

December 2018 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

TTB Proposes Modernizing Labeling and Advertising Regulations

The Tax and Trade Bureau (TTB) has announced the publication of a [rulemaking document \(Notice No. 176\)](#) which would update, simplify, and clarify the labeling and advertising regulations for wine, distilled spirits, and malt beverages. According to TTB, when finalized, these updated regulations “will facilitate industry compliance by simplifying and clarifying regulatory standards, incorporating guidance documents and other current policies into the regulations, and reducing regulatory burden on industry members where possible.” Comments are being accepted through March 26, 2019.

TTB Tags Miami and Illinois Distributors with Trade Practice Violations

The Tax and Trade Bureau (TTB) [accepted](#) a \$1.5 million offer in compromise from Miami distributor Eagle Brands for alleged trade practice violations, specifically payments to retailers to carry and promote its products to the exclusion of competing products. TTB also alleges that Eagle Brands employees provided retailers with draft systems that were to be used exclusively for Eagle Brands products. In Illinois, TTB [accepted](#) a \$325,000 offer in compromise from Elgin Beverage Co. for alleged tied house violations.

B. THE COURTS

Court of Appeals Opinion Supports Out-of-State Retail Shipping

The U.S. Court of Appeals for the Seventh Circuit issued its [opinion](#) in *Lebamoff v. Rauner*, involving a challenge to Illinois prohibitions of direct-to-consumer wine shipments by out-of-state retailers, finding that such prohibitions are discriminatory. Like another case in Michigan (see October update), this case will ultimately hinge on the outcome of the Tennessee retailer residency requirement case (see October update) now pending before the Supreme Court.

C. THE STATES

Sales, Distribution and Franchise:

Michigan

Gaining Senate approval, [Senate Bill 1154](#) would allow a brewer or micro brewer to sell beer it manufactured for consumption on or off the premises at an approved tasting room if the tasting room were located on licensed brewery premises where the brewer or micro brewer manufactures. Subject to existing limitations, if a brewer or micro brewer had more than one licensed brewery premises, the bill would allow the brewer or micro brewer to sell beer that it has produced at one licensed brewery premises at an approved tasting room on any of its other licensed brewery premises if conditions specified in the bill were met, such as that the licensed

brewery premises receiving the beer, on which the tasting room is located, must produce a volume of beer equivalent to 50% of the volume of beer sold to consumers at that tasting room.

Passing the Senate, [S.B. 1156](#) defines “tasting room” with respect to beer to mean a location on the manufacturing premises of a brewer or micro brewer where it may produce samples of or sell at retail for on- or off-premises consumption, or both, beer it manufactures.

Trade Practice & Other:

California

The California Department of Alcoholic Beverage Control (ABC) announced that [ABC agents investigated](#) 70 Type 75 Brew Pub Restaurants and discovered nearly 50 were not in compliance with their licenses, by either not brewing beer at all, not brewing quantities for service consumers expect of a legitimate brew pub, or were otherwise not functioning as a brew pub.

Michigan

Passing the Senate, [S.B. 1165](#) would define “alternating proprietorship” to mean an arrangement in which two or more brewers or micro brewers, or wine makers or small wine makers, take turns using the same space and equipment to manufacture wine or beer, respectively, under the Code and federal law.

New Jersey

[Senate Bill 3154](#) authorizes limited breweries, commonly referred to as microbreweries, to hold certain on-site and off-site events open to the general public. Under the bill, on-site special events include trivia and quizzes; paint and sip craft making; live music and open microphone; live televised sporting events; educational events and seminars; movie or theatrical events; animal adoption events to the extent permitted by local ordinance; yoga and similar classes; and private parties, such as birthdays, weddings, anniversaries, civic and political functions, professional and trade association events, and class reunion and alumni events. Off-site special events under the bill include beer, music, and arts festivals; civic events; athletic events, such as 5K races, mud runs, and bike races; limited brewery anniversary celebrations; and holiday celebrations. Also under the bill, the requirement that a consumer take a tour of the brewery as a prerequisite to consuming malt alcoholic beverages on the premises can be satisfied by taking either an onsite tour or a virtual tour of the brewery and that tours are not required for the licensee to sell its product at retail for off-premises consumption and that the product may be sold in a keg, sixtel, case, six-pack, growler, or crowler.

Ohio

Failing to advance from committee, a proposed amendment to House Bill 522 provides for the doubling the amount of branded glassware that a manufacturer may provide annually to a retailer from two to four cases and caps the total number of cases that a retailer may receive annually at seven.