

## July 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 48 total sponsors in the U.S. Senate and H.R. 2903 has 274 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.

### B. THE COURTS

#### **Court Rules on Ohio Franchise Law Case**

The U.S. Court of Appeals for the Sixth Circuit recently handed down a [decision](#) which clarifies several provisions of Ohio franchise law regarding “successor” provisions, including what entities qualify as a successor in change of control situations, compensation awards and fair market value reductions based on the time spent litigating the successor status of the supplier.

#### **Texas ABC “One Share Rule” Challenged in Court**

The Texas Association of Business, the McLane Company and McLane Beverage Distribution, Inc. have filed suit in U.S. District Court challenging the Texas Alcoholic Beverage Commission’s (TABC) position that it is illegal for a person or business (governed by the three-tier regulatory system) that operates in one tier to own even a single share of stock in a company that operates in another tier, even in the absence of any control or influence over the other company (the One Share Rule). The suit also claims that TABC fails to apply the rule consistently across all licensees. The suit comes in the wake of TABC’s rejection of McLane’s 2012 application for an alcohol distribution permit due to McLane parent company’s (Berkshire Hathaway) interest in retailer Wal-Mart.

### C. THE STATES

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

## **Delaware**

Failing to pass the Senate, [House Bill 228](#) sought 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.

## **Massachusetts**

Legislation to create a task force of brewers, distributors and political appointees to work out differences on franchise law reform, specifically when and how a brewer can exit a distribution arrangement, has cleared the Senate. If agreement can’t be reached by year’s end, legislation requiring brewer-distributor relationships to be governed by contracts and general commercial law would be reintroduced.

## **New Hampshire**

Signed into law by the Governor, [House Bill 197](#) establishes a commission to study the separation of alcoholic beverage producers, distributors, and retailers, commonly referred to as the 3-tier system.

## **New York**

Passing both legislative chambers, [S.B. 5707](#) seeks to authorize farm brewery licensees to sell wine and spirits manufactured by the licensee or a licensed farm winery or distillery.

## **Rhode Island**

Signed into law, [Senate Bill 3053](#) and [House Bill 8100](#) authorize holders 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:**

### **Pennsylvania**

According to the [Brewers of Pennsylvania](#), a recently enacted revenue package contained a Malt Beverage Tax Credit (not to exceed \$5 million annually) on any capital expenditure that expands brewery operations.

### **New York**

Passing both legislative chambers, [Assembly Bill 1719](#) provides for a beer production business tax credit for small brewers that produce 60 million or fewer gallons of beer in New York City. The tax credit consists of 12 cents per gallon for the first 500,000 gallons of beer produced, and three and eighty-six one hundredths cents per gallon thereafter up to 15,500,000 gallons.

Reported from committee and referred to another, [Senate Bill 6313](#) would require the Commissioner of Taxation and Finance to allow distillers and brewers to file their taxes electronically.

## **Trade Practice & Other:**

### **Alaska**

Signed by the Governor, [House Bill 375](#) requires the electronic submission by brewers of certain reports.

### **California**

Held for further study in the Assembly following Senate passage, [S.B. 1426](#) seeks to establish a new tied-house exception that authorizes, until January 1, 2022, a person who does not hold an ownership interest in more than five California on-sale retail licenses, to be compensated by an alcoholic beverage supplier for promotional or marketing services. The California Craft Brewers association opposes the bill as written due to concerns that it would allow manufacturers to engage in pay-to-play practices.

### **Louisiana**

Signed by the Governor, [H.B. 667](#) expands sampling privileges for certain permit holders.

### **Missouri**

Signed by the Governor, [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.

### **New Hampshire**

Passing the House, [H.B. 1703](#) seeks to authorize brew pubs to manufacture alcoholic cider.

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

### **New York**

Passing the Assembly and returned to the Senate, [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.

Under consideration by the Senate after passing the Assembly, [Senate Bill 8140](#) seeks to create, among other provisions, a combined craft manufacturer's license combining the privileges of two or more farm or micro manufacturing licenses for use at one premises.

Passing the Senate, [S.B. 1860](#) would allow brewers, manufacturers, and importers to serve small samples of their beer or malt beverages at certain events.

### **Vermont**

Signed into law by the Governor, [S.B. 250](#), among many provisions, mandates technical amendments to Title 7 to improve its clarity, and to identify substantive amendments that may be necessary to remove out-of-date or obsolete provisions or to reflect more accurately the current practices and programs.