

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update

Small brewer excise tax recalibration legislation, The Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) HR 494, was introduced in the 113th Congress 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 [11 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](#).

STOP Act Reauthorization Introduced

H.R. 498, legislation to reauthorize the Sober Truth on Preventing (STOP) Underage Drinking Act, has been introduced. The STOP Act, which became law in 2006, emphasizes that alcohol is different than other consumer products and is best regulated by the states.

Federal Trade Commission Issues Final Order on Four Loko

The Federal Trade Commission has [announced](#) it has finalized a modified order settling charges against Phusion Projects, LLC for what were determined to be false claims that a 23.5-ounce can of Four Loko contains the alcohol equivalent of one or two regular 12-ounce beers, and that a consumer could drink one entire can safely on a single occasion. The order requires Phusion to gain Tax and Trade Bureau (TTB) approval to place an Alcohol Facts panel on containers of Four Loko which would include the container size, percentage alcohol by volume, number of servings in the container, and serving size in fluid ounces, as well as the statement, "According to the U.S. Dietary Guidelines, a serving contains 0.6 ounces of pure alcohol." Finally, the order also requires that all of Phusion's flavored malt beverages containing more than two and a half servings of alcohol be made re-sealable within six months.

B. THE COURTS

Anheuser-Busch Guilty of Mislabeling?

Several class-action lawsuits have been brought against Anheuser-Busch (A-B) claiming violation of consumer protection statutes. Typical is the suit filed in U.S. District Court for the Eastern District of Pennsylvania which states A-B's label claims about alcohol content are false. The court filing states "Using highly advanced process control instrumentation and corporate protocols, AB can and does identify and control, with great accuracy and precision, the exact

alcohol content of each unit it sells, but nevertheless intentionally misrepresents each such product as having a greater amount of alcohol than it actually contains.” The suits claim that AB waters down their beer prior to bottling to reduce the alcohol content.

C. THE STATES

Taxation:

Hawaii

Although similar in providing for a reduced tax rate of \$0.23 per gallon of beer applied to 60,000 barrels of production during a taxable year by a small brewery or brewpub located in the state, [Senate Bill 1261](#) defines the qualifying brewer as producing not more than 60,000 barrels annually while [House Bill 1123](#) defines qualifying brewers as those with not more than 2 million barrels annual production.

Minnesota

[Senate Bill 587](#) raises the barrelage from 100,000 to 250,000 annual production for brewers (both in-state and out-of-state) to qualify for the tax credit of \$4.60 per barrel on 25,000 barrels sold.

New York

[Assembly Bill 4574](#) provides for a credit against the personal income tax and the franchise tax equal to the amount actually expended on and after January 1, 2013 for cases, bottles, carafes or other containers in which wine, liquor, or beer produced for resale is packaged and for corks and labels used in and on such containers. The credit only applies to brewers that produce sixty million or fewer gallons of beer in this state.

Pennsylvania

[Senate Bill 495](#) provides for a tax credit on capital improvements up to \$200,000 for qualifying brewers.

West Virginia

[House Bill 2016](#) seeks to double the per barrel tax on non-intoxicating beer to \$11.00 to help fund the Prevention, Intervention, Treatment and Recovery Fund. The tax imposed, however, shall not apply to non-intoxicating beer manufactured by a brewpub.

Sales, Distribution and Franchise:

Georgia

Both [H.B. 313](#) and [S.B. 174](#) seek to give brewer manufacturers the ability to sell a maximum of 288 ounces per person per day of malt beverages manufactured on its premises for off-premises consumption in conjunction with an educational and promotional tour of the brewery. The legislation would also give brewpubs the same off premise ability and allow the distribution of up to 5,000 barrels annually through the wholesale tier. [H.B. 314](#) carries identical provisions.

Illinois

Legislation ([House Bill 2606](#) and [Senate Bill 1855](#)) has been introduced to make clear the intent of legislation passed in the previous session which prohibited any beer manufacturer from owning a distributorship or engaging in self-distribution if the brewer produces more than 15,000 barrels annually.

Maryland

Companion legislation [Senate Bill 223](#) and [House Bill 231](#) create a limited beer wholesalers license which would allow brewers producing not more than 22,500 barrels annually (effectively a brewpub license) to self-distribute not more than 3,000 barrels in a calendar year. Non-resident brewery permit holders (out-of-state breweries) are also eligible to obtain a limited beer wholesalers license under the same parameters as in-state breweries. The legislation also seeks to bring production brewery licensees, which currently enjoy unlimited self-distribution and no barrelage cap, under the same 3,000 barrel limitation.

[Senate Bill 955](#) creates a refillable container permit allowing production breweries to sell draft beer in specified refillable containers for consumption off the licensed premises.

[H.B. 4](#) and [S.B. 32](#) would authorize a Class 5 brewery licensee (production brewery) to sell annually up to 6,000 barrels of beer brewed at the location for on-premises consumption.

Massachusetts

[House Bill 267](#) seeks to allow brewers who represent 20% or less of a wholesaler's total sales in the prior calendar year to terminate the relationship in the absence of cause for fair market value. If the parties cannot agree on the amount that fair market value represents, that determination shall be made through binding arbitration.

Companions [House Bill 179](#) and [Senate Bill 97](#) would expand the sales abilities of farmer breweries.

Minnesota

[House Bill 266](#) and [Senate Bill 467](#) would allow brewer taprooms to be located in cities with municipal liquor stores.

Mississippi

Dying in committee, [House Bill 954](#) sought to allow breweries under 200,000 barrels annual production to ability to sell limited quantities of beer on the brewery premises for off-premises consumption.

Missouri

[S. B. 365](#) seeks to modify the definition of franchise under Missouri franchise law, specifically for agreements between alcohol wholesalers and suppliers so that a franchise may exist even without a license to use a trade name, trademark, or service mark and regardless if there is a community of interest in the marketing of the products. If enacted, this would effectively invalidate a recent court decision favorable to the franchise rights of very small brands by

requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights. Similar legislation was vetoed by the Governor last session.

North Dakota

Passing the Senate, [Senate Bill 2284](#) provides for a brewer taproom license which would enable breweries with an annual production not to exceed 25,000 barrels to offer on-premises sales and sampling and engage in self-distribution up to 10,000 barrels per year.

Tennessee

[House Bill 903](#) and [Senate Bill 747](#) would allow beer manufacturer that is also licensed as restaurant or limited service restaurant for purposes of selling alcoholic beverages for consumption on premises to sell beer manufactured at such brew pub for off premises consumption.

Texas

Companion legislation [Senate Bill 515](#) and [House Bill 1763](#) increases the annual production limit for a brewpub from 5,000 to 12,500 barrels and authorizes brewpubs to sell their products to the wholesale tier and to self-distribute up to 1,000 barrels annually.

[Senate Bill 516](#) authorizes a production brewery under 125,000 barrels of annual production to self-distribute up to 40,000 barrels annual of beer, ale and malt-liquor to retailers.

[S.B. 518](#) authorizes a production brewery under 225,000 barrels of annual production to sell up to 5,000 barrels annually of beer produced by the brewery to ultimate consumers for consumption on the premise of the brewery.

[Senate Bill 639](#) and companion [H.B. 1538](#) would prohibit suppliers from receiving compensation for distribution rights and impose uniform pricing for brewery sales of beer to wholesalers.

Vermont

[House Bill 180](#) would allow manufacturers of malt or vinous beverage to sell directly to retail dealers up to 5,000 gallons of malt or vinous beverages a year and to deliver the beverages by common carrier or the manufacturer's own vehicles provided that no more than 100 gallons per month are sold to any single retailer.

[Senate Bill 53](#) allows for internet sales of malt or vinous beverages to in-state and out-of-state consumers.

Direct Shipping:

South Dakota

Passing committee, [Senate Bill 100](#) provides for the direct shipment of wine to the state's consumers.

Trade Practice & Other:

Alabama

Homebrew legalization bills [H.B.9](#) and [S.B.171](#) have received favorable consideration in committee hearings.

California

The provisions of [A.B. 782](#) would permit a wholesaler or manufacturer to accept the return of unsold and unopened beer from an organization that obtained a caterer's permit or an event permit.

[Assembly Bill 933](#) would authorize a licensed distilled spirits manufacturer to charge consumers for tastings on its licensed premises.

[Senate Bill 533](#) would authorize a beer manufacturer, other than the beer manufacturer, importer, or wholesaler identified on the returnable beer container's or carton's label, to refill the container or carton if the original label on the container or carton is removed and replaced by the refilling beer manufacturer.

Colorado

Indefinitely laid aside, [Senate Bill 84](#) would have authorized cumulative discount programs, under which a supplier provided a reward to a retailer for meeting a previously determined purchase goal.

Connecticut

[H.B. 6211](#) allows the offering and tasting of samples of distilled spirits at the places of business where they are produced.

[House Bill 6361](#) would eliminate the state's minimum pricing requirements.

Florida

[House Bill 715](#) and [Senate Bill 1344](#) would authorize the sale of beer in the traditional 64 ounce "growler" package.

Companion bills [House Bill 695](#) and [Senate Bill 864](#) seek to prohibit manufacturers, distributors, and importers of beer from furnishing coupons redeemable by vendors to consumers.

Georgia

[House Bill 124](#) seeks the local authorization and regulation of sales of alcoholic beverages on Sunday.

Hawaii

Passing initial committee consideration, [H.B. 1126](#) would require beers sold or distributed in the State whose labels convey the impression that the beers were produced in Hawaii to indicate otherwise if not produced in the State.

Idaho

Passing the Senate and under House consideration, [Senate Bill 1058](#) would remove the current prohibition on sales of 5 gallon kegs.

Illinois

[House Bill 1573](#) provides that manufacturers shall send a list of their registered agents to any distributor or importing distributor to which the manufacturer has granted the right to sell at wholesale and pay a fee of \$250 when registering agents, representatives, or persons acting on behalf of a manufacturer.

Indiana

Passing the Senate, [Senate Bill 100](#) seeks to allow a small brewer (defined as not more than 30,000 barrels annual production) to sell beer to consumers for carryout at a farmers' market that is operated on a nonprofit basis, in a quantity of not more than 576 ounces per consumer at any one time.

Passing the full House, [House Bill 1293](#) creates an artisan distiller's permit for a person who desires to commercially manufacture not more than 10,000 gallons of liquor in a calendar year.

Iowa

[House Bill 182](#) increases from 1.5 to 9 liters the amount of micro-distilled spirits a permit holder can sell to a person per day on the premises of the micro-distillery.

Maryland

[House Bill 704](#) and [Senate Bill 755](#) seek to increase the annual production limit for Class 7 micro-breweries from 22,500 barrels to 60,000 barrels of malt beverages.

Michigan

[Senate Bill 216](#) contains recommendations of the Liquor Control Advisory Rules Committee for the reform of Michigan's liquor control regulations. Brewers Association member Matt Greff (Arbor Brewing Co., Ann Arbor, MI) served as a member of the committee which included representation from all three tiers of the alcohol industry. The provisions relating to beer include:

- Creates a new "Small Brewer" license that replaces the current microbrewer and brewpub licenses, which are both eliminated under the bill. A small brewer could brew up to 30,000 barrels of beer and could sell their product to a wholesaler, to a retailer, to a consumer via direct shipment (up to a total of 115 barrels per year), or at retail for on- or off-premises consumption at its licensed premises.
- Exempts contracts between small brewers or small winemakers and their wholesaler from the Supplier-Distributor Franchise Law if the small brewer's or small winemaker's volume through the distributor represents less than 3 percent of the distributor's book of business.
- Allows a brewer, brandy manufacturer, small distiller, winemaker, or small winemaker to obtain a "catering permit" to sell, deliver, and serve beer, wine, or spirits at a catered, private off-premises event.

Minnesota

Companion bills [H.B. 186](#) and [S.B. 220](#) would amend the wine tasting statute to permit the consumption of beer.

Mississippi

Homebrew legalization legislation [S.B. 2183](#) has passed the Senate.

Missouri

Passing the Senate, [S.B. 121](#) provides that beer brewed for personal or family use may be removed from the premises where brewed for use at organized affairs, exhibitions, or competitions, such as home brewer contests, tastings, or judgments. Additionally, the bill allows distillers, wholesalers, winemakers, retailers, and brewers may make financial contributions for festivals where alcohol is sold to a not-for-profit organization that is registered with the Secretary of State.

New Hampshire

[House Bill 237](#) amends the statute authorizing and regulating home brewing to include the production of wine.

Dying in committee, [House Bill 275](#) sought to establish a pilot program for the sale of New Hampshire microbrewery and nano brewery beers at certain state liquor stores.

[H.B. 253](#), seeking to repeal the serving size limitation on sales by nano breweries for consumption on the premises, has been amended to allow a nano brewery to obtain a license upgrade exempting the licensee from sales limitations when the licensee is selling food.

New Mexico

[H.B. 504](#) and [S.B. 424](#) authorize the issuance of a tasting permit to a licensed dispenser, retailer, resident manufacturer, nonresident manufacturer, wholesaler or winegrower to conduct tastings of wine, beer or spirituous liquor on a licensed premises.

New York

Passing initial committee consideration, [House Bill 2745](#) would give the State Liquor Authority the ability to consider the economic development and job opportunities that can be created by promoting the prudent expansion of the manufacture of beer, wines, and liquors, and other ancillary activities that can help to promote tourism and recreational activities.

Oklahoma

[House Bill 1341](#), allowing the holder of a brewer license to serve free samples of beer produced by the licensee, limited to no more than 12 fluid ounces per day in a designated sampling area, to visitors 21 years of age or older, has passed the House.

Pennsylvania

[House Bill 296](#) provides for a nano-brewery license to produce no more than one hundred fifty barrels of malt or brewed beverages and to sell malt or brewed beverages produced and owned by the brewery to individuals for consumption on or off the licensed premises in any container or package of any volume and to hotel, restaurant, club and public service liquor licensees. The license holder may also operate a restaurant or brewery pub on the licensed premises.

Rhode Island

Held in committee for further study, [House Bill 5190](#) would allow farm breweries and farm wineries to sell beer and wine for off-premises consumption at farmers markets.

South Carolina

[House Bill 3554](#) specifies that samples and sales of beer at breweries must be restricted to products of fourteen percent alcohol by weight or less for on-premises consumption and, for sales, limited to a maximum of sixty-four ounces of beer per consumer in a twenty-four hour period.

Washington

[Senate Bill 5674](#) allows up to a total of three wineries or microbreweries may offer samples at a farmers market per day. Samples must be two ounces or less, and each winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.