

## May 2018 Legal & Legislative Update

### A. FEDERAL / NATIONAL / INTERNATIONAL

#### **American Craft Beer Week Recognized in Congress**

[House Resolution 884](#), introduced by the Congressional House Small Brewers Caucus chairs Representatives Peter DeFazio (D-OR), Mike Kelly (R-PA), Richard Neal (D-MA) and Patrick McHenry (R-NC), expresses appreciation for the goals of American Craft Beer Week (May 14-20, 2018) and recognizes the economic and community contributions of small and independent brewers.

#### **BA, NBWA Seek Hearing on ABI-SABMiller Proposed Final Judgment**

The Brewers Association (BA) and the National Beer Wholesalers Association (NBWA) have filed a joint Reply Brief in the matter of the Anheuser-Busch InBev (ABI) acquisition of SABMiller stating that the Department of Justice (DOJ) has inadequately addressed competitive concerns raised in previous amicus filings by BA and NBWA and requesting a hearing be held before the Proposed Final Judgment is finalized.

#### **TTB Accepts Record Offer in Compromise for Trade Practice Violations**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has [accepted](#) a \$900,000 offer in compromise from Warsteiner Importers Agency Inc. for alleged violations of the trade practice provisions of the Federal Alcohol Administration (FAA) Act, the largest single offer in compromise for trade practice violations accepted by TTB to date.

#### **FDA Issues Final Menu Labeling Guidance**

With the arrival of the compliance date for menu labeling, The Food and Drug Administration (FDA) has issued [final supplemental guidance](#) for industry that addresses public and stakeholder comments and expands upon the draft version issued in November 2017. Alcohol is covered in section 10 of the guidance document. The menu labeling requirements apply to restaurants and similar retail food establishments that are part of a chain with 20 or more locations. In addition, they must be doing business under the same name and offering for sale substantially the same menu items. Covered establishments must disclose the number of calories contained in standard items on menus and menu boards. Businesses must also provide, upon request, the following written nutrition information for standard menu items: total calories; total fat; saturated fat; trans fat; cholesterol; sodium; total carbohydrates; sugars; fiber; and protein. Complete information on the requirements are posted on the [FDA web site](#).

### B. THE STATES

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

Alaska

Failing to pass House committee consideration, [S. B. 76](#) sought comprehensive updates to alcohol beverage laws. The bill was amended in the House to include the provision that ultimately killed it, one which called for a reduction in the amount of beer a brewery can serve a customer, from 36 ounces to 24 ounces.

### **California**

Amended in committee, [Senate Bill 1283](#) authorizes a brewpub-restaurant licensee to: label, bottle, package, or refill any container with beer produced on their licensed premises and may, at the licensed premises, sell beer produced and packaged by the licensee to consumers for consumption off the premises; donate or sell beer produced by the licensee to a nonprofit, which beer shall not count in the calculation of minimum amounts of beer required to be produced by a brewpub-restaurant licensee; have a minimum seven-barrel commercial brewing system located permanently onsite that is capable of producing at least seven barrels of beer per brewing cycle and increases the minimum amount to be manufactured by the licensee from 100 to 200 barrels.

### **Colorado**

Passed by the legislature, [Senate Bill 243](#) lays out the conditions under which grocery and convenience stores will sell full-strength beer effective in 2019.

### **Delaware**

Before the Governor for action, [House Bill 373](#) would allow craft distilleries, breweries, and wineries the ability to sell products produced by other Delaware craft distilleries, breweries, and wineries for on-site consumption, only. The products sold must be purchased through the existing three-tier system (i.e., wholesalers or traditional retailers).

### **Louisiana**

Withdrawn from committee consideration, [S.B. 492](#) sought to allow those nineteen to twenty-one years of age to purchase alcohol under a certificate program that would require parental permission and the completion of educational course.

### **Michigan**

[S.B. 969](#) seeks to prohibit the use, possession, and sale of marijuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits.

### **Vermont**

Sent to the Governor for action, [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.

## **Taxation:**

### **Hawaii**

Failing to advance from a House-Senate conference committee, [H.B. 2656](#) sought to establish a small craft beer producer income tax credit.

## **Trade Practice & Other:**

### **California**

Further amended in committee, [A.B. 2573](#) would allow a retailer to accept up to 10 cases of glassware provided at no cost from beer manufacturers per year. No beer manufacturer may give more than 5 cases per retailer.

### **Hawaii**

Dying at the close of the session, [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.

On the Governor's desk for action, [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**

Signed by the Governor, [H.B. 2470](#) allows microbreweries to contract with other microbreweries for production and packaging of beer and hard cider; provides for the sale of domestic beer in refillable containers; allows licensed microbrewers in the state to produce beer containing up to 15.0 percent alcohol by weight; increases the number of hours that microbreweries may sell beer on Sundays; and allows self-service beer from automated machines.

### **Massachusetts**

The state Alcoholic Beverages Control Commission (ABCC) has handed down a decision absolving wholesaler August A. Busch & Co. (a wholly-owned subsidiary of brewer Anheuser-Busch) from a charge of violating the prohibition on giving a thing of value to a retail account. At issue were coolers and draught towers ordered and paid for by Anheuser-Busch, but facilitated by the wholesaler. ABCC found that, as Anheuser-Busch retained ownership throughout, the wholesaler was not in violation.

### **Michigan**

Before the Governor for action, [H.B. 4667](#) renames the Grape and Wine Industry Council as the Michigan Craft Beverage Council and requires the Council to direct the Department of Agriculture and Rural Development to award grants for research into fruits used in winemaking and wines, hops, barley, beer, and spirits.

### **New Hampshire**

Passed by both chambers of the legislature, [House Bill 1720](#) allows a beverage manufacturer in a contract brewing arrangement to store beverages produced by the contract brewer at its facility.

**Oklahoma**

Signed into law, [Senate Bill 1333](#) modifies the definition of “small brewer” to mean a brewer who manufactures less than 65,000 barrels of beer annually. Previously, a “small brewer” was defined as one who produced less than 25,000 barrels annually.