

June 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 45 total sponsors in the U.S. Senate and H.R. 2903 has 231 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.

FDA Modernizes Nutrition Facts Label for Packaged Foods

The Food and Drug Administration has issued a new [rule](#) updating the Nutrition Facts label and the Supplemental Facts label. Most food manufacturers will be required to use the new label by July 26, 2018. Manufacturers with less than \$10 million in annual food sales will have an additional year to comply with the new rules. The FDA plans to conduct outreach and education efforts on the new requirements.

Food and Drug Administration Issues Final Food Defense Regulation

The FDA Food Safety Modernization Act (FSMA) [final rule](#) is aimed at preventing intentional adulteration from acts intended to cause wide-scale harm to public health, including acts of terrorism targeting the food supply, requiring mitigation (risk-reducing) strategies for processes in certain registered food facilities. Each covered facility is required to prepare and implement a food defense plan. This written plan must identify vulnerabilities and actionable process steps, mitigation strategies, and procedures for food defense monitoring, corrective actions and verification. The rule applies to both domestic and foreign companies that are required to register with the FDA as food facilities under the Federal Food, Drug, and Cosmetic (FD&C) Act.

B. THE STATES

Sales, Distribution and Franchise:

Delaware

Amended in the Senate following House passage, [House Bill 228](#) seeks to 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.

Maryland

Signed by the Governor, [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.

New Hampshire

Under consideration by a joint House-Senate conference committee, [Senate Bill 305](#) authorizes brew pubs to manufacture alcoholic cider.

Oklahoma

Agreed in conference committee, [Senate Joint Resolution 68](#) would establish a ballot initiative that would affect issues related to common ownership between the manufacturing, wholesaling and retailing tiers, the operation of brewery-owned branches and the ability of the legislature to require the divestiture of such branches, and the ability of grocery and c-stores to sell refrigerated, strong beer.

Signed by the Governor, [S.B. 424](#) authorizes a brewer to sell beer produced by the brewer to consumers on the premises of the brewery.

Pennsylvania

Signed by the Governor, [House Bill 1690](#) provides for substantive reforms to the state’s liquor sales system. Short of full privatization, the bill would allow for expanded grocery and restaurant sales while maintaining existing state stores.

Rhode Island

Passing the House, [House Bill 8100](#) would permit holders of a manufacturer's license to sell at retail alcoholic beverages manufactured by them known for on-site and off-site consumption in an amount not in excess of two hundred eighty-eight ounces (288 oz.) per visitor per day, to be sold in bottles that may hold no more than seventy-two ounces (72 oz.) each.

Passing initial committee consideration, [S.B. 3053](#) seeks to allow the holder of an alcoholic beverage manufacturer license to sell an amount not in excess of thirty-six ounces (36 oz.) of malt beverage and four and one-half ounces (4.5 oz.) of distilled spirits per visitor per day, for consumption on the premises. It would also authorize the sale of beverages produced on the premises in an amount not in excess of two hundred eighty-eight ounces (288 oz.) of malt beverages, and seven hundred fifty milliliters (750 ml) of distilled spirits per visitor per day, to

be sold in containers that may hold no more than seventy-two ounces (72 oz.) each. These beverages may be sold to the consumers for off-premise consumption.

Taxation:

Maryland

Signed into law, [House Bill 648](#) requires the electronic filing of alcoholic beverage tax returns.

Trade Practice & Other:

Arizona

Signed by the Governor, [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 Senate committee after passing the Assembly, [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.

New Hampshire

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

New York

Returned to the Senate and amended, [S.B. 1227](#) authorizes the operation of home beer makers centers, home cider makers centers and home wine makers centers under the jurisdiction of the state liquor authority and defines such centers as places where individuals pay a fee to use space and equipment for the purpose of making beer, cider or wine for personal household use and not for resale.

Ohio

Signed by the Governor, [House Bill 37](#), among other provisions, eliminates the maximum permitted alcohol content of beer (currently 12% alcohol by volume) and would authorize the Liquor Control Commission to adopt rules requiring the label on every package, bottle, and container of such beer over 12% ABV to state the percentage of alcohol by volume and that the beer is a "high alcohol beer."

Passing the House, [House Bill 444](#) allows certain permittees to provide up to four tasting samples (free of charge) of beer, wine, or spirituous liquor, in any 24-hour period of time. The bill also increases the legally permitted alcohol content of beer from 12% to 15% alcohol by volume and requires the Division of Liquor Control to issue a printed card for every place in Ohio for which a C (retail sales of beer, wine, and mixed beverages for off-premises

consumption) or D liquor permit has been issued regarding beer that contains between 12.1% and 15% alcohol by volume. The sign must read substantially as follows: "CAUTION Beer sold from this premises may contain up to 15% alcohol by volume, which is a higher alcohol content than standard beer that contains not more than 12% alcohol by volume. Please use caution when consuming beer with a higher alcohol content."

South Carolina

Signed by the Governor, [H.B. 5245](#) provides that a manufacturer, brewer, importer, or retailer may offer or sponsor coupons and rebates to a consumer for the purchase of beer. Coupons and rebates include, but are not limited to, retailer instant redeemable coupons, mail-in rebates, and coupons and rebates offered or redeemed through any electronic means. Further, a wholesaler is prohibited from participating in the procurement, redemption, or other costs associated for any coupon or rebate for beer offered or sponsored by a manufacturer, brewer, importer, or retailer. Finally, a beer manufacturer or wholesaler is prohibited from offering paper instant redeemable coupons and scanback coupons for beer.

Amended in the Senate following House passage, [H.B. 3450](#) prohibits a beer wholesaler from delivering beer to a retail beer and wine permit holder unless the beer has been received and unloaded at its licensed premises.

Washington

The Washington State Liquor and Cannabis Board issued AB-InBev a notice of violation and accompanying \$150,000 fine as the result of an investigation that showed the brewer paid an exclusive promotional fee to two Seattle music venues.