

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 [141 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](#).

B. THE COURTS

Kentucky Alcohol Sales Restrictions Ruling Reversed

An appeal to overturn a 2012 U.S. District Court ruling that Kentucky's ban on grocery store, gas station and convenience store sales of wine and liquor was unconstitutional under the equal protection clause of the 14th Amendment, has been successful. The 2012 ruling referenced the arbitrary nature of the restriction, given that drug stores are allowed to sell wine and liquor, as the rationale for striking it down. The state on appeal, however, argued that the law did in fact have a rational basis in that it restricted access to high alcohol products, i.e. a legitimate state interest. The U.S. Court of Appeals judge for the 6th Circuit agreed, concluding that "grocery store and gas stations pose a greater risk of exposing citizens to alcohol than do other retailers."

C. THE STATES

Sales, Distribution and Franchise:

Alabama

[House Bill 355](#) would create a new license for brewpubs allowing the sale of beer for off premises consumption.

California

The California Department of Alcoholic Beverage Control has issued an [Industry Advisory](#) addressing the ability to sell beer to consumers from the manufacturer's premise, clarifying that a beer manufacturer may only sell beer which is brewed under that license for both off-site and

on-site consumption. Only if the beer manufacturer operates a bona fide eating establishment can other manufacturers' beer be sold for on-site consumption.

Florida

Companion legislation [House Bill 283](#) and [Senate Bill 406](#) authorize containers of malt beverages to be sold or offered for sale by a vendor at retail in any size, thereby allowing the sale of traditional 64 ounce growlers. The bill also authorizes malt beverage tastings in a licensed premise.

Georgia

Companions [H.B. 314](#) and [S.B. 174](#) provide for limited retail sales for off-premise consumption for both brewery and brewpub licenses.

Hawaii

Companions [H.B. 2484](#) and [S.B. 3042](#) create a new license type for a small craft producer pub (for beer defined as one producing not more than 60,000 barrels annually) and among other abilities, allow for the sale of growlers for off-premises consumption.

Indiana

Passing the Senate, [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.

[Senate Bill 415](#) seeks to regulate transactions and agreements between beer wholesalers and suppliers. It requires a beer wholesaler to have a bona fide distribution agreement with each of the beer wholesaler's suppliers. It specifically addresses terminations by small brewers (defines as those producing not more than 30,000 barrels annually) with compensation amounts dictated by how long the brand has been in the wholesaler's portfolio. The language further states that if any provision of the alcoholic beverage law is held invalid, the remaining provisions of the law must be construed in accordance with the intent of the legislature to further limit rather than to expand commerce in alcoholic beverages and to enhance strict regulatory control through the state alcohol commission and the three tier system of alcoholic beverage distribution.

[House Bill 1022](#) provides that a holder of an alcoholic beverage permit who is authorized to sell alcoholic beverages for carryout may sell alcoholic beverages for carryout on Sunday.

Maryland

[House Bill 464](#) authorizes the holder of a Class 7 micro-brewery (on- and off-sale) license to sell at retail beer brewed under the license to customers for consumption off the licensed premises as prepackaged beer in non-refillable containers.

Mississippi

Failing to advance out of committee, [S.B. 2720](#) sought to remove restrictions on manufacturers having certain relationship with retailers of beer.

Also failing to advance and dying in committee, [Senate Bill 2721](#) sought to give brewers with annual sales of 200,000 barrels or less the ability to sell at retail limited amounts of beer.

Similar legislation also dying in committee, [House Bill 904](#) sought to give the holder of a permit to manufacture beer who operates a brewery the ability to sell limited amounts of beer on the premises of the brewery.

[Senate Bill 2590](#) seeks to prohibit retailers of from having an interest in the business of wholesalers, distributors and manufacturers of beer.

Nebraska

[L.B. 456](#) would allow for the sale of draught beer for home consumption to patrons of an establishment holding a Class C liquor license.

New Hampshire

[House Bill 1287](#) seeks to impose a refundable deposit on beverage containers.

[Senate Bill 257](#) authorizes off-premises licensees to sell beer in sealed refillable containers.

Oklahoma

[H.B. 3105](#) clarifies that any disputes concerning distribution agreements for low-point beer between wholesalers and manufacturers must be resolved in the district and appellate courts of Oklahoma.

Vermont

[House Bill 672](#) seeks to allow manufacturers or rectifiers of vinous beverages, malt beverages, or spirits to ship directly to consumers.

Virginia

Passing the House and under Senate consideration, [House Bill 882](#) would allow the sale of wine and cider in growlers or other reusable containers that are federally approved and the sale of cider in kegs.

Washington

[House Bill 2327](#) would allow breweries, microbreweries, wineries and various retailers, restaurants, and hotel licensees to sell beer and wine in kegs and growlers, filled at the tap at the time of sale, for consumption off the premises.

Taxation:

Hawaii

Companions [House Bill 2483](#) and [Senate Bill 3041](#) seek to establish a tax rate of 23 cents per wine gallon on draft beer and beer other than draft beer that are brewed or produced by a small brewery or brewpub.

Michigan

[House Bill 5275](#) allows a brewer, micro brewer, or brewpub to claim a credit against certain taxes for beer produced using a specified percentage of hops and other ingredients grown in the state.

Mississippi

[House Bill 183](#) seeks to impose an additional tax to be paid by wholesalers for the privilege of engaging or continuing in business of 64.02 cents per gallon on beer manufactured at brewpubs and on beer acquired for sale or distribution in the state.

New Jersey

[Senate Bill 1201](#) seeks to create a new taxable category of alcoholic beverages called flavored malt beverages (defined as a beverage having an alcoholic content of one half of one per centum (1/2 of 1%) or more by volume for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Tax and Trade Bureau) and imposes a separate tax rate on the category of \$4.40 a gallon.

New Mexico

[House Bill 16](#) increases the percentage of the liquor excise tax distributed to the local DWI grant fund.

[S.B. 263](#) would authorize counties to impose a local liquor excise tax.

West Virginia

[House Bill 4292](#) doubles the tax on non-intoxicating beer to \$11.00 a barrel and designates half that amount to fund an alcohol prevention and treatment program.

As part of the Tax Revenue Act of 2014 ([Senate Bill 302](#)), the barrel tax imposed on non-intoxicating is increased by twenty-five percent on each barrel, and in like ratio on each part barrel, of non-intoxicating beer manufactured in the state for sale within this state, whether contained or sold in barrels, bottles or other containers. A like tax is also levied and on all non-intoxicating beer manufactured outside the state but sold in this state.

Washington

Companions [H.B. 1122](#) and [S.B. 5039](#) would extend the sunset date for increased taxes on beer and strong beer to fund the education legacy trust account.

Trade Practice & Other:

Alabama

[House Bill 389](#) would allow a retail licensee or a state liquor store to conduct tastings of wine, beer, and distilled liquor.

Florida

[Senate Bill 470](#) allows licensed distributors of malt beverages, or any vendor, to conduct malt beverage tastings in any licensed premises authorized to sell malt beverages by package or for consumption on premises.

Georgia

[S.B. 335](#) provides that local governing authorities may authorize retail dealers and retail consumption dealers to conduct tasting events at which samples of malt beverages and wine may be served and removes the prohibition against brewpub licensees offering or permitting free sampling by customers.

Indiana

[House Bill 1068](#) provides that a supplier commits an unconscionable act that is treated the same as a deceptive act under the deceptive consumer sales law if the supplier refuses to sell to a retailer with which the supplier has done business within the previous two years a good that is a food or beverage product at the same price that the supplier sells the good to any other retailer.

[H.B. 1322](#) allows the holder of a microbrewery permit and a farm winery permit to operate the microbrewery and farm winery in all or part of the same building or part of a building; the holder of a microbrewers' permit to serve complimentary samples of beer in an outside area that is contiguous to the microbrewery; a microbrewery, a farm winery, or a premises that contains both, to provide an outside area contiguous to the premises, where consumers can consume beer or wine purchased by the glass on the premises; a microbrewery and a farm winery that occupy all or part of the same premises to offer complimentary samples of the microbrewery's beer and the farm winery's wine in one room of the building occupied by the microbrewery and the farm winery.

Maryland

[S.B. 445](#) increases to 60,000 (currently 22,500) the limit on the number of barrels of malt beverages that a micro-brewery may collectively brew, bottle, or contract for in a calendar year.

Mississippi

[House Bill 801](#) authorizes package retailers to sample product and hold tasting/sampling events.

Missouri

[H.B. 1121](#) requires a brew-on-premises facility to obtain a license from the Division of Alcohol and Tobacco Control and stipulates that production cannot exceed 200 gallons per calendar year for households with two or more adults 21 years of age or older and 100 gallons per calendar year for households with one adult 21 years of age or older.

[House Bill 1266](#) authorizes a licensed beer merchant to sell 32 to 70 fluid ounces of beer in containers filled on the premises to customers for consumption off the premises. An employee

must close the container with a one-time-use, tamper-proof seal. The bill also prohibits any wholesaler, distributor, or manufacturer of intoxicating liquor from furnishing dispensing or cooling equipment to any person who is licensed to sell intoxicating liquor in the original retail package.

[House Bill 1304](#) changes the definition of "original package" of malt liquor for liquor licensing purposes to include cans and pouches.

New Hampshire

[Senate Bill 310](#) establishes a tenant brewer license authorizing the holder to enter into a partnership with a beverage manufacturer to produce or package beer or specialty beer.

[S.B. 329](#) eliminates the prohibition on advertising alcoholic beverages on billboards and establishes restrictions on the content and placement of billboards and exterior signs advertising alcoholic beverages.

New Jersey

[Assembly Bill 698](#) prohibits the sale of alcoholic energy drinks which are defined as any prepackaged alcoholic beverage that has been intentionally supplemented by the manufacturer with caffeine.

The "Smart Container Act" ([A.B. 1079](#)) would require a 10-cent deposit on all plastic and glass bottles and aluminum cans (other than refillable containers) less than 24 oz. and a 20-cent deposit on such beverage containers over 24 oz. up to 3 liters. Wine and beer containers would be liable for a deposit.

[Assembly Bill 1959](#) would establish a farm brewery licensee allowing a holder to brew up to 2,000 barrels of malt alcoholic beverages a year for retail sale for consumption off the premises and to offer samples. The legislation also creates a winery-brewery sublicense that would permit wineries to produce malt alcoholic beverages for retail sale to consumers for consumption off the licensed premises.

New Mexico

[H.M. 67](#) requests a study on the feasibility of implementing regulations allowing the delivery of beer, wine and hard alcohol, along with the concurrent delivery of prepared foods or groceries, to homes, hotels and licensed bed and breakfasts.

New York

[A.B. 7544](#) 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.

Companion legislation [A.B. 8679](#) and [S.B. 2321](#) 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 434](#) relates to permits for brewers, manufacturers, and importers 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.

Ohio

[Senate Bill 173](#) authorizes specified persons to provide serving samples of and conduct consumer product instruction about the products of a manufacturer, supplier, or broker of beer, wine, or mixed beverages. The instruction or sampling must take place on the premises of a retail permit holder who is authorized to sell beer, wine, or mixed beverages for off-premises consumption.

Rhode Island

[Senate Bill 2110](#) provides for a farmer-brewer license and delineates the necessary percentages of hops which must be grown on both the specific licensed farm premises and at other in-state facilities.

[S.B. 2112](#) seeks to amend current law so that a farmer-winery and a farmer-brewery may, under certain conditions, be licensed to sell wine/beer for off-premises consumption at a farmers' market, similar to that permitted in Massachusetts.

South Dakota

[Senate Bill 92](#) seeks to require nondiscriminatory pricing between malt beverage suppliers and malt beverage wholesalers.

Vermont

Under House consideration after passing the Senate, [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.

Virginia

Passing the Senate, [Senate Bill 430](#) provides for a farm brewery license which stipulates that the breweries: manufacture no more than 15,000 barrels of beer per calendar year; are located on a farm in the Commonwealth owned or leased by such brewery or its owner; and agricultural products, including barley, malt, hops, or fruit used by such brewery in the manufacture of its beer are grown on the farm.

Under House consideration after passing the Senate, [Senate Bill 596](#) provides that the state license tax for breweries that manufacture no more than 500 barrels of beer during the licensing year is \$350.

Washington

[House Bill 1022](#) seeks to allow beer and/or wine specialty shops to provide samples to customers without prior qualification from the Liquor Control Board and to allow brewers, distributors, wineries, distillers, and importers to provide samples to other licensees without being subject to Liquor Control Board rules.

[Senate Bill 5303](#) allows breweries and microbreweries to identify the producer of their beer on private labels authorized under current law.