

April 2016 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

Craft Beverage Modernization and Tax Reform Act

S. 1562, the [Craft Beverage Modernization and Tax Reform Act](#), was introduced in the U.S. Senate on June 11, 2015 by Senator Ron Wyden (D-OR) and companion H.R. 2903 was introduced in the U.S. House of Representatives on June 25, 2015 by Representatives Erik Paulsen (R-MN) and Ron Kind (D-WI). S. 1562 has 37 total sponsors in the U.S. Senate and H.R. 2903 has 181 total sponsors in the U.S. House of Representatives.

S. 1562/H.R. 2903 would reduce excise taxes, compliance burdens, and regulations on breweries, cideries, wineries, and distilleries. Tax provisions for breweries include: 1) Any domestic brewery that produces less than 2 million barrels a year would pay \$3.50/barrel on the first 60,000 barrels and \$16 barrel on anything above 60,000-2 million barrels; 2) Any domestic brewery that produces more than 2 million barrels a year would pay \$16/barrel on their first 6 million barrels; 3) All importers would pay \$16/barrel on the first barrel they import through 6 million barrels. Those importers that import more than 2 million barrels would pay \$18/barrel on any barrel over 6 million.

TTB Issues FAQ on Category Management and Tied House

The Tax and Trade Bureau has issued [Frequently Asked Questions](#) (FAQs) on shelf schematics in response to questions we received following publication of Ruling 2016-1, The Shelf Plan and Shelf Schematic Exception to the “Tied House” Prohibition, and Activities Outside Such Exception. Ruling 2016-1 provided general guidance concerning promotional activities commonly associated with category management programs and whether or not those activities are lawful.

Menu Labeling Effective Date Delayed

The federal Food and Drug Administration announced it is delaying the effective date of menu labeling regulations enforcement from December 1, 2016, to the date that is one year after it issues final guidance.

FDA Issues Final Rule on Sanitary Transportation of Human and Animal Food

As part of the [final rule](#) established to prevent practices during transportation that create food safety risks, the Food and Drug Administration has exempted the transportation of human food byproducts transported for use as animal food without further processing from the requirements of the rule. Thus, the transporting of spent grain will not be impacted by this rule.

B. THE COURTS

Distributor Sues Massachusetts ABC

Distributor Craft Brewers Guild (CBG) is suing the Massachusetts Alcoholic Beverages Control Commission (ABCC) in the wake of the ABCC’s finding that CBG violated state rules against offering inducements to retailers. Craft Brewers Guild opted to pay a fine of over \$2.5 million

(based on profits earned in a 90-day period) rather than accept a license suspension of 90 days. In its suit, CBG claims that, in reaching its decision, the ABCC exceeded its authority, violated constitutional provisions, made errors of law and acted in an arbitrary and capricious manner.

C. THE STATES

Sales, Distribution and Franchise:

Alabama

Signed into law by the Governor, [House Bill 176](#) incorporates the recommendations relating to beer from the Alabama Alcohol Beverage Study Commission which was created to study Alabama's laws related to the manufacture, distribution, and sale of alcoholic beverages and determine if they are competitive and consistent with related statutes across the United States. Specifically, the bill's provisions would allow licensed brewers and brewpubs producing less than 60,000 barrels of beer yearly to directly sell up to 288 ounces (one case equivalent) per consumer per day for off-premise consumption (both draft and package beer); brewers and brewpubs would be allowed to deliver up to two donated kegs of beer per charitable or non-profit event; and language limiting the location of a brewpub licensee to a historic area would be repealed. The provisions of the bill will become effective on June 1.

Delaware

Passing the House, [House Bill 228](#) would allow holders of a "Farmer's Market Permit or Agricultural Themed Event Permit" to conduct tastings and sell craft beer, mead, distilled spirits, and wine in sealed containers for off-premise consumption at retail prices at off-site farmers markets or agricultural themed events.

Georgia

[H.B. 1159](#) provides that a brewer licensed in the state may sell at wholesale up to 5,000 barrels annually of malt beverages manufactured on its licensed premises. Any such sales must be made only to a licensed retail dealer whose licensed premises is located within the same county in which the brewer's licensed premises is located.

Indiana

Signed into law by the Governor, [S.B. 169](#) allows certain restaurants to sell beer for off-premises consumption if the permit holder also has a permit for a microbrewery that is adjacent to or at the same location as the restaurant and the beer is manufactured at the brewery.

Iowa

Passing initial subcommittee consideration, [HF 2156](#) would allow brewpubs to engage in growler sales.

Maryland

Passing the House and under Senate consideration, [H.B. 733](#) authorizes the holder of multiple manufacturer's licenses at the same location to allow the sampling, sales, and consumption of products produced under the licenses at each of the licensed premises, consistent with the

authorization of each license. A farm brewery license holder may apply for and obtain, under a different name, one or more additional licenses for the same or other premises. Additionally, the bill repeals prohibitions against distillery, rectifying, limited winery, and farm brewery license holders from selling or allowing to be consumed at the licensed premises any product other than products produced by the license holder.

Massachusetts

Advancing from committee, [House Bill 282](#) would expand the retail abilities of pub brewers.

New Mexico

Signed by the Governor, [Senate Bill 163](#) allows liquor license holders with package rights (rights to sell by the bottle for off-premise consumption) to fill and sell growlers of beer.

Oklahoma

Gaining approval from the House Rules Committee, [Senate Joint Resolution 68](#), among other provisions, would prohibit any common ownership between the manufacturing, wholesaling and retailing tiers. The bill stipulates that a brewery may, following adoption of this provision, maintain or obtain licenses to distribute beer to no more than two territories within the state, also known as brewery-owned branches. However, the brewery must divest itself of all brewery-owned branches within five years and any brewery-owned branch in operation on the date of adoption of this provision may not expand its distribution territory beyond the distribution territory that was in effect on the date the provision is adopted.

Oregon

Signed into law, [House Bill 4053](#) expands retail opportunities for brewery licensees to include: retail sales of malt beverage, wine and cider for consumption on or off the licensed premises; selling wine, malt beverages or cider in growlers; holding special events licenses; and holding a full on-premises sales license that allows sale of distilled spirits. Additionally, the bill establishes a fee for special events brewery license, requires the license holder to maintain liquor liability insurance or a bond if event is opened to public and attendance is anticipated to exceed 300 individuals per day and limits the brewery licensee to selling malt beverage at retail at three locations regardless of number or type of licenses held.

Taxation:

Louisiana

In an effort to close a significant budget shortfall, the Governor and legislature worked together to pass multiple tax increases, including on alcohol. The barrel rate for beer increased from the current \$10.00 to \$12.50.

Mississippi

Dying in committee, [Senate Bill 2820](#) sought to clarify that the beer excise tax must be applied to beer provided on the premises of a brewery for the purpose of tasting or sampling and that the holder of a license to operate a brewery must keep an accurate accounting of the amount of beer provided and consumed as samples.

New York

[Assembly Bill 9456](#) would allow distillers and brewers to file their taxes electronically.

Oklahoma

Passing the Senate, [S.B.1239](#) requires low-point beer and alcohol excise taxes to be paid electronically.

Virginia

Signed into law, [House Bill 859](#) provides sales and use tax exemption for machinery, tools, equipment and materials used by licensed brewers in the production of beer and materials such as labels and boxes for future use in packaging the beer for shipment or sale.

West Virginia

[House Bill 4701](#) provides for a doubling of the current barrel tax on non-intoxicating beer to \$11.00.

Trade Practice & Other:

Alabama

[Senate Bill 343](#) seeks to allow a family member of a licensed distributor or wholesaler of alcoholic beverages or a family member of an officer or director thereof to be a licensed manufacturer or retailer of alcoholic beverages or be the owner, proprietor, or lessor of a place covered by a separate beer or liquor license if the family member has reached the age of majority and is not an officer, director, employee, or stockholder of the distributor or wholesaler.

Arizona

Passing the House, [H.B. 2182](#) strikes the requirement that a beer and wine store be 5,000 square feet in area in order to be eligible for sampling privileges.

California

Amended in committee, [Assembly Bill 2076](#) would require the Department of Water Resources, in consultation with the California brewing industry, to develop water and energy use efficiency certification guidelines for the production of beer

[A.B. 2172](#) would permit the removal and use of home brewed beer in connection with a club meeting held on the premises of an authorized licensee. The bill would also permit club members to exchange and consume home brewed beer at this type of meeting and would require tables used for the meeting to be designated by the authorized licensee.

Colorado

Signed into law, [House Bill 1084](#) seeks to alter current law which states that a "head of a family" is allowed to brew beer for family use without obtaining a liquor license. The bill would remove "head of a family" and "family use" and replace it with "adult" and "personal use".

Signed by Governor Hickenlooper, [H.B. 1042](#) would create an exemption from licensing requirements for state institutions of higher education that engage in manufacturing and tasting of fermented malt beverages (3.2% beer) and malt liquor (full-strength beer) for teaching or research purposes. The exemption applies only if the higher education institution does not offer its manufactured beer for sale and allows only students, employees, or expert tasters who are at least 21 years of age to taste the beer.

Connecticut

[House Bill 5580](#) establishes a farm brewery manufacturers permit.

Florida

Signed by the Governor, [S.B. 698](#) requires, among other provisions, the payment of keg deposits by retailers to wholesalers.

Georgia

The Department of Revenue has released [proposed regulations](#) that would restore the ability of breweries (and distilleries) to vary tour admission fees based on the amount and quality of alcohol included in free tastings and the free souvenir.

[House Bill 1158](#) seeks to clarify that free tastings and free food may be offered by a brewery without conducting a brewery tour.

Idaho

Amended in the Senate after passing the House, [H.B. 597](#) seeks to bring breweries into alignment with wineries by allowing minors in tasting rooms.

Kansas

Amended in the House following Senate passage, [S.B. 326](#) would increase the amount of beer that could be manufactured with a microbrewery license, allowing production of between 100 and 60,000 barrels of domestic beer in a calendar year for each microbrewery license issued in the state. The bill also would specify that if a licensee has 10 percent or greater ownership interest in one or more entities that also hold a microbrewery license, the aggregate number of domestic barrels manufactured by all licenses under such common ownership could not exceed 60,000 barrels. Under current law, each license allows the production of between 100 and 30,000 barrels of beer in a calendar year. The bill would specify that a microbrewery licensee that also is licensed as a club or drinking establishment could sell and transfer domestic beer to that club or drinking establishment. Microbrewery licensees with 10 percent or greater ownership interest in one or more entities that also hold a microbrewery license would be allowed to manufacture and transfer domestic beer between the microbrewery licenses with common ownership for storage or sale.

Kentucky

Among a host of provisions, [Senate Bill 11](#) seeks to increase the annual production limit for microbreweries from 25,000 barrels to 50,000 barrels, authorize a brewer to sell malt beverages in growlers on its premises and authorize microbreweries to sell their products by the drink or package at fairs, festivals, and similar events. The bill has been signed by the Governor.

Maine

Becoming law without the Governor's signature, [Senate Bill 562](#) authorizes any person licensed as a manufacturer of malt liquor or wine to give a retail licensee samples of malt liquor and wine.

Maryland

Withdrawn after failing to gain committee approval, [House Bill 1239](#) sought to increase the annual amount of beer that a Class 5 brewery licensee may sell for on-premises consumption from 500 barrels to 1,500 barrels.

Michigan

Passing the House, [H.B. 5257](#) would allow a wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer to use unpaid social media to advertise any of the following: an on-premises brand promotion; beer, wine, or spirits tastings; product location communication.

Passing both legislative chambers, [Senate Bill 667](#) would, among other provisions, allow a manufacturer, outstate seller, or vendor of spirits to provide brand logoed merchandise to an on- or off-premises retailer to promote the brand and price of its products under certain circumstances.

Missouri

[Amended](#) in the House after passing the Senate, [Senate Bill 919](#) allows a brewer to lease portable refrigeration units to retail licensees at a value equal to the cost of the unit to the brewer. A brewer may also enter into lease agreements with wholesalers, who may enter into sub-lease agreements with retail licensees at a value equal to the cost of the unit to the brewer. A wholesaler may not directly or indirectly fund the cost or maintenance of the portable refrigeration units. Under this act, no portable refrigeration unit may exceed certain height, width, and depth dimensions and the portable refrigeration unit must bear in a conspicuous manner substantial advertising matter about a product or products of the brewer. No retail location may have more than two units and a retail licensee may sell any product from such units. Additionally, the bill allows any person who is licensed to sell intoxicating liquor in the original package at retail to sell 32 to 128 ounces of draft beer for consumption off the premises.

Nebraska

Before the Governor for action, [L.B. 1105](#) creates The Nebraska Craft Brewery Board, a body tasked with establishing a public forum to provide any manufacturer of beer or producer of agricultural products used in the brewing process the opportunity, at least once annually, to discuss with the board its policies and procedures and administering the expenditure of funds from The Nebraska Beer Industry Promotional Fund, the purpose of which is to develop and maintain programs for the research and advancement of the beer brewing process, the marketing and promotion of the beer industry in Nebraska, and the marketing and promotion of agricultural products and their byproducts grown and produced in Nebraska for use in the beer industry. The bill also provides for the continued ability of craft brewery license holders exceeding the 20,000 barrel production threshold to engage in retail sales.

New Hampshire

Passing the House, [House Bill 1188](#) seeks to authorize brew pubs to manufacture alcoholic cider.

Passing the Senate, [Senate Bill 306](#) would allow the sampling of beer or wine at farmers' markets if authorized by the town or city.

New Jersey

[A.B. 2281](#), the "Smart Container Act," 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. The proposal would include juice, sports drinks, and bottled waters as well as soda, wine and beer containers. Under the bill's provisions, the distributor would pay the initial deposit on each full beverage container to be sold in New Jersey to the State Treasurer on a quarterly basis. The retailer would collect the deposit from the consumer when the beverage is sold and reimburse the distributor.

Oregon

In a bid to privatize Oregon's liquor sales, Oregonians for Competition (a group that includes grocers, retailers and consumers) has gained approval to collect signatures for ballot Initiative 71, which would end state sales of liquor and allow beer and wine retailers the ability to sell liquor.

Virginia

Approved by the Governor, [S.B. 578](#) clarifies that for limited breweries, "land zoned agricultural" means land zoned as (i) an agricultural district or classification or (ii) land otherwise permitted by a locality for limited brewery use. The bill provides that "land zoned agricultural" does not include land zoned "residential conservation." The bill exempts from its provisions any limited brewery that, prior to July 1, 2016, holds a valid license or pending application for a license that is subsequently granted by the Alcoholic Beverage Control Board and is located on land zoned as agricultural district or classification or land otherwise permitted by a locality for farm winery or limited brewery use. The bill allows any such limited brewery that is located on land zoned residential conservation to expand existing buildings or structures and construct new buildings or structures if approved by the locality by special exception.

Washington

Signed into law by the Governor, [House Bill 2605](#) would authorize the Liquor and Cannabis Board to issue a special permit to a beer manufacturer allowing the manufacturer to conduct a private tasting and sales event involving beer of its own production.