

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 [138 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 [37 Senate sponsors](#).

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

FDA Proposes Rule on Preventing Intentional Adulteration of Food

The federal Food and Drug Administration has published a [proposed rule](#) on food defense that would require domestic and foreign facilities to address vulnerable processes in their operations to prevent acts on the food supply intended to cause large-scale public harm. The proposed rule, which is required by the FDA Food Safety Modernization Act (FSMA), would require the largest food businesses to have a written food defense plan that addresses significant vulnerabilities in a food operation. This is one of several FDA proposed regulations that exempt alcohol beverage facilities regulated by TTB, however, brewers and other industry members still need to file an initial registration with the FDA.

B. THE COURTS

Distributor Challenges Distribution Law

Indiana distributor Monarch Beverage Co. has filed suit in U.S. District Court challenging state law that prohibits beer wholesalers from holding a permit to wholesale liquor and vice versa. Currently, wine wholesalers have the ability to also distribute beer and liquor. Monarch claims that the prohibition is an arbitrary restraint that serves no legitimate state interest.

C. THE STATES

Sales, Distribution and Franchise:

Indiana

[Senate Bill 5](#) seeks to allow a small brewer to sell the brewer's beer to consumers for carryout at a farmers' market that is operated on a nonprofit basis, in a quantity of not more than 576 ounces

per consumer at any one time and requires the beer sold to be placed in the bottle or container at the brewer's permit premises.

[S.B. 16](#) seeks to require that, for a brewery to qualify as a microbrewery, the entire brewing process of the beer must occur in Indiana. The bill would further: allow a small brewer to sell the brewer's beer to consumers for carryout at a farmers' market that is operated on a nonprofit basis, in a quantity of not more than 576 ounces per consumer at any one time; allow a microbrewery, with the approval of the alcohol and tobacco commission, to participate in a trade show or an exposition for not more than 45 days in a calendar year; allow the holder of an artisan distiller's permit that also holds a microbrewery permit to hold a retailer permit for a restaurant; and makes an exception to a provision that prohibits the holder of an artisan distiller's, a distiller's, or a rectifier's permit to acquire an interest in a holder an Indiana permit to sell alcoholic beverages at retail.

New Hampshire

[House Bill 1217](#) amends the definition of “wholesale distributor” to allow purchases of beverages from nano brewery licensees.

Oregon

As part of an effort spearheaded by the Northwest Grocers Association to privatize liquor sales in the state, five initiative petitions have been filed for inclusion on the 2014 ballot. The common thread among the initiatives is allowing stores of 10,000 square feet or more to stock and sell spirits, thereby removing the state from the business of alcohol sales.

Trade Practice & Other:

Missouri

[House Bill 1185](#) provides that no caffeinated malt beverage shall be imported, produced, manufactured, distributed, or sold at any retail outlet in the state.

[House Bill 1266](#) would allow licensed retailers to sell thirty-two ounces to seventy ounces of draft beer to customers in containers filled on the premises for consumption off the premises.

Ohio

[House Bill 391](#) seeks to allow beer manufacturers to manufacture beer containing not more than 21% of alcohol by volume beginning on the effective date of this act, and, beginning one year after the effective date of this act, to allow the sale and distribution of beer containing not more than 21% of alcohol by volume in this state by increasing the legally permitted alcohol content of beer from 12% to 21%. The bill also generally prohibits the inclusion of caffeine or other stimulants in beer containing more than 12% of alcohol by volume, but exempting beer that has incidental amounts of caffeine from coffee, chocolate, or tea.

Vermont

[Senate Bill 260](#) would allow malt and vinous beverage wholesale dealers to hold tastings at local establishments that have yet to receive their licenses, but have prior approval from the local control commission.