending machines located on state property. This requirement did not apply to a vending machine containing a perishable food product. If a machine located on state property has an internal energy saving device the operator is required to activate it. Other machines that operate with a compressor on state property are required to have external energy saving devices.

## **SALES TAX**

### General Changes

Various states changed their general sales tax rates during 2007 or for 2008. For example the Utah sales tax rate was reduced on January 1, 2008 from 4.75% to 4.65%. Other changes have included Maryland (from 5% to 6%), North Carolina (.25% increase made permanent), and South Carolina (from 5% to 6%).

### Vending Developments

NAMA and the California council are working to enact legislation that would remove the sales tax from vended sales of snacks and bottled water. This legislation is likely to face serious opposition because of revenue loss to the state and the budgetary issues California now faces.

Legislation to reduce the sales tax liability of Georgia vendors, and put them on an equal footing with convenience stores, is remains pending. NAMA and the Georgia state council are working to enact this legislation.

The state of Indiana recently considered statewide sales tax increases and early this year new legislation was introduced to provide an exemption for food sold through vending machines.

Special session legislation last year in Maryland would have added snack foods to the list of

taxable food products and repealed an existing provision exempting these foods when sold through vending machines. This legislation was opposed by NAMA and various other groups. It failed to pass.

In Michigan several proposals were made to eliminate the sales tax exemption for the sale of certain food in vending machines. NAMA worked with local vending operators along with the Michigan Distributors and Vendors Association to help defeat these proposals.

A new law in Tennessee reduces the state sales tax on food from 6% to 5.5%. For vending this decreases the rate on some food sales through vending machines.

Other legislative efforts have taken place in many states including Maine, Minnesota, New York, Washington and West Virginia.

### Snack or Candy Taxes

A special tax on candy sales was proposed in New Hampshire. The tax would have amounted to 50¢ per pound, with a proportional rate applied to packages of less than one pound. NAMA worked successfully with the National Confectioners Association and local interests in New Hampshire to defeat this tax.

### **WAGE/HOUR**

On May 25th President Bush signed the Small Business and Work Opportunity Act of 2007. The legislation provides for an increase in the federal minimum wage to \$6.55 per hour during July 2008. Next year the minimum wage again will increase to \$7.25 per hour.

Many states have their own minimum wage rates set higher than the federal standard. These states can be found by visiting the U.S. Department of Labor at <http://www.dol.gov/esa/minwage/america.htm#Illinois>.

Industry route drivers have generally been considered exempt from overtime provisions of the wage/hour law because the drivers were operating commercial motor vehicles in interstate commerce. Recently, federal requirements under the Unified Carrier Registration Act of 2005 were put into effect mandating that all motor carriers, including vending companies, who operate these commercial vehicles to register their trucks.

### **OBESITY AND HEALTH**

NAMA and the National Restaurant Association are closely watching legislation in Congress (HR 3895) which would require nutritional labeling on restaurant menus and signs on vending machines listing the calorie content of vended items. Maintaining accurate signs at all vending locations would be difficult and expensive. NAMA opposes the legislation and has asked members to

express their opposition to their Representatives.

Chicago recently imposed a new, first of its kind 5¢ tax on each bottle of water sold in the city. The tax took effect January 1st and several associations filed a lawsuit challenging its legality. NAMA worked locally with operator members, the Illinois Automatic Merchandising Council, and the associations bringing the lawsuit in responding to this tax. Members have been kept up to date with bulletins and we will continue to work with all parties and monitor the litigation carefully to support the plaintiffs in any way we can.

Several states considered bills to restrict the sale of certain food and drink products either in schools or on state property.

For example, legislation in California and Massachusetts would require vending machines in state buildings to contain healthy or natural snacks.

Legislation in Rhode Island has been approved. The new law requires all senior high schools that sell or distribute beverages and snacks on their premises, including when sold through a vending machine, to offer only healthier items effective January 1, 2008. This requirement already applies to elementary, middle and junior high schools.

Other bills to restrict certain products or vending machines in schools were introduced or remain pending in:

Iowa	Michigan
Illinois	Missouri
Kansas	New Jersey
Kentucky	New York
Massachusetts	Rhode Island

Another approach legislators used regarding the obesity and health issue was to ban foods containing saturated or trans-fat. Many cities and states considered this kind of legislation. Legislation is currently pending in California (AB 93) and Virginia (SB 124).

### **OTHER DEVELOPMENTS**

A bill was enacted in California relating to bottled water and increasing the water vending machine license fee.

Massachusetts legislation would require recycling containers to be placed within 10 feet of any vending machine selling beverages in recyclable containers. Whoever holds or applies for the license to operate the machine would be responsible for the recycling containers.

Height standards for vending machine controls, coin slots, bill acceptors and other operating mechanisms have come under renewed scrutiny in Pennsylvania. A local inspector in the Philadelphia area challenged the placement of vending equipment because the controls or

operating mechanisms on the equipment were higher than 48 inches from the ground. Several years ago standard setting agencies such as the American National Standards Institute and the U.S. Access Board lowered the height standard for controls and operating mechanisms in buildings and facilities from 54 inches to 48 inches. As a result of all this, a variance from this standard is now being sought in Pennsylvania.

Please refer questions or comments about this report to the NAMA Government Affairs Department or to one of our regional offices below.

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