

## February 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 STATES

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

##### **Georgia**

[House Bill 738](#) allows a small brewer (defined as a brewer whose sales of products to such brewer's wholesaler do not exceed 15 percent of the wholesaler's total sales in the prior calendar year) to terminate a wholesaler agreement with 30 days' notice. The bill provides that the successor wholesaler will compensate the discontinued wholesaler in an amount equal to the fair market value of the small brewer's distribution rights and if an agreed value cannot be reached, arbitration is provided for. Finally, the bill provides for a 25,000 barrel annual self-distribution allowance.

##### **Michigan**

[H.B. 5343](#) seeks to double the amount of beer a micro brewer may self-distribute to 2,000 barrels per year, not including sales to consumers on the micro brewer's licensed premises.

### **New York**

Passing the Senate, [S.B. 7186](#) seeks to allow restaurant-brewers to sell up to two hundred fifty barrels of their product without the use of a wholesaler.

Awaiting a full Senate vote, [S.B. 5509](#) would allow allowing brewery supply stores to sell beer for off premises consumption.

### **Oklahoma**

[House Bill 3429](#) would allow the holder of multiple small brewer licenses to sell beer produced at any brewery for which the licensee has a license at any other brewery for which the licensee has a license, or on contiguous premises.

### **Washington**

[House Bill 1947](#) would allow a microbrewery to sell beer of its own production in growlers and cans at retail for off-premises consumption at a qualifying farmers market. Currently, only bottles of beer can be sold.

Passing the Senate, [S.B. 5006](#) creates a new endorsement to allow wineries to serve beer and microbreweries to serve wine to their customers but restricts the offerings to three products and requires the products to be produced in Washington.

## **Taxation:**

### **Alaska**

A 5% tax on alcohol sales in Anchorage will appear on the April ballot.

### **Hawaii**

[H.B. 2726](#) seeks to reduce the tax rate on qualified small brewers (defined as producing 70,000 barrels or less annually) and adds spirits-based beverages to the definition of cooler beverages to bring those products into tax equivalency with beer- and wine-based coolers.

### **Michigan**

[House Bill 5345](#) seeks to revise the threshold for claiming a tax credit based on how much beer the brewer manufactures in a tax year. Currently, a brewer can claim a credit against the beer tax against its first 30,000 barrels of production if it does not manufacture more than 50,000 barrels of beer during the tax year in which the credit is claimed. The bill would increase this amount to 60,000 barrels of beer during the relevant tax year.

### **New Jersey**

[Senate Bill 268](#) allows credits against the New Jersey alcoholic beverage tax to manufacturers of brewed beverages in the amount of qualified capital expenses paid by the brewer during the tax year.

## **Trade Practice & Other:**

### **Hawaii**

[Senate Bill 2234](#) seeks to lower the threshold blood alcohol concentration from 0.08 to 0.05 for the offenses of operating a vehicle under the influence of an intoxicant.

### **Michigan**

[S.B. 711](#) provides for a limited production manufacturer license.

### **New Hampshire**

[House Bill 1300](#) changes the definition of cider to specify that ciders having an alcohol content greater than 6 percent but not more than 12 percent by volume shall be considered specialty beers.

### **New Jersey**

[Assembly Bill 1091](#) seeks to require Division of Travel and Tourism to advertise and promote tours of breweries in the State.

[A.B. 1103](#) would authorize a limited brewery (microbrewery) licensee to hold on-site special events open to the general public on the licensed premises of the brewery, as well as off-site special events open to the general public. Licensees may satisfy the requirement that a consumer take a tour of the brewery as a prerequisite to consuming malt alcoholic beverages on the premises by offering either an on-site tour or a virtual tour of the brewery, while also clarifying that an on-site or virtual tour is not required for the licensee to sell its product at retail for off-premises consumption and that the product may be sold in a keg, sixtel, case, 32 six-pack, growler, or crowler.

[Assembly Bill 1130](#) seeks to allow the consumption of food on the licensed premises of a limited brewery, with patrons able to purchase food from a vendor not owned by the licensee, or from a restaurant or other type of food vendor off the licensed premises, to be consumed on the licensed premises of the brewery.

[Assembly Bill 1144](#) would allow dogs in certain areas of licensed microbreweries that are designated for the consumption of brewed products, provided that the brewery owner has elected to allow dogs on the premises, dogs will not have access to any areas of the premises where the dog would present a risk of contamination of products intended for human consumption, and the presence of dogs will not present a risk of contaminating any clean equipment, glassware, or related articles in the area designated for the consumption of brewed products.

[A.B. 1293](#) establishes the “New Jersey Brewery, Cidery, Meadery, and Distillery Industry Advisory Council.”

[A.B. 1610](#) would not require consumers to take a tour of a limited brewery prior to purchasing beverages for on-site consumption. However, the bill requires the licensee to make tours of the

brewery available to consumers during business hours when the brewery is open to the general public and brewing, packaging, or maintenance operations allow for the conducting of a tour.

Among several provisions, [Senate Bill 72](#) seeks to establish a farm brewery license that would permit farm breweries to produce malt alcoholic beverages for retail sale to consumers for consumption off the licensed premises.

[Senate Bill 271](#) seeks to amend current law to authorize holders of a limited brewery license to: hold an unlimited number of on-premises special events, for which the license holder may sell tickets without obtaining a permit; hold up to 18 off-premises special events per year pursuant to a permit; deliver its product to a consumer's home; sell soda, whether or not manufactured by the license holder; coordinate with a food vendor to provide food on the licensed premises; and provide menus to consumers. Further, the bill eliminates the requirement that the license holder provide a tour to a consumer prior to serving alcoholic beverages for consumption on the licensed premises and provides that pourers and servers employed by the licensed brewery are not required to be certified by an industry-recognized server training program.

### **Ohio**

The subject of a committee hearing, [Senate Bill 115](#) seeks to prohibit a person under 21 from entering or being allowed into a permitted bar, restaurant-bar, microbrewery, brew pub, winery, farm winery, or micro-distillery that has beer and intoxicating liquor sales that exceed 60% of the total gross receipts.

### **South Carolina**

[Senate Bill 993](#) would allow licensed wineries, breweries, and micro-distilleries to sell their wine, beer, and alcoholic liquors at festivals and to provide samples at festivals. Further, each type of manufacturer could also obtain a corresponding festival permit.

### **South Dakota**

Passing the House, [H.B. 1081](#) would exempt from alcoholic beverage regulations certain uses of alcohol by postsecondary institutions.

### **Vermont**

[Senate Bill 291](#) seeks to reduce the legal blood alcohol concentration limit from 0.08 percent to 0.05 percent and to require the Secretary of Transportation to conduct a public education campaign about the reduced limit, to take effect upon two bordering states enacting substantially comparable blood alcohol content limitations.

[H.B. 563](#) seeks to define "low alcohol spirits beverage" and include such beverages in the regulatory structure governing vinous beverages.

[House Bill 781](#) seeks to create a farm-based manufacturer's license for alcoholic beverage manufacturers that are located on a farm and produce alcoholic beverages that are made a majority by weight from ingredients produced by that farm.

### **Washington**

Clearing initial committee consideration, [H.B. 2412](#) changes the number of retail licenses a domestic brewery and a microbrewery may hold, from two to four. These include an on/off premises tavern, beer/wine restaurant, spirits/beer/wine restaurant, or any combination thereof.

Passing the House, [H.B. 2319](#) eliminates the requirement that the Liquor and Cannabis Board (LCB) adopt and administer a keg-identification program for sales of kegs and other containers of four gallons or more of malt liquor.

### **West Virginia**

[House Bill 2168](#) seeks to authorize temporary 30 day licenses for out-of-state nonintoxicating beer brewers to import beer for test marketing and distribute to festivals and samplings.

[H.B. 4158](#) provides that a person at least 21 years of age may manufacture alcoholic liquor for personal or family use, with the household amount limited to 100 gallons per calendar year if there are two or more persons over the age of 21 years, or 50 gallons if there is only one person over the age of 21 years in the household. Any alcoholic liquor manufactured under this section may not be sold or offered for sale.