

January 2020 Legal & Legislative Update

A. FEDERAL / NATIONAL / INTERNATIONAL

Craft Beverage Modernization and Tax Reform Act

On December 20, 2019, the President signed into law the Further Consolidated Appropriations Act, 2020, which includes a one-year extension (through December 31, 2020) of the Craft Beverage Modernization and Tax Reform Act (CBMTRA) provisions originally passed for a two-year period in the Tax Cuts and Jobs Act of 2017.

The Craft Beverage Modernization and Tax Reform Act of 2019 ([S. 362](#); [H.R. 1175](#)) seeks to make permanent the temporary tax and other provisions originally passed as part of the Tax Cut and Jobs Act in 2017 and extended in 2019. Specific tax provisions relating to beer include: reducing the federal excise tax to \$3.50 per barrel on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels annually; reducing the federal excise tax to \$16 per barrel on the first 6 million barrels for all other brewers and all beer importers; keeping the excise tax at the current \$18 per barrel rate for barrelage over 6 million. Additional provisions address the transfer of beer between breweries and expanding the list of ingredients considered traditional in the production of fermented beverages.

The legislation also provides supplementary funding for the Tax and Trade Bureau, in addition to any other amounts appropriated: for fiscal year 2019, \$15 million, to remain available until 9/30/2020; and for fiscal year 2020, \$15 million, to remain available until 9/30/2021. Of the amounts appropriated for fiscal years 2019 and 2020, \$5 million would be directed to 1) the costs of accelerating the processing of label and formula applications; 2) the costs of programs for trade practice enforcement violations; and 3) implementation of the new law, including accelerating the processing of permit applications for non-industrial alcohol production and distribution.

B. THE COURTS

Missouri Alcohol Advertising Laws Struck Down

The Eighth Circuit Court of Appeals [struck down](#) several Missouri alcohol beverage advertising laws citing the state's failure to demonstrate the laws advanced the state's interest (e.g. in promoting responsible consumption) and that the scope of the laws went beyond what was necessary to achieve that interest. As this decision is opposed to a Ninth Circuit ruling on a similar case, it is possible the U.S. Supreme Court could hear the case if appealed.

C. THE STATES

Sales, Distribution and Franchise:

Michigan

[S.B. 665](#) seeks to increase from 2 to 3 the number of on-premises tasting rooms allowed for brewer licensees.

Wisconsin

Passing the Assembly, [A.B. 434](#) seeks to prohibit a brewer from making retail sales of beer and intoxicating liquor during hours in which a Class B licensed premises must be closed, i.e. between the hours of 2 a.m. and 6 a.m. on weekdays and between the hours of 2:30 a.m. and 6 a.m. on weekends.

Taxation:

New York

[Assembly Bill 8915](#) and companion S.B. 7139 seek to increase the current 14 cent/gallon tax on beer to 30 cents/gallon, with the anticipated \$51 million in additional revenue used to help fund the State University of New York and the City University of New York.

Signed into law, [Senate Bill 578](#) requires the commissioner of taxation and finance to allow brewers and distillers to file their taxes electronically.

Trade Practice & Other:

California

The California Department of Alcoholic Beverage Control has issued [guidance](#) concerning the ability of beer manufacturers to provide glassware to retail accounts.

New York

Signed by the Governor, [A.B. 1971](#) increases the number of barrels that a restaurant brewer (brew-pub) may produce to sell at retail or wholesale from 250 to 2,000 barrels.

Oregon

The Oregon Liquor Control Commission (OLCC) has amended its regulations “with an effective date of Jan. 1, 2020, making it a violation for any licensee or permittee to manufacture, store, transport, sell, or offer to sell an alcoholic beverage that contains CBD, THC, or any other cannabis derivative, including cannabis terpenes. This action generally affirms and conforms with the existing federal standards...” OLCC guidance documents explaining the responsibilities and allowable activities for each license category can be found on the [OLCC website](#).