

April 2018 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

DOJ Clarifies ABI-SABMiller Proposed Final Judgment

Since the October 2016 Anheuser-Busch InBev (ABI) acquisition of SABMiller, the Department of Justice (DOJ) has been working with ABI on approval of the Proposed Final Judgment (PFJ) and has now [clarified the “best efforts” clause](#) in the PFJ which was the subject of several *amicus curiae* (friends of the court) filings, including by the Brewers Association, expressing concerns that the best efforts language did not adequately protect the public from anticompetitive practices by ABI.

B. THE COURTS

Texas Craft Brewer Challenge Denied

A federal district court in Texas issued [an opinion](#) in *Deep Ellum Brewing, LLC, et al. v. Texas Alcoholic Beverage Commission*, upholding Texas’ prohibition on sales of beer by brewers to consumers for off-premises consumption.

C. THE STATES

Sales, Distribution and Franchise:

Alabama

Signed by the Governor, [H.B. 303](#) exempts tasting rooms from a law prohibiting manufacturers from selling alcohol between 9 PM Saturday and 2 AM Monday.

California

[Senate Bill 1283](#) seeks to authorize a brewpub-restaurant licensee to label, bottle, package, or refill any container with beer produced on the licensed premises, to sell beer produced by the licensee for consumption off the premises, as provided, and to give or sell beer manufactured by the licensee to specified nonprofit organizations.

Connecticut

[House Bill 5036](#) would, among various provisions, remove the nine liter off premise sales limit currently imposed on farm breweries.

Illinois

Rereferred to committee, [H.B. 4897](#) seeks to allow a brewer, class 1 brewer, or class 2 brewer to sell beer manufactured by any other brewer, class 1 brewer, or class 2 brewer to non-licensees and to sell cider. An amendment has been proposed in committee to include a provision

authorizing the transfer of up to 30,000 barrels of beer manufactured by that class 1 brewer to the premises of a licensed class 1 brewer wholly owned and operated by the same licensee.

Kentucky

Signed by the Governor, [H.B. 136](#) proposes numerous changes to retail sales by microbreweries and to distribution and shipping of malt beverages. It would also require microbreweries to report and pay taxes on wholesale sales made directly to consumers.

Maryland

Failing to clear committee, The Reform on Tap Act of 2018 ([H.B. 518](#)) sought to provide for: no limits for Class 5 or Class 7 brewery taproom sales; no limits for take-home sales; no limits on production of beer; no tour or special events requirements for Class 5 take-home sales; repeals the “buy-back” provision for Class 5 taproom sales; hours of taproom operations to be determined by local governments; brewers producing less than 300,000 barrels of beer annually are not subject to franchise laws; unlimited self-distribution permitted for brewers producing less than 300,000 barrels of beer annually; contract brewing is permitted; lifts taproom sale restrictions on contract brewed beer; establishes a two-year provisional license for start-up brewers who are contracting beer.

Withdrawn from consideration, [H.B. 1052](#) sought, among a variety of provisions, to reduce the number of barrels a Class 5 brewery could sell for on-site consumption from 2,000 to 500 (although this restriction would not apply to a brewery producing 1 million or more barrels) and to repeal the ability to contract brew.

Massachusetts

Rereferred to committee, [S.B. 136](#) seeks to restore contract rights to craft brewers.

New Hampshire

Passing the Senate, [S.B. 418](#) allows beverage manufacturers and nano breweries to sell one sample per label and two pints per person for consumption on premises with a maximum of 48 ounces per person.

South Dakota

Signed into law, [Senate Bill 173](#) raises the production cap on microbreweries to 30,000 barrels under which a manufacturer may maintain on-site sales rights. Additionally, a licensed microbrewery may self-distribute 1,500 barrels annually, may hold on the licensed premises an artisan distiller license, a farm winery license, or a microcidery license, may operate additional locations and may transfer beer between those locations without regard to the self-distribution limitation.

Vermont

Under Senate consideration following House passage, [H.B. 710](#) would create an exception to the beer franchise law for certificate of approval holders and manufacturers of malt beverages that manufacture or distribute not more than 50,000 barrels of malt beverages and whose products comprise three percent or less of the wholesale dealer’s total annual sales of malt beverages by volume.

Virginia

Signed by the Governor, [Senate Bill 695](#) creates an internet beer retailer license, which would authorize persons located within or outside the Commonwealth to sell and ship beer in closed containers to persons in the Commonwealth to whom beer may be lawfully sold for off-premises consumption. Such licensee shall not be required to comply with the monthly food sale requirement.

Taxation:

Hawaii

Amended in the Senate following House passage, [H.B. 2656](#) establishes a small craft beer producer income tax credit.

Trade Practice & Other:

Alabama

Becoming law without the Governor's approval, [H.B. 414](#) would create a new nonprofit special events retail license and allows manufacturers to donate up to 31 gallons of beer and up to two cases of table wine to a nonprofit.

California

Amended in committee, [A.B. 2573](#) would authorize a beer manufacturer, as defined, to furnish, give, rent, loan, or sell advertising specialties to an on-sale retail licensee, subject to specified conditions. The bill would prohibit an on-sale retail licensee that was furnished or given advertising specialties free of charge from selling those advertising specialties.

Florida

Signed into law, [House Bill 961](#) seeks to provide that a vendor may accept glassware from a distributor, at no charge, subject to the following conditions: the distributor received the glassware at no direct or indirect charge from a malt beverage manufacturer, importer, brand owner or registrant of malt beverage, or any broker, sales agent, or sales person thereof; the glassware prominently and permanently advertises a brand name; the distributor does not give the vendor more than 10 cases per calendar year per licensed premises; the vendor does not sell the glassware or return it to a distributor for cash, credit, or replacement; manufacturers and importers provide a no-charge invoice when glassware is given to a distributor; records relating to the sale or gift of glassware between industry members be kept for three years and that copies be provided under certain circumstances. The bill provides definitions as follows: a "case" means a box containing up to 24 pieces of glassware; "glassware" means a glass container that holds up to 23 fluid ounces.

Hawaii

Amended in the Senate, [House Bill 2411](#) clarifies that a class 14 brewpub licensee or class 18 small craft producer pub licensee may conduct liquor sales at multiple, appropriately licensed

premises; specifies that brewpubs and small craft producer pubs may sell malt beverages in growlers that may be recyclable containers and do not exceed one gallon; permits direct shipment of spirits and beer to customers under the same conditions as currently permitted for direct shipment of wine; and provides that a class 18 small craft producer pub licensee is permitted to manufacture not more than one hundred twenty-five thousand, rather than one hundred thousand, barrels of malt beverages on the licensee's premises during the license year

Amended in the House, [Senate Bill 2711](#) would authorize brewpub and small craft producer pub licensees to conduct liquor sales at multiple appropriately licensed premises statewide.

Additionally, it seeks to increase the maximum amount that a small craft producer pub licensee can manufacture from 60,000 barrels of malt beverage to 350,000 barrels of malt beverage statewide, provided that no single location manufactures more than 125,000 barrels of malt beverage; allow brewpubs and small craft producer pub licensees to sell malt beverages in growlers that may be recyclable containers of up to one gallon; and permit direct shipping of malt beverages and spirits under the same conditions as are currently permitted for direct shipment of wine.

Amended in the Senate following House passage, [House Bill 2410](#) would allow brewpub and small craft producer pub licensees to allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

Kansas

Amended in and passed by the Senate, [House Bill 2470](#) would allow microbreweries within the state of Kansas to contract with other microbreweries for production and packaging of beer and hard cider. The House did not agree to the Senate amendments and a conference committee has been appointed.

Maryland

Passing the Senate, [S.B. 956](#) establishes the Maryland Beer and Brewery Promotion Program and Fund to provide grants to eligible applicants designed to promote Maryland beer, assist Maryland breweries, and educate the public about brewing in Maryland.

New Hampshire

Amended prior to House passage, [House Bill 1578](#) allows nano brewery licensees to distribute samples at a wine manufacturer's facility for an annual fee.

Rhode Island

Failing to pass committee, [S.B. 2251](#) seeks to reduce the alcoholic beverage manufacturing and wholesale licensing fee from \$3,000 to \$500.

Utah

Failing to pass committee, [House Bill 345](#) seeks to delay the effective date of the reduction of the blood alcohol concentration limit from .08 to .05 until December 30, 2019.

Washington

Signed into law, [H.B. 2517](#) requires the Liquor and Cannabis Board (LCB) to adopt, by rule, a schedule of penalties applicable to a licensed alcohol manufacturer who has committed a regulatory violation as part of the licensee's activities involving the public and relating to serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license, or serving alcohol with a special occasion license and provides that the schedule of penalties may not include the suspension, revocation, or cancellation of an alcohol manufacturer's license.