

August 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:

Colorado

Signed by the Governor, [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.

Signed into law, [Senate Bill 213](#) seeks to allow the sale of alcohol as part of delivery or takeout orders through June 30, 2021.

Georgia

Signed into law, [House Bill 879](#) allows 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.

Massachusetts

Passing the Senate, [S.B. 2829](#) allows a brewery with less than 250,000 barrels annual production to terminate a wholesaler in the absence of good cause with thirty days' written notice of termination. The terminated wholesaler, as sole and exclusive compensation for termination of the right to distribute the brands of the brewery, shall be paid an amount equal to the laid-in cost of the merchantable inventory and the laid-in cost of the current sales and marketing material, plus the fair market value of the distribution rights for the brands that are being terminated by the brewery. If fair market value cannot be agreed upon, binding arbitration would be invoked to make that determination.

New Jersey

Taken up by the Senate following Assembly passage, [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 crowlers 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

Under Senate consideration after 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.

Trade Practice & Other:

Ohio

Taken up by the Senate after 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.