April 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 Postpones Tax and Other Filings in Response to COVID-19
Due to COVID-19-related impacts, the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued Industry Circular 2020 – 2 which postpones several filing and payment due dates for 90-days where the original due date falls on or after March 1, 2020, through July 1, 2020.

B. THE STATES

Sales, Distribution and Franchise:

Alabama
H.B. 407 provides for a delivery service license from the Alcoholic Beverage Control (ABC) Board to transport and deliver up to 48 twelve ounce containers of beer and six 750 milliliter bottles of wine, within a 24 hour period, to individuals in the state that are at least 21 years of age for personal use.
Colorado

**Senate Bill 194** would allow a licensed brew pub to sell to the public in sealed containers for off-premises consumption malt liquors that are manufactured at a separate licensed brew pub under the same ownership as the brew pub at which the retail sale occurs.

Kentucky

Becoming law without the Governor’s signature, **H.B. 415** establishes 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 requires 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.

Maryland

Passing the Senate, **S.B. 839** seeks to repeal specified manufacturer’s permits and establishes a manufacturer off-site permit and a brewery special event permit. The bill authorizes a Class 8 farm brewery license to sell beer produced by the license holder for off-premises consumption and increases the maximum amount of beer specified holders of Class 7 limited beer wholesaler’s licenses may manufacture and distribute annually: a holder of a Class 7 limited beer wholesaler’s license, which was issued to a specified Class 5 brewery or a Class 7 micro-brewery is authorized to sell up to 5,000 barrels (instead of 3,000 barrels) of its own beer at wholesale annually. Additionally, the bill clarifies a Class 5 brewery and Class 7 micro-brewery may obtain the Class 7 limited beer wholesaler’s license if it produces in aggregate from all of its locations up to 45,000 of beer annually (instead of 22,500 barrels of beer annually).

Massachusetts

Reported from committee, **House Bill 327** seeks to allow small brewers (defined as under 6 million barrels) to terminate a distributor without cause and with less than the current 120-day notice (the notice provision is tiered based on sales: 30 days for brewers selling 5,000 barrels or less, 45 days for brewers selling between 5,001 and 350,000 barrels, and 60 days for brewers selling between 350,001 and 6 million barrels) for fair market value as determined by the terminated distributor and successor distributor. If those two parties fail to agree, the determination is made through binding arbitration, with the successor distributor compensating the terminated distributor.

Clearing committee, **H.B. 3549** would allow an “emerging brewery” to, without good cause shown, terminate the right to distribute any brands of malt beverages for any licensed wholesaler to whom such emerging brewery has made regular sales of such brands of malt beverages. An emerging brewery shall mean any entity that (1) is authorized to sell malt beverages to wholesalers in the commonwealth, hereinafter referred to in this section as a “brewery”, (2) is privately owned and operated, and (3) directly or indirectly, produced less than 100,000 barrels of malt beverages in the 12-month period immediately preceding the date of the written notice of termination.
Senate Bill 461 seeks to expand the sale of products by farmer breweries.

Minnesota
S.B. 4074 seeks to expand the ability of breweries to engage in off-sales and adds exclusive liquor stores to those allowed to refill growlers.

Mississippi
Passing the Senate, S.B. 2552 seeks to remove the prohibition on brewpubs for making sales for off-premises consumption.

New Jersey
Assembly Bill 3445 seeks to allow the holder of a limited brewery license to operate up to 15 salesrooms apart from the brewery premises with the ability to sell their products in original containers or open containers for consumption on the salesroom premises. The bill also allows the holder of a limited brewery license and the holder of a winery license who produces 250,000 gallons or less to jointly operate a salesroom on the same premises, however, breweries would be prohibited from jointly operating salesrooms with other breweries and wineries would be prohibited from jointly operating salesrooms with other wineries.

Rhode Island
House Bill 8005 modifies limitations on quantities of malt beverages and distilled spirits that can be sold at retail by certain licensed breweries and distilleries for off-premises consumption.

S.B. 2715 seeks to allow brewpub manufacturers to sell bottles or cans of certain alcoholic beverages produced on the premises to consumers, not to exceed twenty-four (24) twelve-ounce (12 oz.) bottles or cans or twenty-four (24) sixteen-ounce (16 oz.) bottles or cans of malt beverages or seven hundred fifty milliliters (750 ml) of distilled spirits, for off-premises consumption, in addition to the half-gallon bottle known as a "growler".

South Carolina
Passing initial committee consideration, 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.

Tennessee
H.B. 1722 and companion S.B.1753 seek to authorize beer manufacturers to self-distribute beer within a 100-mile radius of the manufacturer if the manufacturer brews 50,000 gallons or less.
Washington
Signed by the Governor, 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
Signed into law, House Bill 158 would remove a current restriction and allow a microbrewery to operate at more than one location.

Taxation:

Hawaii
Passing initial Senate committee consideration after passing the full House, H.B. 2726 provides a reduced beer tax rate for small craft producer pubs of 35 cents per wine gallon. The bill also seeks to amend the definition of "cooler beverage" to include spirits-based beverages, enabling a preferential tax rate so as to encourage local distilleries to produce ready-to-drink cocktails.

Trade Practice & Other:

Louisiana
H.B. 336 would allow an entity operating multiple brewing facilities located in the state to transfer bonded beer between the entity's permitted facilities.

House Bill 564 seeks to authorize brewers to host up to thirty private events at the brewing facility and provides certain restrictions for such events.

Michigan
Signed by the Governor, 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.

Mississippi
Passing the House, House Bill 917 defines “light spirits products” as being no more than 4% alcoholic content by weight and regulated the same as beer and light wine.

Missouri
H.B. 2604 would allow home brewed beer on any premises licensed for the sale and on-premises consumption of intoxicating liquor.

New Jersey
A.B. 3720 seeks to allow a limited brewery to serve beer on its premises to a consumer who has not toured the brewery; however, a brewery would be required to offer consumers a tour, either
at a regularly scheduled date and time or upon request, and prominently display a sign concerning the availability of tours and would also be required to make information available to consumers about the brewery and brewing process. The bill additionally allows a licensee to offer, or offer for sale, snack food (e.g., packaged crackers, chips, nuts, and similar snacks) to patrons, but would still be prohibited from operating a restaurant.

**South Carolina**
Passing initial committee consideration, S.B. 993 creates festival permits to be issued to licensed breweries, wineries, and micro distilleries, authorizing them to sell their products and to provide samples for consumption at a festival for which a permit is obtained.

**Washington**
Signed into law, 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.

**Wyoming**
Signed by the Governor, H.B. 82 provides for contract brewing.