

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 108 U.S. Representatives, while [Senate Bill 3339](#) has the support of 24 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 Files Comments on Federal Menu Labeling. In a joint comment submission with the Beer Institute, the Brewers Association (BA) has offered [preliminary comments](#) in response to a [Food and Drug Administration \(FDA\) notice](#) seeking public input on the requirement that chain restaurants (and similar retail food establishments with 20 or more outlets) disclose caloric values for regular menu items and that they make available more detailed nutrient information to consumers on request. This requirement, part of the comprehensive federal health care legislation passed in March, applies to alcohol beverages.

At this early stage, BA has asked that FDA ensure consistency with all applicable Alcohol and Tobacco Tax and Trade Bureau (TTB) rules pertaining to alcohol beverage labeling and advertising, particularly the Statement of Average Analysis which has been in place for many years. It is anticipated that further comments will be submitted in the coming weeks.

Feds Look at Military Exception to Legal Drinking Age. [H.R. 5958](#) directs the Secretary of Defense to allow members of the Armed Forces serving on active duty who are at least 18 years old and less than 21 years old to purchase and consume beer and wine at certain locations on military installations.

B. THE COURTS

Threat to Self-Distribution in Illinois a Big Step Closer to Reality. Relying heavily on the Supreme Court's *Granholm* decision, a federal judge has ruled the Illinois law allowing self-distribution rights to in-state brewers unconstitutional. The ruling comes as part of the suit originally brought by Anheuser-Busch InBev (ABI) against the Illinois Liquor Control Commission (ILCC) disputing 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. ABI disagreed, claiming the ILCC decision violates the commerce clause of the U.S. Constitution by restricting its interstate business.

In ruling on the Commerce Clause portion of the case, the court has in essence leveled the playing field down – rather than expanding the right to self-distribute to those outside of Illinois, the court has revoked that ability for in-state suppliers. The decision, however, will not become effective until March 31, 2011, so that the legislature has an opportunity to consider its own remedy to this constitutional issue during its regular session.

C. THE STATES

Trade Practice & Other:

California

With the Governor's signature, [A.B. 2134](#), the California Small Brewers Association-sponsored Beer Maker Dinner bill has become law. The legislation allows licensed brewers to conduct and participate in events featuring craft beers paired with food called "Beer Maker Dinners." Such consumer events may be held at restaurants that purchase a brewer's products. This measure creates a tied-house exception similar to one in existing law for winemakers.

Delaware

Signed into law by the Governor, [House Bill 447](#) is meant to encourage tourism at Delaware-licensed microbreweries. Current Delaware law permits an individual to have an interest in up to two brewery-pubs and a microbrewery, but under a strict reading of the statute the individual could only sell for consumption off of the premises at two of the three licensed premises. This bill makes clear that this limitation does not apply to microbreweries and brewery-pubs. Additionally, following the federal small brewer production threshold, the bill would allow microbreweries to brew up to 2 million barrels with the hope that this could attract larger microbreweries to Delaware.

Minnesota

The Minneapolis City Council has adopted an ordinance allowing licensed brewers to sell 64-ounce growlers out of their locations.

New York

Becoming law with the Governor's signature, [S.B. 6970](#) relates to alternating proprietorships, allowing for premises (including space and equipment) to be rented by a licensed tenant brewer and for brewers to manufacture produce, blend, package, bottle, purchase, sell and deliver alcoholic beverage beverages.