

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 107 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.

More Trouble for H.R. 5034. Yet another state Attorney General (Idaho) recently clarified his position relative to this legislation, stating that although he supports states' rights to regulate alcohol within their borders, this should not be construed as support for HR 5034. Additionally, a House Judiciary Committee hearing that was rumored to be in the works for mid-July has been indefinitely postponed.

The Comprehensive Alcohol Regulatory Effectiveness Act of 2010 (H.R. 5034) supported by the National Beer Wholesalers Association (NBWA), seeks to give more alcohol beverage regulatory power to states. Opposition is concerned with removal of or reduced federal authority over interstate commerce in alcohol beverages. This potentially includes existing federal authority over taxation, product composition, labeling, advertising, and importation of foreign goods. Under such a scenario, individual states could be empowered to enact protectionist laws inconsistent with other states' laws which could cause serious barriers to interstate commerce and other access to market issues. The Brewers Association's opposition to this bill is detailed in the official [position statement](#).

Four Senators versus Four Loko. U.S. Senators Charles Schumer (D-NY), Dianne Feinstein (D-CA), Amy Klobuchar (D-MN) and Jeff Merkley (D-OR) have publicly called on the Food and Drug Administration (FDA) to release information on its investigation into potential health risks posed by energy drinks that combine alcohol and caffeine. Referencing FDA's November, 2009 letter to 30 manufacturers of such drinks, including Four Loko and Joose, requesting information showing that the use of caffeine in alcoholic beverages is safe, the Senators urged FDA to come to a decision on the matter.

B. THE COURTS

Russian Brewer's Court Victory Underscores Importance of Written Contracts. A useful lesson concerning written agreements between suppliers and wholesalers was contained in a decision involving a wrongful termination case brought by a New York wholesaler against a Russian brewer. In *S.K.I. Beer Corp. v. Baltika Brewery*, the District Court originally dismissed the wholesaler's claims that the termination was in violation of New York's beer franchise law based on the fact that the parties'

contract called for all disputes to be heard by a court in St. Petersburg, Russia. On appeal, the 2nd Circuit Court of Appeals upheld that ruling, citing the fact that there was no conflict between provisions of the franchise law and the selection of the dispute forum in the written agreement. Hence, the supplier gained a valuable protection through the written agreement even in the face of a strongly wholesaler-favorable franchise law.

Court Affirms Favorable Three-Tier Decision in Texas. In a case originally dating to 2007, the appeals court of the 5th Circuit has denied an appeal to reconsider a decision barring out-of-state retailers from shipping direct to consumers, thus validating the Texas law which requires retailers maintain a physical presence in the state from which to conduct business.

Battle for Bud Trademark Goes Against ABI. The European Court of Justice has declined to overturn a lower court decision barring A-B InBev from registering the Budweiser brand as a European Union-wide trademark. The decision is a victory for Czech brewer Budejovicky Budvar which will retain control of the mark in Germany, one of Europe's premier beer markets.

C. THE STATES

Distribution and Franchise:

Massachusetts

[House Bill 4743](#), seeking to impose additional restrictions on the ability of brewers to change wholesalers, has died with the close of the legislative session. The Massachusetts Brewers Guild had been active in efforts to raise the legitimate concerns of small brewers with the legislation as written.

Washington

The Washington Brewers Guild has formally expressed opposition to [Initiative 1100](#), a measure that has been certified to appear on the November 2 ballot. I-1100 seeks to privatize the sale of liquor in Washington, allowing beer and wine retailers to additionally sell spirits and buy direct from manufacturers. Price controls and volume discount bans would be abolished. The concerns of small brewers center on the increased difficulty of getting their beer to market under this scenario, as large retailers (like Costco, which is supporting the passage of the measure) and chain restaurants would be in a position to make new and additional demands on suppliers in order to obtain shelf space or placements. Such an environment would inevitably favor larger brewers over small, independent breweries.

Another ballot initiative, the wholesaler-backed I-1105, which would also privatize alcohol sales but keep wholesaler protections in place, has also been certified to appear on the November ballot.

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 been formally adopted falling approval by both chambers of the legislature.

Trade Practice & Other:

California

Successfully passing both chambers of the legislature, [A.B. 2134](#), the California Small Brewers Association-sponsored Beer Maker Dinner bill, would allow licensed brewers to conduct and participate in events featuring craft beers paired with food called "Beer Maker Dinners." Such consumer events would 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

Passing the House, [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.

Signed into law, [S.B. 234](#) establishes universal recycling in Delaware. Among its many provisions, the legislation converts the current bottle deposit to a recycling fee on beverage containers. This change will have implications for beverage labeling, including alcohol products liable to its provisions.

Mississippi

Governor Haley Barbour officially proclaimed July 24-31 2010, as [Mississippi Craft Beer Week](#).

South Carolina

Signed into law by the Governor, [House Bill 4516](#) allows a nonprofit organization to hold a temporary license to sell alcoholic liquor by the drink at a special function for a period not to exceed twenty-four hours.