

## **A. FEDERAL / NATIONAL / INTERNATIONAL**

Small Brewer Federal Excise Tax Legislation Update. With the close of the 111<sup>th</sup> Congress, [H.R. 4278](#) garnered 132 co-sponsors and [Senate Bill 3339](#) had the support of 28 U.S. Senators.

As the 112<sup>th</sup> Congress gets underway in January, the Brewers Association expects both measures to be reintroduced early in the session.

USDA Publishes Notice Regarding Organics. The U.S. Department of Agriculture, Agricultural Marketing Service, has published a [Notice of Draft Guidance](#) and request for comments relating to the labeling, composition of and use of percentage statements in “made with organic XXX” (where XXX is a specified ingredient or food group). Comments must be submitted by March 14, 2011.

## **B. THE STATES**

### **Distribution and Franchise:**

#### **Illinois**

[H.B. 205](#) seeks to allow self distribution to brewers brewing 60,000 barrels or less annually and also would also allow brewpubs to sell direct to retailers. The total off-premises sales for brewpubs would be limited to 50,000 gallons (about 1,600 barrels) per year.

### **Direct Shipping:**

#### **Maryland**

The Office of the Comptroller has submitted a report to the General Assembly concerning the results of its study into the viability of permitting the direct shipment of wine to in-state consumers. The Comptroller concluded that while the direct shipment by out-of-state wineries would be beneficial to consumers, the shipment of wine by out-of-state retailers would have a negative impact on in-state businesses.

### **Taxation:**

#### **Mississippi**

[House Bill 173](#) would, in part, impose a privilege tax at the wholesale level of 64 cents per gallon of beer acquired for sale or distribution in the state. Brewpubs are also liable for this tax on all beer produced on-premises.

#### **New Hampshire**

A request for draft legislation seeking to increase the tax rate on all types of alcohol has been withdrawn from consideration.

## **Trade Practice & Other:**

### **California**

[Senate Bill 39](#) seeks to ban the importation, production, manufacture, distribution, or sale of caffeinated beer beverages (defined as containing 1 percent or more of alcohol by volume to which is added or infused caffeine) in the state.

### **Iowa**

[Senate File 1](#) prohibits the manufacture, sale, or distribution of caffeinated alcoholic beverages, defined as any beverage containing more than one-half of one percent of alcohol by volume, including alcoholic liquor, wine, and beer, to which caffeine is added.

### **Michigan**

Keg registration legislation ([S.B 470](#)) has been signed into law by the Governor.

### **Mississippi**

[H.B. 744](#) seeks to raise the allowable alcohol content in beer from 5% to 8% by weight.

[Senate Bill 2064](#) provides for raising the allowable alcohol content in beer from 5% to 8% by weight and for the ability to make homebrewed beer for domestic or household use.

[S.B. 2673](#) seeks to raise the allowable alcohol content in beer from 5% to 17% by weight and provides for the ability to make homebrewed beer for domestic or household use.

### **Montana**

[Legislation](#) has been drafted, although not yet introduced, to shift the allowable serving hours of small breweries.

### **New Hampshire**

A request for draft legislation to privatize the state liquor stores has been withdrawn from consideration.

### **Texas**

[House Bill 660](#) would allow brewpubs the ability to sell beer into the wholesale distribution system. The current production limit of 5,000 barrels would apply to on- and off-premises sales and brewpub licensees producing 10,000 barrels or less annually could engage in self distribution. Total annual brewpub production would be limited to 75,000 barrels.

[H.B. 602](#) allows production breweries to make unbroken cases available to consumers after tours.

### **South Carolina**

[House Bill 3246](#) would ban the importation, production, manufacture, distribution, or sale of alcoholic energy drinks and caffeinated malt beverages in the state. Both classes of beverage are defined as: (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; or

(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.

### **Washington**

[Senate Bill 5029](#) and [House Bill 1172](#) would authorize a pilot program for limited wine and beer tasting at farmers markets.

[S.B. 5111](#) provides for the privatization of the sale and distribution of alcohol and calls for a referendum on the issue at the next general election.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. With the close of the 111<sup>th</sup> Congress, [H.R. 4278](#) garnered 132 co-sponsors and [Senate Bill 3339](#) had the support of 28 U.S. Senators. As the 112<sup>th</sup> Congress gets underway, the Brewers Association expects both measures to be reintroduced early in the session.

Brewers Association Revises Craft Brewer Definition. The Board of Directors of the Brewers Association (BA) has voted to [revise the definition](#) of a craft brewer through a change to what constitutes “small.” Whereas the previous definition referenced a 2 million barrel annual production cap to be considered small, the new definition increases that number to 6 million barrels.

Federal Restaurant Menu Labeling Update. The federal Food and Drug Administration (FDA) has rescinded their initial interpretation of the effective date for menu labeling requirements passed as part of the comprehensive federal health care legislation approved in March 2010. This requirement, which applies to alcohol beverages, was originally considered effective upon implementation of the statute. The agency has now determined that the process will proceed with the issuance of a Notice of Public Rulemaking (NPRM) with public comments requested prior to any final rulemaking determination.

The Brewers Association filed formal [comments](#) with the Food and Drug Administration addressing issues of importance to small brewers such as maintaining consistency with current TTB regulations, accounting for normal batch-to-batch variations and how seasonal and other short-term brands will be regulated.

Beyond Caffeine: Marin Institute Pushes ABV and Container Size Limits. Following the federal ban on pure caffeine additions to alcohol beverages, anti-alcohol group Marin Institute has developed [model state legislation](#) restricting the size and alcohol content of “alcopops.” In Marin’s words: “Many products (such as Joose and Four Loko), while no longer containing caffeine, are still a public health menace, sold in supersized, super-sweet, fruit-flavored, 23.5 oz, single-serving cans, with up to 12% alcohol content—the equivalent of 4.7 standard drinks of alcohol.”

## B. THE STATES

### Distribution and Franchise:

#### **Massachusetts**

Legislation (House Docket 2759) allowing a small brewer (defined as producing less than 6 million barrels of beer a year and who accounts for less than 20 percent of the wholesaler’s business) to move without cause to a different wholesaler as long as fair market value compensation is provided, is under consideration by the legislature.

#### **Missouri**

[H.B. 258](#) and [Senate Bill 64](#) prohibits brewers or beer manufacturers as well as their officers, directors, agents, employees or affiliates, from having any direct or indirect interest in the license, business, assets or corporate stock of a wholesaler.

### **Nebraska**

[L.B. 279](#) eliminates the exception in the Liquor Control Act that allows a beer manufacturer to also own a beer distributorship.

### **New York**

Companion bills [Senate Bill 1315](#) and [Assembly Bill 789](#) seek to permit brewers with less than 300,000 barrels annual volume and which represent 3% or less of a wholesaler's brand sales measured in case equivalents to terminate an agreement with that wholesaler without having good cause. The legislation also requires payment of fair market value of the applicable distribution rights lost and allows for an arbitration panel to review the fair market value.

## **Direct Shipping:**

### **Indiana**

[House Bill 1081](#) and [House Bill 1132](#) seeks to allow the direct shipping of wine to Indiana consumers.

### **Maryland**

Companion bills [H.B. 234](#) and [S.B. 248](#) establish a direct wine shipper's permit enabling holders to ship to individual consumers.

### **Pennsylvania**

[House Bill 110](#) provides for the direct shipment of wine to the state's consumers.

### **Washington**

Companion bills [S.B. 5256](#) and [H.B. 1482](#) wine shipper's permit is created to allow licensed wine manufacturers, suppliers, importers, wholesalers, distributors, and retailers to ship wine to individuals in Washington who are at least 21 years of age.

## **Taxation:**

### **Hawaii**

Companion bills [H.B. 365](#) and [S.B. 644](#) seek to reduce the gallonage tax on the first 60,000 barrels of beer brewed or produced during a taxable year by a small brewery or brewpub in the state to \$0.23 per gallon.

### **Iowa**

[Senate Study Bill 1007](#) proposes an increase in the beer excise tax from the current \$5.89 per barrel to 73 cents per gallon (\$22.63 per barrel).

## **Maryland**

Companion bills [Senate Bill 168](#) and [House Bill 121](#) would increase the tax rates for alcoholic beverages sold in Maryland from 9 cents to \$1.16 per gallon for beer, from \$1.50 to \$10.03 per gallon for distilled spirits and from 40 cents to \$2.96 per gallon for wine. The additional revenue would be used for funding specified health services.

## **New Mexico**

[H.B. 23](#) seeks to increase the excise tax rate on beer brewed by in-state microbrewers to \$1.15 per gallon (the current rate is 8 cents/gallon).

## **Trade Practice & Other:**

### **Connecticut**

Proposed legislation ([Senate Bill 464](#)) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

[H.B. 5279](#) seeks to allow the sale of alcohol on Sunday in places operating under package store permits, drug store permits, manufacturer permits for beer or grocery store permits.

### **Indiana**

Companion legislation [S.B. 197](#) and [H.B. 1239](#) seek to allow Sunday carryout sales and would also permit the sale of cold beer.

### **Iowa**

A House companion bill ([House File 25](#)) joins [Senate File 1](#) in seeking to prohibit the manufacture, sale, or distribution of caffeinated alcoholic beverages, defined as any beverage containing more than one-half of one percent of alcohol by volume, including alcoholic liquor, wine, and beer, to which caffeine is added.

### **Kansas**

[S.B. 54](#) seeks, in part, to allow the sale of strong beer in grocery and convenience stores.

### **Michigan**

Provisions of [House Bill 4061](#) would allow microbreweries and brewpubs to serve as host facilities to homebrew competitions and tastings under certain conditions.

### **Mississippi**

Died in committee: [House Bill 1164](#) allows holders of beer manufacturers permits who operate breweries to provide certain samples in conjunction with tours of premises.

Died in committee: [H.B. 1068](#), creating a special permit for package retailers to host tasting events.

Died in committee: [H.B. 744](#) seeks to raise the allowable alcohol content in beer from 5% to 8% by weight.

Died in committee: [Senate Bill 2064](#) provides for raising the allowable alcohol content in beer from 5% to 8% by weight and for the ability to make homebrewed beer for domestic or household use.

Died in committee: [S.B. 2673](#) seeks to raise the allowable alcohol content in beer from 5% to 17% by weight and provides for the ability to make homebrewed beer for domestic or household use.

### **Montana**

[S.B. 202](#) seeks to shift the allowable serving hours of small breweries.

[Senate Bill 203](#) allows for the sale of beer by off-premises retailers in growlers for off-premises consumption.

### **New Jersey**

[S.B. 2639](#) creates a craft distillery license.

### **New York**

Companion bills [S.B. 1515](#) and [A.B. 2412](#) provide that the state policy with regard to the alcoholic beverage control law shall be to promote economic development and job opportunities in the beer, wine and liquor industries of the state.

[Senate Bill 1652](#) would allow licensed brewers to serve small samples of their beer or malt beverages at certain events and includes the privilege to sell such beverages for consumption off-premises.

### **North Dakota**

[H.B. 1339](#) creates a domestic brewery license allowing holders to sell beer produced at that brewery for on- and off-premises sale. Holders may sell or ship beer to persons inside or outside of the state in a manner consistent with the laws of the place of sale or delivery in total quantities not in excess of twenty-five thousand gallons in a calendar year. Holders may offer free samples of beer for sale but may not engage in any wholesaling activities. According to the bill's sponsor, the legislation was initiated so that homebrewers could offer their beer at tastings and for sale through the state's distribution network.

### **Oregon**

[House Bill 2924](#) removes limitations on alcohol content, minimum amount, source and place of consumption for malt beverages sold by brewery; allows a brewery to sell malt beverages at retail at one premises other than premises where manufacture occurs; allows a brewery to obtain a special events license.

[S.B. 434](#) prohibits licensees of Oregon Liquor Control Commission from manufacturing, importing, storing, delivering, distributing or selling alcoholic beverages containing caffeine or containing other substances used for increasing energy levels.

Of the half a dozen bills introduced to amend a 2010 Oregon Liquor Control Commission reinterpretation of statutory language that limited homebrewers to the production of beer or wine for home consumption (which resulted in the cancellation of the Oregon State Fair's beer and wine competitions), [S.B. 444](#) has received the support of the Oregon Homebrewers Association and the American Homebrewers Association as the most comprehensive measure.

### **South Carolina**

Companion bills [Senate Bill 375](#) and [House Bill 3246](#) would ban the importation, production, manufacture, distribution, or sale of alcoholic energy drinks and caffeinated malt beverages in the state. Both classes of beverage are defined as: (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; or (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.

### **Virginia**

The provisions of [H.B. 2456](#) provide for the full implementation of retail privatization of distilled spirits by January 1, 2013.

[Senate Bill 1192](#) allows manufacturers of alcoholic beverages to sell their product in retail establishments that they own or in which they have an ownership interest, something prohibited by current law.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. On March 9th [S. 534](#), a bill seeking to enact a graduated beer excise tax rate of \$3.50 and \$16.00 for America's small brewers, was introduced in the U.S. Senate by Senators John Kerry (D-Massachusetts) and Mike Crapo (R-Idaho). Joining Senators Kerry and Crapo were 17 of their Senate colleagues who signed on as original co-sponsors.

S. 534 mirrors the provisions contained in last session's S. 3339 which gained the support of 28 U.S. Senators. Specifically, S. 534 would 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. It is anticipated that similar legislation will soon be introduced in the House of Representatives.

Small Distiller Excise Tax Bill. H.R. 777 seeks to allow small distilled spirits producers a tax credit in an amount equal to 80 percent of the otherwise applicable tax on the first 65,000 of proof gallons of distilled spirits produced during the calendar year at qualified facilities in the United States. A small distilled spirits producer is defined as any person who produces not more than 100,000 proof gallons of distilled spirits annually.

Tax and Trade Bureau (TTB) Anticipating Budget Cuts. TTB has [announced changes](#) to label and formula approvals due, in part, to "...the economic challenges that impact budgets across Government, including TTB's..." and designed to encourage electronic submissions. Effective immediately, "Expedite Requests" and "Informal Reviews" will no longer be accepted and TTB asks that applicants plan for a full 90-day application review process.

The Myth of a Standard Drink. The Brewers Association, in conjunction with the Beer Institute and the National Beer Wholesalers Association, recently released a [joint statement](#) concerning the U.S. Department of Agriculture's (USDA) [Dietary Guidelines](#) and its recommendations relating to alcohol consumption. The guidelines underscore a long-standing beer community position that there is no such thing as a "standard" drink across different types of alcohol beverages and that this fact is essential in the effort to convey accurate and useful information to consumers.

Feds to Study Alcohol Advertising. The Federal Trade Commission (FTC) recently published a [Federal Register Notice](#) asking for comments on proposed information requests which will be directed to the ultimate U.S. parent companies of up to fourteen advertisers of beer, wine, or distilled spirits. The requests would seek information from those companies concerning compliance with voluntary advertising placement provisions, sales and marketing expenditures, the status of third-party review of complaints regarding compliance with voluntary advertising codes and alcohol industry data collection practices.

The FTC is taking this step prior to initiating a study on, and publishing a report about, voluntary advertising self-regulation by the alcohol industry. Comments on the proposed information requests must be received on or before April 26, 2011.

## **B. THE COURTS**

Supreme Court Defers. In a much anticipated development, the Supreme Court has decided against hearing *Wine Country Gift Baskets.com v. Steen*, the Texas case involving the ability of out-of-state retailers to ship directly to residents of the state. In an earlier Fifth Circuit Court decision, the ability of in-state retailers to ship direct was upheld while denying the same ability to those outside Texas. The decision not to review the case at the highest judicial level is widely seen as a victory for state-based regulation of alcohol.

Small Brewer Tax Rate Upheld in Puerto Rico. A federal judge has declared that the Puerto Rico law establishing a reduced tax rate for small brewers is not discriminatory. Coors Brewing Co. brought the case against the Commonwealth of Puerto Rico seeking to eliminate the differential tax rate as a violation of the Commerce Clause. The case has been active for about 30 years and is still not resolved as Coors considers filing objections to the latest ruling.

## **C. THE STATES**

### **Distribution and Franchise:**

#### **Illinois**

Continuing to receive consideration in the House, [H.B. 205](#) seeks to allow self-distribution to brewers brewing 60,000 barrels or less annually and also would allow brewpubs to sell direct to retailers. The total off-premises sales for brewpubs would be limited to 50,000 gallons (about 1,600 barrels) per year. [Senate Bill 88](#) has also been introduced and contains identical provisions

#### **Massachusetts**

[House Bill 1897](#) seeks to allow a small brewer (defined as producing less than 6 million barrels of beer a year and who accounts for less than 20 percent of the wholesaler's business) to move without cause to a different wholesaler as long as fair market value compensation is provided.

#### **Missouri**

The subject of committee hearings, [H.B. 258](#) and [Senate Bill 64](#) prohibit brewers or beer manufacturers as well as their officers, directors, agents, employees or affiliates, from having any direct or indirect interest in the license, business, assets or corporate stock of a wholesaler.

#### **New York**

Receiving initial favorable action in committee, [Assembly Bill 789](#) seeks to permit brewers with less than 300,000 barrels annual volume and which represent 3% or less of a wholesaler's brand sales measured in case equivalents to terminate an agreement with that wholesaler without having good cause. The legislation also requires payment of fair market value of the applicable distribution rights lost and allows for an arbitration panel to review the fair market value.

## **Direct Shipping:**

### **Florida**

Companion bills [H.B. 837](#) and [S.B. 854](#) authorize direct shipment of wine into and within the state for personal consumption only.

### **Maryland**

Committee hearings have been held with respect to companion bills [H.B. 234](#) and [S.B. 248](#) seeking to establish a direct wine shipper's permit enabling holders to ship to individual consumers.

### **Massachusetts**

[H.B. 1029](#) allows for the direct shipment of wine to the residents of the Commonwealth.

### **Mississippi**

[S.B. 2929](#), authorizing certain persons domiciled outside this state to lawfully ship directly to package retailers those manufactured wines that are not listed by the alcoholic beverage control division as a part of its inventory and distribution operation, has died in committee.

### **New Mexico**

Passing the House, [House Bill 487](#) creates a wine direct shipping permit.

### **Oklahoma**

An effort to amend the Constitution through a ballot initiative, [HJR 1041](#) seeks to permit the direct shipping of wine

### **Rhode Island**

Legislation permitting the direct shipping of wine to consumers ([S.B. 170](#)) has been introduced.

### **Tennessee**

[H.B. 853](#) allows for the direct shipment of wine to Tennessee residents.

## **Taxation:**

### **Connecticut**

Governor Malloy is reportedly considering a host of tax increase proposals, including on alcohol.

### **Hawaii**

Reported favorably from committee, [S.B. 644](#) seeks to reduce the gallonage tax on the first 60,000 barrels of beer brewed or produced during a taxable year by a small brewery or brewpub in the state to \$0.23 per gallon.

[House Bill 1554](#) establishes separate liquor tax rates for beer manufactured in Hawaii and beer manufactured outside of the state.

## **Iowa**

[Senate Study Bill 1007](#) proposes an increase in the beer excise tax from the current \$5.89 per barrel to 73 cents per gallon (\$22.63 per barrel). The bill remains under consideration.

## **Maryland**

Hearings have been held on companion bills [Senate Bill 168](#) and [House Bill 121](#) which seek to increase the tax rates for alcoholic beverages sold in Maryland from 9 cents to \$1.16 per gallon for beer, from \$1.50 to \$10.03 per gallon for distilled spirits and from 40 cents to \$2.96 per gallon for wine. The additional revenue would be used for funding specified health services.

## **New Mexico**

[Senate Bill 551](#) seeks to extend the authority to impose a local liquor excise taxes to all counties, provided the tax is approved through general election. The local excise tax on “microbrew” beer could not exceed 5 cents/gallon.

## **Pennsylvania**

[S.B. 275](#) provides for limited tax credits for small brewers.

## **West Virginia**

[House Bill 3178](#) seeks to double the current tax on beer, instituting a new levy of \$11.00/barrel. The increased revenue would provide funding for substance abuse services.

## **Trade Practice & Other:**

### **Arizona**

Arizona Governor Janice Brewer officially proclaimed February 19 – 26, 2011 as [Arizona Beer Week](#).

### **California**

[A.B. 351](#) adds the ability to reference the composition of the beer or wine as a subject which may be included in a winegrower’s, beer manufacturer’s, or a beer and wine wholesaler’s educational instruction of licensees and their employees on the subject of wine or beer, including but not limited to, the history, nature, values, and characteristics of those beverages.

Bringing beer into line with provisions already in place for wine, [Assembly Bill 1014](#) seeks to exempt premises set aside for beer tasting by a beer manufacturer, any holder of an out-of-state beer manufacturer's certificate or any holder of a beer and wine importer's general license from the health and sanitation standards for retail food facilities.

### **Colorado**

[S.B. 60](#) would permit all persons licensed to sell malt, vinous, or spirituous liquors for on-premises consumption to also sell low-alcohol-content beer for consumption on the licensed premises.

## **Georgia**

[House Bill 69](#) provides that in each county or municipality in which package sales of only malt beverages and wine by retailers is lawful, the governing authority of the county or municipality may authorize package sales by a retailer of malt beverages and wine on Sundays from 12:30 P.M. until 11:30 P.M., if approved by referendum. [Senate Bill 10](#) contains identical provisions.

## **Illinois**

[Senate Bill 50](#) provides that no alcoholic liquor that combines alcohol with caffeine, guarana, or other similar substances that are commonly referred to as "caffeinated alcohol beverages" may be imported into the State or produced, manufactured, distributed, sold, or offered for sale. The provisions only apply to products that contain caffeine, guarana, or other similar substances that are added or mixed to alcoholic liquors and do not apply to naturally caffeinated products such as coffee (made from the *Coffea arabica* plant) cola (made from kola nuts), teas (made from plants such as the leaves of *Thea sinensis*) or cocoa.

## **Kansas**

[S.B. 80](#) would allow microbreweries to raise the content of micro-brewed beer from eight to ten percent alcohol by weight. The bill would also allow microbreweries to serve domestic beer, free of charge, at special events monitored and regulated by the Division of Alcoholic Beverage Control. Supported by the Kansas Craft Brewers Guild, the bill gives small breweries sampling rights already enjoyed by the farm wineries.

[S.B. 54](#) seeks, in part, to allow the sale of strong beer in a restricted number of grocery and convenience stores. The bill has received favorable committee consideration.

## **Maryland**

[H.B. 182](#) would prohibit the importation, production, distribution, sale, or offer for sale in the State of an alcoholic beverage commonly referred to as an alcohol energy drink to which the manufacturer has directly added caffeine or specified other substances as separate ingredients.

[House Bill 1202](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and alters the limit on special brewery promotional event permits that may be issued to a holder in a year. [Senate Bill 496](#) contains identical provisions.

## **Massachusetts**

[House Bill 125](#) would require a warning label on single and multi-pack containers of beer and single and multi-pack containers of wine to include the following: WARNING: A person who provides alcoholic beverages to a person under 21 years of age, if convicted under section 34 could be imprisoned for up to 1 year and fined up to \$2,000 or both such imprisonment and fine.

## **Minnesota**

[SF 416](#) seeks to allow the holder of certain brewer's license to operate an on-sale facility.

## **Mississippi**

[House Bill 1165](#), which sought to allow breweries the ability to provide samples in conjunction with tours of the brewery premises, has died in committee.

## **Missouri**

[S.B. 160](#) allows any winery, distiller, manufacturer, wholesaler or brewer to provide tasting samples on a licensed retail premises so long as the sample provider has certain permits, permission from the retailer and no money is given to the retailers for the tasting.

## **Montana**

Tabled by the Senate Business, Labor and Economic Affairs Committee, [S.B. 202](#) sought to shift the allowable serving hours of small breweries.

Passing both chambers of the legislature, [Senate Bill 203](#) allows for the sale of beer by off-premises retailers in growlers for off-premises consumption.

## **New Hampshire**

[House Bill 262](#) provides for the issuance of a nano brewery license to a business that manufactures beer or specialty beer, not exceeding, 2,000 barrels annually for sale to the general public or licensees.

## **New York**

[A.B. 4622](#) permits persons with licenses to sell beer or wine products for consumption off-premises to provide beer samples in their licensed establishments.

## **North Carolina**

[House Bill 98](#) would allow brewery permit holders to sell malt beverages brewed at the brewery on the premises of the brewery.

## **North Dakota**

Passing the House and under Senate consideration, [H.B. 1339](#) creates a domestic brewery license allowing holders to sell beer produced at that brewery for on- and off-premises sale. Holders may sell or ship beer to persons inside or outside of the state in a manner consistent with the laws of the place of sale or delivery in total quantities not in excess of twenty-five thousand gallons in a calendar year. Holders may offer free samples of beer for sale but may not engage in any wholesaling activities. According to the bill's sponsor, the legislation was initiated so that homebrewers could offer their beer at tastings and for sale through the state's distribution network.

## **Oklahoma**

[HJR 1011](#) calls for a Constitutional amendment to allow brewers to sell their own beer to the public. The changes would only allow breweries to sell beer on the premises of their own brewery.

## **Oregon**

A public hearing has been scheduled for [House Bill 2924](#). The legislation removes limitations

on alcohol content, minimum amount, source and place of consumption for malt beverages sold by brewery. The bill also allows a brewery to sell malt beverages at retail at one premises other than premises where manufacture occurs and to obtain a special events license.

[S.B. 434](#) prohibits licensees of Oregon Liquor Control Commission from manufacturing, importing, storing, delivering, distributing or selling alcoholic beverages containing caffeine or containing other substances used for increasing energy levels. A public hearing has been held.

Passing the Senate and under House consideration, [S.B. 444](#) seeks to amend a 2010 Oregon Liquor Control Commission reinterpretation of statutory language that limited homebrewers to the production of beer or wine for home consumption (which resulted in the cancellation of the Oregon State Fair's beer and wine competitions). The bill has received the support of the Oregon Homebrewers Association and the American Homebrewers Association.

### **South Carolina**

Passing the House and under consideration in the Senate, [House Bill 3246](#) would ban the importation, production, manufacture, distribution, or sale of alcoholic energy drinks and caffeinated malt beverages in the state. "Alcoholic energy drink" and "caffeinated malt beverage" mean a prepackaged alcoholic or malt beverage in which caffeine or other stimulants including, but not limited to, guarana, ginseng, and taurine have been intentionally added as a food additive to the beverage. The provisions of the bill do not apply to alcoholic or malt beverages made with ingredients that contain naturally occurring caffeine, including but not limited to, coffee, cola, tea, cacao, or extracts derived from these foods.

### **Tennessee**

Companion bills [S.B. 629](#) and [H.B. 893](#) authorize manufacturers of alcoholic beverages to obtain a license for the sale of alcoholic beverages for consumption on premises.

[House Bill 2058](#) creates a misdemeanor offense for the manufacture, sale, offer for sale, advertisement, or distribution of any caffeinated alcohol drink. The term "caffeinated alcohol drink" does not apply to alcoholic beverages that only contain caffeine as a natural constituent of one (1) or more of their ingredients, such as a coffee flavoring. [Senate Bill 1832](#) contains identical provisions.

### **Texas**

[House Bill 660](#) would allow brewpubs the ability to sell beer into the wholesale distribution system. The current production limit of 5,000 barrels would apply to on- and off-premises sales and brewpub licensees producing 10,000 barrels or less annually could engage in self distribution. Total annual brewpub production would be limited to 75,000 barrels.

[H.B. 602](#) allows production breweries to make unbroken cases available to consumers after tours.

Companion bills [H.B. 2436](#) and [S.B. 1575](#) would allow small Texas breweries/manufacturers to sell beer to ultimate consumers from the place of production for consumption on or off-premises.

The provisions would supplement existing Texas law that allows small brewers (less than 75,000 bbl production) to self-distribute their own products.

### **Virginia**

[H.B. 2456](#), calling for the full implementation of retail privatization of distilled spirits by January 1, 2013, has died in committee.

[Senate Bill 1192](#) allows manufacturers of alcoholic beverages to sell their product in retail establishments that they own or in which they have an ownership interest. The bill has died in committee.

### **Washington**

Receiving favorable committee consideration, [S.B. 5709](#) allows a microbrewery and domestic brewery to sell beer of another domestic brewery for on and off-premises consumption from its premises.

Passing the Senate and under House consideration, [S.B. 5492](#) removes the 100,000 barrel annual production limit on brewers assessed and represented by the Washington Beer Commission, enabling any state-licensed brewer to be assessed and represented by the Commission.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. On March 29<sup>th</sup> [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) was introduced in the U.S. House of Representatives by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2).

H.R. 1236 mirrors the provisions contained in last session's H.R. 4278 which gained the support of 132 U.S. Representatives. Specifically, the bill would 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.

The introduction of H.R. 1236 comes shortly after Senators John Kerry (MA-D) and Mike Crapo (ID-R) introduced a small brewer graduated excise tax bill in the Senate, [S.534](#).

CARE Act Returns – Distributor-backed Legislation Introduced in 112<sup>th</sup> Congress. The distributor-supported Community Alcohol Regulatory Effectiveness Act of 2011 ([H.R. 1161](#)) has been introduced in the U.S. House of Representatives. A modified version of last year's Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010 (H.R. 5034), H.R. 1161 remains problematic for the reasons the Brewers Association (BA) opposed the previous bill (see [BA position statement](#)), particularly due to concerns that it would allow states to enact protectionist and anti-competitive laws. If this bill became law, it could raise significant market access barriers for small brewers.

In a joint industry [statement](#), BA joined other alcohol producer and importer associations in asking Congress to reject the Community Alcohol Regulatory Effectiveness Act of 2011.

Federal Restaurant Menu Labeling Update. The Federal Food and Drug Administration (FDA) has published a [proposed rule](#) concerning implementation of the requirement for restaurants and similar retail food establishments that are part of a chain with 20 or more locations to provide calorie and other nutrition information for standard menu items. As part of the proposed rule, the FDA has decided to tentatively exempt alcohol from these labeling requirements (the relevant section begins on page 19202, 3. Food Covered).

In October, 2010 the Brewers Association submitted [comments](#) concerning issues of importance to small brewers including maintaining consistency with current TTB regulations, accounting for normal batch-to-batch variations and the regulation of seasonal and other short-term brands. The exemption is temporary, pending comments and the issuance of a final rule. FDA has asked for comments to be submitted on all aspects of the proposed rule, with a deadline of June 6, 2011.

Tax and Trade Bureau (TTB) Clarifies Advertising Issues. TTB recently issued two Industry Circulars dealing with advertising matters: [Application of Alcohol Beverage Advertising](#)

[Regulations to Media Personality Sponsorships](#) provides guidance on how TTB interprets the applicability of the Federal Alcohol Administration Act (FAA Act) and TTB alcohol beverage advertising regulations to sponsored promotional statements made by media personalities during television or radio broadcasts; [Application of Alcohol Beverage Advertising Regulations to Television Advertising](#) clarifies the Alcohol and Tobacco Tax and Trade Bureau's (TTB) policy regarding the applicability of the regulations requiring the inclusion of mandatory information to television advertising of alcohol beverages.

## **B. THE STATES**

### **Distribution and Franchise:**

#### **New York**

Passing the Assembly and now under Senate consideration, [Assembly Bill 789](#) seeks to permit brewers with less than 300,000 barrels annual volume and which represent 3% or less of a wholesaler's brand sales measured in case equivalents to terminate an agreement with that wholesaler without having good cause. The legislation also requires payment of fair market value of the applicable distribution rights lost and allows for an arbitration panel to review the fair market value.

### **Direct Shipping:**

#### **Arkansas**

[H.B. 2082](#) creates a wine direct shipper's permit.

#### **Florida**

Continuing to receive consideration in their respective chambers, companion bills [H.B. 837](#) and [S.B. 854](#) authorize direct shipment of wine into and within the state for personal consumption only.

#### **Maine**

[L.D. 1141](#) allows off-premise retail licensees of beer and wine to direct ship beer and wine in and outside the state, subject to certain conditions

#### **Maryland**

Creating a direct shipper's permit and hence the ability to direct ship to the state's consumers, [House Bill 1175](#) has passed both chambers

Passing the Senate, [S.B. 248](#) seeks to establish a direct wine shipper's permit enabling holders to ship to individual consumers.

#### **New Jersey**

[Assembly Bill 3897](#) seeks to allow the direct shipping of wine to the state's legal age consumers by both in-state and out-of-state wineries. Similar legislation has been introduced in the Senate ([S.B. 2782](#)), but with a limit of 24 cases per year allowed to be direct shipped.

### **New Mexico**

Signed into law by the Governor, [Senate Bill 445](#) creates a wine direct shipping permit.

### **Pennsylvania**

[Senate Bill 790](#) provides for the direct shipment of up to eighteen liters of wine per month to residents of the Commonwealth.

### **Rhode Island**

Legislation permitting the direct shipping of wine to consumers ([S.B. 170](#)) has been held in committee for further study.

### **Tennessee**

[H.B. 853](#) and [S.B. 1030](#) allow for the direct shipment of wine to Tennessee residents. Both remain under active consideration, with the Senate bill passing that chamber and sent to the House.

## **Taxation:**

### **Arkansas**

Signed into law by the Governor, [H.B. 2046](#) exempts a wholesale manufacturer of beer from paying sales and use tax on kegs used to sell beer at wholesale.

### **Maryland**

Gaining favorable committee consideration, [Bill 1213](#) seeks to increase the tax rates for alcoholic beverages sold in Maryland from 9 cents to \$1.16 per gallon for beer, from \$1.50 to \$10.03 per gallon for distilled spirits and from 40 cents to \$2.96 per gallon for wine. The additional revenue would be used for funding specified health services.

## **Trade Practice & Other:**

### **Alabama**

[House Bill 86](#) provides for the sale of beer brewed in the state's brewpubs to any designated wholesaler licensee for resale to retail licensees; allows brewpubs to purchase draft or keg beer brewed by other manufacturers in original unopened containers from any licensed wholesaler, and for the brewpub to resell the beer for consumption on its premises.

### **California**

The subject of several committee hearings and amendments, [Senate Bill 39](#) prohibits the import, production, manufacture, distribution, or sale of caffeinated beer beverages at retail locations within California. Importantly, caffeinated beer beverages are defined as "a beer for which the

manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.” Further, “this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.”

Bringing beer into line with provisions already in place for wine, [Assembly Bill 1014](#) seeks to exempt premises set aside for beer tasting by a beer manufacturer, any holder of an out-of-state beer manufacturer's certificate or any holder of a beer and wine importer's general license from the health and sanitation standards for retail food facilities. The bill has passed out of committee after initial consideration.

### **Colorado**

Failing on a floor vote, [H.B.1284](#) sought to provide for the sale of full strength beer (above 3.2% abw) in grocery stores.

[S.B.194](#) provides for the sale of full strength beer (above 3.2% abw) in convenience stores.

### **Connecticut**

Receiving favorable committee consideration, [Senate Bill 464](#) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

Failing to achieve consideration, [H.B. 5279](#) sought to allow the sale of alcohol on Sunday in places operating under package store permits, drug store permits, manufacturer permits for beer or grocery store permits.

### **Georgia**

[House Bill 472](#) seeks to increase the maximum number of barrels of beer that may be manufactured (from 5,000 to 10,000) and sold (from 500 to 5,000) under the brewpub exception to the three-tier distribution system. Additionally removes the requirement that beer be sold solely in draft form.

[H.B. 505](#) provides for the creation of a craft brewery license and for an exception to the three-tier distribution system.

Passing the Senate and under consideration in the House, [Senate Bill 10](#) provides that in each county or municipality in which package sales of only malt beverages and wine by retailers is lawful, the governing authority of the county or municipality may authorize package sales by a retailer of malt beverages and wine on Sundays from 12:30 P.M. until 11:30 P.M., if approved by referendum.

### **Illinois**

[Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

## **Kansas**

Passing both chambers and only needing the Governor's signature to become law, [S.B. 80](#) would raise the maximum alcohol limit on "domestic" beer to 12.5% abv (from 10.0%). The bill would also allow microbreweries to serve domestic beer, free of charge, at special events monitored and regulated by the Division of Alcoholic Beverage Control. Supported by the Kansas Craft Brewers Guild, the bill gives small breweries sampling rights already enjoyed by the farm wineries.

## **Maryland**

Failing to pass committee, [H.B. 182](#) sought to prohibit the importation, production, distribution, sale, or offer for sale in the state of an alcoholic beverage commonly referred to as an alcohol energy drink to which the manufacturer has directly added caffeine or specified other substances as separate ingredients.

Passing both chambers and awaiting the Governor's signature, [Senate Bill 496](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and alters the limit on special brewery promotional event permits that may be issued to a holder in a year.

## **Minnesota**

Companion bills [HF 703](#) and [SF 416](#) seek to allow the holder of certain brewer's license to operate an on-sale facility.

## **Missouri**

Favorably passed out of committee, [S.B. 160](#) allows any winery, distiller, manufacturer, wholesaler or brewer to provide tasting samples on a licensed retail premises so long as the sample provider has certain permits, permission from the retailer and no money is given to the retailers for the tasting.

## **Montana**

Signed into law by the Governor, [Senate Bill 203](#) allows for the sale of beer by off-premises retailers in growlers for off-premises consumption.

## **New Hampshire**

Passing the House and moving to the Senate, [House Bill 262](#) provides for the issuance of a nano brewery license to a business that manufactures beer or specialty beer not exceeding 2,000 barrels annually for sale to the general public or licensees.

## **New York**

[Assembly Bill 6430](#) seeks to create a state liquor authority community liaison to act between the state liquor authority and community boards of the city of New York; requires the community boards to be given at least sixty days notice before any wine, beer, or liquor license is issued, renewed, or altered within the boundaries of such community board.

[A.B. 6507](#) authorizes the issuance of a temporary beer, wine and liquor permit, good for twenty-four consecutive hours, to promote products produced in this state

[Senate Bill 4221](#) would include flavored malt beverages within the definition of liquor for the purposes of distribution and wholesale and retail sale. Excluded from the definition are traditionally brewed beers and malt liquors which have small amounts of fruit, fruit juice, fruit flavor or other natural herbs or spices added during the fermentation process. However, alcoholic beverages which contain flavors or consist of colors or sweetness levels that would appeal to persons under the age of twenty-one years are included.

### **Oklahoma**

[Senate Bill 658](#) creates a joint task force to study and analyze the necessary modifications to existing law necessary regarding the sale of low-point, high-point beer and wine in grocery stores. The 20-member task force is to conclude its study no later than February 1, 2012.

### **Oregon**

Moving to the Senate following House passage, [House Bill 2924](#) removes limitations on alcohol content, minimum amount, source and place of consumption for malt beverages sold by a brewery. The bill also allows a brewery to sell malt beverages at retail at one premises other than premises where manufacture occurs and to obtain a special events license.

Signed into law by the Governor, [S.B. 444](#) seeks to amend a 2010 Oregon Liquor Control Commission reinterpretation of statutory language that limited homebrewers to the production of beer or wine for home consumption (which resulted in the cancellation of the Oregon State Fair's beer and wine competitions). The bill received the support of the Oregon Homebrewers Association and the American Homebrewers Association.

### **Tennessee**

Under committee consideration, [S.B. 12](#) removes the state department of agriculture's authority to regulate or inspect a distillery or wholesaler of alcoholic beverages. Many small brewers hold wholesale licenses in order to self-distribute.

### **Texas**

Receiving favorable committee consideration, [H.B. 602](#) allows production breweries to make unbroken cases available to consumers after tours for off premises consumption.

### **Washington**

A state liquor store privatization initiative, [I-1157](#), has been filed. This measure would close and sell state liquor stores and authorize licensing businesses to distribute, import, and sell spirits (hard liquor). It would authorize licensing retail sales of spirits by certain businesses with existing licenses to sell beer and wine. It would allow distilleries to sell their spirits at retail. It would impose additional taxes on spirits sales and repeal uniform pricing and certain requirements governing sale, distribution, and production of beer, wine, and spirits.

Awaiting the Governor's signature, [House Bill 1172](#) creates a pilot project for beer and wine tasting at farmers markets.

Passing the House and under Senate consideration, [H.B. 1244](#) would allow a spirits, beer, and wine restaurant that already is permitted to sell kegs to also allow the sale of beer in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the restaurant at the time of sale (e.g., growlers).

Passing both legislative chambers and awaiting the Governor's signature, [S.B. 5492](#) removes the 100,000 barrel annual production limit on brewers assessed and represented by the Washington Beer Commission, enabling any state-licensed brewer to be assessed and represented by the Commission.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [31 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [28 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Tax and Trade Bureau (TTB) Seeks to Streamline COLA Reviews. TTB recently issued [Industry Circular 2011-04](#) announcing the decision to no longer examine labels to determine whether the images included in the applications meet the type size, characters per inch, and contrasting background requirements.

Pabst Blast Incurs States' Wrath. Seventeen attorneys general have written a [letter](#) to Pabst Chairman and CEO Dean Metropoulos to express their concerns with the product's package size, alcohol content and marketing. The AG's call on the makers of Blast to "take immediate steps to significantly reduce the number of servings of alcohol presented to consumers in a single serving container so as to eliminate the serious public safety risks posed by this "binge-in-a-can" product."

Feds and States Target Alcohol Advertising. Following the Federal Trade Commission's (FTC) recently published [Federal Register Notice](#) regarding proposed information requests to certain advertisers of beer, wine, and distilled spirits concerning a number of advertising-related issues, twenty-four attorneys general have sent a [letter](#) to the FTC advising what data should be collected and how it should be collected to best address the problem of underage drinking. The AG's suggest the following approach: advertising and promotional spending data should be collected on an ongoing basis instead of intermittently; alcohol advertising should not be allowed when more than 15% of the people in the audience are between the ages of 12 and 20; and alcohol advertising data should include digital and social media marketing such as blogs and corporate sponsored social media sites.

## B. THE STATES

### **Distribution and Franchise:**

#### **Delaware**

[H.B. 84](#) allows microbreweries to transport and deliver their beer and cider directly to persons who are licensed to sell such products.

## **Illinois**

Passing the Senate and under House consideration, [Senate Bill 754](#) provides for 7,500 barrels of self-distribution for brewers making less than 15,000 barrels a year. Before being amended, the bill also provided for brewpubs to self-distribute a small amount of beer (up to 50,000 gallons).

## **Indiana**

Passing both chambers of the legislature, [House Bill 1132](#) increases the production limitation to 30,000 barrels (from 20,000) of those brewery permit holders able to self-distribute and act as a retailer of their own beer.

## **Massachusetts**

The Joint Committee on Consumer Protection and Professional Licensure has held a hearing on [House Bill 1897](#), which seeks to allow a small brewer (defined as producing less than 6 million barrels of beer a year and who accounts for less than 20 percent of the wholesaler's business) to move without cause to a different wholesaler as long as fair market value compensation is provided.

## **Nebraska**

Signed into law by the Governor, [L.B. 279](#) eliminates the exception in the Liquor Control Act that allows a beer manufacturer to also own a beer distributorship.

## **Nevada**

[Senate Bill 410](#) clarifies that if a supplier sells less than 2,500 barrels of malt beverages in Nevada during any calendar year, the supplier may terminate, refuse to continue or cause a wholesaler to resign from a franchise agreement without first establishing good cause. The bill has died in committee.

## **North Carolina**

[S.B. 424](#) seeks to increase the annual production threshold from twenty-five thousand barrels to one hundred thousand barrels in determining a brewery's ability to self-distribute.

[House Bill 764](#) seeks to strengthen franchise law provisions governing the relationships between wholesalers and suppliers.

## **Rhode Island**

[S.B. 486](#), an attempt to further strengthen the rights of wholesalers in agreements with suppliers, has been withdrawn from consideration.

## **Direct Shipping:**

### **Arkansas**

[H.B. 2082](#), creating a wine direct shipper's permit, has died in committee.

### **Louisiana**

[Senate Bill 55](#) provides for the direct shipment of wine by in-state retailers.

### **Maine**

Failing to receive consideration, [L.D. 1141](#) allowing off-premise retail licensees of beer and wine to direct ship beer and wine in and outside the state, has died for the session.

### **Maryland**

Creating a direct shipper's permit and hence the ability to direct ship to the state's consumers, [House Bill 1175](#) has been signed into law.

### **Pennsylvania**

[Senate Bill 886](#) provides for the direct shipment of up to eighteen liters of wine per month to residents of the Commonwealth.

### **Tennessee**

Passing the Senate and House, [S.B. 1030](#) allows for the direct shipment of wine to Tennessee residents.

## **Taxation:**

### **Maryland**

Passing both chambers of the legislature and eligible for the Governor's signature, [House Bill 1213](#) provides that the sales and use tax rate for the sale of an alcoholic beverage is 9% of the taxable price of the alcoholic beverage.

## **Trade Practice & Other:**

### **Alabama**

Receiving favorable committee consideration, [House Bill 86](#) provides for the sale of beer brewed in the state's brewpubs to any designated wholesaler licensee for resale to retail licensees; allows brewpubs to purchase draft or keg beer brewed by other manufacturers in original unopened containers from any licensed wholesaler, and for the brewpub to resell the beer for consumption on its premises.

[H.B. 266](#), allowing the production of homebrewed beer, mead, cider, and wine in limited amounts for personal use, has died.

### **Alaska**

[Senate Bill 128](#) would extend on premises consumption hours from 8:00 PM to 10:00 PM for brewery licensees.

Under the provisions of [H.B. 210](#), active duty military personnel under age 21 could legally consume alcoholic beverages and use tobacco products in Alaska.

## **California**

Passing the Senate and under consideration in the House, [Senate Bill 39](#) prohibits the import, production, manufacture, distribution, or sale of caffeinated beer beverages at retail locations within California. Importantly, caffeinated beer beverages are defined as “a beer for which the manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.” Further, “this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.”

The Mayor of San Diego has proclaimed June 16 – 18, 2011 [American Homebrewers Association Days](#) to honor the 33<sup>rd</sup> Annual National Homebrewers Conference to be held on those dates.

## **Colorado**

Withdrawn from consideration, [S.B.194](#) provides for the sale of full strength beer (above 3.2% abw) in convenience stores.

Sent to the Governor for his signature, [Senate Bill 60](#) would allow bars and restaurants to sell the full range of beer, not just full strength beer (above 3.2% abw).

## **Connecticut**

Receiving favorable Senate consideration, [Senate Bill 464](#) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

## **District of Columbia**

The D.C. Beer Manufacturers Tasting Permit Act of 2011 has unanimously passed the D.C. Council, giving breweries in the District the same rights to host tastings as grocery and liquor stores.

## **Florida**

Recognizing the Florida Brewers Guild and the Florida craft brewing industry, [H.R. 9121](#) also designates September 2011 as "Craft Brewing Month" in Florida.

## **Georgia**

Signed into law by the Governor, [Senate Bill 10](#) provides that in each county or municipality in which package sales of only malt beverages and wine by retailers is lawful, the governing authority of the county or municipality may authorize package sales by a retailer of malt beverages and wine on Sundays from 12:30 P.M. until 11:30 P.M., if approved by referendum.

## **Illinois**

Passing the Senate and under House consideration, [Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

## **Iowa**

Signed into law by the Governor, [H.F. 617](#) defines “high alcoholic content beer” to mean “beer which contains more than five percent of alcohol by weight, but not more than twelve percent of alcohol by weight, that is made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains. Not more than one and five-tenths percent of the volume of a “high alcoholic content beer” may consist of alcohol derived from added flavors and other non-beverage ingredients containing alcohol. The added flavors and other non-beverage ingredients may not include added caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine.”

Also receiving the signature of the Governor, [S.F. 240](#) allows licensees and permittees authorized to sell alcoholic liquor, wine, or beer in original unopened containers for consumption off the licensed premises to deliver alcoholic liquor, wine, or beer to a home or other designated location in the state. Deliveries are limited to alcoholic beverages authorized by the licensee’s or permittee’s license or permit.

### **Kansas**

Signed into law by the Governor, [S.B. 80](#) raises the maximum alcohol limit on "domestic" beer to 12.5% abv (from 10.0%) and also allows microbreweries to serve domestic beer, free of charge, at special events monitored and regulated by the Division of Alcoholic Beverage Control. Supported by the Kansas Craft Brewers Guild, small breweries now enjoy the same sampling rights as farm wineries.

### **Maryland**

Becoming law with the Governor’s signature, [Senate Bill 496](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and alters the limit on special brewery promotional event permits that may be issued to a holder in a year.

### **Massachusetts**

[House Bill 2701](#) allows any licensee with or without an onsite brewery and holding a valid license for on- or off-premise consumption of malt beverages, to sell malt beverages for off-premise consumption, provided however, that all malt liquor shall be dispensed in bottles from 32 ounces to 64 ounces in volume.

### **Minnesota**

[SF 416](#) provides for a brewer taproom license which authorizes the sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer. Eligibility for such license is restricted to brewers with an annual production of 250,000 barrels or less.

### **New Hampshire**

Eligible for the Governor’s signature, [House Bill 262](#) provides for the issuance of a nano brewery license to a business that manufactures beer or specialty beer, not exceeding, 2,000 barrels annually for sale to the general public or licensees.

### **New Jersey**

Companion bills S.B. 2870 and [A.B. 3969](#) raise the annual production limit for a limited brewery license from 300,000 barrels to 500,000 barrels. Also allows such licensees to sell products at retail to consumers on the licensed premises of the brewery for consumption on or off the premises, and to offer samples for sampling purposes only.

[Assembly Bill 4012](#), seeking to eliminate the permit requirement for home production of wine and beer for personal use, has been proposed.

### **New Mexico**

Signed into law, [S.B. 546](#) provides for a craft distiller's license.

### **New York**

Receiving favorable committee consideration, [Senate Bill 4221](#) would include flavored malt beverages within the definition of liquor for the purposes of distribution and wholesale and retail sale. Excluded from the definition are traditionally brewed beers and malt liquors which have small amounts of fruit, fruit juice, fruit flavor or other natural herbs or spices added during the fermentation process. However, alcoholic beverages which contain flavors or consist of colors or sweetness levels that would appeal to persons under the age of twenty-one years are included.

### **North Carolina**

[House Bill 98](#) allows brewery permit holders to engage in the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the manufacturer's original container for consumption off the premises. The bill has passed the House and is under Senate consideration.

### **North Dakota**

Failing to pass the Senate after House approval, [H.B. 1339](#) sought to create a brewery license allowing holders to sell beer produced at that brewery for on- and off-premises sale. Holders could also sell or ship beer to persons inside or outside of the state in a manner consistent with the laws of the place of sale or delivery in total quantities not in excess of twenty-five thousand gallons in a calendar year; and offer free samples of beer for sale but may not engage in any wholesaling activities. According to the bill's sponsor, the legislation was initiated so that homebrewers could offer their beer at tastings and for sale through the state's distribution network.

### **Oklahoma**

Passing the Senate and now under House consideration, [Senate Bill 658](#) creates a joint task force to study and analyze the necessary modifications to existing law necessary regarding the sale of low-point, high-point beer and wine in grocery stores. The 20-member task force is to conclude its study no later than February 1, 2012.

### **Oregon**

Passing both legislative chambers, [House Bill 2924](#) modifies the alcohol content and quantity restrictions for malt beverages sold by brewery licensees on the licensed premises.

## **Rhode Island**

Held in committee for further study, [S.B. 800](#) would allow the holder of a manufacturer's license to sell not in excess of 72 ounces per visitor of malt beverages at the licensed place of the manufacturer to visitors for off-premise consumption only in conjunction with a tour and/or tasting.

## **Texas**

Passing the House, [H.B. 602](#) allows production breweries to make unbroken cases available to consumers after tours for off premises consumption.

Companion bills [H.B. 2436](#) and [S.B. 1575](#) have stalled in committee. The bills would allow small Texas breweries/manufacturers to sell beer to ultimate consumers from the place of production for consumption on or off-premises. The provisions would supplement existing Texas law that allows small brewers (less than 75,000 bbl production) to self-distribute their own products.

## **Washington**

Signed into law by the Governor, [H.B. 1465](#) allows breweries and microbreweries to sell beer produced by other domestic breweries and microbreweries as long as the other breweries' brands do not exceed 25 percent of the brewery's on-tap offering of its own brands. Also allows certain beer and/or wine specialty shops to sell beer in a sanitary container (e.g., growlers).

Signed into law by the Governor, [House Bill 1172](#) creates a pilot project for beer and wine tasting at farmers markets.

Receiving the Governor's approval and becoming law, [S.B. 5492](#) removes the 100,000 barrel annual production limit on brewers assessed and represented by the Washington Beer Commission, enabling any state-licensed brewer to be assessed and represented by the Commission.

[Senate Bill 5933](#) establishes a private licensee system of distribution of distilled spirits in place of purchase and resale of distilled spirits by the state.

## **A. FEDERAL / NATIONAL / INTERNATIONAL**

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [59 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [31 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Spirits Trade Group Increases Self-Imposed Advertising Threshold. The Distilled Spirits Council of the U.S. (DISCUS) has made the decision to purchase media advertising only where at least 71.6% (up from 70%) of the audience is of legal drinking age. The move comes after census data revealed this to be the percentage of the U.S. population as a whole that is 21 years of age or older.

## **B. THE STATES**

### **Distribution and Franchise:**

#### **Delaware**

[H.B. 84](#) allows microbreweries to transport and deliver their beer and cider directly to persons who are licensed to sell such products. The bill has been amended to give out-of-state microbreweries the same ability to self-distribute as in-state microbreweries pursuant to the bill.

#### **Illinois**

Signed into law by the Governor, [Senate Bill 754](#) provides for 7,500 barrels of self-distribution for brewers making less than 15,000 barrels a year. Before being amended, the bill also provided for brewpubs to self-distribute a small amount of beer (up to 50,000 gallons).

#### **Indiana**

Receiving the Governor's approval and thereby becoming law, [House Bill 1132](#) increases the production limitation to 30,000 barrels (from 20,000) of those brewery permit holders able to self-distribute and act as a retailer of their own beer.

#### **Massachusetts**

Citing its anti-competitive nature, the Federal Trade Commission (FTC) has weighed in on [House Bill 1871](#), legislation seeking to impose further requirements on suppliers in acquisition situations and when attempting to terminate wholesalers.

## **Wisconsin**

[Legislative language](#) has been added to the state budget bill that would severely limit access to market for small brewers. Ostensibly designed to block large brewer ownership of distributorships, and despite the fact that it increases the amount of beer brewers could self-distribute, the language takes away the ability of small brewers to hold a wholesalers permit, engage in the sale of beer for on- and off-premises consumption and vacates all municipal permitting authority to the state.

## **Direct Shipping:**

### **Florida**

Dying in committee, [H.B. 837](#) sought to authorize direct shipment of wine into and within the state for personal consumption only.

### **Louisiana**

Passing the Senate, [Senate Bill 55](#) provides for the direct shipment of wine by in-state retailers.

### **Massachusetts**

Legislation regulating the direct shipping of wine ([H.B. 1883](#)) was the subject of a hearing in the Joint Committee on Consumer Protection and Professional Licensure.

### **Tennessee**

With the Governor's approval, [S.B. 1030](#), allowing for the direct shipment of wine to Tennessee residents, has become law.

## **Taxation:**

### **California**

[S.B. 653](#) seeks to authorize counties, cities, any school district, county offices of education and community college districts to impose an excise tax on alcoholic beverages of five-cents per five ounces and at a proportionate rate for any other quantity. The tax would be imposed on the seller, not the consumer.

### **Maryland**

Becoming law with the Governor's signature, [House Bill 1213](#) provides that the sales and use tax rate for the sale of an alcoholic beverage is 9% of the taxable price of the alcoholic beverage.

## **Trade Practice & Other:**

### **Alabama**

Failing to receive final committee consideration, [House Bill 86](#) sought to provide for the sale of beer brewed in the state's brewpubs to any designated wholesaler licensee for resale to retail

licensees; allow brewpubs to purchase draft or keg beer brewed by other manufacturers in original unopened containers from any licensed wholesaler and for the brewpub to resell the beer for consumption on its premises.

[S.B. 192](#), seeking to allow brewpub licensees to enter the distribution channel and to allow production breweries to have on-premise sales, passed the legislature this week and is awaiting action by the Governor.

### **California**

Passing the Senate and under consideration in the Assembly, [Senate Bill 39](#) prohibits the import, production, manufacture, distribution, or sale of caffeinated beer beverages at retail locations within California. Importantly, caffeinated beer beverages are defined as *“a beer for which the manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.”* Further, *“this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.”*

[A.B. 1014](#), which has passed the Assembly and is under Senate consideration, exempts premises set aside by a beer manufacturer, as defined, for beer tasting, from the definition of a food facility, thereby, exempting beer tasting premises from the provisions of the California Retail Food Code. The bill is sponsored by the California Small Brewers Association.

Another California Small Brewers Association sponsored bill, [A.B. 351](#), specifically references the "composition of the beer or wine" as a subject which may be included in specific type of tastings or instruction by a winegrower, beer manufacturer, or a beer and wine wholesaler while instructing licensees and their employees on the subject of wine or beer. The bill has passed the Assembly.

[Assembly Joint Resolution 11](#) urges Congress to defeat H.R. 1161 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 or unnecessary limitation between in-state and out-of-state wine producers.

### **Colorado**

Signed into law by the Governor, [Senate Bill 60](#) would allow bars and restaurants to sell the full range of beer, not just full strength beer (above 3.2% abw).

### **Connecticut**

Receiving favorable consideration in both the Senate and House, [Senate Bill 464](#) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

### **Illinois**

Passing the Senate and the House, [Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in

which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

### **Massachusetts**

[H.B. 125](#) would require the placement of a warning label on single and multi-pack containers of beer and single and multi-pack containers of wine to include the following: “WARNING: A person who provides alcoholic beverages to a person under 21 years of age, if convicted under section 34 could be imprisoned for up to 1 year and fined up to \$2,000 or both such imprisonment and fine.”

[House Bill 2701](#) allows any licensee with or without an onsite brewery and holding a valid license for on- or off-premise consumption of malt beverages, to sell malt beverages for off-premise consumption, provided however, that all malt liquor shall be dispensed in bottles from 32 ounces to 64 ounces in volume. The bill has received a committee hearing.

### **Michigan**

[H.B. 4061](#), scheduled for a committee hearing, would allow homebrewers to serve their home brewed beer at meetings held on licensed brewery premises.

### **Minnesota**

[H.F. 1326](#) provides for a brewer taproom license which authorizes the sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer. Eligibility for such license is restricted to brewers with an annual production of 250,000 barrels or less.

### **New Hampshire**

Signed into law by the Governor, [House Bill 262](#) provides for the issuance of a nano brewery license to a business that manufactures beer or specialty beer, not exceeding, 2,000 barrels annually for sale to the general public or licensees.

### **New Jersey**

[Assembly Bill 4012](#), seeking to eliminate the permit requirement for home production of wine and beer for personal use, has been introduced.

### **New York**

[Assembly Bill 7449](#) authorizes the liquor authority to issue farm brewery licenses for the manufacture and sale of beer on farms.

Receiving favorable committee consideration, [Senate Bill 3109](#) seeks to permit persons with licenses to sell beer or wine products for consumption off premises to provide beer samples in their licensed establishments.

### **North Carolina**

Signed by the Governor, [House Bill 98](#) allows brewery permit holders to engage in the retail sale of malt beverages for consumption on the premises and the retail sale of malt beverages in the

manufacturer's original container for consumption off the premises. The bill has passed the House and is under Senate consideration.

### **Oklahoma**

Approved by the Governor, [Senate Bill 658](#) creates a joint task force to study and analyze the necessary modifications to existing law necessary regarding the sale of low-point, high-point beer and wine in grocery stores. The 20-member task force is to conclude its study no later than February 1, 2012.

### **Oregon**

Signed into law by the Governor, [House Bill 2924](#) modifies the alcohol content and quantity restrictions for malt beverages sold by brewery licensees on the licensed premises.

### **Texas**

Dying in committee, [H.B. 602](#) sought to allow production breweries to make unbroken cases available to consumers after tours for off premises consumption.

### **Washington**

[S.B. 5942](#) calls for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations. The bill has passed the legislature and awaits gubernatorial action.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [102 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [35 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Federal Restaurant Menu Labeling Update. The Brewers Association (BA) has filed a second round of formal [comments](#) with the Food and Drug Administration (FDA) in response to that agency's [proposed rule](#) concerning implementation of the requirement for restaurants and similar retail food establishments that are part of a chain with 20 or more locations to provide calorie and other nutrition information for standard menu items. As part of the proposed rule, the FDA has tentatively exempted alcohol from these labeling requirements (the relevant section begins on page 19202, 3. Food Covered).

Additionally, the BA has joined an industry coalition in submitting a [second comment document](#) to the FDA.

Small Brewers Gain Unified Senate Voice. Citing the strong economic contributions of American small brewers, as well as their innovative and entrepreneurial spirit, U.S. Senators Max Baucus (D-Montana) and Mike Crapo (R-Idaho) have formed the [Senate Small Brewers Caucus](#). In a letter to their Senate colleagues, Baucus and Crapo outlined the mission of the caucus which includes learning about the cultural, economic and social contributions of community-based small brewers as well as the technical and innovative aspects of brewing. Importantly, the Senators also refer to the caucus as providing "a forum to discuss the issues important to small brewers while exploring what we as lawmakers can do to strengthen the growth and role of these small businesses in main street economies across the country."

The Senate-side caucus joins its House of Representatives counterpart, the [House Small Brewers Caucus](#) formed four years ago, to give small brewers a truly bi-cameral, bi-partisan voice among national decision makers in Washington, DC.

## B. THE COURTS

2009 Illinois Alcohol Tax Hikes Affirmed. The Illinois Supreme Court has [ruled](#) that a package of bills passed in 2009 to fund a \$31 billion public works program is not in violation of the Illinois Constitution. Spirits and wine distributor Rocky Wirtz filed a lawsuit claiming that the

package was unconstitutional because it bundled unrelated legislation in an effort to finance the capital expenditures program. The package included tax hikes on beer, wine and spirits and one of the key points of the legal challenge was the disparity of the tax increases on the different types of alcohol. Spirits received the biggest increase in tax rate, with the levy on a fifth of spirits rising from 90 cents to \$1.71, while the tax on a bottle of wine increased 13 cents and on a six pack of beer about 2.6 cents. Those increases will remain in place, as the court found ample precedent for taxing alcohol of varying strength at different rates.

## **C. THE STATES**

### **Distribution and Franchise:**

#### **North Carolina**

Passing the Senate, [Senate Bill 745](#) provides for small brewer franchise termination in the absence of good cause with the payment of fair market value to the affected wholesaler. Other provisions in the bill specify that franchise agreements apply to all supplier products under the same brand name, including different categories of products manufactured under a common identifying trade name and enumerate additional supplier prohibitions.

#### **Wisconsin**

[Legislative language](#) added to the recently signed-into-law state budget bill severely limits access to market for small brewers and several legislators have stated they plan to work to have those provisions repealed. Ostensibly designed to block large brewer ownership of distributorships, and despite the fact that it increases the amount of beer brewers could self-distribute, the language takes away the ability of small brewers to hold a wholesalers permit, engage in the sale of beer for on- and off-premises consumption and vacates all municipal permitting authority to the state.

### **Direct Shipping:**

#### **Louisiana**

Signed into law by the Governor, [Senate Bill 55](#) provides for the direct shipment of wine by in-state retailers.

### **Taxation:**

#### **Texas**

Signed into law, [H.B. 2582](#) repeals the partial state tax exemption allowed to in-state small beer producers, but not to out-of-state brewers. Concerned about Granholm-related legal challenges and costly litigation, the state leveled the playing field down to the detriment of Texas brewers.

### **Trade Practice & Other:**

## **Alabama**

[S.B. 192](#), seeking to allow brewpub licensees to enter the distribution channel and to allow production breweries to have on-premise sales, has been signed into law by the Governor.

## **California**

Undergoing another round of amendment, [Senate Bill 39](#) is now worded to “prohibit the import, production, manufacture, distribution, or sale of *beer to which caffeine has been directly added as a separate ingredient* at retail locations within the state.” Previously, the language was “prohibit the import, production, manufacture, distribution, or sale of *caffeinated beer beverages, as defined*, at retail locations within the state” where caffeinated beer beverages were defined as “*a beer for which the manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.*” That definition has been removed as has language stating “*this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.*”

[A.B. 1014](#), which has passed the Assembly and the Senate and is awaiting concurrence, exempts premises set aside by a beer manufacturer, as defined, for beer tasting, from the definition of a food facility, thereby, exempting beer tasting premises from the provisions of the California Retail Food Code. The bill is sponsored by the California Small Brewers Association.

Successfully passing both legislative chambers, [Assembly Joint Resolution 11](#) urges Congress to defeat H.R. 1161 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 or unnecessary limitation between in-state and out-of-state wine producers.

## **Connecticut**

Signed into law by the Governor, [Senate Bill 464](#) creates the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

## **Illinois**

Awaiting gubernatorial action, [Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

## **Maryland**

Becoming law with the Governor's signature, [House Bill 1202](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and allows for the sale of up to 288 ounces of beer to tour attendees for off premises consumption.

## **Michigan**

Passing the House and under Senate consideration, [H.B. 4061](#) would allow homebrewers to serve their home brewed beer at meetings held on licensed brewery premises.

The Michigan Liquor Control Commission has given [Flying Dog Brewery](#) permission to sell its Belgian style India Pale Ale after initially denying them that right due to concerns that the name is potentially offensive. While welcoming the decision, Flying Dog Brewery is proceeding with its First Amendment lawsuit against the state.

### **Nevada**

[A.B. 200](#) authorizes a brew pub to obtain a special permit for the transportation of malt beverages which are manufactured on the premises of the brew pub and which the brew pub is donating for charitable or nonprofit purposes. The bill has been signed into law.

### **New York**

Companion bills [Senate Bill 5664](#) and [Assembly Bill 8397](#) seeks to remove all flavored malt beverages and wine products from the shelves of grocery stores and bodegas. The sale of these beverages would be limited to liquor stores. "Flavored malt beverage" means and includes any alcoholic beverage of any name or description that is manufactured from malt, wholly or in part, or from any substitute therefor including, but not limited to, liquor, spirit or wine; and containing more than one per centum sugar by volume which is manufactured with the addition of flavorings or other ingredients including, but not limited to, fruit, fruit juice or fruit flavor, or herbs, nuts or spices (including, but not limited to, chocolate, licorice or vanilla), or stimulants (including, but not limited to, caffeine, guarana, ginseng, taurine or wormwood oil). While a flavored malt beverage is a beer, naturally fermented or traditionally brewed beers, such as ales, bitters, browns, lagers, porters, stouts, seasonal beers, wheat beers or other specialty beers shall not be deemed flavored malt beverages.

### **Washington**

[S.B. 5942](#) calls for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations. The bill has been signed into law.

Another liquor sales privatization effort is picking up steam in Washington. [Supporters](#) of I-1183 have collected more than 350,000 signatures with the intent of getting the proposal, which they claim will raise \$200 million in additional revenue beyond what the state currently collects through liquor sales, on the ballot. Big box retailer Costco is once again providing the lion's share of funding to drive the initiative, which is also supported by the Washington Restaurant Association.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [112 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [35 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Different Name, Same Agenda. Anti-alcohol group Marin Institute has changed its name to [Alcohol Justice](#), claiming the "new name shows we are vigilant, fair and laser-focused."

## B. THE COURTS

Federal Court Calls Timeout in New Jersey Wine Fight. A U.S. District Court judge has suspended the legal wrangling over the state's wine laws in hopes that the legislature can provide a fix. New wineries and retail operations have been unable to open since an appeals court ruled that New Jersey law unfairly impacted interstate wine sales. Two bills are currently under active consideration in the legislature to provide that fix; however, they differ on whether to allow the direct shipment of wine to consumers, a point that has hampered the progress of both bills (see C. The States – Direct Shipping, below).

## C. THE STATES

### Direct Shipping:

#### **New Jersey**

[Senate Bill 2782](#), seeking to allow direct shipping of wine, continues to receive consideration in the Senate, while competing [Assembly Bill 3831](#) has been amended to remove the ability to direct ship wine (see B. The Courts, above).

#### **Pennsylvania**

[H.B. 1770](#) seeks clarify the conditions under which wine may be shipped direct to residents of the Commonwealth.

### Trade Practice & Other:

## **California**

Approved by the Governor and thereby becoming law, [Senate Bill 39](#) prohibits the import, production, manufacture, distribution, or sale of beer to which caffeine has been directly added as a separate ingredient at retail locations within the state.

[A.B. 1014](#), which has been signed into law by the Governor, exempts premises set aside by a beer manufacturer, as defined, for beer tasting, from the definition of a food facility, thereby, exempting beer tasting premises from the provisions of the California Retail Food Code. The bill is sponsored by the California Small Brewers Association.

Adopted by both legislative chambers and formally filed with the Secretary of State's office, [Assembly Joint Resolution 11](#) urges Congress to defeat H.R. 1161 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 or unnecessary limitation between in-state and out-of-state wine producers.

## **Massachusetts**

A move by the [Alcoholic Beverages Control Commission](#) to require farmer-brewery license holders to grow at least 50% of their grain or hops, directly threatened the viability of the state's small brewers through increased licensing fees and the loss of the ability to provide a tasting room and direct from premise sales. Fortunately, the decision has been reversed due in large part to input from the Massachusetts Brewers Guild.

## **Michigan**

[Senate Resolution 71](#), designating July 2011 as Michigan Craft Beer Month and commending the Michigan craft brewers, has been adopted.

## **A. FEDERAL / NATIONAL / INTERNATIONAL**

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [121 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [35 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

## **B. THE STATES**

### **Trade Practice & Other:**

#### **District of Columbia**

The DC Council has passed [Bill 118](#), the Brewery Manufacturer's Tasting Permit Amendment Act of 2011, which allows a manufacturer's license holder to conduct tastings of alcoholic beverages on the licensed premises.

#### **Michigan**

Passing the Senate Committee on Regulatory Reform after previously passing the full House, [H.B. 4061](#) would allow homebrewers to serve their home brewed beer at meetings held on licensed brewery premises.

#### **Virginia**

The Virginia Department of Alcoholic Beverage Control (ABC) has initiated a [comprehensive review](#) of its regulations with the participation of alcohol beverage industry representatives. The [Virginia Craft Brewers Guild](#) is actively participating in the review process.

## **A. FEDERAL / NATIONAL / INTERNATIONAL**

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [128 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Makers of Four Loko Reach Agreement with Federal Regulators. Phusion Projects, LLC, the makers of Four Loko, have agreed to re-label and re-package the alcohol beverage to meet Federal Trade Commission (FTC) concerns over a misrepresentation of the true alcohol content of the product and that consumers could safely drink an entire can in one sitting.

According to an [FTC news release](#), the administrative settlement requires Phusion Projects to include disclosures on containers of Four Loko, or any other flavored malt beverage containing more alcohol than two and-a-half regular beers, stating how much alcohol – compared to the amount of alcohol found in regular beer – is in the drink. Additionally, starting six months after the settlement takes effect, Phusion Projects is required to use only resealable containers for flavored malt beverages that have more alcohol than the equivalent of two and a half regular beers.

TTB Issues Guidance on Personalized Labels. As part of the Tax and Trade Bureau's efforts to streamline agency operations with respect to label approval, TTB has issued [guidance](#) affecting personalized labels with the goal of allowing compliant products to bet to market faster.

United Nations (UN) Targets Alcohol as Part of Non-Communicable Disease Epidemic. In a [political declaration](#) adopted during a General Assembly summit, world leaders stated their intention of combatting the so-called "lifestyle diseases" of smoking, alcohol abuse, poor diets and physical inactivity. Calling the threat posed by non-communicable diseases "one of the major challenges for development in the twenty-first century," the UN pledged to work with other United Nations agencies and international organizations to develop, before the end of 2012, "a comprehensive global monitoring framework, including a set of indicators, capable of application across regional and country settings [...] to monitor trends and to assess progress made in implementing national strategies and plans on non-communicable diseases".

## **B. THE STATES**

### **Trade Practice & Other:**

**California**

[Assembly Bill 183](#), signed into law by the Governor, prohibits off-sale licensees from selling alcoholic beverages using a customer-operated checkout system.

**Illinois**

Becoming law with the Governor's approval, [Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

**New Hampshire**

The state Liquor Commission has banned the sale of Joose, a fruit-flavored beer, concluding that the labeling does not sufficiently indicate it's an alcoholic beverage and that the bright packaging colors and marketing make distinguishing it from soda difficult.

**Pennsylvania**

Among other provisions, [H.B. 11](#) provides for the privatization of wine and spirits sales in the Commonwealth.

**Wisconsin**

Companion bills [S.B. 205](#) and [A.B. 290](#) provide that a person is not required to hold a license or permit to manufacture wine or beer at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers, or to taste the wine or beer at this business, if the wine or beer is not sold or offered for sale. A person is also not required to hold a license or permit to manufacture wine or beer for educational purposes, or to taste the wine or beer at the place of manufacture, if the wine or beer is not sold or offered for sale. A person who manufactures wine or beer under these circumstances is also not required to pay an occupational tax.

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [137 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Beer and Wine May Help Postal Service Remain Afloat. As part of Postal reauthorization legislation and as a means to boost revenue to the debt-ridden United States Postal Service (USPS), the U.S. Senate is considering a provision making legal the direct shipment of beer and wine to consumers through the USPS. Under the proposal, licensed manufacturers would be able to ship direct under provisions of individual state laws, although individuals would still be prohibited from sending alcohol through the mail.

## B. THE COURTS

Texas Small Brewer Sues State Alcoholic Beverage Commission. Jester King Craft Brewery is one of several parties that has filed suit in federal court against the Texas Alcoholic Beverage Commission (TABC) citing several current provisions of Texas law as unconstitutional. According to the brewery's [release](#), Constitutional violations include the inability to label their products accurately, inform customers of where they can purchase the brewery's products, sell their beer directly to consumers and imposing the requirement that out of state breweries obtain a separate license in order to sell their products in Texas.

## C. THE STATES

### Trade Practice & Other:

#### **Oklahoma**

A joint task force created earlier this year to analyze the necessary modifications to existing law necessary to potentially allow the sale of high-point beer and wine in grocery and convenience stores, has formally dissolved without making a recommendation. The 20-member task force was to have concluded its study by February 1, 2012, but the group voted to end meetings after members came to the conclusion that no agreement on the issue would be forthcoming.

#### **Pennsylvania**

[House Bill 2020](#) would establish the Infrastructure Future Fund, utilizing the proceeds from the sale of the state's retail and wholesale liquor operations to fund transportation and infrastructure projects.

### **Washington**

With nearly 60% of voters casting their ballots in the affirmative, [I-1183](#) has been approved. This measure would close state liquor stores, selling those assets. The state would license private parties to distribute spirits and to sell spirits in retail stores meeting certain criteria. The measure establishes licensing fees for the sale and distribution of spirits based on the licensee's sales revenues. It also changes some wine distribution laws and allows non-uniform wholesale pricing for wine and spirits.

### **Wisconsin**

Amended in the Assembly before passage and transmittal to the Senate, [A.B. 290](#) provides that a person is not required to hold a license or permit to manufacture wine or beer at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers, or to taste the wine or beer at this business, if the wine or beer is not sold or offered for sale. A person is also not required to hold a license or permit to manufacture wine or beer for educational purposes, or to taste the wine or beer at the place of manufacture, if the wine or beer is not sold or offered for sale. A person who manufactures wine or beer under these circumstances is also not required to pay an occupational tax, however any person providing wine or beer for tasting at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers must hold an operator's license (i.e., a bartender's license).

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [139 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would 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.

Comment Period Closes on Four Loko Consent Agreement. The public comment period relating to the agreement between the Federal Trade Commission (FTC) and Phusion Projects, LLC, the makers of Four Loko, to meet concerns of deceptive advertising has officially closed. The settlement requires Phusion Projects to include disclosures on containers of Four Loko, or any other flavored malt beverage containing more alcohol than two and-a-half regular beers, stating how much alcohol (compared to the amount of alcohol found in regular beer) is in the drink. Additionally, starting six months after the settlement takes effect, Phusion Projects is required to use only re-sealable containers for flavored malt beverages that have more alcohol than the equivalent of two and a half regular beers.

The Brewers Association Government Affairs Committee considered submitting comments to clarify that craft brewer products, some of which may be similar in alcohol content and package size, are very different from the flavored malt beverages that are the subject of the FTC agreement. In the end, the committee decided against making comments based on the fact that the order is specific to Phusion Projects. However, the committee has done extensive work on the issue of defining and differentiating craft beers from high alcohol flavored malt beverages (HAFMB) and should an issue arise that results in HAFMB regulations or legislation potentially implicating small brewers and their beer, the Brewers Association has material that may help address those situations. More information is available by contacting [Pete Johnson](#).

Federal Trade Commission Seeks Comments on Alcohol Advertising Data. The Federal Trade Commission (FTC) recently published a [Federal Register Notice](#) asking for comments on proposed information requests which will be directed to the ultimate U.S. parent companies of up to fourteen advertisers of beer, wine, or distilled spirits. The requests would seek information from those companies concerning compliance with voluntary advertising placement provisions, sales and marketing expenditures, digital marketing practices and data collection and descriptions of lesser-known media programs, such as point-of-sale advertising, product placement, and social responsibility programs.

The FTC is taking this step prior to publishing a report about voluntary advertising self-regulation by the alcohol industry. Comments on the proposed information requests must be received on or before December 29, 2011.

## **B. THE STATES**

### **Direct Shipping:**

#### **New Jersey**

[A.B. 4303](#) would allow direct shipping by wineries and creates an out-of-state winery license

#### **Pennsylvania**

Passing out of committee, [Senate Bill 790](#) provides for the direct shipment of up to eighteen liters of wine per month to residents of the Commonwealth.

### **Taxation:**

#### **Illinois**

The Cook County (Chicago) Board of Commissions has voted to raise the alcohol tax by 50%, with the new rate on beer clocking in at 9 cents per gallon.

#### **New Jersey**

[A.B. 2643](#) creates a separate tax category for flavored malt beverages with a tax rate of \$4.40 per gallon. Although beer is exempted, flavored malt beverages are defined as those products which require the submission of a formula application to the federal Tax and Trade Bureau. The Garden State Craft Brewers Guild is working with the bill's sponsor to clarify that the many small brewer-produced beers requiring formula approval do not fall into the flavored malt beverage category.

### **Trade Practice & Other:**

#### **New Jersey**

Passing the Assembly, [A.B. 4012](#) eliminates the permit requirement for home production of wine and beer for personal use.

#### **North Carolina**

Passing both legislative chambers and awaiting the Governor's consideration, [House Bill 796](#) would allow all permittees that have been issued a brewery permit to sell at retail malt beverages that have been manufactured at the brewery or at another out of state location by the same permittee only on the premises of the brewery.

#### **Pennsylvania**

Following passage from the House in June and the incorporation of Senate committee amendments, [House Bill 242](#) has been reported to the full Senate for a vote. In part, the bill provides that a manufacturer may sell malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the licensed premises where sold if it complies with the conditions and regulations placed upon holders of brewery licenses. A manufacturer also may sell any malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption off the licensed premises in containers or packages of unlimited quantity and of any volume.

[Senate Resolution 216](#) directs the Budget and Finance Committee to conduct an economic impact study of the brewery industry in the Commonwealth.

### **Wisconsin**

The subject of a public hearing in the Senate, [A.B. 290](#) provides that a person is not required to hold a license or permit to manufacture wine or beer at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers, or to taste the wine or beer at this business, if the wine or beer is not sold or offered for sale. A person is also not required to hold a license or permit to manufacture wine or beer for educational purposes, or to taste the wine or beer at the place of manufacture, if the wine or beer is not sold or offered for sale. A person who manufactures wine or beer under these circumstances is also not required to pay an occupational tax, however any person providing wine or beer for tasting at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers must hold an operator's license (i.e., a bartender's license).