

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. On March 29th [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) was introduced in the U.S. House of Representatives by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2).

H.R. 1236 mirrors the provisions contained in last session's H.R. 4278 which gained the support of 132 U.S. Representatives. Specifically, the bill would reduce the small brewer rate on the first 60,000 barrels by 50 percent (from \$7.00 to \$3.50/barrel) and institute a new rate \$16.00 per barrel on beer production above 60,000 barrels up to 2 million barrels. Breweries with an annual production of 6 million barrels or less would qualify for these tax rates.

The introduction of H.R. 1236 comes shortly after Senators John Kerry (MA-D) and Mike Crapo (ID-R) introduced a small brewer graduated excise tax bill in the Senate, [S.534](#).

CARE Act Returns – Distributor-backed Legislation Introduced in 112th Congress. The distributor-supported Community Alcohol Regulatory Effectiveness Act of 2011 ([H.R. 1161](#)) has been introduced in the U.S. House of Representatives. A modified version of last year's Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010 (H.R. 5034), H.R. 1161 remains problematic for the reasons the Brewers Association (BA) opposed the previous bill (see [BA position statement](#)), particularly due to concerns that it would allow states to enact protectionist and anti-competitive laws. If this bill became law, it could raise significant market access barriers for small brewers.

In a joint industry [statement](#), BA joined other alcohol producer and importer associations in asking Congress to reject the Community Alcohol Regulatory Effectiveness Act of 2011.

Federal Restaurant Menu Labeling Update. The Federal Food and Drug Administration (FDA) has published a [proposed rule](#) concerning implementation of the requirement for restaurants and similar retail food establishments that are part of a chain with 20 or more locations to provide calorie and other nutrition information for standard menu items. As part of the proposed rule, the FDA has decided to tentatively exempt alcohol from these labeling requirements (the relevant section begins on page 19202, 3. Food Covered).

In October, 2010 the Brewers Association submitted [comments](#) concerning issues of importance to small brewers including maintaining consistency with current TTB regulations, accounting for normal batch-to-batch variations and the regulation of seasonal and other short-term brands. The exemption is temporary, pending comments and the issuance of a final rule. FDA has asked for comments to be submitted on all aspects of the proposed rule, with a deadline of June 6, 2011.

Tax and Trade Bureau (TTB) Clarifies Advertising Issues. TTB recently issued two Industry Circulars dealing with advertising matters: [Application of Alcohol Beverage Advertising](#)

[Regulations to Media Personality Sponsorships](#) provides guidance on how TTB interprets the applicability of the Federal Alcohol Administration Act (FAA Act) and TTB alcohol beverage advertising regulations to sponsored promotional statements made by media personalities during television or radio broadcasts; [Application of Alcohol Beverage Advertising Regulations to Television Advertising](#) clarifies the Alcohol and Tobacco Tax and Trade Bureau's (TTB) policy regarding the applicability of the regulations requiring the inclusion of mandatory information to television advertising of alcohol beverages.

B. THE STATES

Distribution and Franchise:

New York

Passing the Assembly and now under Senate consideration, [Assembly Bill 789](#) seeks to permit brewers with less than 300,000 barrels annual volume and which represent 3% or less of a wholesaler's brand sales measured in case equivalents to terminate an agreement with that wholesaler without having good cause. The legislation also requires payment of fair market value of the applicable distribution rights lost and allows for an arbitration panel to review the fair market value.

Direct Shipping:

Arkansas

[H.B. 2082](#) creates a wine direct shipper's permit.

Florida

Continuing to receive consideration in their respective chambers, companion bills [H.B. 837](#) and [S.B. 854](#) authorize direct shipment of wine into and within the state for personal consumption only.

Maine

[L.D. 1141](#) allows off-premise retail licensees of beer and wine to direct ship beer and wine in and outside the state, subject to certain conditions

Maryland

Creating a direct shipper's permit and hence the ability to direct ship to the state's consumers, [House Bill 1175](#) has passed both chambers

Passing the Senate, [S.B. 248](#) seeks to establish a direct wine shipper's permit enabling holders to ship to individual consumers.

New Jersey

[Assembly Bill 3897](#) seeks to allow the direct shipping of wine to the state's legal age consumers by both in-state and out-of-state wineries. Similar legislation has been introduced in the Senate ([S.B. 2782](#)), but with a limit of 24 cases per year allowed to be direct shipped.

New Mexico

Signed into law by the Governor, [Senate Bill 445](#) creates a wine direct shipping permit.

Pennsylvania

[Senate Bill 790](#) provides for the direct shipment of up to eighteen liters of wine per month to residents of the Commonwealth.

Rhode Island

Legislation permitting the direct shipping of wine to consumers ([S.B. 170](#)) has been held in committee for further study.

Tennessee

[H.B. 853](#) and [S.B. 1030](#) allow for the direct shipment of wine to Tennessee residents. Both remain under active consideration, with the Senate bill passing that chamber and sent to the House.

Taxation:

Arkansas

Signed into law by the Governor, [H.B. 2046](#) exempts a wholesale manufacturer of beer from paying sales and use tax on kegs used to sell beer at wholesale.

Maryland

Gaining favorable committee consideration, [Bill 1213](#) seeks to increase the tax rates for alcoholic beverages sold in Maryland from 9 cents to \$1.16 per gallon for beer, from \$1.50 to \$10.03 per gallon for distilled spirits and from 40 cents to \$2.96 per gallon for wine. The additional revenue would be used for funding specified health services.

Trade Practice & Other:

Alabama

[House Bill 86](#) provides for the sale of beer brewed in the state's brewpubs to any designated wholesaler licensee for resale to retail licensees; allows brewpubs to purchase draft or keg beer brewed by other manufacturers in original unopened containers from any licensed wholesaler, and for the brewpub to resell the beer for consumption on its premises.

California

The subject of several committee hearings and amendments, [Senate Bill 39](#) prohibits the import, production, manufacture, distribution, or sale of caffeinated beer beverages at retail locations within California. Importantly, caffeinated beer beverages are defined as "a beer for which the

manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.” Further, “this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.”

Bringing beer into line with provisions already in place for wine, [Assembly Bill 1014](#) seeks to exempt premises set aside for beer tasting by a beer manufacturer, any holder of an out-of-state beer manufacturer's certificate or any holder of a beer and wine importer's general license from the health and sanitation standards for retail food facilities. The bill has passed out of committee after initial consideration.

Colorado

Failing on a floor vote, [H.B.1284](#) sought to provide for the sale of full strength beer (above 3.2% abw) in grocery stores.

[S.B.194](#) provides for the sale of full strength beer (above 3.2% abw) in convenience stores.

Connecticut

Receiving favorable committee consideration, [Senate Bill 464](#) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

Failing to achieve consideration, [H.B. 5279](#) sought to allow the sale of alcohol on Sunday in places operating under package store permits, drug store permits, manufacturer permits for beer or grocery store permits.

Georgia

[House Bill 472](#) seeks to increase the maximum number of barrels of beer that may be manufactured (from 5,000 to 10,000) and sold (from 500 to 5,000) under the brewpub exception to the three-tier distribution system. Additionally removes the requirement that beer be sold solely in draft form.

[H.B. 505](#) provides for the creation of a craft brewery license and for an exception to the three-tier distribution system.

Passing the Senate and under consideration in the House, [Senate Bill 10](#) provides that in each county or municipality in which package sales of only malt beverages and wine by retailers is lawful, the governing authority of the county or municipality may authorize package sales by a retailer of malt beverages and wine on Sundays from 12:30 P.M. until 11:30 P.M., if approved by referendum.

Illinois

[Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

Kansas

Passing both chambers and only needing the Governor's signature to become law, [S.B. 80](#) would raise the maximum alcohol limit on "domestic" beer to 12.5% abv (from 10.0%). The bill would also allow microbreweries to serve domestic beer, free of charge, at special events monitored and regulated by the Division of Alcoholic Beverage Control. Supported by the Kansas Craft Brewers Guild, the bill gives small breweries sampling rights already enjoyed by the farm wineries.

Maryland

Failing to pass committee, [H.B. 182](#) sought to prohibit the importation, production, distribution, sale, or offer for sale in the state of an alcoholic beverage commonly referred to as an alcohol energy drink to which the manufacturer has directly added caffeine or specified other substances as separate ingredients.

Passing both chambers and awaiting the Governor's signature, [Senate Bill 496](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and alters the limit on special brewery promotional event permits that may be issued to a holder in a year.

Minnesota

Companion bills [HF 703](#) and [SF 416](#) seek to allow the holder of certain brewer's license to operate an on-sale facility.

Missouri

Favorably passed out of committee, [S.B. 160](#) allows any winery, distiller, manufacturer, wholesaler or brewer to provide tasting samples on a licensed retail premises so long as the sample provider has certain permits, permission from the retailer and no money is given to the retailers for the tasting.

Montana

Signed into law by the Governor, [Senate Bill 203](#) allows for the sale of beer by off-premises retailers in growlers for off-premises consumption.

New Hampshire

Passing the House and moving to the Senate, [House Bill 262](#) provides for the issuance of a nano brewery license to a business that manufactures beer or specialty beer not exceeding 2,000 barrels annually for sale to the general public or licensees.

New York

[Assembly Bill 6430](#) seeks to create a state liquor authority community liaison to act between the state liquor authority and community boards of the city of New York; requires the community boards to be given at least sixty days notice before any wine, beer, or liquor license is issued, renewed, or altered within the boundaries of such community board.

[A.B. 6507](#) authorizes the issuance of a temporary beer, wine and liquor permit, good for twenty-four consecutive hours, to promote products produced in this state

[Senate Bill 4221](#) would include flavored malt beverages within the definition of liquor for the purposes of distribution and wholesale and retail sale. Excluded from the definition are traditionally brewed beers and malt liquors which have small amounts of fruit, fruit juice, fruit flavor or other natural herbs or spices added during the fermentation process. However, alcoholic beverages which contain flavors or consist of colors or sweetness levels that would appeal to persons under the age of twenty-one years are included.

Oklahoma

[Senate Bill 658](#) creates a joint task force to study and analyze the necessary modifications to existing law necessary regarding the sale of low-point, high-point beer and wine in grocery stores. The 20-member task force is to conclude its study no later than February 1, 2012.

Oregon

Moving to the Senate following House passage, [House Bill 2924](#) removes limitations on alcohol content, minimum amount, source and place of consumption for malt beverages sold by a brewery. The bill also allows a brewery to sell malt beverages at retail at one premises other than premises where manufacture occurs and to obtain a special events license.

Signed into law by the Governor, [S.B. 444](#) seeks to amend a 2010 Oregon Liquor Control Commission reinterpretation of statutory language that limited homebrewers to the production of beer or wine for home consumption (which resulted in the cancellation of the Oregon State Fair's beer and wine competitions). The bill received the support of the Oregon Homebrewers Association and the American Homebrewers Association.

Tennessee

Under committee consideration, [S.B. 12](#) removes the state department of agriculture's authority to regulate or inspect a distillery or wholesaler of alcoholic beverages. Many small brewers hold wholesale licenses in order to self-distribute.

Texas

Receiving favorable committee consideration, [H.B. 602](#) allows production breweries to make unbroken cases available to consumers after tours for off premises consumption.

Washington

A state liquor store privatization initiative, [I-1157](#), has been filed. This measure would close and sell state liquor stores and authorize licensing businesses to distribute, import, and sell spirits (hard liquor). It would authorize licensing retail sales of spirits by certain businesses with existing licenses to sell beer and wine. It would allow distilleries to sell their spirits at retail. It would impose additional taxes on spirits sales and repeal uniform pricing and certain requirements governing sale, distribution, and production of beer, wine, and spirits.

Awaiting the Governor's signature, [House Bill 1172](#) creates a pilot project for beer and wine tasting at farmers markets.

Passing the House and under Senate consideration, [H.B. 1244](#) would allow a spirits, beer, and wine restaurant that already is permitted to sell kegs to also allow the sale of beer in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the restaurant at the time of sale (e.g., growlers).

Passing both legislative chambers and awaiting the Governor's signature, [S.B. 5492](#) removes the 100,000 barrel annual production limit on brewers assessed and represented by the Washington Beer Commission, enabling any state-licensed brewer to be assessed and represented by the Commission.