March 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.

TTB Addresses Alcohol Returns for COVID-19-related Event Cancellations
The Tax and Trade Bureau has announced that it will not consider returns of alcohol beverage products purchased to sell during events cancelled due to COVID-19 to violate federal consignment sales rules (prohibiting the sale or purchase of alcohol beverage products with the privilege of return not attributable to ordinary and usual commercial reasons) provided the products were not initially purchased or sold with the privilege of return. However, even though such returns are lawful, a producer or wholesaler is not required to accept returns of such products.

BA Petitions TTB on Non-Alcoholic Malt Beverages
The Brewers Association has petitioned the Tax and Trade Bureau to modernize regulations governing non-alcoholic malt beverages, specifically seeking the ability to reference beer styles (e.g. lager, ale, IPA) in the labeling and advertising of these products. The petition argues that the ability to reference beer styles recognized by today’s consumers will strengthen the market for such products and provide consumers with useful information. Further, requiring the terms
“non-alcoholic” or “alcohol free” on labels and in advertising will dispel any potential for consumer confusion arising from the use of recognized beer styles.

**BA Joins Alcohol Coalition in Submitting Comments to OMB**
The Brewers Association joined the American Craft Spirits Association, the American Distilled Spirits Alliance, the Distilled Spirits Council of the U.S., the National Association of Beverage Importers, and the Wine & Spirits Wholesalers of America in responding to the Office of Management and Budget (OMB) request for information on Improving and/or Reforming Regulatory Enforcement and Adjudication. Specifically with respect to the Tax and Trade Bureau (TTB), the comments outline recommendations to the enforcement process that will assist TTB in managing its resources and priorities, while also strengthening due process for industry members through procedures that will provide the transparency and predictability necessary for a business to operate effectively.

**B. THE STATES**

**Sales, Distribution and Franchise:**

**Alabama**
*Senate Bill 184* seeks to change the definition of beer to include fermented beverages made with a variety of substitutes for malt (i.e. rice, grain of any kind, bran, glucose, sugar, or molasses) and would require all beverages sold by a manufacturer or supplier to a wholesaler to be subject to franchise laws.

**Alaska**
Under House consideration following Senate passage, *S.B. 52* seeks to organize the statutes governing the alcohol industry in a logical, commonsense manner for all users, clearly defining the rights and obligations of licensees. New statutory provisions retain the three-tier licensing system but create more flexibility for small manufacturers; create a new endorsement system to expand the boundaries of licensed businesses and accommodate special events; and modify the permitting system for clarity. The bill also creates local control in community population limits, adds mechanisms to prevent underage access to alcohol, regulates common carriers who deliver alcohol and provides for a smooth transitional implementation period.

**California**
In a joint letter to a California Assembly Member, the Federal Trade Commission and the Department of Justice raised concerns with *A.B. 1541* which proposes to strengthen franchise provisions for distributors. According to the federal agencies, the bill would likely diminish competition among California beer wholesalers and increase manufacturers’ costs of obtaining distribution services from wholesalers. These effects, in turn, would likely increase the cost of beer distribution, with consumers paying higher prices for beer.

**Kentucky**
*H.B. 415* seeks to establish a direct shipper license authorizing shipment of alcoholic beverages to consumers in Kentucky. A manufacturer authorized to manufacture alcoholic beverages in or
outside Kentucky or a licensed alcoholic beverage supplier would be eligible to apply for the license. The bill would require shipment by common carrier and would limit the amounts of alcoholic beverages a licensee may ship, as follows: distilled spirits – no more than 10 liters per consumer per month; wine – no more than 10 cases per consumer per month; and malt beverages – no more than 10 cases per customer per month.

**Senate Bill 231** seeks to allow microbreweries (defined as under 50,000 barrels annual production) to self-distribute up to 2,500 barrels per year. The bill additionally provides for: written distribution agreements; no cause terminations for brewers whose products represent five percent or less of a distributor’s gross annual sales, provided forty-five days’ notice of termination has been given and the payment to the distributor of an amount equal to 300% of the distributor’s gross profits from the sale of the brewer’s products in the twelve months immediately preceding the delivery of the notice of termination has been made.

**Michigan**

Passing the House, **H.B. 5343** would increase the total barrels of beer per year that a microbrewer may sell and deliver to a retailer from 1,000 barrels to 2,000 barrels. All brands and labels of a microbrewer, whether sold to a wholesaler or a retailer in this state or outside of this state, would have to be combined in determining the yearly total, but sales to consumers on the licensed premises of the microbrewer would not be included.

Under the provisions of **H.B. 5349**, the requirement that a brand extension must be assigned to the appointed wholesaler of the underlying brand would not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of beer had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the underlying brand. The legislation has passed the House.

Passing the Senate, **S.B. 665** would allow those brewers not licensed as a microbrewer and that produced in total fewer than 120,000 barrels of beer per year to sell its beer for on-premises consumption at not more than three approved tasting rooms in the state.

**Minnesota**

**House Bill 3758** would raise the small brewer production threshold for the ability to sell growlers from 20,000 to 40,000 barrels.

**New York**

Passing both legislative chambers, **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.

**Oklahoma**

Passing initial committee consideration, **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.

**South Carolina**
Senate Bill 1099 seeks to provide that a manufacturer, brewer, or importer of beer shall not request or require that a wholesaler submit certain information for beer brands not manufactured, brewed, or imported by the manufacturer, brewer, or importer; shall not mandate certain employment matters; shall not request or require a wholesaler to pay beer brand marketing or advertising funds; shall not ship, invoice, or initiate payment for any quantity of beer in excess of that forecast by a wholesaler or for any point of sale advertising or other items in excess of that specified by the wholesaler; shall not attribute any financial interest to a wholesaler for beer not in the wholesaler's possession; shall not request or require a wholesaler to pay for certain matters pertaining to software owned or mandated by the manufacturer, brewer, or importer; and shall not require payment of a penalty by the wholesaler for noncompliance with any requirement of the manufacturer, brewer, or importer, excluding certain fees or interest.

Washington
On the Governor’s desk for action, S.B. 5006 creates a new endorsement to allow wineries to serve beer and microbreweries to serve wine to their customers on-premise but restricts the offerings to three products and requires the products to be produced in Washington.

Wyoming
Passing initial committee consideration, House Bill 158 would remove a current restriction and allow a microbrewery to operate at more than one location.

Taxation:

Hawaii
Passing the House, 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
Gaining House approval, 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.

Trade Practice & Other:

Hawaii
Passing the Senate, 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.

Iowa
Signed into law, S.B. 2134 allows a manufacturer of beer to obtain and possess alcoholic liquor for the purpose of manufacturing canned cocktails.
Michigan
Passing both chambers of the legislature, S.B. 711 provides for a limited production manufacturer license that would allow for the limited production of beer, allow the licensee to purchase beer from a different brewer or micro brewer and modify that beer, allow the licensee to sell the beer to a wholesaler or person outside of Michigan.

New Hampshire
Referred for study, 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
Senate Bill 2056 seeks to require Division of Travel and Tourism to advertise and promote tours of breweries in the State.

Senate Bill 2121 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.

South Dakota
Signed by the Governor, H.B. 1081 exempts from alcoholic beverage regulations certain uses of alcohol by postsecondary institutions.

Washington
Passing both chambers of the legislature, 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. Also directs the Department of Health to adopt rules to allow dogs on brewery premises and eliminates keg registration forms and sticker requirements for keg sales at breweries.

West Virginia
Passing the House, 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.