June 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.

Congress Passes, President Signs Paycheck Protection Program Flexibility Act
H.R. 7010, the Paycheck Protection Program (PPP) Flexibility Act of 2020, modifying provisions related to the forgiveness of loans made to small businesses under the PPP implemented in response to COVID-19, has been signed into law. Specifically, the bill establishes a minimum maturity of five years for a paycheck protection loan with a remaining balance after forgiveness. The bill also extends the covered period during which a loan recipient may use such funds for certain expenses while remaining eligible for forgiveness. The bill raises the non-payroll portion of a forgivable covered loan amount from the current 25% up to 40%.

The bill extends the period in which an employer may rehire or eliminate a reduction in employment, salary, or wages that would otherwise reduce the forgivable amount of a paycheck protection loan. However, the forgivable amount must be determined without regard to a reduction in the number of employees if the recipient is (1) unable to rehire former employees and is unable to hire similarly qualified employees, or (2) unable to return to the same level of business activity due to compliance with federal requirements or guidance related to COVID-19.
Additionally, the bill revises the deferral period for paycheck protection loans, allowing recipients to defer payments until they receive compensation for forgiven amounts. Recipients who do not apply for forgiveness shall have 10 months from the program’s expiration to begin making payments.

**BA Submits a Request for Extension of TTB Notification Waiver**
Following on the request for waiver of the prior notification and waiting period requirements associated with the voluntary destruction of unmerchantable beer in the marketplace which was subsequently granted through June 2020, the Brewers Association has submitted a request that the Tax and Trade Bureau (TTB) extend the waiver until at least September 1 to account for the large volume of beer expected to go out-of-code over the next several months due to continued closures, and restricted re-openings, of on-premise establishments.

**South Africa Looks to Zero Tolerance with Drunk Driving Legislation**
The National Road Traffic Amendment Bill seeks to delete references to specific blood alcohol content levels, essentially setting the permissible blood alcohol level for anyone operating a motor vehicle to zero while leaving penalties unchanged.

**B. THE STATES**

**Sales, Distribution and Franchise:**

**Colorado**
Passing initial House committee consideration, [Senate Bill 194](#) allows 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.

[Senate Bill 213](#) seeks to allow the sale of alcohol as part of delivery or takeout orders through June 30, 2022.

**Massachusetts**
[Initiative Petition No. 19-14](#): Petition for a Law Relative to the Sale of Beer and Wine by Food Stores has been certified to appear on the November ballot. The proposal would create a license allowing food stores to sell wine and beer for off-premises consumption, progressively increase and then eliminate the limit on the number of licenses for the sale of alcoholic beverages consumed off-premises that any one retailer could own or control, and require food stores and other retailers selling alcohol for consumption off-premises to implement certain age-verification policies to prevent the sale of alcohol to customers under age 21.

**New York**
[A.B. 10448](#) would authorize the direct intrastate and interstate shipment of liquor.

**Ohio**
**House Bill 669** would allow bars, restaurants, small breweries, micro-distilleries, and wineries (retail permit holders) to sell drinks to personal consumers in covered cups or other containers for off-premises consumption, including via delivery. The bill authorizes a food delivery service (e.g. DoorDash, Grubhub) to deliver alcoholic beverages to personal consumers.

**Oklahoma**
Signed by the Governor, **S.B. 1928** authorizes retail spirit licensees, restaurants, wineries, and grocery stores to sell curbside and deliver alcoholic beverages in sealed original containers. Products sold in such a manner must be delivered by employees of the licensee. Small brewers and small farm wineries may sell curbside only alcoholic beverages produced by such licensee in sealed original containers.

**Taxation:**

**Hawaii**
Passing a second Senate committee after clearing the full House, **H.B. 2726** provides a reduced beer tax rate for qualified small brewers (70,000 barrels annual production or less) 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.

**New Jersey**
**A.B. 4193** provides a temporary sales and use tax exemption for sales of alcoholic beverages by a craft alcoholic beverage manufacturer to a purchaser. The exemption would be effective until it is determined by the Governor that an emergency no longer exists.

**New York**
**Senate Bill 8393** would exempt alcoholic beverages sold at retail by a licensed producer of alcoholic beverages to a customer where such sale occurs either at the brewery, winery or distillery where such alcoholic beverage was produced or as a direct delivery from the tax on alcoholic beverages.

**Trade Practice & Other:**

**Ohio**
**House Bill 674**, among many provisions, seeks to: eliminate statutory limitations on Sunday sales of alcohol; address issues related to outdoor refreshment areas; exempt certain brewpubs from the requirement to obtain a retail food establishment or food service operation license from a local board of health, instead allowing them to serve prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor, under exemptions from board of health regulation established by the bill or to maintain a schedule with the owner or operator of a mobile retail food establishment or a mobile food service operation licensed by a local board of health to serve food to the brewpub’s customers; allow a manufacturer or supplier of alcoholic beverages to provide glassware intended for the serving of beer to a permit holder authorized to
sell beer for on-premises consumption if the manufacturer or supplier provides a receipt to the permit holder; and allow a distributor, manufacturer, trade marketing professional, solicitor, or broker of alcoholic beverages to use free services provided by social media to advertise certain events.