

November 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:

Louisiana

Passing the House, [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

Signed into law by the Governor, [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

[S.B. 3020](#) and companion H.B. 4908 seek to allow craft distilleries to sell mixed drinks and mixed drink ingredients for consumption off licensed premises and authorizes direct shipping by craft distilleries.

Ohio

Signed by the Governor, [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.

Pennsylvania

[Senate Bill 1370](#) provides for conditions under which a supplier may terminate a distributor relationship in the absence of good cause with sixty days' notice and provided that "irrevocable loss" (defined as the loss of volume of such brand or brands accounting for more than ten per centum of the entire liquid volume of malt or brewed beverages or gross sales amount distributed by the importing distributor in the twelve months preceding the written notice, whichever is less) to the distributor does not result from the termination.

Taxation:

Louisiana

Signed by the Governor, [S.B. 72](#) authorizes a one-time refundable income tax credit for a portion 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.

Trade Practice & Other:

Louisiana

Vetoed by the Governor, [S.B. 18](#) sought to provide 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. Eligible

businesses include breweries, microbreweries, and microdistilleries that offer on-site retail consumption.

The subject of a House-Senate conference committee, [House Bill 85](#) creates the Bar Assistance Relief Program (BAR Program) within the Louisiana Main Street Recovery Program to provide economic support to eligible bars, breweries and commercial fishermen.

Passed by the House and delivered to the Senate, [H.R. 17](#) requests the Department of Health and the office of alcohol and tobacco control in the Department of Revenue grant each bar and restaurant owner and in-state manufacturer a permit extension, at no cost to the owner, for a period equal in duration to the total time that the declared state of public health emergency for COVID-19 is in effect.

Passed by the House and referred to Senate committee, [H.C.R. 8](#) would suspend until 60 days after final adjournment of the 2021 Regular Session of the legislature the enforcement authority of the commissioner of alcohol and tobacco control afforded to the commissioner under present law as they apply to violations of COVID-19-related restrictions, except as they apply to the city of New Orleans.

New Jersey

[A.B. 4750](#) waives the issuance and renewal fees for certain alcoholic beverage manufacturing licenses during Coronavirus pandemic.

Amended to permit the New Jersey Brewers Association, the Brewers Guild of New Jersey, and their successor organizations to submit information or changes to the Internet website established pursuant to this bill, [A.B. 1091](#) requires the Division of Travel and Tourism to advertise and promote tours of breweries in the State.

[Senate Bill 3128](#) seeks to allow the owners and operators of restaurants, bars, and breweries to use outdoor spaces which they own or lease and which are located on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages, including alcoholic beverages if so licensed.