

June 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.

Following Investigation, Keg Importers to Pay Antidumping Duties

The U.S. Department of Commerce announced that [preliminary determinations](#) in the antidumping duty investigations of imports of refillable stainless steel kegs from China, Germany, and Mexico have been made, finding that exporters from China, Germany, and Mexico have dumped refillable stainless steel kegs in the United States. As a result, Commerce will instruct U.S. Customs and Border Protection to collect specified cash deposits from importers of refillable stainless steel kegs from China, Germany, and Mexico.

USDA Issues Opinion on 2018 Farm Bill Hemp-related Provisions

The United States Department of Agriculture (USDA) issued a [legal opinion](#) to address questions raised by several hemp-related provisions of the Agricultural Act of 2018, better known as the 2018 Farm Bill. The [USDA opinion](#) clarifies four areas of the 2018 Farm Bill:

- (1) the removal of hemp as a controlled substance and schedule I drug became effective upon enactment of the 2018 Farm Bill;
- (2) following publication of implementing regulations, states and Indian tribes cannot prohibit interstate transportation and shipment of hemp and hemp-based products, and the USDA confirmed that this preemption also covers hemp produced under the 2014 Farm Bill;
- (3) pending certain exceptions, individuals with certain controlled substance felony convictions will be barred from producing hemp; and

(4) following the enactment of the 2018 Farm Bill, states and Indian tribes still retain the ability to regulate hemp production, including the ability to grow or cultivate hemp in that state or territory.

B. THE STATES

Sales, Distribution and Franchise:

Alabama

Signed by the Governor, [Senate Bill 404](#) would permit a small manufacturer of beer to have a financial interest in a brewpub under certain conditions.

[House Bill 542](#) seeks to allow a licensed manufacturer of alcoholic beverages to dispense and sell at its on-site tasting room, 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.

Arkansas

Signed into law, [Act 681](#), allows for the operation of microbrewery-restaurants in dry counties.

Illinois

Assigned to House committee following Senate passage, [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.

Maine

[Senate Bill 593](#) seeks to change the definition of "small brewery" by increasing the amount of malt liquor a small brewery may brew, and subsequently self-distribute, from 50,000 gallons to 30,000 barrels per year. The bill also sets the maximum amount of the distribution termination fee that the wholesale licensee is entitled to receive from that small beer manufacturer in connection with a non-good cause termination if that small beer manufacturer's brands make up no more than 3% of the wholesale licensee's business. Finally, the legislation provides for a shortened notification requirement, expedited arbitration, and allows the transfer of distribution rights upon notification, regardless of whether the terminated distributor has received the termination fee.

Montana

Dying in committee, [H.B. 185](#) sought to extend the hours for small breweries to serve beer at a sample room to between 10:00 a.m. and 10:00 p.m.

A proposal to create the Alcohol Advisory Council, charged with studying and reporting on all aspects of alcohol in the state, failed to advance from committee.

New York

[S.B. 5427](#) seeks to expand the number of barrels that a restaurant brewer may sell at retail.

North Carolina

Signed into law, [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.

Passing initial committee consideration, [House Bill 536](#), seeks to revise numerous provisions of the state's alcoholic beverage control laws. Proposed changes affecting the craft beer industry include: allowing breweries to produce private label brands for retail permittees; clarifying contract brewing law regarding labeling and taxation; allowing beer tasting at non-365-day farmers markets; allow retail transfer of beer four times per year between locations; creating a common area entertainment permit; and retail delivery right protections.

Texas

Awaiting the Governor's signature, [House Bill 1545](#), reauthorizing the Texas Alcoholic Beverage Commission (TABC), also: provides for the ability of production breweries to sell a case equivalent amount of beer for off-premises consumption; removes the distinction between beer and ale, using instead the term malt beverages, and directs the TABC to tax malt beverages at the current excise tax rate for beer, which is lower than the current excise tax rate for ale; directs TABC to transition to the federal Certificate of Label Approval (COLA) malt beverage registration process by December 31, 2020, eliminating separate fee charges for different size containers and exempting certain brewers and manufacturers from obtaining label approval from TABC for malt beverages sold to the ultimate consumer.

Taxation:

Alabama

Signed into law, [Senate Bill 404](#) 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

The Governor has proposed raising the per-gallon tax on alcohol beverages, with the beer rate increasing 4.6 cents to 27.7 cents/gallon.

Trade Practice & Other:

Alabama

Before the Governor for action, [Senate Bill 276](#) authorizes wineries, distilleries, and breweries that conduct tastings and samplings and that are located within an entertainment district to sell alcoholic beverages for consumption within the entertainment district.

California

Passing the Senate, [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.

Passing the Assembly, [A.B. 1133](#) allows a beer manufacturer up to give up to five cases of glassware – a total of 120 pieces – to an on-sale retail licensee, as specified, and allows an on-sale retail licensee to accept, without direct or indirect charge, up to 10 cases of glassware – a total of 240 pieces – per licensed location from licensed beer manufactures.

Connecticut

Signed into law by the Governor, [Senate Bill 647](#), among many provisions, increases the amount that permittees with a manufacturer permit for beer, brew pub, beer and brew pub, and farm brewery may sell, daily per person, for off-premises consumption until July 1, 2020, from nine liters to nine gallons (on July 1, 2020, the bill consolidates the four permits into one, but keeps the same beer sale threshold); the consolidated beer permit allows retail beer sales for on-premises consumption, with or without selling food; 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”; allows a permittee to sell beer for on-premises consumption between 9:00 a.m. and 1:00 a.m. the next morning on Monday through Thursday, 9:00 a.m. and 2:00 a.m. the next morning for Friday and Saturday, and 11:00 a.m. and 1:00 a.m. the next morning on Sunday; requires beer manufacturer permittees to pay the state alcoholic beverages tax (i.e., excise tax) on malt beverages (e.g., beer) they produce and sell for on-premises consumption for amounts over 15 barrels annually. Current law exempts all such beer produced and sold for on-premises consumption from the tax.

Delaware

Signed by the Governor, [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. The bill also limits brands that can be transferred from a commonly owned manufacturer or microbrewery to a brewery-pub for consumption on the brewery pub premises.

Illinois

Passing both legislative chambers in amended form, [House Bill 3610](#) makes changes to provisions authorizing a manufacturer, distributor, or importing distributor to sell coil cleaning services and dispensing accessories. It further provides that a manufacturer of beer or a brew pub may transfer any beer manufactured or sold on its licensed premises to a growler or crowler and sell those growlers or crowlers to non-licensees for consumption off the premises; provides that on-premises retail licensees may fill growlers or crowlers or refill growlers of beer if specified

requirements are met, including sealing requirements, labeling requirements, and cleaning and sanitization requirements. Finally, in a provision that prohibits manufacturers, distributors, and importing distributors from furnishing things of value to retail licensees, except for certain types of signage, provides that growlers and crowlers are not a temporary inside sign and may only be sold to retailers at fair market value.

Missouri

Signed into law, [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

Signed by the Governor, [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.

New Jersey

The state Division of Alcoholic Beverage Control has issued a [Special Ruling](#) defining allowable activities for limited (i.e. craft) brewery licensees. The ruling covers issues related to on- and off-premises events, brewery tours, food on brewery premises, and certain retail sales.

Oklahoma

Becoming law with the Governor's signature, [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.

Signed by the Governor, [Senate Bill 813](#) authorizes the holder to provide certain amounts of alcohol free of charge to customers for consumption on the holder's premises.

Oregon

Signed by the Governor, [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.