

May 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.

TTB Issues Industry Circular on Hemp Ingredients

The Tax and Trade Bureau (TTB) has issued Industry Circular 2019-1, [Hemp Ingredients in Alcohol Beverage Formulas](#), addressing the ability of industry members to produce alcohol beverages containing ingredients derived from hemp, such as cannabidiol (CBD). The circular explains current TTB policy on the use of hemp and discusses the critical role of the U.S. Food and Drug Administration (FDA) regarding these issues.

- TTB will require a formula for any product containing a hemp-derived ingredient
- TTB will not approve a formula for any product containing a Schedule I controlled substance under the Controlled Substances Act
- TTB will not approve a formula for any product containing CBD until FDA changes its current position towards CBD as a food ingredient. FDA currently views interstate commerce in any food containing CBD as a violation of the federal Food, Drug & Cosmetic Act
- TTB will continue to approve formulas for alcohol beverages containing ingredients derived from hemp seeds and hemp oil
- TTB will not approve a formula for any product containing a hemp ingredient other than those derived from hemp seeds or oil unless it also receives adequate evidence that FDA deems the ingredient generally recognized as safe (GRAS) for food

New TTB Guidance on Reduced Excise Tax Rates

The Tax and Trade Bureau (TTB) has posted further information of interest to brewers as part of the continuing effort to provide guidance concerning reduced excise tax rates. The new information concerns how the rates apply to production at multiple breweries under the same ownership and multiple breweries that are part of a controlled group. The three new FAQ's can be found in the Beer Tax Reform Questions and Answers section of [TTB's Craft Beverage Modernization and Tax Reform page](#).

Proposal to Allow Alcohol through the Mail Introduced in Congress

[H.R. 2517](#), the USPS Shipping Equity Act, would end the prohibition on the U.S. Postal Service (USPS) from shipping alcoholic beverages to consumers.

B. THE STATES

Sales, Distribution and Franchise:

Florida

Dying in committee, [House Bill 903](#) sought to provide 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

[House Bill 738](#) allows a small brewer (defined as a brewer whose sales of products to such brewer's wholesaler do not exceed 15 percent of the wholesaler's total sales in the prior calendar year) to terminate a wholesaler agreement with 30 days notice. The bill provides that the successor wholesaler will compensate the discontinued wholesaler in an amount equal to the fair market value of the small brewer's distribution rights and if an agreed value cannot be reached, arbitration is provided for. Finally, the bill provides for a 25,000 barrel annual self-distribution allowance.

Illinois

Passing the Senate, [S.B. 996](#) provides that a brewer may cancel an agreement with a wholesaler without notice, unless otherwise provided by agreement, if there has been a revocation or suspension of a license or permit to sell beer in this state for a period of not less than 30 days which has a material and adverse effect upon the wholesaler's ability to sell beer in this state.

Maryland

Signed into law, [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.

Becoming law with the Governor's signature, [House Bill 1080](#) 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 termination, a brewery must enter into a termination agreement with the terminated franchisee which includes compensation to the terminated franchisee for the fair market value of the terminated franchise and requires the brewery to repurchase its beer in a specified manner.

North Carolina

Under committee consideration in the Senate, [H.B. 363](#) 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.

Oklahoma

Signed by the Governor, [S.B. 728](#) authorizes the holder of a mixed beverage license which is also a restaurant or an on-premises beer and wine license to directly purchase wine and beer from a winemaker and a small brewer respectively.

Texas

[House Bill 1545](#), reauthorizing the Texas Alcoholic Beverage Commission, was amended in the House prior to passage to allow production breweries to sell beer-to-go.

Taxation:

Alabama

[House Bill 494](#) provides that the excise tax on beer is to be levied at the time the beer is allocated by the brewery or brewpub for retail sale rather than at the time it is dispensed for consumption.

Illinois

Clearing an initial Senate committee, [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

Failing to advance from committee, [House Bill 793](#), sought for the purpose of reducing the incidence of domestic violence and suicides, to increase 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 have increased .15 cents/gallon to .50 cents/gallon.

Nebraska

[LB 723](#) seeks to amend the Nebraska Liquor Control Act to decrease excise tax rates for beer, wine, and spirits, with the tax rate for beer going from \$0.31 per gallon to \$0.25 per gallon.

Trade Practice & Other:

California

Passing the Senate, [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.

Before the full Senate for a vote, [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

Awaiting full Senate consideration, [Senate Bill 647](#), among many provisions, consolidates the manufacturer permits for beer, brew pub, beer and brew pub, and farm brewery into one permit, allows the permittee to wholesale distribute to other alcoholic liquor permittees, allows retail beer sales for on-premises consumption, with or without selling food, allows retail beer sales for off-premises consumption of up to six gallons per person per day, requires permittees to annually produce at least 5,000 gallons of beer before they can sell beer through a wholesaler, removes the requirement that a farm brewery permittee may only annually produce up to 75,000 gallons of beer and must, among other things, use a certain minimum percentage of materials grown or malted in the state for the beer to be advertised and sold as “Connecticut Craft Beer”, and allows the sale of beer for off-premises consumption between 10:00 a.m. and 6:00 p.m. on Sunday and 8:00 a.m. and 10:00 p.m. Monday through Saturday and does not specify what hours the permittee may sell beer for on-premises consumption.

Passing committee, [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.

Delaware

Passing the House and initial Senate committee consideration, [H.B. 125](#) would allow licensed Delaware brewery pubs and microbreweries to affiliate with other in-state or out-of-state brewers while retaining their current license privileges so long as production does not exceed 6 million barrels annually.

Hawaii

On the Governor's desk, [Senate Bill 772](#) seeks 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 requires 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.

Illinois

Clearing initial committee consideration in the Senate, [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

Signed by the Governor, [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; and allows a brewery to can and carbonate liquor for a distillery in the same county.

Maine

Signed by the Governor, [Senate Bill 66](#) requires that all malt liquor, wine, hard cider 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, hard cider 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, hard cider or low-alcohol spirits products if those products are given as complimentary samples to consumers or sold to customers as samples.

Missouri

Passed by both chambers of the legislature, [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.

New Hampshire

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

New York

[A.B. 7258](#) seeks to limit the application of the New York's "tied-house" provisions to retailers, wholesalers and manufacturers licensed by the New York State Liquor Authority.

Oklahoma

Passing the House 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.

Gaining committee approval in the Senate, [H.B. 1643](#) provides that it is unlawful for licensees who sell alcoholic beverages to retailers to discriminate in price between retailers, grant discounts or rebates or other inducements.

Signed into law, [Senate Bill 819](#) allows for the consumption of drinks served at a brewery outside of the serving area (defined as the area of the bar where drinks are sold, prepared and served to paying customers). The measure allows a brewer license holder to manufacture and sell cider and allows accompanied visitors under the age of 21 to be on the licensed premises excepting the serving area.

Oregon

Under consideration in the House, [S.B. 287](#) authorizes a farm brewery to be established as a permitted use on land zoned for exclusive farm use or mixed farm and forest use provided the farm brewery: produces less than 150,000 barrels of malt beverages annually; produces less than 15,000 barrels of malt beverages annually at the brewery site; and owns an on-site or contiguous hop farm of at least 15 acres, purchases hops from at least 15 acres of a contiguous hop farm, or obtains hops from a total of 15 acres of any combination of these sources.

Texas

Signed by the Governor, [S.B. 928](#) amends the Alcoholic Beverage Code to authorize a brewer's permit holder to import ale and malt liquor for manufacturing purposes from a nonresident brewer's permit holder and to mix and blend the imported ale and malt liquor and bottle and sell the resultant product.

Washington

Signed into law, [S.B. 5394](#) authorizes liquor manufacturers, distributors, and their licensed representatives to post and share on their websites and social media accounts, promotional information and images, related to certain events at on-premises liquor retailers' premises or licensed special occasion events. Requires events to feature a product of the manufacturer's own production or a product sold by the distributor, to qualify for the authorization. Specifies that the promotional information posted and shared may include links to purchase event tickets. Specifies there is no obligation on liquor manufacturers, distributors, or their licensed representatives to post or share information, and retailers may not require the posting or sharing of information related to retailer events.