

September 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.

FDA Issues Final Rule on Gluten-Free Claims for Fermented Foods

The federal Food & Drug Administration (FDA) recently [finalized regulations](#) governing gluten-free claims for fermented and hydrolyzed foods, including beer and other alcohol beverages. The so called “final rule” directly applies to alcohol beverages that fall within FDA’s primary labeling jurisdiction (notably including most hard seltzer and hard cider products), and will likely influence future decision making towards gluten-free claims by the Alcohol and Tobacco Tax and Trade Bureau (TTB). Affected companies must come into compliance with the new regulations on or before August 13, 2021.

B. THE STATES

Sales, Distribution and Franchise:

Massachusetts

A new draft ([S.B. 2841](#)) of the previous bill which passed the Senate, has been referred to House committee. The legislation 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

[A.B. 4606](#) seeks to allow the holder of a limited brewery license, restricted brewery license, plenary winery license, farm winery license, out-of-State winery license, cidery and meadery license, or craft distillery license to directly ship or deliver to the residence of a consumer the licensee's products in original packages during the state of emergency.

Virginia

Pre-filed for the 2021 session, [House Bill 1735](#) seeks to expand the privileges of limited brewery licensees by allowing them to sell at retail wine manufactured by farm winery licensees for on-premises consumption. The bill also expands the privileges of farm winery licensees by allowing them to sell at retail beer manufactured by limited brewery licensees for on-premises consumption.

Trade Practice & Other:

Pennsylvania

[House Bill 2821](#) seeks to establish the Brewery, Distillery, and Winery Manufacturers COVID 19 Grant Program, with \$20,000,000 of the money available to the Commonwealth under the CARES Act appropriated for the purpose of awarding grants under the program.