

California State Senate  
Select Committee on

# California's Wine Industry



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Susan Boyd  
Principal Consultant

State Capitol  
Sacramento, CA 95814  
916.651.4334  
916.323.6958 fax

## Light Brown Apple Moth Threatens Grapes

A new exotic pest, the Light Brown Apple Moth (LBAM) has invaded portions of California. On March 22, 2007, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service confirmed the presence of the Light Brown Apple Moth in California and set in motion a comprehensive effort to detect, control, and eventually eradicate this pest.

Since then, this invasive species has been detected in areas of Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara and Santa Cruz counties. The moth is originally from Australia and has become established in New Zealand, New Caledonia, Hawaii and the British Isles. Its discovery in California is a first in North America. As an exotic pest species, it does not naturally occur here and has few if any natural enemies to control its population.

The LBAM is known to feed on over 250 different ornamental and native plant species. The pest destroys, stunts, or deforms young seedlings; spoils the appearance of ornamental plants; and injures deciduous fruit-tree crops, citrus and grapes. Damage to grapes occurs when the larvae construct silken shelters on the leaves and grapes and feed on the fruit.

In order to prevent the spread of the LBAM to other areas of California and the remainder of the continental United States, both the California Department of Food and Agriculture and the U. S. Department of Agriculture have established quarantines. The USDA quarantine restricts interstate movement of certain articles to prevent the spread of the moth. This quarantine encompasses all LBAM-affected counties of California. The CDFA quarantines plant products in the affected counties through a two-tiered approach which regulates the intra and interstate movement of host articles from quarantined areas based on inspection verifying that shipments do not harbor the pest.

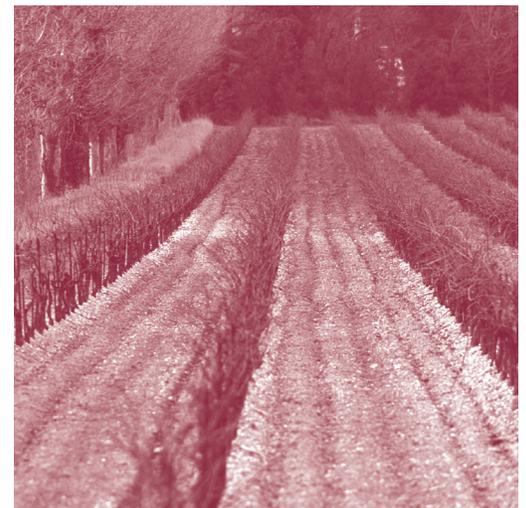
Emergency eradication, in addition to the quarantine action, has been started in two

cities to protect California from the negative economic and environmental impacts the establishment of this pest would cause. Beginning in June 2007, a ground spray of an organic formulation of the biological pesticide known as Bt (*Bacillus thuringiensis*) was applied in a small portion of the cities of Napa and Oakley.

*Bacillus thuringiensis* is a type of bacteria which is not pathogenic to humans, i.e., does not cause illness. This material is a naturally occurring biological insecticide that is registered in California and commonly used on organically grown fruits and vegetables. When an insect eats the bacteria or its spores, their digestive processes are disrupted and they soon die. This action is specific to susceptible insects and does not occur in mammals, including humans.

Urgency legislation has been introduced to create the Light Brown Apple Moth Program within the California Department of Food and Agriculture. The program includes requirements for an appropriate level of support staffing and logistical support for eradicating the Light Brown Apple Moth and the creation of an LBAM Account in the Department of Food and Agriculture Fund. SB 556 has passed the Senate and is moving through the Assembly.

For further information on the Light Brown Apple Moth access: <http://www.cdffa.ca.gov/>



# 2007 Legislation relating to the Wine Industry

**AB 87**-Requires all wines produced or bottled from any sub-appellation located within the current "Paso Robles" appellation to carry the designation "Paso Robles" on the label.

**AB 233**-Healthy Heart and Lung Act: Enhances efforts to control and reduce the emissions of particulate matter and other pollutants from diesel-powered engines.

**AB 323**-Allows brand owners that hold certain wholesale/retail licenses (17/20) to donate and pour wine at nonprofit fundraising events.

**AB 345**-Requires the State Board of Equalization to calculate the total amount of all surtaxes, interest, and penalties that would be collected as a result of a reclassification of any alcoholic beverage from beer to a distilled spirit (flavored malt beverage).

**AB 346**-Requires the ABC to determine if the design of any malt beverage container sold within this state can be visually confused with a container for a beverage that does not contain alcohol and promulgate labeling regulations.

**AB 413**-Requires an applicant for a retail license to sell alcoholic beverages to mail notifications to residents and owners of real property via a method that offers proof of mailing.

**AB 541**-Provides that the release, by a manufacturer, of a genetically engineered plant material, shall constitute a private nuisance for which the manufacturer may be liable for damages and other costs.

**AB 892**-Provides that a wine is entitled to the appellation of origin "California," or a geographical subdivision, if the wine meets specified criteria, including the requirement that 100% of the wine's volume is derived from fermented juice of fruit grown in California, and the wine has been fully produced and finished within the state.

**AB 951**-Prohibits possession of alcoholic beverages whether open or closed, on non-motorized vessels along the American River in Sacramento between the Hazel Avenue and Watt Avenue bridges during three summer holiday periods -Memorial Day, 4th of July, and Labor Day.

**AB 960**-Provides local governments the ability to phase out liquor stores through the amortization process.

**AB 982**-Permits a distilled spirits wholesaler to purchase the advertising space and time from an on-sale retail licensee subject to existing tied-house exceptions for an auditorium, a theme or amusement park, an enclosed theater, or an arena.

**AB 1100**-Requires manufacturers or producers of food for human consumption that contain any product from a cloned animal to clearly label the food indicating that the food includes the product of a cloned animal.

**AB 1445**-Expands the permitted services relating to the rotating, restocking, and rearranging of alcoholic beverages.

**AB 1479**-Provides that, when the ABC chooses to delegate its power to an administrative law judge for a hearing, the licensee shall have the right to reject the ABC's administrative law judge selection, and instead have an administrative law judge appointed by the Office of Administrative Hearings.

**AB 1569**-Prohibits insurers from taking possession of and selling any beer whose containers have been damaged.

**AB 1596**-Requires the ABC to prepare and submit a report to the Legislature by June 30, 2008, regarding enforcement staffing levels for district offices, including recommendations on funding levels necessary to support appropriate enforcement staffing levels.

**AB 1598**-Allows culinary arts programs at California community colleges to buy, use, sell or consume wine or beer as part of a sponsored dinner, course instruction, or meal demonstration.

**AB 1657**-Makes it an alternate felony/misdemeanor, rather than a misdemeanor, to furnish alcohol to a minor who thereafter causes death or great bodily injury.

**AB 1658**-Increases various fines for persons convicted of furnishing, selling or giving an alcoholic beverage to a person under the age of 21.

**SB 63**-Requires food for human consumption that contains any product from a cloned animal be labeled to indicate that the food includes the product of a cloned animal.

**SB 108**-Modifies an existing law that allows wine orders to be taken at wine tasting events held by specified nonprofit organizations to include three additional types of nonprofit organizations: civic leagues, social organizations and voluntary employees' beneficiary associations.

**SB 120**-Requires restaurants with nine or more locations to print certain nutritional information on their menus. Alcoholic beverages are exempt.

**SB 169**-Establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

**SB 180**-Permits agricultural employees to select a labor union representative by utilizing representation cards (card check) signed by a majority of the bargaining unit.

**SB 297**-Allows counties, upon voter approval, to levy a tax up to 5% on the purchase of on-sale alcohol.

**SB 351**-Creates a tied-house exception to allow any alcoholic beverage manufacturer or importer to purchase advertising space and time at specified arenas and stadiums in California for a "designated driver program".

# Retailer Shipping to Consumer Explored

On May 31, 2007 the Senate Select Committee on California's Wine Industry held a hearing at the State Capitol: "Granholtm v. Heald" and Beyond: Wine Retailer Direct-to-Consumer Shipping.

"Granholtm v. Heald" was decided by the United States Supreme Court on May 16, 2005. The Granholtm decision was about discrimination. The Court said that the states could not discriminate against out-of-state wineries. In other words, shipping of wine to consumers by winegrowers must be treated equally both intrastate and interstate. This decision started an evolution that has become a revolution in the wine industry across the nation.

January 1, 2006, SB 118 became law in California in response to the Granholtm decision. SB 118 continued the current privilege of direct to California consumer sales by in-state wineries, while allowing out-of-state wineries to obtain a permit in order to sell directly to adult California residents.

Although the Granholtm decision was specific to the product of wine and specifically addressed discrimination related to winegrowers or wineproducers, many believe that this same methodology should allow out-of-state retailers to ship directly to consumers.

Since the passage of SB 118, the California Department of Alcoholic Beverage Control has been sued by several consumers and retailers who believe California law should be broader. The hearing explored the emerging trends in light of the current stay issued by the court in the California retailer case.

Tracy K. Genesen, Partner, Kirkland & Ellis and Counsel to the Specialty Wine Retailers Association, began the hearing with a historical perspective of Granholtm v. Heald and advocated for legislation to permit out-of-state retailers to ship directly to California consumers.

Steve Gross, State Relations Manager for the Wine Institute, discussed related legislation across the nation.

Steve Hardy, Director, John Pierce, Chief Counsel, and Matthew Botting, Staff Counsel, California Department of Alcoholic Beverage Control, addressed their remarks to the current statutes and the pending litigation.

David Richards, Executive Vice President, Beverages & More and Lawrence Dutra, President, Adams Wine Group, supported the Specialty Wine Retailers Association's position of opening California's consumer markets.

Craig Wolf, President and CEO, Wine and Spirits Wholesalers of America, testified regarding the hazards of allowing direct to consumer shipping of wine, emphasizing youth access.

Fred Reno, President, Henry Wine Group and Alan Rath, a California consumer, concluded the hearing with a plea to free the market to allow consumers more choices.

For a copy of the transcript report of the hearing, fax a request to Susan Boyd (916) 323-6958 or email [susan.boyd@sen.ca.gov](mailto:susan.boyd@sen.ca.gov).



## Legislation *continued from page 2*

**SB 450**-Authorizes the ABC to extend the current 30 day waiting period affecting the issuance or transfer of a liquor license for a period not-to-exceed 20 days upon written request of any local government agency. Requires a licensee to prominently display signage providing contact information for local law enforcement and the ABC's district office for purposes of reporting possible violations by the licensee.

**SB 556**-Creates the Light Brown Apple Moth Program in the Department of Food and Agriculture.

**SB 574**-Establishes a framework to determine fair market value to be paid to an existing beer wholesaler by a successor beer wholesaler when distribution rights to a brand are canceled and that right is granted to a successor beer wholesaler.

**SB 634**-Requires the city or county to deny a proposed subdivision of Williamson Act-contracted land unless the city council or county board of supervisors makes certain findings.

**SB 696**-Enables restricted service lodging establishments to sell beer and wine to their guests from food sale areas for consumption by guests on the premises.

**SB 762**-Authorizes the ABC to issue 10 new original on-sale general licenses for bona fide public eating places at Mammoth Mountain Ski Area in the County of Mono.

**SB 995**-Allows off-sale retail locations to do instructional tastings for consumers on site.



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## Information

### Informative Wine Industry Websites include:

California Department of Food and Agriculture  
[www.cdfa.ca.gov](http://www.cdfa.ca.gov)

California Association of Winegrape Growers  
[www.cawg.org](http://www.cawg.org)

Family Winemakers of California  
[www.familywinemakers.org](http://www.familywinemakers.org)

Wine Institute  
[www.wineinstitute.org](http://www.wineinstitute.org)

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