

## June 2015 Legal & Legislative Update

### A. FEDERAL / NATIONAL / INTERNATIONAL

#### **Small Brewer Federal Excise Tax Legislation**

H.R. 232, the [Small Brewer Reinvestment and Expanding Workforce Act](#) (Small BREW Act), was introduced in the 114<sup>th</sup> U.S. Congress on January 8 by Representatives Erik Paulsen (R-MN) and Richard E. Neal (D-MA). Joining as original co-sponsors of the bill were Representatives Peter De Fazio (D-OR), Earl Blumenauer (D-OR), Patrick McHenry (R-NC) and Patrick Meehan (R-PA). H.R. 232 has 80 total sponsors in the U.S. House of Representatives.

On February 4, Senators Ben Cardin (D-MD) and Susan Collins (R-ME) introduced S. 375 (Small BREW Act) in the U.S. Senate. S. 375 has 34 total sponsors in the U.S. Senate.

Supported by the Brewers Association, 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 in the last Congress, H.R. 494, gained a total of 182 total sponsors. In the Senate, companion legislation S.917 realized 47 total sponsors.

#### **Federal Legislation Introduced to Reduce Distilled Spirits Excise Tax**

[H.R. 2520](#), the Distillery Innovation and Excise Tax Reform Act, seeks to reduce the current \$13.50/proof gallon rate to \$9.00/proof gallon, with the initial 100,000 gallons taxed at a rate of \$2.70/proof gallon. All spirits producers would be eligible for the reduced rates. In the Senate, [S. 1444](#), the Distillery Excise Tax Reform Act of 2015, seeks the same \$2.70 rate on the first 100,000 proof gallons, but does not provide for any other rate reduction.

### B. THE COURTS

#### **Suit Challenging “Handmade” Claim Dismissed**

A U.S. District Court in Tallahassee, Florida has ruled against consumers who brought suit against Maker’s Mark Distillery for using the term “handmade” in marketing its Maker’s Mark bourbon whiskey. Plaintiffs claimed they relied on that characterization when purchasing the whiskey, only to find that it is actually produced in a highly mechanized process utilizing “large machines.” The court found, however, that the plaintiffs failed to state a claim on which relief could be granted due to their inability to “articulate a consistent, plausible explanation of what they understood “handmade” to mean in this context.”

### C. THE STATES

#### **Sales, Distribution and Franchise:**

## **Alabama**

Failing to advance beyond committee level consideration, [Senate Bill 452](#) sought to allow a brewpub to sell alcoholic beverages for on-premises and off-premises consumption and to create a license allowing limited production breweries to produce beer and operate a restaurant on their licensed premises and sell their beer at the brewery and restaurant.

## **Connecticut**

Signed into law, [S.B. 934](#) allows beer, brewpub, and beer and brewpub manufacturer permittees to also hold a farmers' market beer sales permit.

## **Louisiana**

Awaiting gubernatorial action, [H.B. 232](#) seeks to authorize manufacturers for low and high alcoholic content beverages and brewers for low alcoholic content beverages to sell certain quantities of these beverages at the facility where they are manufactured or brewed.

## **Nebraska**

[Legislative Resolution 315](#) provides for a study of the contractual relationship between craft breweries and distributors, including whether there should be changes to allow craft beer manufacturers more flexibility when entering and exiting distribution contracts.

## **New Jersey**

Companions [A.B. 4389](#) and [S.B. 2910](#) seek to permit certain breweries to sell beer at community farm markets.

[Assembly Bill 4391](#) and [Senate Bill 2912](#) both seek to authorize restricted breweries to annually sell up to 1,000 barrels of beer to in-state and out-of-state retailers.

## **Oklahoma**

After passing both chambers in different versions, a conference committee was unable to agree on a final bill. [S.B. 424](#) would authorize a brewer to sell beer produced by the brewer to consumers on the premises of the brewery.

With House-Senate conference committee members unable to agree on a mutually acceptable bill, [Senate Bill 688](#) has failed to advance. The bill sought to require low-point beer manufacturers and wholesalers who assign a brand extension to assign the extension to the licensed wholesaler which has exclusive sales territory for the brand. The measure would also have changed the calculation to determine if a manufacturer is exempt from the provisions relating to wholesaler and manufacturer agreements. Currently, manufacturers who produce less than 300,000 gallons (9,523 barrels) are exempt. The measure changed the amount to 10,000 barrels (315,000 gallons). The measure also provided that no manufacturer is to accept any inducement from a wholesaler in exchange for entering into a distribution sales agreement with a wholesaler.

## **Oregon**

Passing both chambers of the legislature, [S.B. 138](#) seeks to permit brewery-public house licensees to sell at wholesale and distribute up to 7,500 barrels of malt beverages per year

produced by the licensee to other licensees of the Oregon Liquor Control Commission, allows brewery-public house licensees to distribute any amount of malt beverages manufactured at the licensee's premises to any other manufacturer, wholesaler or retail premises licensed to the same licensee and allows brewery-public house licensees to distribute for export any amount of malt beverages manufactured at the licensee's premises.

### **Pennsylvania**

[House Bill 1196](#) further defines the term "geographically contiguous" in the context of franchise territories to include "two distinct areas which are separated by no more than five miles at the closest point."

The Pennsylvania Liquor Control Board announced a [new regulation](#) is in effect that allows the holder of a brewery license to serve its own beer for consumption on the licensed premises under certain conditions. Previously, a brewery licensee had to also obtain a brewery pub license in order to serve malt or brewed beverages (beer) for on-premises consumption. The regulation also allows a Brewery License holder to sell beer at its storage locations with the same requirements and restrictions of the licensed premises.

## **Taxation:**

### **Illinois**

Adopted by the full House, [House Resolution 431](#) urges the Governor and the General Assembly to review the possibilities of increasing distribution fees by 2.5% on craft beer breweries solely to fund childcare services at State universities.

### **Nebraska**

Signed by the Governor, [L.B. 330](#), among other provisions, provides tax credits to beer manufacturers for the use of beer-related crops grown in-state.

### **New York**

Passing the full Assembly, [Assembly Bill 7106](#) seeks to exempt brewers who produce less than 60,000 barrels of beer a year from the requirement to file annual information returns with the department of taxation and finance.

### **Pennsylvania**

[S.B. 73](#) provides for a small brewer tax credit of \$200,000 for the purchase of qualifying capital expenditures.

## **Trade Practice & Other:**

### **California**

Amended in Senate committee, [A.B. 774](#) allows a permitted licensed beer manufacturer to conduct instructional tastings on the subject of beer at a certified farmers' market under specified conditions.

Passing the Assembly and under Senate consideration, [Assembly Bill 776](#) seeks to authorize a licensed beer manufacturer to apply to the Department of Alcoholic Beverage Control (ABC) for a brewery event permit that allows the sale of beer produced by that beer manufacturer for consumption on property contiguous and adjacent to the licensed premises of the manufacturer and would allow up to 4 authorized events each calendar year.

Passing the Assembly, [A.B. 973](#) seeks to harmonize the rules for on-sale and off-sale retailers and allows the dissemination of retail information on new media platforms (e.g. social media) for all types of retailers.

### **Illinois**

Amended in the Senate after passing the House, [House Bill 3237](#) allows a manufacturer, distributor, or importing distributor to furnish free social media advertising to a person having a retail license if the social media advertisement does not contain the retail price of any alcoholic liquor. The bill also establishes a class 2 brewer license for a person who is a holder of a brewer license or non-resident dealer license who manufactures up to 120,000 barrels of beer per year for sale to a licensed importing distributor or distributor; changes the name of the craft brewer license to class 1 brewer license and prohibits the holder from being a member of or affiliated with, directly or indirectly, a manufacturer that produces more than 30,000 barrels of beer per year or any other alcoholic liquor; increases the amount of beer that a brew pub may sell for off-premises consumption to 5,000 barrels per year. In a provision concerning approval for a self-distribution exemption for a class 1 brewer licensee, adds a requirement that the class 1 brewer licensee must relinquish any brew pub license held by the licensee, including any ownership interest held in the licensed brew pub.

### **Nebraska**

[Legislative Resolution 287](#) provides for a study of craft breweries and whether brewpubs and microbreweries should be licensed as craft breweries or should have separate licenses.

### **New Hampshire**

Amended and passed by the House, [Senate Bill 99](#) establishes a committee to study allowing the sampling of beer or wine at farmer's markets and a committee to study powdered or crystalline alcohol.

### **New Jersey**

Companion bills [A.B. 4390](#) and [S.B. 2911](#) seek to allow consumption of food on limited brewery premises.

[Assembly Joint Resolution 109](#) designates the third weekend in October each year as "Shuck, Sip, and Slurp Weekend" to promote New Jersey oysters, wine, and beer.

### **New York**

Passing the Senate, [S.B. 1757](#) would prohibit the sale or offering for sale of any powdered or crystalline alcohol.

Awaiting a full Senate vote, [Senate Bill 1860](#) provides for permits for brewers, manufacturers, and importers to serve small samples of their beer or malt beverages at certain events; includes fees and definition of small sample; includes the privilege to sell such beverages for consumption off-premises.

Before the full Senate for a vote, [S.B. 4118](#) 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.

### **North Carolina**

Before the Governor for action, [House Bill 909](#) provides for, among other provisions, alternating proprietorships and contract brewing.

### **Texas**

[H.R. 2278](#) recognizes April 29, 2015, as Craft Brewers Day at the State Capitol.

### **Washington**

Signed by the Governor, [S.B. 5662](#) allows a licensed domestic brewery or microbrewery to provide promotional items to a nonprofit charitable corporation or association.