

December 2014 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Shows Solid Support as 113th Congress Adjourns

Small brewer excise tax recalibration legislation, The Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) registered significant bipartisan support in both chambers of the 113th U.S. Congress. H.R. 494 was introduced on February 5 by Representatives Jim Gerlach (R-PA) and Richard E. Neal (D-MA). Joining as original co-sponsors of the bill were Representatives Peter De Fazio (D-OR), Erik Paulsen (R-MN), Earl Blumenauer (D-OR) and Patrick McHenry (R-NC). The bill now has a total of [181 sponsors](#).

On May 9, Senators Ben Cardin (D-MD) and Susan Collins (R-ME) introduced S. 917 in the U.S. Senate. The bill now has the support of [47 Senate sponsors](#).

The Small BREW Act seeks to 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. Legislation introduced last session, H.R. 1236, gained a total of 174 total sponsors. In the Senate, companion legislation S.534 realized 44 total sponsors.

FDA Issues Final Rule on Menu Labeling

The U.S. Food and Drug Administration (FDA) finalized [rules](#) requiring that calorie information be listed on menus and menu boards in chain restaurants and similar retail food establishments and vending machines. The menu labeling final rule applies to restaurants and similar retail food establishments if they are part of a chain of 20 or more locations, doing business under the same name, offering for sale substantially the same menu items and offering for sale restaurant-type foods. Alcohol beverages are considered food items for the purposes of this rule. [Further resources](#) have been provided by FDA to assist in understanding these new requirements.

BA Files Comments on Revised Proposed Rule Affecting Spent Grain

The Brewers Association (BA) submitted a second round of comments on the federal [Food and Drug Administration's proposed rule](#) concerning the regulation of spent grain used for animal feed as part of the Food Safety and Modernization Act (FSMA). BA comments focused on reiterating the fact that beverage alcohol facilities should not be liable to this regulation given the general exemption such facilities received under FSMA, the need for "bright line" guidance respecting compliance responsibility between brewers and farmers, an express exemption for brewpubs and clarity concerning the inspection authority of FDA or state-contracted officials.

B. THE COURTS

License Approval Forthcoming for ABI in Kentucky Branch Acquisition

In the aftermath of a Franklin County circuit court ruling that the Kentucky Department of Alcoholic Beverage Control (ABC) must issue Anheuser-Busch Inbev (ABI) a distributor's license for the Budweiser of Owensboro distributorship, the Director of the Kentucky ABC Malt Beverage Division has conditionally approved the license pending submission of further documentation to clarify information which has been deemed either incomplete or inaccurate. The director expressed ongoing concerns, however, relating to access to market issues for craft brewers. ABI's acquisition had been opposed by the Kentucky Guild of Brewers, The National Beer Wholesalers Association, the Wine and Spirits Wholesalers Association, the MillerCoors wholesalers, several of the state's ABI distributors and retailers.

Small Brewers Sue Texas ABC over Distribution Rights Payments

[The Institute for Justice has filed suit](#) in a Texas District Court on behalf of three small brewers claiming that it is unconstitutional for the state to force them to give distributors their territorial distribution rights without compensation.

Distributors Raise Three-Tier Concerns in Idaho

In the wake of Anheuser-Busch InBev's (ABI) purchase of Bend, Oregon's 10 Barrel Brewing Co. which operates a brewpub in the state of Idaho, [the Idaho Beer & Wine Distributors Association has petitioned the state](#) for a declaratory ruling seeking confirmation of Idaho law that prohibits a brewer producing more than 30,000 barrels from holding a retail, brew pub or wholesale license. Both ABI and 10 Barrel Brewing Co. have an annual production in excess of that limit.

C. THE STATES

Sales, Distribution and Franchise:

Montana

Draft legislation has been requested that seeks to revise franchise laws related to beer and wine distributors.

Ohio

[House Bill 668](#) would allow certain permit holders, including manufacturers of beer, to sell and ship beer and wine on behalf of a different class of permit holder to consumers residing in the state.

Trade Practice & Other:

Ohio

Receiving favorable floor consideration in the House, [House Bill 594](#) seeks to prohibit the sale or offering for sale for human consumption of powdered or crystalline alcohol.