

October 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 Issues Ruling Affecting Voluntary Calorie Statements on Labels

In Tax and Trade Bureau (TTB) Ruling [2020-1](#) TTB expands the tolerances for voluntary calorie statements on labels and in advertisements for wine, distilled spirits, and malt beverages which will make the tolerances more consistent with the food labeling regulations of the U.S. Food and Drug Administration (FDA). This ruling does not require any changes to approved labels, but instead allows greater flexibility for industry members who choose to use voluntary nutrient content statements on labels or in advertisements.

DoJ Requires Divestiture in ABI Acquisition of CBA

The Department of Justice (DoJ) [announced](#) it is requiring Anheuser-Busch InBev SA/NV (ABI), its wholly-owned subsidiary Anheuser-Busch Companies LLC (AB Companies), and Craft Brew Alliance Inc. (CBA) to divest CBA's entire Kona brand business in the state of Hawaii and to license to the acquirer the Kona brand in Hawaii in order for AB Companies, a minority shareholder in CBA, to proceed with its proposed acquisition of the remaining shares of CBA. The department has approved PV Brewing Partners, LLC as the acquirer. The DoJ

believes the proposed settlement will maintain competition in the beer industry in Hawaii, thereby benefitting consumers.

B. THE STATES

Sales, Distribution and Franchise:

Louisiana

[House Bill 44](#) suspends the authority of a parish or municipality to prohibit the sale of alcoholic beverages or to limit the time of operation of any establishment selling alcoholic beverages during any COVID-19 public emergency until one year after any COVID-19 public emergency is terminated. Present law provides that during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any municipality or parish, the chief law enforcement officer of the political subdivision affected by the proclamation may prohibit the sale and distribution of alcoholic beverages.

Michigan

Passing the legislature and before the Governor for action, [Senate Bill 665](#) amends the Michigan Liquor Control Code to allow a brewer producing less than 120,000 barrels and that is not licensed as a micro brewer to sell its beer for consumption on the licensed premises at up to three of its approved tasting rooms in Michigan, rather than the two currently allowed.

New Jersey

[A.B. 4719](#) and companion S.B. 2952 seek to allow limited brewery licensees to deliver beer to a consumer's residence and alcoholic beverage retailers and craft distilleries to sell and deliver alcoholic beverages and mixed drinks for consumption off the licensed premises.

Ohio

Passing both legislative chambers, [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.

Rhode Island

[S.B. 2928](#) would authorize certain retail license holders to sell alcoholic beverages with take-out food orders. This act would take effect upon passage and would sunset on December 31, 2021.

South Carolina

Signed by the Governor, [S.B. 993](#) addresses festival permits and sampling at festivals and also includes a provision increasing the maximum amount of beer that may be sold to an individual per day for off-premises consumption by a brewery from two hundred eighty-eight to five hundred seventy-six ounces.

Signed into law, [S.B. 1099](#) specifies certain actions which beer manufacturers, brewers, and importers are prohibited from taking in business relations with wholesalers (with exceptions for written agreements between both parties), relating to marketing data and funding, shipping product quantities in excess of ordered quantities, and software requirements. The provisions of this bill do not apply to existing distribution agreements between beer producers and wholesalers.

Taxation:

Louisiana

Awaiting floor debate, [H.B. 37](#) authorizes a one-time income tax credit for the amount of annual state license or permit fees imposed by the commissioner of alcohol and tobacco control and paid by the owners or operators of restaurant establishments and establishments licensed to sell or serve alcoholic beverages for consumption on their premises by paying customers.

Oregon

The Oregon Health Authority's 2021-23 budget request includes a proposal to increase the tax on beer, wine, and cider by an as yet undetermined amount, although the associated line item references a total amount of \$293 million. The additional revenue would be used to address behavioral health issues, including substance use disorder prevention and treatment.

Trade Practice & Other:

Louisiana

Amended in the Senate to include breweries, microbreweries, and microdistilleries that offer on-site retail consumption, [S.B. 18](#) provides that a permit holder that timely paid its operating permit fees and its malt beverages or beverages of low alcoholic content permit fees during the 2020 calendar year, shall have its permit fees due during the 2021 calendar year reduced on a pro rata basis for the number of days in calendar year 2020 that the permit holder was required to close operations due to COVID-19 emergency proclamations.

Michigan

[Senate Bill 1139](#) (part of a package of three bills addressing mixed spirits beverages) proposes a change to the definition of beer. Currently, "beer" is defined as a beverage obtained by alcoholic fermentation of an infusion or decoration of barley, malt, hops, or other cereal in potable water. Under this legislation, the term would mean either of the following: 1) A beverage obtained by alcoholic fermentation of an infusion or decoration of barley, malt, hops, sugar, or other cereal in potable water; 2) Alcoholic liquor that is not brandy, mead, spirits, or wine.

New Jersey

[Assembly Bill 4700](#) and companion Senate Bill 2950 seek to waive the renewal fees to hold a limited brewery license and restricted brewery license (brewpub). The bill further allows municipal governing bodies to also waive the municipal renewal fees to hold a plenary retail consumption license.