

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 [105 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 [29 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](#).

B. THE COURTS

Split Decision in Missouri Franchise Ruling

In long-fought termination suit between supplier Diageo and distributor Major Brands, a state court has ruled that a community of interest did exist between the two businesses and that, therefore, the Missouri franchise law is applicable. Furthermore, the court held that Diageo terminated without cause and that Major Brands stands to suffer severe financial consequences through the loss of Diageo's brands. However, the court refused to grant Major Brands the injunction it sought to keep Diageo brands in its house as the legal process continues, based on the fact that the financial harm of that loss is quantifiable and therefore compensable. Additionally, the court had no interest in supervising a continuing business relationship which it characterized as an "uneasy alliance."

C. THE STATES

Taxation:

New York

Companion legislation [Assembly Bill 7767](#) and [Senate Bill 5594](#) seek to establish a tax credit for beer produced within New York City by those with an annual production of 60 million gallons or less. The proposed credit is 12 cents per gallon for the first 500,000 of beer produced, and three and eighty-six one hundredths cents per gallon thereafter until 15,500,000 gallons.

Sales, Distribution and Franchise:

Delaware

[House Bill 190](#) would facilitate the growth of Delaware licensed brewery-pubs, microbreweries, farm wineries and craft distilleries by allowing them to expand their businesses within and outside of the State, provided they continue to meet the production limitations set forth in the statutes. It would also permit brewery-pubs to distill products which are not malt-based.

Illinois

On the Governor's desk for action, [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.

Becoming law with the Governor's signature, [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. Under the bill's provisions, Anheuser-Busch InBev must divest the 30% ownership stake it holds in Chicago distributor City Beverage.

Michigan

Signed into law, [Senate Bill 27](#) permits an eligible merchant to fill and sell growlers with beer for off-premises consumption.

Nevada

Becoming law with the Governor's signature, [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

Signed 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.

Texas

Receiving the Governor's approval, [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.

Signed into law 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.

Becoming law with the Governor's signature, [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 premises of the brewery.

Signed into law 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.

Trade Practice & Other:

Florida

Signed into law by the Governor, [House Bill 347](#) defines a “craft distillery” to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises. The bill allows a liquor manufacturer that meets the requirements of a craft distillery to sell two sealed containers per year of the distilled spirits it produces on its premises, to a consumer, for off-premises consumption. The bill requires that sales of the spirits be made on “private property” contiguous to the distillery premises.

Also signed into law, [H.B. 695](#) prohibits an alcoholic beverage licensee from possessing or using malt beverage coupons, if the coupon is furnished by an alcohol beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person of the licensee and redeemable by a vendor who sells malt beverages to consumers.

Illinois

Signed into law, [H.B. 630](#) specifies the requirements for the use of homemade brewed beverages at a public exhibition, demonstration, tasting, or sampling.

Kansas

Signed into law by the Governor, [H.B. 2199](#), among other provisions, authorizes the preparing or mixing of samples at a licensed retail premises for the purpose of conducting wine, beer, or distilled spirit tastings.

Maine

Becoming law, [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.

Signed by the Governor, [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 4710](#) allows a brewpub to have an interest in up to 5 (currently 2) other brewpubs if the combined production of all the locations in which the brewpub has an interest does not exceed 18,000 barrels (currently 5,000 barrels) of beer per calendar year.

Missouri

Signed into law by the Governor, [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.

New Jersey

[Legislation](#) creating a craft distillery license permitting a licensee to manufacture up to 20,000 gallons of distilled alcoholic beverages, has passed both legislative chambers.

New York

Passing both legislative chambers, [Assembly Bill 8046](#) creates an exemption from the brand label registration fee for distilled spirits produced in small batches, modernizes the standards used in approving brand labels and reduces the amount of information that brand owners and wholesalers must provide to the State Liquor Authority when applying for brand label approval.

[Senate Bill 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

Signed into law 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

Signed by the Governor, [H.B. 1917](#) authorizes outdoor advertising of an alcoholic beverage or of the business of any person engaged in the manufacture, sale, or distribution of an alcoholic beverage to be placed on or affixed to the outside of a public transportation passenger vehicle or vehicle for hire.

Signed into law by the Governor, [House Bill 3307](#) authorizes resident and nonresident manufacturers (producers of beer), and resident and nonresident brewers (producers of ale and malt liquor), to enter into contract brewing arrangements. Additionally the bill allows a holder of a manufacturer's license to utilize the shared premises concept as long as the license holders are both licensed under the federal Alternate Brewing Proprietorship law.