

## July 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 Announces Extension of Beer Destruction Notification Waiver**

Following a request by the Brewers Association to extend the previously granted waiver of notice requirements (through July 1) associated with the destruction of unmerchantable tax-paid beer, the Tax and Trade Bureau has [announced](#) that the waiver will remain in effect through September 1, 2020. With levels of out-of-code beer in the marketplace expected to remain high through the summer months, the continued elimination of the twelve day waiting period prior to destruction should help expedite both the destruction process and the subsequent drawback claim on taxes already paid.

#### **Anheuser-Busch Receives Suspensions, Fine in Wake of TTB Trade Practice Investigation**

The Tax and Trade Bureau (TTB) has accepted a \$5 million Offer in Compromise from Anheuser-Busch, LLC (A-B) for [alleged violations](#) of the Federal Alcohol Administration (FAA) Act. A-B has also served short suspensions of two of its Colorado importer and wholesaler permits. Alleged violations include exclusion provisions within sponsorship agreements (sports and entertainment), inducements to sports industry concessionaires and several retailer-focused violations.

## **B. THE STATES**

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

#### **Colorado**

Awaiting the gubernatorial action, [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.

Passing both chambers of the legislature, [Senate Bill 213](#) seeks to allow the sale of alcohol as part of delivery or takeout orders through June 30, 2021.

#### **Georgia**

Before the Governor for action, [House Bill 879](#) seeks to allow a packaged goods retailer to deliver malt beverages and wine in unbroken packages purchased by an individual for personal use to an address designated by such individual, subject to certain conditions. The bill also addresses Sunday sales and sampling/tasting events.

#### **Louisiana**

Signed by the Governor, [Senate Bill 178](#) relaxes certain rules governing the delivery of alcohol. Under the bill's provisions, third-party delivery companies would be allowed to use independent contractors in addition to their own employees, provides that only malt beverages, sparkling wine, and still wine may be delivered from the licensed premises of a restaurant permit holder, and expands the delivery area from 10 miles to 25 miles from the place of purchase in a parish having a population of less than 100,000.

#### **Massachusetts**

After being certified to appear on the November ballot, proponents have decided that no further action on [Initiative Petition No. 19-14: Petition for a Law Relative to the Sale of Beer and Wine by Food Stores](#) will occur this year due to the current pandemic. 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.

#### **Michigan**

Referred to a second House committee after Senate passage, [S.B. 665](#) would allow a brewer that is not a micro brewer and that produces less than 120,000 barrels of beer per year to sell its beer for on-premises consumption at up to three approved tasting rooms in the state. The current two-tasting-room limitation on beer sales for on-premises consumption would still apply to a brewer that produces 120,000 barrels or more of beer per year.

A package of [sixteen bills](#) has been signed into law which amend various sections of the Michigan Liquor Control Code to revise provisions concerning such things as tax payment frequency, brand extensions, beer festival special licenses, and beer in growlers, among others. Part of that package, [H.B. 5343](#) doubles 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.

### **Mississippi**

Signed into law, [Senate Bill 2552](#) removes the prohibition on the amount of beer that can be sold directly to consumers at breweries producing seventy-five thousand gallons of beer or less. Currently, brewers are limited to selling either 10 percent of the beer produced or 1,500 barrels, whichever is the lesser amount.

### **New Jersey**

Passing the Assembly, [A.B. 4319](#) seeks to extend the temporary ability of bars and restaurants to sell and deliver alcoholic beverages in closed and sealed containers (including growlers and growlers of beer) beyond any COVID-19-related end date. Additionally, the bill would allow holders of a winery, limited brewery, craft distillery, or cidery and meadery license to hold an unlimited number of on-premises activities, to hold extended premises activities which would include activities occurring on an outdoor area either adjacent to or adjoining the licensed premises, to participate in up to 25 off-premises events per year, removes from current law a provision requiring the holder of a limited brewery license or distillery license to provide a tour of the facility when selling the brewery's or distillery's respective products for consumption on the licensed premises, and establishes guidelines for beer, wine, and distilled spirits festivals. Finally, the bill seeks to allow the holder of a limited brewery, craft distillery, or cidery and meadery license to deliver its product to a consumer's home, sell non-alcoholic beverages, coordinate with a restaurant, food vendor, or food truck to provide food on the licensed premises, and provide menus to consumers. These licensees would continue to be prohibited from operating a restaurant on the licensed premises as required by current law.

### **Ohio**

Passing the House, [House Bill 669](#) allows bars, restaurants, small breweries, micro-distilleries, and wineries (qualified permit holders) to sell alcoholic beverages in sealed, covered cups or other containers for off-premises consumption, including via delivery (drinks may include beer, wine, mixed beverages, or spirituous liquor). Prior to delivering an alcoholic beverage to a personal consumer, a qualified permit holder, or a qualified permit holder's employee, is required to make an effort to ensure that the personal consumer is 21 or older.

### **Tennessee**

Failing to advance from committee, [S.B.1753](#) sought to authorize beer manufacturers to self-distribute beer within a 100-mile radius if the manufacturer brews 50,000 gallons or less.

## **Trade Practice & Other:**

### **Mississippi**

Signed by the Governor, [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.

## **Ohio**

Passing the House, [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.