

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Graduated Excise Tax Rate Reduction. [HR 4278](#), legislation seeking to enact a graduated beer excise tax rate of \$3.50 and \$16 for America's small brewers, continues to add cosponsors in the U.S. House of Representatives.

The bill incorporates the small brewer excise tax reduction component of the previously introduced [H.R. 836](#), which would cut the tax rate in half to \$3.50/barrel on the first 60,000 barrels, but also contains a provision to lower the upper tax rate to \$16 per barrel on beer production above 60,000 barrels up to 2 million barrels for brewers with an annual production of less than 6 million barrels.

The Brewers Association has developed a [resource page](#) with the information and tools small brewers need to make the case to their U.S. Representatives for supporting this tax relief measure.

Tax and Trade Bureau Ramping Up Compliance Efforts. The federal Alcohol and Tobacco Tax and Trade Bureau (TTB) has published [TTB Industry Circular 2010-1](#), which explains how two new market-based sampling programs will allow the agency to determine the rate of compliance by the alcohol industry with Federal alcohol beverage laws and regulations regarding advertising, labeling, and product content.

World Health Organization (WHO) Releases Draft Strategy on Alcohol. As part of the United Nations, WHO is tasked with developing global health policies and most recently released its [Draft Global Strategy to Reduce the Harmful Use of Alcohol](#). Among the recommendations are restricting access to alcohol through regulation of the number and hours of on-premise and off-premise outlets, marketing restrictions and a host of pricing-related policies including taxation, inflation-indexing and minimum price levels.

B. THE COURTS

Leveling the Field in Massachusetts. The First U.S. Circuit Court of Appeals has ruled as unconstitutional the Massachusetts law restricting the issuance of direct shipper permits to wineries producing less than 30,000 gallons annually. On its face, the law appeared impartial in that it denied permits to both in-state and out-of-state wineries over the gallonage limit, however, in reality only out-of-state vintners surpassed the threshold amount, so giving the competitive advantage to in-state businesses.

Out-of-State Retailers – Don't Mess with Texas. In another U.S. Circuit Court of Appeals decision (this time the Fifth), a Texas law restricting to in-state retailers the ability to direct ship in Texas was found constitutional. The basis of the Court's decision can be traced to the structure of the three-tier system itself: within this structure, producers are often out-of-state entities while wholesalers and retailers are in-state concerns, over which states have the unquestioned right to regulate their operations and impose the conditions under which they conduct business.

C. THE STATES

Distribution and Franchise:

California

The California Attorney General has issued an advisory statement pertaining to supplier-wholesaler contracts which specifically labels as violations of California law many provisions which the AG believes threaten the independence of the wholesaler. Contract provisions giving suppliers any say in matters such as business plans, personnel decisions, which brands will be carried by the wholesaler and approval of wholesaler acquisitions, all fall within the scope of the advisory.

Indiana

[H.B. 1191](#) allows a person to wholesale beer, wine, and liquor (current law allows a person to wholesale only wine and beer or wine and liquor). Also allows, under certain conditions, a beer wholesaler to have a minority interest in another entity that holds a beer wholesaler permit.

Under certain specified conditions, [Senate Bill 244](#) allows a beer and wine wholesaler to wholesale liquor.

Oklahoma

[Senate Bill 2027](#) sets out the framework for termination of agreements between brewers and wholesalers. The legislation exempts those brewers producing less than 300,000 gallons annually from the provisions contained therein.

Pennsylvania

A Senate hearing has been held on [House Bill 291](#) (already passed by the House) in which testimony was heard from both supporting wholesalers and opposing small brewers. Although the bill ostensibly addresses direct shipping issues arising in the wake of the Supreme Court's Granholm decision, small brewers have concerns with market access and wholesale agreement termination issues.

Legislation allowing beer distributors to sell six-packs of beer ([H.B. 2203](#)) has been introduced for consideration. Currently, restaurants and taverns are permitted to sell six-packs, but distributors must sell only by the full case.

Direct Shipping:

Indiana

[H.B. 1035](#) would allow an Indiana consumer to buy wine from a direct wine seller and have it shipped using a third party verification service retained by the winery (as an alternative to providing information in an initial face to face transaction with the winery). Under the provisions

of this bill, a direct wine seller would be allowed to direct ship not more than 90,000 liters of wine in Indiana in any permit year.

New Jersey

Companion legislation [Assembly Bill 1702](#) and [Senate Bill 766](#) seek to allow the direct shipping of wine to New Jersey residents.

Pennsylvania

[House Bill 2201](#) seeks to allow the direct shipment of wine into the Commonwealth.

Rhode Island

[S.B. 2029](#) permits the direct shipping of wine to consumers.

Washington

[House Bill 2099](#) creates a wine retailer shipper's permit which allows out-of-state online retailers to ship up to two cases of wine or cider per month to a Washington resident 21 years of age or older.

Taxation:

Indiana

[House Bill 1281](#) seeks an increase in all alcohol excise taxes (beer would increase from 11.5 cents to 43.5 cents per gallon), with part of the increased revenue going toward to fund a proposed microbrewery development council for the development, promotion, and education of microbreweries.

Kansas

A House tax committee is considering legislation that would double taxes on alcoholic beverages.

North Dakota

Signatures are being collected to place a question on the ballot to approve raising alcohol taxes to fund alcohol education programs. The tax on a six-pack of beer would increase 5 cents, from 9 to 14 cents.

West Virginia

[H.B. 2681](#) seeks to increase the tax on beer from \$5.50 to \$6.35 per barrel.

Trade Practice & Other:

Alabama

[H.B. 406](#), referred to as the Brewery Modernization Act, would eliminate the distinction between beer manufacturers and brewpubs, permitting any beer manufacturer located in Alabama to sell alcohol on-premises.

Passing out of committee, [Senate Bill 153](#) would permit the production of homebrewed beer, mead, cider, and wine for personal use and would facilitate organized tasting and judging events.

California

[A.B. 1598](#), modeled on draft legislation brought forward by anti-alcohol group Marin Institute, would prohibit the import, production, manufacture, distribution, or sale of caffeinated malt beverages at retail locations within the state. A caffeinated malt beverage is defined as “a beverage for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Trade and Tax Bureau pursuant to Section 25.55 of Title 27 of the Code of Federal Regulations, that is not exempt under subdivision (f) thereof, and is either of the following:

(1) A beverage containing at least 0.5 percent alcohol by volume that is produced by a brewer, as defined in Section 5092 of Title 26 of the United States Code, to which is added or infused caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine.

(2) A beverage containing at least 0.5 percent alcohol by volume that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer, as described in Section 25.55 of Title 27 of the Code of Federal Regulations, to which is added a flavor or other ingredient containing alcohol, except for a hop extract, and caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine.

Colorado

[House Bill 1186](#), would allow the sale of malt liquor in convenience stores, defined as retail businesses of less than 5,000 square feet and offering quick purchases of food, beverages, or gasoline but not a pharmacy, which otherwise would be limited to selling 3.2% beer. It would not, however, allow these establishments to sell other types of alcohol beverages such as wine or spirits.

Indiana

Passing the Senate and under House consideration, [Senate Bill 75](#) gives microbreweries the ability to sell their beer for carryout on Sunday at the address for which the brewer's permit was issued. Consumers would be able to buy up to 7.5 gallons of beer in bottles, or other appropriate containers.

[House Bill 1027](#) seeks to allow the sale of alcoholic beverages on election days.

Iowa

[SF 2091](#) would effectively increase the allowable alcohol content of beer brewed in the state from 5% to less than 17% ABW.

Kansas

[H.B. 2537](#) seeks to allow the sale of full strength beer (above 3.2% abv) in convenience and grocery stores.

Maine

[House Bill 1192](#) strikes a provision that requires taste testing of alcoholic beverages by retail establishments to be conducted in a manner that precludes the possibility of observation by children. The legislation implements a new requirement that signs announcing the time and date of a taste testing be posted for at least 7 days prior to the event.

Mississippi

[House Bill 731](#), seeking to increase the amount of alcohol that beer may contain from 5% to 10% by weight, has died in committee.

[S.B. 2243](#), seeking to increase the amount of alcohol that beer may contain from 5% to 8% by weight, has also died in committee.

Failing to receive consideration, [H.B. 732](#) sought to allow a person the right to brew homemade beer for personal, family, domestic or household use.

New Jersey

Signed into law by the Governor, [Senate Bill 2905](#) requires chain restaurants to provide calorie information for food and beverage items (including beer, wine and spirits) offered for sale.

Oklahoma

Homebrewing legalization legislation ([H.B. 2348](#)) has passed out of committee.

[House Joint Resolution 1062](#) seeks to amend the state Constitution through a ballot initiative to allow on- brewery premise sales of beer.

South Carolina

[H.B. 4327](#) provides for the sales of beer and wine on Sundays.

Virginia

The provisions of [House Bill 342](#) require the Alcoholic Beverage Control Board to complete an implementation study by December 31, 2010, on how it will privatize government stores.

Washington

[H.B. 2688](#) would allow grocery stores to offer beer and wine tastings.

[Senate Bill 5111](#) would allow businesses engaged in the sale or sale and delivery of gifts and flowers to obtain a beer and wine gift delivery license, allowing the business to solicit, take orders for, sell, and deliver beer and/or wine. Delivery of beer or wine must be made in conjunction with gifts or flowers and to individuals other than the person placing the order.

The provisions of [S.B. 5158](#) would allow the Legislative Gift Center to sell, for off-premise consumption, wine and beer produced in Washington.

[S.B. 6027](#) concerns the findings and recommendations of the Joint Select Committee on Beer and Wine Regulation created to review the laws relating to the manufacture, distribution, and

sale of beer and wine and is a carryover from the previous session. The recommendations pertain to the issues of tied house law, post and hold and minimum markup.

Passing out of committee, [S.B. 6204](#) seeks to privatize the sale of alcohol in the state.

[Senate Bill 6333](#) establishes a pilot project for beer and wine tasting at farmers markets.

[H.B. 2804](#) would prohibit the sale of caffeinated or stimulant-enhanced malt beverages. The bill defines a “caffeinated or stimulant-enhanced malt beverage” as a beverage to which is added caffeine or other stimulants including guarana, ginseng, and taurine, and contains at least 0.5 percent alcohol by volume.