

April 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.

FDA Guidance Issued on Hops and the Produce Safety Rule

The U.S. Food and Drug Administration (FDA) recently issued [guidance](#) announcing its decision to exercise enforcement discretion with regard to the Produce Safety Rule for entities growing, harvesting, packing or holding hops. The FDA's rationale for exercising enforcement discretion for hops is that hops used in the making of beer receive adequate pathogen reduction through means other than a cook step (e.g., pH, alcohol content and fermentation) and hops are not used outside of the brewing process.

FDA Commissioner Weighs in on Cannabis-Derived Products

U.S. Food and Drug Administration (FDA) released a [statement](#) by FDA Commissioner Scott Gottlieb, MD outlining the agency's current actions regarding possible regulatory approaches for cannabis-containing and cannabis-derived products.

TTB Extends Comment Period for Labeling and Advertising Rulemaking

The Tax and Trade Bureau (TTB) announced a ninety-day extension of the public comment period through June 26, 2019 for Notice 176, [Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages](#), 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.”

TTB Accepts Two Separate Offers in Compromise for Trade Practice Violations

The Tax and Trade Bureau has accepted a [\\$2.5 million offer in compromise](#) from Heineken USA for alleged violations of the Federal Alcohol Administration (FAA) Act. TTB alleges that Heineken provided some retailers with a proprietary draft system at no charge and reimbursed other retailers for the cost of the system. TTB further alleges that Heineken made slotting fee payments to retailers and disguised those unlawful payments as payments for permissible activities (such as consumer sampling) that never actually occurred.

In a [second case](#), TTB accepted a \$350,000 offer in compromise from Brewers Distributing Company, a wholesaler in Peoria, Illinois, for alleged violations of the consignment sale and exclusive outlet provisions of the Federal Alcohol Administration (FAA) Act.

B. THE STATES

Sales, Distribution and Franchise:

District of Columbia

The Manufacturer's Satellite Taverns Amendment Act of 2019 has been proposed in D.C. Council. The legislation seeks to allow brewers and distillers to own and operate up to two satellite taverns elsewhere in the city, primarily selling products that they manufacture themselves.

Florida

Moving through a series of House committees, [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.

Iowa

[H.B. 572](#) seeks to authorize persons holding class “A” or special class “A” permits that manufacture beer to sell up to a total of 100 barrels per year of the beer it manufactures to retail beer permittees or retail liquor control licensees.

Maryland

Passing both chambers of the legislature, [H.B. 1010](#), the Brewery Modernization Act of 2019, contains a [host of provisions](#) enhancing the retail, production and distribution abilities for several classes of breweries.

Passing both legislative chambers and eligible for the Governor’s signature, [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 20,000 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.

Failing to clear committee, 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.

Minnesota

[House Bill 1799](#) expands the allowable container sizes for purposes of brewer off-sales.

[H.B. 1800](#) seeks to allow brewer taprooms to offer limited sale of collaboration malt liquor.

[House Bill 1802](#) removes a licensing condition for off-premise sales that prohibits a brewer that produces more than 20,000 barrels of its own brands annually from obtaining said license.

New Mexico

Dying in committee, [H.B. 603](#) sought to 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

Receiving favorable consideration in the House, [H.B. 383](#) would allow brewery permittees that sell fewer than 100,000 barrels of malt beverages produced by the brewery each year to self-distribute up to 50,000 barrels of malt beverages manufactured by the brewery per year to

unaffiliated retail permittees. The bill would also provide that only breweries that sell fewer than 25,000 barrels of malt beverages produced by the brewery per year may terminate a franchise agreement in the absence of good cause. Also includes language further protecting distributors in several areas.

North Dakota

Signed into law by the Governor, [S.B. 2343](#) addresses retail sales and beer transfers for microbrew pub and brewer taproom license holders.

West Virginia

Signed into law by the Governor, [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

Continuing to advance, [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

Passing the House, [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.

Maine

[House Bill 793](#), for the purpose of reducing the incidence of domestic violence and suicides, increases the excise taxes imposed on spirits, malt liquor, fortified wines and hard cider and the sales tax imposed on the sale of liquor sold in establishments for consumption on or off premises. The excise tax on beer would increase .15 cents/gallon to .50 cents/gallon.

New Mexico

Signed by the Governor, [S.B. 413](#) revises 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.

Trade Practice & Other:

Alabama

[H.B. 151](#) seeks to: define “small manufacturer” as a manufacturer that sells, on an annual basis, no more than 250,000 barrels of beer, 100,000 gallons of table wine, or 50,000 proof gallons of liquor, and that is no more than 25 percent owned, directly or indirectly, by a manufacturer that is not itself a small manufacturer; remove the requirements that a brewpub be located in a historical or economically distressed area, operate a restaurant or otherwise provide food and increase allowable production to 25,000 barrels (from 10,000); allow a licensed manufacturer of alcoholic beverages to dispense and sell at its on-site tasting room, in addition to their own alcoholic beverages, alcoholic beverages that are manufactured in this state but not by the manufacturer, so long as the other manufacturer is under common ownership with the brewery, winery, or distillery; allow a manufacturer to enter into alternating proprietorship arrangements with other manufacturers; and authorize manufacturers, wholesalers, and retailers of alcoholic beverages to enter into certain limited business or financial relationships that comply with federal law.

Arkansas

Signed into law, [House Bill 1877](#) authorizes a manufacturer of home-brewed beer to remove home-brewed beer from the manufacturer's premises for personal or family use, including organized affairs, exhibitions, competitions, and tastings.

California

Passing initial committee consideration, [A.B. 1133](#) seeks to allow a beer manufacturer, without direct or indirect charge, to give up to five cases of retail advertising glassware to an on-sale retail licensee, per license location, each calendar year for use at the licensed location. On-sale retail licensee may accept up to 10 cases of glassware, per licensed location, each calendar year.

Awaiting a full Senate vote, [Senate Bill 21](#) seeks to lower the required minimum brewing production of a brewpub-restaurant licensee from 200 barrels per year to 100 barrels per year.

[S.B. 448](#) would exempt a small microbrewery or small winery (defined as one that produces no more than 1000 gallons of product per year) that utilizes volunteers who perform part-time labor in exchange for hands-on training, from having these volunteers classified as employees or apprentices.

Passing the Assembly, [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.”

Under Senate consideration following Assembly passage, [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.

Amended and passed by committee, [Senate Bill 166](#) would require the State Water Resources Control Board to convene a study group by December 1, 2021, to advise the Legislature on policies regarding onsite process water reuse in breweries and wineries.

Connecticut

[House bill 7260](#) would exempt from certain small employer health insurance plan requirements a Connecticut employer that (1) holds a manufacturer permit for beer from the Department of Consumer Protection and (2) obtains health insurance for its employees and their dependents through the Connecticut Brewers Guild.

Georgia

Amended in House committee after 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

Now the subject of a House-Senate conference, [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 twenty-four ounces of total volume before a customer at any one time.

Idaho

Signed by the Governor, [S.B. 1078](#) allows a craft brew facility to contract with other entities wishing to brew at their facility.

Illinois

Amended in the House prior to passage, [House Bill 3610](#) 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.

Indiana

Amended in both chambers of the legislature, [H.B. 1518](#) provides, among many provisions, 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; allows minors in brewery premises, including tasting rooms, if accompanied by a parent and if the minor has a handstamp or wristband indicating that the minor is under 21 years of age; exempts microbreweries from a provision concerning wholesaler-manufacturer agreements; and urges the Legislative Council to assign to a summer study committee the topic of franchise protection for beer wholesalers.

Maine

[Senate Bill 66](#) requires that all malt liquor, wine and low-alcohol spirits products imported to, exported from or sold in Maine bear a label approved by the United States Department of the

Treasury, Alcohol and Tobacco Tax and Trade Bureau unless the malt liquor, wine or low-alcohol spirits products are manufactured in Maine and are not shipped, distributed or sold in interstate commerce. The bill also requires manufacturers to register the labels of all malt liquor, wine and low-alcohol spirits products sold in the State with the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations unless the malt liquor, wine or low-alcohol spirits products are sold by a Maine manufacturer directly to consumers for on-premises consumption or in a keg to a Maine retailer licensed to sell liquor for on-premises consumption.

Maryland

Failing to advance from committee, [House Bill 480](#) sought to establish the Maryland Brewery Promotion Program and Fund in the Department of Commerce. The program would have provided grants designed to assist Maryland breweries, educate the public about brewing in Maryland, and promote Maryland beer with funding coming from the revenue collected from the existing 9 cents per gallon alcoholic beverages tax on beer produced at Maryland breweries.

Missouri

Advancing in the House following Senate passage, [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 the House, [House Bill 356](#) repeals the expiration date of the statutory language giving brewers the ability to lease to retailers portable refrigeration units.

Passed by 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 \$2500 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

Receiving favorable Senate consideration, [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.

Passing the House, [H.B. 598](#) would establish a commission to study beer and wine agritourism in New Hampshire.

Oklahoma

Passing House committee with amendments, [S.B. 936](#) creates a Charitable Collaboration Brewer License. The license authorizes 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. Beers sold or sampled to individuals will be considered taxable. Sales and sampling may only occur between the hours of 10:00 a.m. and 2:00 a.m. along with other restrictions on consumption. Licensees who hold a brewery license may sell to retailers. The measure 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.

Utah

Signed by the Governor, [S.B. 132](#) changes the definition of beer to increase the ABW from 3.2% to 4.0% (4% ABV to 5% ABV) and increases the barrel tax .30 cents to \$13.10/barrel.