

A. FEDERAL / NATIONAL / INTERNATIONAL

UPDATE: Small Brewer Graduated Excise Tax Rate Legislation. Bipartisan legislation seeking a graduated beer excise tax rate of \$3.50 and \$16 for domestic small brewers continues to gain support in both chambers of Congress. In the House, [H.R. 4278](#) currently enjoys the support of 98 U.S. Representatives, while [Senate Bill 3339](#) has the support of 21 U.S. Senators.

The legislation seeks to cut the small brewer rate on the first 60,000 barrels by 50 percent to \$3.50/barrel and lowers the tax rate by two dollars to \$16 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 be eligible for these reduced rates.

The Brewers Association has developed a [resource page](#) with the information and tools small brewers need to make the case to their federal elected officials for supporting these tax relief measures.

Brewers Association Signs Industry Letter in Opposition to H.R. 5034. The Brewers Association has joined other industry trade groups in opposition to The Comprehensive Alcohol Regulatory Effectiveness Act of 2010 (H.R. 5034) as expressed in a [letter to Members of Congress](#). The legislation, advocated by the National Beer Wholesalers Association (NBWA), seeks to strengthen state control of alcohol regulation through a variety of means, including addressing what NBWA sees as a growing number of court rulings undermining states' regulatory primacy on alcohol issues.

State Alcohol Regulators Express Support for HR 5034. Highlighting the polarizing nature of The Comprehensive Alcohol Regulatory Effectiveness Act of 2010 (H.R. 5034), The National Alcohol Beverage Control Association (NABCA) Board of Directors has passed a resolution supporting the legislation. Unsurprisingly, NABCA cited the need to protect the primary authority of the states in regulating alcohol "as their states' citizens deem necessary and as provided by the 21st Amendment to the US Constitution."

Federal Agencies Come to "Understanding" on Organic Labeling. The Tax and Trade Bureau (TTB) and the Agricultural Marketing Service (AMS, a division of the U.S. Department of Agriculture) have issued a [Memorandum of Understanding](#) regarding organic labeling. The document spells out jurisdictional responsibilities, as well as delineating an agreed upon policy with respect to labeling and advertising of organic products.

B. THE COURTS

Illinois Small Brewers File Amicus Brief in ABI- Illinois Liquor Control Commission Suit. The Illinois Craft Brewers Guild has joined in support of the global brewer in the dispute between Anheuser-Busch InBev (ABI) and the Illinois Liquor Control Commission (ILCC). Recall that the disagreement began with the ILCC's ruling that the brewer could not buy Chicago distributor City Beverage because, under state law, it is barred from operating as a distributor. The back

and forth eventually lead to the Wine and Spirits Distributors of Illinois filing a motion to intervene based on their belief that the ABI lawsuit threatens the integrity of the three-tier system because no brewer supplier can act as a distributor in Illinois under its interpretation of the Liquor Control Act. This threw into jeopardy the right of all brewers, large and small, to self distribute in the state, leading to *amicus* filing, following which ABI released the following statement (in part):

“We are pleased to have the support of small brewers in this case through an amicus brief filed by the Illinois Craft Brewers Guild and accepted by the court today. Brewer participation as a wholesaler can be especially important to small brewers, who depend on this right to assure they can get their beer to market.

It is a fallacy and myth that the three-tier system collapses when a brewer participates in the middle tier. Rather, the state remains firmly in control of alcohol sales by virtue of the state regulations that all distributors must comply with, regardless of owner or their residency. This tier remains intact when brewers participate as licensed distributors, abiding by state laws. In fact, we have been a responsible and good citizen in our role as a distributor in Illinois for the past 30 years.

We told the court that the remedy in this case should be to extend the same privileges to all parties and not deny this right to those brewers who currently hold distributor’s licenses in the state. We continue to believe the law and past practice support our right to continue to hold a license ...”

C. THE STATES

Distribution and Franchise:

Massachusetts

[House Bill 4743](#) seeks to impose additional restrictions on the ability of brewers to change wholesalers. The Massachusetts Brewers Guild is working to amend the bill to provide an exclusion for small brewers.

New York

Killed in the Senate earlier this year, [Assembly Bill 488](#) has new life, passing the Assembly again and moving to the Senate. The bill would allow small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

Washington

Certified as attaining the requisite number of signatures to be placed on the November 2 ballot, [Initiative 1100](#) seeks to privatize the sale of liquor in Washington. Under its provisions, beer and wine retailers would be allowed to additionally sell spirits, with price controls and volume discount bans abolished. Retailers would be able to buy direct from manufacturers under this proposal which accounts for the massive support Costco has put behind the initiative. Meanwhile, the wholesaler-backed I-1105, which would also privatize alcohol sales but keep wholesaler protections in place, awaits certification.

Direct Shipping:

California

[Senate Joint Resolution 34](#) urges the United States Congress to defeat H.R. 5034 in order to protect and preserve the ability of California wineries, and all wineries in the United States, to ship wine directly to consumers without discrimination between in-state and out-of-state wine producers. The resolution has passed the Senate and moved to the House for consideration.

New Hampshire

Signed into law by the Governor, [H.B. 1352](#) alters the reporting requirements for direct shippers of alcoholic beverages and the limitations on the number of containers of liquor and wine a direct shipper may ship to a customer.

Taxation:

California

The City of San Francisco has proposed a local “charge for harm” alcohol mitigation fee. Backed by anti-alcohol group Marin Institute, the program seeks to charge alcohol wholesalers for related city and county services attributable to alcohol-related harms. The proposed fee on beer, wine and hard liquor would be 0.076 of a cent per ounce of fluid alcohol.

Trade Practice & Other:

Louisiana

Receiving the Governor’s signature and thereby becoming law, [House Bill 1484](#) would create a free three-day permit, allowing the possession, serving and consumption of homemade beer, mead and other fermented beverages at businesses licensed for on premises consumption of alcohol. This provision allows homebrew clubs to legally hold club meetings, competitions and other organized events at bars, restaurants and other licensed establishments.

Michigan

Passing out of a House committee, [S.B. 470](#) would amend the Michigan Liquor Code to require all kegs of beer sold at retail to have an attached identification tag, require ID and a signature to purchase a keg, and create an administrative fine for retailers and a criminal penalty for consumers for certain violations.

[Senate Resolution 164](#), designating July 2010 as Michigan Craft Beer Month and commending the Michigan craft brewers, has been adopted.

Minnesota

The City of Minneapolis is considering the elimination of a current requirement that mandates restaurant operations must be a part of any microbrewery opening within the city limits. In effect, this has limited the small brewery operators to brewpubs at the expense of production only breweries.

New Jersey

Companion bills [S.B. 2040](#) and [A.B. 3063](#) establish a farm brewery license which allows breweries under 2,000 barrels production and built on, or immediately adjacent to, actively farmed land on which hops or another product which is used in the production of the malt alcoholic beverages is being cultivated, to maintain a warehouse and to sell products to consumers for consumption off the licensed premises and to offer samples for sampling purposes only.

New York

[Assembly Bill 11393](#) seeks to give brewers the ability to obtain a Festival Permit through which they would be allowed to offer 3 oz. samples of their beer to consumers.

[S.B. 3246](#) has passed the upper chamber and been sent to the Assembly. The legislation would permit those with licenses to sell beer or wine products for consumption off premises to provide beer samples in their licensed establishments.

Relating to alternating proprietorships, [S.B. 6970](#) allows for premises including space and equipment to be rented by a licensed tenant brewer and allows for brewers to manufacture produce, blend, package, bottle, purchase, sell and deliver alcoholic beverage beverages. The bill has passed both chambers of the legislature.

Oregon

The Oregon Liquor Control Commission, through a reinterpretation of statutory language, now limits homebrewers to the production of beer or wine for home consumption. This has resulted in the cancellation of the Oregon State Fair's beer and wine competitions.