

March 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.

Legislation to Ensure Fair Aluminum Pricing Introduced in Congress

Representatives Ken Buck (CO-04) and Al Lawson (FL-05) have introduced [H.R. 1406](#) to ensure a fair and free market for the pricing of aluminum in the United States. The Aluminum Pricing Examination (APEX) Act grants the Commodities Futures Trading Commission (CFTC) the statutory authority to conduct oversight of the aluminum market and to investigate price setting, benchmarking, and reporting entities.

B. THE COURTS

Massachusetts Court Upholds Record Fine Against Beer Distributor for Pay-To-Play

The Massachusetts Supreme Judicial Court [upheld a \\$2.6 million fine](#) against beer wholesaler Craft Brewers Guild for violating anti-price discrimination statutes and commercial bribery regulations. In the same decision, the Court overturned a fine lodged against a bar that received such kickback payments, holding that Massachusetts retailers do not violate commercial bribery regulations by accepting kickback payments.

C. THE STATES

Sales, Distribution and Franchise:

Alaska

[S.B. 52](#) seeks to reorganize the statutes governing alcohol regulation to clearly define the rights and obligations of licensees, restructure penalties for offenses, and organize the statutes in a logical, common-sense manner. New statutory provisions retain the three-tier licensing system but create more flexibility for small manufacturers, create a new endorsement system to expand the boundaries of licensed businesses and accommodate special events, and modify the permitting system for clarity.

Connecticut

Stalling in committee, [Senate Bill 742](#) sought to require breweries to offer their products for on-premise sale and consumption or for on-premise sale for off-premise consumption, but not both.

[House Bill 6042](#) seeks to allow the holder of a manufacturer permit for beer to sell twenty-four liters of beer in sealed bottles or other sealed containers per person per day for consumption off the permit premises.

[H.B. 6282](#) would allow a brewery to sell up to a "log" of beer (19.8 liters) to an individual per day.

Provisions in [H.B. 7148](#) would allow Connecticut breweries, wineries, cideries, and distilleries to sell each other's products.

[Senate Bill 661](#) seeks to allow retail customers of farm breweries and brew pubs to bring their dogs on the retail premises.

Florida

[Senate Bill 1304](#) would permit manufacturers to terminate a distributor contract if their products represent less than 10% of distributor's total alcohol beverage portfolio with 120 days' notice. The bill further: 1) provides that a brewery brewing less than 250,000 barrels is not subject to the Florida franchise law; 2) permits a brewery to transfer, without a distributor, any collaboration beers they produce; 3) provides that a brewery brewing less than 250,000 barrels can self-distribute (kegs, package, etc.), however, if a brewery has an existing distribution agreement, it can deliver up to 4 kegs to a vendor in that territory at a time (any delivery over 4 kegs requires the distributor's written permission); 4) standardizes "barrels" of beer in the statute language (instead of kegs); 5) lowers the requirement for a distributorship license from \$100,000 worth of product to \$10,000 worth of product; 6) eliminates the "come-to-rest requirement" for a brewery that is self-distributing.

Receiving favorable initial committee consideration, [House Bill 903](#) provides for limited exemptions to the current regulations regarding distribution agreements between beer distributors and manufacturers, as follows: 1) exempts small breweries (i.e. total production volume does not exceed 150,000 gallons of malt beverages a year) from the beer franchise relations law; 2) allows any brewer to provide 120 days written notice and terminate their distributor franchise agreement, but only if the beer manufacturer accounts for 10% or less of the

distributors total sales. The bill further authorizes limited self-distribution for certain brewers, as follows: 1) allows a craft brewery whose annual total production volume is less than 7,000 kegs (~108,500 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in a standard keg or similar container (a craft brewery with an existing franchise agreement with a distributor is not eligible for this exemption); 2) requires that the craft brewer comply with certain distribution-specific laws when acting as a distributor, and exempts the craft brewer from the “come-to-rest requirement.” 3) allows brew pubs to transfer beer to a restaurant, of common owner affiliation, which is a part of a restaurant group of not more than 15 restaurants.

Georgia

[Senate Bill 152](#) seeks an expansion of the sales abilities of malt beverage manufacturers to allow up to 3,000 barrels sold at each of the brewer’s licensed premises for on- or off-premise consumption. Additionally, requires fifty percent of malt beverages sold for consumption on a brewer's licensed premises to be produced on the same licensed premises on which such sales occur. Finally, for brewpubs, increase the annual amount beer allowed to be sold to wholesale dealers to 10,000 barrels (from 5,000).

Illinois

[House Bill 3610](#) provides that a brew pub license shall allow the licensee to manufacture up to 155,000 gallons of beer per year through a written agreement with a brewer, class 1 brewer, class 2 brewer, or brew pub and to make sales of the beer manufactured through a written agreement with a brewer, class 1 brewer, class 2 brewer, or brew pub. Provides that brew pubs wholly owned and operated by the same licensee may combine each location's production limit of 155,000 gallons of beer per year and allocate the aggregate total between the wholly owned, operated, and licensed locations.

Iowa

[H.B. 401](#) provides that a manufacturer of beer may be granted one class “B” beer permit for the purpose of selling beer at retail for consumption on or off the premises of the manufacturing facility regardless of whether the manufacturer is also a manufacturer of native distilled spirits or a manufacturer of native wine.

Maryland

Significantly amended before passing the Senate, [Senate Bill 704](#) reduces, from 180 days to 45 days, the number of days that a brewery must wait after notifying a distributor of its intent to terminate or refuse to renew a beer franchise agreement before terminating the agreement, if the brewery produces 30,000 or fewer barrels of beer per year. Such a brewery is authorized to terminate or refuse to continue or renew a franchise agreement without good cause and is no longer required to give its franchisee an opportunity to correct a deficiency if that is the reason the agreement is being terminated. Before terminating a beer franchise agreement, a brewery must buy back all of its beer from the franchisee, as specified.

Montgomery County-specific [H.B. 333](#) provides that a holder of a Class 7 micro-brewery license in Montgomery County may produce any amount of beer each year. The holder of a Class 8 farm brewery license in Montgomery County is authorized to (1) produce any amount of beer each

year and (2) engage in retail sales and food service during the same hours and days established for a Class B beer, wine, and liquor license. A brewery of any type in Montgomery County may obtain a Class 7 limited beer wholesaler's license if it produces up to 45,000 barrels of beer each year in aggregate from all of its locations. The holder of a Class 7 limited beer wholesaler's license in the county may distribute up to 6,000 barrels of its own beer each year.

New Mexico

[H.B. 603](#) would expand the sales reciprocity among licensed manufacturers of craft alcohol to include licensed craft distillers, thereby providing the right for small brewers, winegrowers and craft distillers to sell the products of the other two as part of their liquor licenses.

North Carolina

[Senate Bill 246](#) seeks to allow self-distribution of 50,000 barrels for breweries producing less than 100,000 barrels annually (current is 25,000), small brewery (less than 25,000 barrels) termination of a distributor in absence of good cause with fair market value compensation and would limit additional retail locations to three. Also includes language further protecting distributors in several areas.

Tennessee

Failing to advance from committee, [S.B. 217](#) sought to allow beer manufacturers to self-distribute beer within a 100-mile radius of the manufacturer if the manufacturer brews 50,000 gallons or less annually.

West Virginia

Passing both chambers of the legislature, [Senate Bill 529](#), among a variety of provisions, removes the two-growler limit per patron per day for licensees who sell growlers for off premises consumption; increases allowable growler size to no larger than 128 ounces; provides for certain growler licensees to conduct complimentary samplings; creates a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allows nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume; and removes the bond requirements for brewers, resident brewers, and distributors.

Taxation:

Hawaii

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

Passing their respective chambers, [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.

Illinois

[H.B. 2577](#) would exclude manufacturers and importing distributors that in the preceding year had less than \$50,000 of tax liability from a requirement that they file a specified bond with the Department of Revenue.

Nebraska

Stalling in committee, [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.

[L.B. 723](#) seeks to reduce alcohol tax rates, with the rate for beer dropping .06 cents to .25 cents per gallon.

New Mexico

Passing initial committee consideration with amendments, companions [H.B. 489](#) and S.B. 413 propose a revision to the excise tax rates for microbrewed beer, cider and craft distillers, with the beer rates revised from the single rate of \$.41 per gallon to \$.08 per gallon on the first 30,000 barrels, \$.28 per gallon for volumes from 30,000 to 60,000 barrels and \$.41 for volumes from 60,000 barrels to 200,000.

New York

[A.B. 3473](#) provides a tax credit for bottling, packaging, and labeling expenses of wineries, breweries and distilleries.

Trade Practice & Other:

California

Amended and re-referred to committee, [A.B. 205](#) seeks to revise the definition of beer to also provide that beer that includes honey, fruit, fruit juice, fruit concentrate, herbs, spices, or other food materials, as adjuncts in fermentation, shall be defined exclusively as "beer."

[A.B. 1713](#) seeks to prohibit a person from driving a motor vehicle when the person has 0.05 percent or more, by weight, of alcohol in their blood.

[Assembly Bill 609](#) seeks to exempt licensed premises operated by beer manufacturers from the current requirement that any on-sale retail licensee that gives, sells, or otherwise dispenses draught beer include specified information regarding the beer upon the faucet, spigot, or outlet from which the beer is drawn or in the place of service or consumption.

[Senate Bill 166](#) would require the State Water Resources Control Board to adopt regulations for microbiological, chemical, and physical water quality and treatment requirements for the onsite treatment and reuse of process water in breweries and wineries.

Georgia

Passing the Senate, [S.B. 146](#) provides that retail package liquor stores may conduct tasting events at which samples of alcoholic beverages may be served and that manufacturers and

wholesalers may provide samples of alcoholic beverages to retail dealers under certain conditions.

Hawaii

Passing the House, [H.B. 546](#) would permit a small craft producer pub licensee to manufacture not more than 125,000 barrels of malt beverages on the licensee's premises per year, allows brewpub licensees and small craft producer pub licensees to conduct certain activities at satellite locations and allows brewpub licensees and small craft producer pub licensees to obtain a direct shipper permit.

Passing the Senate and amended in the House, [S.B. 773](#) would allow a class 18 small craft producer pub licensee to manufacture not more than 75,000 barrels of malt beverages on the licensee's premises during the license year, clarifies that a class 14 brewpub licensee or class 18 small craft producer pub licensee may conduct certain activities at satellite locations other than the licensee's primary manufacturing premises under certain conditions and allows direct shipment of all forms of liquor, rather than just wine, by certain licensees.

Passing their respective chambers, [House Bill 1172](#) and 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. 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.

Idaho

Passing both legislative chambers, [S.B. 1078](#) would permit a craft brew facility to contract with other entities wishing to brew at their facility.

Illinois

Adopted by the House, [H.R. 73](#) congratulates all of the award-winning brewers and all of the brewers across the State of Illinois for bringing national recognition to the quality of their brews and for contributing to the vibrancy of our neighborhoods and communities.

Indiana

Among many provisions, [H.B. 1518](#) provides that a holder of a permit for the State Fairgrounds may, if the permit holder is a small brewery, farm winery, or artisan distillery, sell the alcoholic beverages produced by the permit holder for carryout.

Maryland

[House Bill 480](#) establishes the Maryland Brewery Promotion Program and Fund in the Department of Commerce (Commerce). The program provides grants to eligible applicants designed to assist Maryland breweries, educate the public about brewing in Maryland, and promote Maryland beer. The fund is established as a special fund in the department, and receives the revenue collected from the existing 9 cents per gallon alcoholic beverages tax on beer produced at Maryland breweries.

Michigan

[House Bill 4420](#) seeks to lower the blood alcohol concentration threshold for driving under the influence from 0.08 to 0.05.

Missouri

Passing the Senate, [Senate Bill 197](#) would extend the expiration of the statutory language giving brewers the ability to lease to retailers portable refrigeration units to January 1, 2026.

Passing committee consideration, [House Bill 356](#) repeals the expiration date of the statutory language giving brewers the ability to lease to retailers portable refrigeration units.

Held in committee, [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 Hampshire

Passing the House, [House Bill 597](#) seeks to allow nano brewery licensees to distribute samples at a wine manufacturer's facility and wine manufacturer licensees to distribute samples at a nano brewery.

Receiving favorable committee consideration, [H.B. 598](#) would establish a commission to study beer and wine agritourism in New Hampshire.

Oklahoma

Passing the Senate, [SB 936](#) creates a Charitable Collaboration Brewer License authorizing a licensee to sell beer to beer distributors, qualified persons out of the state, serve limited and free samples of the charitable collaboration beer, consumers on the brewery premises, and purchase collaboration beer. The measure also authorizes charity collaboration beer licensees to utilize private labels or control labels for sale and allows the production of wort and non-retail packaged alcohol products necessary for the development to be transferred-in-bond without taxation between charitable collaborating breweries.

Oregon

Amended prior to passing the Senate, [S.B. 287](#) establishes standards for establishment of farm breweries on lands zoned for exclusive farm use or mixed farm and forest use for breweries that annually produce under 150,000 barrels of malt beverages total with under 15,000 barrels produced on farm brewery site.

Utah

Passing both legislative chambers, [S.B. 132](#) changes the definition of beer to increase the ABW from 3.2% to 4.8% (4% ABV to 6% ABV).