

February 2019 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

Craft Beverage Modernization and Tax Reform Act

The Craft Beverage Modernization and Tax Reform Act of 2019 ([S. 362](#); [H.R. 1175](#)) has been introduced in Congress. The legislation makes permanent the tax and other provisions passed as part of the Tax Cut and Jobs Act which was signed into law in the closing days of 2017 on a temporary, two-year basis. Specific tax provisions relating to beer 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. Additional provisions address the transfer of beer between breweries and expanding the list of ingredients considered traditional in the production of fermented beverages.

The legislation also provides supplementary funding for the Tax and Trade Bureau, in addition to any other amounts appropriated: for fiscal year 2019, \$15 million, to remain available until 9/30/2020; and for fiscal year 2020, \$15 million, to remain available until 9/30/2021. Of the amounts appropriated for fiscal years 2019 and 2020, \$5 million would be directed to 1) the costs of accelerating the processing of label and formula applications; 2) the costs of programs for trade practice enforcement violations; and 3) implementation of the new law, including accelerating the processing of permit applications for non-industrial alcohol production and distribution.

B. THE STATES

Sales, Distribution and Franchise:

Connecticut

[Proposed Bill 742](#) would require breweries to offer their products for on-premise sale and consumption or for on-premise sale for off-premise consumption, but not both.

[Proposed Bill 6658](#) seeks to restrict the holder of a manufacturer permit for beer to sales to the holder of a wholesaler permit and to prohibit the holder of a manufacturer permit for beer from the retail sale of beer on the permitted premises unless the holder of the manufacturer permit is also a holder of a restaurant permit or has received an off-premises sales endorsement to its manufacturer permit.

[Proposed Bill 6846](#) seeks to increase the sales limit for breweries for off-premises consumption to nine gallons.

Maryland

[Senate Bill 704](#) seeks to add a statutory provision allowing a “small franchisor” (a beer manufacturer that produces 300,000 barrels or less annually and accounts for 10% or less of a “franchisee’s” (i.e. distributor’s) total annual sales volume) to terminate a franchise agreement with 15 days written notice. The bill also requires distributors provide written notice 1) to a small franchisor of the percentage of the total annual sales volume that the small franchisor accounts for in comparison to all other franchisors that the distributor is in agreement with at that time and 2) if a change in the percentage of total annual sales volume triggers a change in status of either a small franchisor or a large franchisor. Finally, the bill provides that, before termination of a beer franchise agreement, a small franchisor shall buy back at fair market value all the beer that the distributor purchased from the small franchisor and retains in inventory.

[Senate Bill 801](#), the Brewery Modernization Act of 2019, seeks to increase the taproom sales limit to 5,000 barrels for both class 5 and 7 breweries with no required buyback provision and codifies the right for the former class to engage in on-premise sales; removes the tour requirement for off-premise sales; increases the production cap for class 7 breweries to 45,000 barrels and allows those license holders one additional license in the state.

Massachusetts

[Senate Docket 1434](#) seeks to allow small brewers (defined as under 6 million barrels) to terminate a distributor without cause and with less than the current 120-day notice (the notice provision is tiered based on production at either 30, 45 or 60 days) for fair market value as determined by the terminated distributor and successor distributor. If those two parties fail to agree, the determination is made through binding arbitration, with the successor distributor compensating the terminated distributor.

Montana

Tabled in committee, [House Bill 185](#) seeks to allow small brewery licensee on-site taprooms the ability to sell for an additional two hours until 10:00 p.m.

North Dakota

Passing the Senate, [S.B. 2343](#) addresses retail sales and beer transfers for microbrew pub and brewer taproom license holders.

Taxation:

Hawaii

[H.B. 343](#) seeks to establish a small craft beer producer income tax credit.

[House Bill 887](#) and companion S.B. 1006 repeal the definition of draft beer and apply the same tax rate (0.54 cents/per wine gallon) to all beer.

Nebraska

[L.B. 314](#) and [L.B. 497](#) propose to raise alcohol taxes, among others, to address the state’s property tax crisis. Under both bills, the gallonage tax on beer would increase to \$1.38 from thirty-one cents.

Trade Practice & Other:

California

[A.B. 205](#) seeks to amend the definition of beer to expressly allow the fermentation of fruit, honey and natural sugars.

Colorado

Signed by the Governor, [Senate Bill 11](#) removes the dual licensing requirement for a person who manufactures, sells at wholesale, or imports both fermented malt beverages and malt liquor.

Hawaii

[H.B. 546](#) and companion S.B. 773 would increase the annual production limit of small craft producer pub licensees to 125,000 barrels (from 60,000 barrels) and allow brewpub licensees and small craft producer pub licensees that manufacture beer solely in the state to obtain a direct shipper permit and engage in retail sales at satellite locations.

[House Bill 1172](#) and companion Senate Bill 772 seek to repeal the requirement that there be attached a clear and legible notice, placard, or marker upon the faucet, spigot, or outlet wherefrom the draught beer is drawn. The bills also require rules adopted by the counties related to stacking of beer to refer to a standard serving of total volume that shall not exceed thirty-two ounces of total volume before a customer at any one time.

Massachusetts

[S.D. 1866](#) would limit to fourteen the number of one day alcoholic beverage licenses available to one entity annually.

Missouri

Senate Bill 197 and [House Bill 356](#) seek to repeal the expiration date of the statutory language giving brewers the ability to lease to retailers portable refrigeration units.

[House Bill 634](#) addresses the ability to provide retailers with non-refrigeration dispensing equipment and seeks to increase dollar limits relating to retail displays and advertising. Currently, a distiller, wholesaler, winemaker, or brewer may give or sell product displays to a retail business if the total value of such displays does not exceed \$300 per brand, per retail outlet. The bill changes this limit to \$400 per brand, per retail outlet. Further, this bill changes the limit on the amount of permanent point-of-sale advertising materials that may be sold or given to a retailer from \$500 to \$700 per year, per brand, per retail outlet. The wholesaler or brewer may lend, give, rent, or sell, and may install or repair non-refrigeration dispensing accessories at the retail business establishment to facilitate the dispensing of draft beer. The fair market value of non-refrigeration dispensing accessories given or lent by a wholesaler or brewer to a retailer shall not exceed \$1500 per calendar year. A complete record of non-refrigeration dispensing accessories given, rented, sold, installed, and loaned, and repairs and services made to a retailer shall be retained for a period of not less than three years by the wholesaler or brewer.

New York

[A.B. 3208](#) seeks to lower the blood alcohol concentration required for driving while intoxicated from .08 to .05, and for aggravated driving while intoxicated from .18 to .12.

Oregon

[S.B. 287](#) establishes standards for establishment of farm breweries that produce less than 150,000 gallons of malt beverages on lands zoned for exclusive farm use or mixed farm and forest use.

Utah

Passing initial committee consideration, [S.B. 132](#) would change the definition of beer to increase the ABW from 3.2% to 4.8% (4% ABV to 6% ABV).