

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation

Small brewer excise tax recalibration legislation, The Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) continues to gain support in both chambers of the 113th U.S. Congress. H.R. 494 was introduced on February 5 by Representatives Jim Gerlach (R-PA) and Richard E. Neal (D-MA). Joining as original co-sponsors of the bill were Representatives Peter De Fazio (D-OR), Erik Paulsen (R-MN), Earl Blumenauer (D-OR) and Patrick McHenry (R-NC). The bill now has a total of [98 sponsors](#).

On May 9, Senators Ben Cardin (D-MD) and Susan Collins (R-ME) introduced S. 917 in the U.S. Senate. The bill now has the support of [26 Senate sponsors](#).

The Small BREW Act seeks to reduce the small brewer rate on the first 60,000 barrels by 50 percent (from \$7.00 to \$3.50/barrel) and institute a new rate \$16.00 per barrel on beer production above 60,000 barrels up to 2 million barrels. Breweries with an annual production of 6 million barrels or less would qualify for these tax rates. Legislation introduced last session, [H.R. 1236](#), gained a total of [174 total sponsors](#). In the Senate, companion legislation [S.534](#) realized [44 total sponsors](#).

U.S. Craft Beer Promotion Funding in Jeopardy

An amendment has been introduced in the U.S. Senate to S.954, The Agriculture Reform, Food, and Jobs Act of 2013, to prohibit the use of U.S. Department of Agriculture Market Access Program (MAP) funds for (among other things) "...beer festivals or beer award contests... [and] beer tasting or beer school seminars..." MAP funds are a significant resource for the Brewers Association Export Development Program in meeting its' objectives of educating international trade and media about the U.S. craft beer industry and in assisting American small brewers in leveraging opportunities to increase international distribution.

Feds Push for Lower Legal Blood Alcohol Level

The National Transportation Safety Board (NTSB) has [announced](#), as part of a larger program to eliminate alcohol-impaired driving accidents, its recommendation that the legal blood alcohol content (BAC) level be reduced to .05% from the current .08%. The NTSB, an independent federal agency without implementing authority, cites statistics that over 100 countries currently have BAC limits set at .05% or lower and has urged all 50 states to follow that model.

TTB to Allow Voluntary Serving Facts Statement

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued [Ruling 2013-2](#), interim guidance on the use of optional serving facts statements on labels and in advertisements of alcohol beverages, including malt beverages. The agency issued the ruling pending the completion of formal rulemaking on nutrient content statements.

According to TTB, the ruling allows “Serving Facts” statements that include the serving size, the number of servings per container, the number of calories, and the number of grams of carbohydrates, protein, and fat per serving. Additionally, Serving Facts statements may include information about the alcohol content of the product as a percentage of alcohol by volume and may also include a statement of the fluid ounces of pure ethyl alcohol per serving. Industry members need not apply for new label approval to add a Serving Facts statement if it conforms to the examples contained in the ruling.

Social Media Considered Advertising Subject to Fed Oversight

The Tax and Trade Bureau (TTB) has issued Industry Circular 2013-1, [Use of Social Media in the Advertising of Alcohol Beverages](#), detailing the agency’s position that its jurisdiction over advertising extends to all media, including all forms of social media.

B. THE STATES

Taxation:

Minnesota

Alcohol tax increase provisions were removed from an omnibus tax bill ([H.F. 677](#)). Previously passed by the House, the bill had sought increases on all alcohol excise tax rates, with the barrelage rate on beer increasing by over \$27.00 from the current \$4.60.

Rhode Island

Held for further study, [House Bill 6021](#) seeks to lower the sales tax imposed on alcoholic beverages from 6% to 3% and change the manufacturing taxes imposed on wine, beer and strong liquors to match the manufacturing taxes currently imposed by the commonwealth of Massachusetts.

Sales, Distribution and Franchise:

Delaware

Signed into law by the Governor, [House Bill 31](#) permits off-premises consumption licensees who obtain a Growler Filler permit to purchase kegs or partial kegs from wholesalers and fill and cap containers for the customer to consume off of the premises where sold.

Illinois

Passing both chambers, [House Bill 1573](#) seeks, among other things, to redefine a “craft brewer” as one brewing 30,000 barrels annually (from the current 15,000 barrels) and thereby qualifying for self-distribution.

Passing both chambers of the legislature, [House Bill 2606](#) makes clear the intent of legislation passed in the previous session which prohibited any beer manufacturer from owning a

distributorship or engaging in self-distribution if the brewer produces more than 15,000 barrels annually.

Maryland

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

Michigan

[House Bill 4711](#) allows a brewer to sell its beer for on-premises consumption at not more than two in-state locations that are on any of its licensed brewery premises where the brewer engages in the production of beer (currently restrict to one location).

Missouri

Dying at the close of the session, [House Bill 759](#) sought to modify the definition of franchise under Missouri law, specifically for agreements between alcohol wholesalers and suppliers so that a franchise may exist even without a license to use a trade name, trademark, or service mark and regardless if there is a community of interest in the marketing of the products. The bill would have effectively invalidated a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights. Similar franchise legislation was vetoed by the Governor last session.

Nevada

Awaiting gubernatorial action, [Assembly Bill 153](#) seeks to reduce the qualifying threshold from 2,500 to 2,000 barrels for breweries exempt from the requirement to show good cause when terminating a wholesaler.

North Carolina

Awaiting action by the Governor, [House Bill 829](#) allows for holders of on-premises malt beverage licenses and off-premises malt beverage licenses to engage in growler sales for off-premises consumption.

Ohio

[House Bill 174](#) seeks to prohibit a beer manufacturer from taking certain actions regarding the awarding or acquiring of beer distribution franchises or beer distribution territories prior to July 30, 2013. The bill was introduced to prevent brewers over 1 million barrels annual production (recently prohibited from owning or having a financial stake in wholesale distributors per the provisions of [S.B. 48](#) which has been signed into law) from acquiring interests in wholesalers before the effective date of the prohibiting legislation. A committee hearing on the bill has been cancelled.

Tennessee

Signed into law by the Governor, [Senate Bill 747](#) allows a beer manufacturer that is also licensed as a restaurant or a limited service restaurant for purposes of selling alcoholic beverages for

consumption on premises to sell beer manufactured at such brew pub for off premises consumption.

Texas

Before the Governor for his consideration, [Senate Bill 515](#) raises a brewpub's annual production limit to 10,000 barrels while allowing a brewpub that only sells their own beer to self-distribute to holders of retail licenses and permits up to 1,000 barrels per year or 2,500 barrels per year for all brewpubs operated by the same licensee. No limit is set as to how much of the 10,000 annual production can be sold through a beer distributor in the traditional three-tier system.

Awaiting action by the Governor, [Senate Bill 516](#) and [Senate Bill 517](#) authorize brewers (producers of malt beverages over 5% ABW) and manufacturers (producers of malt beverages under 5% ABW) under 125,000 barrels of annual production to self-distribute up to 40,000 barrels annual of beer, ale and malt-liquor to retailers and extends that privilege to out-of-state breweries.

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

Awaiting action by the Governor, [Senate Bill 639](#) would prohibit a manufacturer from engaging in reach-back pricing (when manufacturers—after the fact—alter the price charged to distributors based on the price a distributor has charged a retailer) and prohibits a manufacturer from accepting a payment for a territorial agreement setting forth territorial rights. It does not prohibit, however, a manufacturer or distributor from entering into contractual agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

West Virginia

Signed into law by the Governor, [House Bill 2956](#) allows brewpubs the ability to sell growlers, prohibits caffeine additions to beer and limits self-distribution to 10,000 barrels for breweries under 25,000 barrels annual production.

Direct Shipping:

Vermont

Signed into law, [Senate Bill 61](#) provides for the direct shipping of beer to consumers.

Trade Practice & Other:

California

Passing the Assembly, [Assembly Bill 647](#) requires that all beer sold in the state have a label affixed to the package or container showing the brand and type of beer, the true and correct name and address of the manufacturer of the beer and the true and correct name of the bottler of the

beer if other than the manufacturer. Additionally, it requires a beer manufacturer that refills any container supplied by a consumer to affix a label, as specified, on the container prior to its resale to the consumer. Finally, it revises the definition of "beer manufacturer" to include only those persons that have facilities and equipment for the purposes of, and are engaged in, the commercial manufacture of beer.

Under Senate consideration following Assembly passage, [A.B.779](#) authorizes a licensed beer manufacturer that produces more than 60,000 barrels of beer per year to manufacture cider or perry at the licensed premises of production and to sell cider or perry to any licensee authorized to sell wine.

Receiving a favorable Assembly vote and now under consideration by the Senate, [Assembly Bill 1424](#) permits beer manufacturers and winegrowers to describe the "composition" of their products, in addition to other characteristics already permitted, when engaging in tastings or instructional events for their licensees or employees.

Connecticut

Signed into law, [House Bill 6540](#) allows for the sale of beer in mixed material containers which include the "pouches" made popular in the juice and flavored malt beverage segments.

Illinois

Passing both chambers of the legislature, [H.B. 630](#) specifies the requirements for the use of homemade brewed beverages at a public exhibition, demonstration, tasting, or sampling.

Louisiana

Approved by both chambers of the state legislature, [House Concurrent Resolution 106](#) designates the week of September 23 through 29, 2013, as Louisiana Craft Brewer Week in recognition of the many contributions by Louisiana craft brewers to the state.

Maine

[Senate Bill 529](#) sets the number of special taste-testing festival licenses statewide at 5 per year, and requires 4 of the 5 licenses to be issued to a trade association that represents breweries or wineries. The bill allows small breweries and wineries from other states to participate in special taste-testing festivals.

[S.B. 590](#) provides that the laws governing the transfer of liquor licenses do not apply to alternating brewery proprietorships regulated by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau.

Michigan

[House Bill 4709](#) redefines "micro brewer" as a brewer that produces in total less than 60,000 barrels of beer per year (from the current 30,000 barrels).

Missouri

Awaiting the Governor's signature, [Senate Bill 121](#) provides that beer brewed for personal or family use may be removed from the premises where brewed for use at organized affairs,

exhibitions, or competitions, such as home brewer contests, tastings, or judging. The use may occur off licensed retail premises, on any premises under a temporary retail license, or on any tax-exempt organization's licensed premises.

Montana

After passing the House, [H.B. 58](#) has died in the Senate. The bill sought to create a brew on-premises license.

Nebraska

[Legislative Resolution 175](#) calls for a study of the craft brewery industry in Nebraska to develop potential tax policy and statutory law to encourage growth of the craft beer industry in the state.

New Hampshire

Becoming law with the Governor's signature, [House Bill 237](#) amends the statute authorizing and regulating home brewing to include the production of wine.

Moving to conference to reconcile differences, [House Bill 253](#) seeks to allow a nano brewery to obtain a license upgrade exempting the licensee from sales limitations where the nano brewery has an existing on-premises beverage and wine license and sells food.

New York

[S.B. 5300](#) establishes the New York craft beverage council within the department of economic development to develop a marketing strategy to promote the state's fine wines, spirits and craft brews.

South Carolina

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

Texas

[House Bill 3716](#) seeks to authorize a member of the manufacturing, wholesaler, or distributor tier to sell to a retailer promotional items that bear an alcoholic beverage manufacturer's logo, brand, or product name, that are designed to promote a specific product or brand, and that are designed for use by the consumer, either on or off the retailer's premises. The bill prohibits these promotional items from being sold for less than the item manufacturer's regularly published wholesale price.

Washington

Signed into law, [Senate Bill 5674](#) provides that wineries or microbreweries must have an endorsement from LCB to sell their products at a qualifying farmers market in order to offer samples. Up to a total of three wineries or microbreweries may offer samples at a farmers market per day. Samples must be two ounces or less and each winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.