

## February 2017 Legal & Legislative Update

### A. FEDERAL / NATIONAL / INTERNATIONAL

#### **Craft Beverage Modernization and Tax Reform Act**

The Craft Beverage Modernization and Tax Reform Act ([S. 236/H.R. 747](#)) was reintroduced in both chambers of the 115<sup>th</sup> Congress. Initial sponsors total 12 in the U.S. Senate and 13 in the U.S. House of Representatives. Specific tax provisions of the bill include: reducing the federal excise tax to \$3.50 per barrel on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels annually; reducing the federal excise tax to \$16 per barrel on the first 6 million barrels for all other brewers and all beer importers; keeping the excise tax at the current \$18 per barrel rate for barrelage over 6 million.

The Craft Modernization and Tax Reform Act would also ease a number of burdens for brewers, including simplifying label approvals and repealing unnecessary inventory restrictions.

#### **TTB Adjusts Alcoholic Beverage Labeling Act Penalty for Inflation**

The Alcoholic Beverage Labeling Act of 1988 (ABLA) requires a government health warning statement to appear on all containers of alcoholic beverages sold or distributed in the United States. ABLA provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than \$10,000, with each day constituting a separate offense. The Federal Civil Penalties Inflation Adjustment Act of 1990 requires agencies to make periodic cost-of-living adjustments to civil monetary penalties and as such, TTB published the latest [civil monetary penalty adjustment notification](#), adjusting the maximum penalty for ABLA violations from \$19,787 to \$20,111, per offense.

### B. THE COURTS

#### **Challenge to Missouri's Alcohol Advertising Regulations Upheld**

The U.S. Court of Appeals for the Eighth Circuit [reversed](#) a district court's dismissal of a suit brought by the Missouri Broadcasters Association (MBA) claiming that a Missouri statute and two regulations restricting alcohol advertising are unconstitutional under the First Amendment. MBA claimed that these restrictive provisions "prevent consumers from receiving truthful information in advertising. Specifically, although retailers can offer price discounts and promotions on alcoholic beverages, these laws keep citizens from learning about those discounts in advance, through radio, television, and newspaper ads."

### C. THE STATES

#### **Sales, Distribution and Franchise:**

Connecticut

A trio of bills, [House Bill 6412](#), House Bill 6415 and House Bill 6562, seek the removal of the nine-liter limit of beer that may be sold per person, per day.

### **Florida**

[S.B. 554](#) would allow breweries under 3,500 barrels annual production and without a franchise agreement with a distributor to sell and deliver kegs to vendors under certain conditions.

### **Georgia**

[Senate Bill 17](#) seeks to allow governing authorities of counties and municipalities to authorize sales of alcoholic beverages during a certain time on Sundays.

[Senate Bill 85](#) would allow breweries to sell up to 3,000 barrels of the beer they manufacture to consumers for both on and off premise consumption (the latter limited to 288 ounces per person, per day).

### **Indiana**

[H.B. 1231](#) would allow a small brewer to sell the brewery's beer for carryout at a farmers' market; package the brewery's beer in a building separate from the brewery; transfer beer to another brewer; employ a minor who is a family member in a capacity that does not involve the sale or serving of alcoholic beverages; manufacture and sell hard cider to the same extent as beer.

While placing certain restrictions on carryout sales of cold alcoholic beverages, [House Bill 1354](#) specifically exempts farm wineries, breweries, artisan distillers from those restrictions.

### **Maine**

[Senate Bill 129](#) clarifies existing law that permits a person that is licensed to manufacture malt liquor, wine or spirits at a facility in the State to sell the product that person produces from the manufacturing facility for off-premises consumption without having to get a separate off-premises retail license. The bill specifies that the location of the manufacturing facility where off-premises sales of the manufacturer's product occur is not required to be accessed by a separate entrance from the area of the facility that is licensed to serve alcoholic beverages for on-premises consumption.

### **Maryland**

[House Bill 1420](#) establishes a class 10 modern brewery license which, among other provisions, would allow the holder to sell annually up to 4,000 barrels of beer brewed by the license holder for on-premises consumption. The bill also addresses off-premises sales, sampling and events.

### **Massachusetts**

[S.D. 1687](#) holds that, regardless of whether or not the parties have entered into a written agreement, relationships between a malt beverage supplier and a wholesaler shall be governed by the parties' agreement, the law of contracts, and/or other generally-applicable provisions and principles of commercial law.

Distributor-backed legislation (H.D. 3525) would allow brewers under 30,000 barrels annual production to terminate distributors without cause.

H.D.1319 provides for the termination of a distributor in the absence of good cause by small brewer suppliers that are 20% or less of the wholesaler's total sales in the prior calendar year preceding any refusal to sell, with binding arbitration resolving any dispute over whether a small brewer relationship exists.

State Treasurer Deb Goldberg has convened an [Alcohol Task Force](#) to examine the legal and regulatory framework governing the alcoholic beverage industry and make recommendations to improve alcohol regulation.

### **Michigan**

Approved by the Governor, [S.B. 973](#) amends the Michigan Liquor Control Code to expand the kinds of businesses that are legally allowed to fill beer growlers. Specifically, it would allow a person holding both a specially designated merchant (SMD) license and a specially designated distributor (SDD) license to fill and sell growlers with beer for off-premises consumption.

Signed into law, a [substitute bill](#) for Senate Bill 1088 addresses issues relating to retailers using third party services via internet or mobile application to facilitate the sale and delivery of beer and wine to a consumer.

### **Mississippi**

Passing the House, [House Bill 1322](#) would authorize small craft breweries (annual production up to 60,000 barrels) to sell beer they produce on the premises of the brewery for both on and off premises consumption, limited to 10 percent of annual production or 1,500 barrels, whichever is less. Additionally, a daily limit of 576 ounces to any one individual is imposed on beer sold for off premise consumption. Small craft breweries would be able to retain these retail privileges in the event they are acquired by a non-small craft brewery. For brewpubs, the annual volume cap on production is raised by 15,000 (from 60,000 to 75,000 gallons) and growler sales are authorized.

### **Nebraska**

[L.B. 632](#) requires that a craft brewery licensee wholly own any of the craft brewery's satellite locations and that there be production at each of those five locations. Current retail satellite locations that are wholly owned or partially owned would be grandfathered in. The bill also requires that when the wholesaler delivers beer from the craft brewer, that the beer must move through the wholesaler's warehouse (at rest provision).

### **New Jersey**

Reported from committee, [Senate Bill 1334](#), allowing the holder of a limited or restricted brewery license to sell beer in growlers at a seasonal farm market, was amended and reported from committee. The amendments establish that only 32, 64, or 128 ounce growler containers are to be sold and to limit the offering of samples to four three-ounce samples of beer per person of legal age per day.

## **New Mexico**

[House Bill 51](#) seeks to amend the liquor control act to create retail reciprocity among craft distillers, small brewers and winegrowers.

## **North Carolina**

[House Bill 67](#) seeks to increase the self-distribution allowance to 100,000 barrels from the current 25,000.

## **North Dakota**

Failing to pass the Senate, [S.B. 2137](#) sought to allow brewpubs and brewer taproom license holders the ability to transfer beer between other brewpubs and taprooms under common ownership.

## **Oregon**

[House Bill 2160](#) would allow brewery-public house licensees to also hold off-premises sales licenses.

## **Texas**

[House Bill 908](#) would allow retailers to sell draft beer for off-premise consumption in securely sealed containers that are either reusable or single-use, i.e. crowlers.

## **Wyoming**

Under Senate consideration after being amended in the House, [House Bill 96](#) authorizes holders of a microbrewery permit to dispense malt beverages in areas adjacent to its site.

## **Taxation:**

### **Kansas**

Governor Brownback's [proposed budget](#) would double the liquor enforcement tax to 16 percent.

### **Massachusetts**

[S.D. 138](#) seeks to triple the excise tax on beer.

### **New Hampshire**

Failing to pass House committee, [House Bill 496](#) sought to increase the tax applied to each gallon of beer sold or transferred, by \$0.20, from \$0.30 to \$0.50.

[H.B. 161](#) would require beverage manufacturer licensees to pay the beer tax on beverages sold at farmers' markets.

### **New Mexico**

[Senate Bill 314](#) seeks to raise excise taxes on alcoholic beverages, with the rate for beer increasing from 41 cents/gallon to \$3.08/gallon for breweries that produce more than fifteen thousand barrels a year.

## **New York**

[Senate Bill 1827](#) would require the commissioner of taxation and finance to allow distillers and brewers to file their taxes electronically.

[S.B. 3387](#) would exempt certain item used at tastings from the compensating use tax held by a licensed brewery, farm brewery, cider producer, farm cidery, distillery or farm distillery.

## **Pennsylvania**

Governor Tom Wolf's budget proposal contains \$5 million in tax credits to brewers providing a maximum annual credit of \$200,000 for capital improvement expenditures made after June 30, 2017.

## **Virginia**

Under House consideration after Senate passage, [Senate Bill 798](#) provides an income tax subtraction, for purposes of computing Virginia adjusted gross income, for the income attributable to the sale of crops grown by a farmer to a brewery licensed in Virginia.

## **Wyoming**

Two bills, [House Bill 155](#) and [House Bill 166](#), which sought to significantly raise the excise taxes on alcohol beverages have failed to advance.

## **Trade Practice & Other:**

### **California**

The state Alcoholic Beverage Control (ABC) reached a pre-hearing resolution to the alleged provision of refrigerators, coolers and draft systems to retailers by California wholesaler Straub Distributing.

### **Connecticut**

[House Bill 5928](#) seeks to promote the growing of hops and barley in Connecticut by creating a farm brewery manufacturer permit.

[H.B. 5932](#) would remove the label requirement for alcoholic beverages manufactured and sold only in the state of Connecticut.

[House Bill 5938](#) would exempt craft beer manufactured in-state and sold in-state from state labeling requirements, provided such craft beer is in compliance with all applicable federal regulations.

### **Hawaii**

[Senate Bill 18](#) seeks to lower the allowable blood alcohol content (BAC) from .08 to .05.

### **Iowa**

[Final recommendations](#) from a working group spearheaded by the State Alcoholic Beverages Division and appointed by the Governor to review and suggest changes to state liquor laws has

been released, simplifying the brewery permitting process and allowing brewpubs to sell growlers for off premise consumption without the need to first sell that beer to a distributor and then buy it back. Any other packaged beer would still need to move through a distributor before being sold for off premise consumption.

### **Kentucky**

[House Bill 133](#) seeks to permit brewers and distributors to extend credit to retail licensees on the purchase of malt beverages for a period not to exceed 30 days from the date of invoice.

### **Maine**

[House Bill 388](#) amends current law that allows a person licensed for retail sale of wine or malt liquor for off-premises consumption to conduct tastings on the licensee's premises if the licensee stocks at least 125 different labels of wine or 100 different labels of malt liquor by removing the minimum stock requirements.

[S.B. 142](#) amends current law that allows a brewery, winery or wholesaler to provide to a retail licensee samples of products, limited to 9 gallons of malt liquor and 9 liters of wine annually by increasing the annual limit to 18 gallons of malt liquor and 18 liters of wine.

### **Maryland**

Companion bills [House Bill 71](#) and Senate Bill 210 authorize the holder of a Class 8 Farm Brewery license to sell or serve any type of food (instead of only specified types of food) if the license holder is also licensed to operate a food establishment in the state.

### **Missouri**

[H.B. 494](#) seeks to allow manufacturers of beer and wine to offer consumer cash rebate coupons. Currently, only manufacturers of intoxicating liquor other than beer or wine can offer such coupons. The bill specifies that a wholesaler cannot directly or indirectly fund the cost of any cash rebate coupon provided by manufacturers of intoxicating liquor, beer, or wine.

### **Nebraska**

[L.B. 254](#) would permit the transfer and serving of homebrew at events, homebrew shops, and club meetings.

### **New Hampshire**

[House Bill 98](#) authorizes brew pubs to manufacture alcoholic cider.

### **New Jersey**

Companions [A.B. 4559](#) and S.B. 2948 would permit the issuance of a craft distillery license to the holder of a limited brewery license, restricted brewery license, plenary winery license, or farm winery license, for use on the same licensed premises.

### **New York**

[Senate Bill 2481](#) would add sales for on premise consumption to already existing abilities to offer tastings and off premise consumption sales of New York state labelled beer manufactured by a licensed brewer or licensed farm brewery.

**Tennessee**

Companion bills [H.B. 499](#) and S.B. 502 redefine beer as having alcoholic content of up to 18 percent by volume (current definition is up to 8 per cent by weight).

**Utah**

[House Bill 155](#) seeks to lower the allowable blood alcohol content (BAC) from .08 to .05.

**Virginia**

Dying in committee, [Senate Bill 1357](#) sought to increase the amount allowed to be spent on the purchase of alcoholic beverages used in a tasting conducted by manufacturers, wine and beer wholesalers, and authorized representatives from \$100 to \$250.

Failing to pass committee, [Senate Bill 1358](#) sought to provide that point of sale advertising materials provided by a manufacturer or its authorized vendor or a wholesale wine and beer licensee to a retail licensee may be made of wood or metal and increases from \$40 per item to \$100 per item the maximum wholesale value of such materials. The bill also provides that no wholesaler or retail licensee shall be required by agreement or otherwise to pay for such advertising materials.

Reported from House committee after passing the Senate, [Senate Bill 1469](#) provides for a single original metal can in the list of allowable disposable containers that a beer licensee, a wine and beer licensee, and certain mixed beverage licensees may use to sell alcoholic beverages.

**Washington**

[House Bill 1701](#) seeks to lower the allowable blood alcohol content (BAC) from .08 to .05.