

December 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:

Oklahoma

[Senate Bill 85](#) (prefile) seeks to authorize holders of multiple small brewer licenses to sell beer at multiple locations.

Pennsylvania

Referred to committee, [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:

Colorado

Signed by the Governor, [H.B. 20B-1004](#) allows a temporary deduction from state net taxable sales for qualifying retailers in the alcoholic beverages drinking places industry (including breweries and taprooms), the restaurant and other eating places industry, and the mobile food services industry in the state in order to allow such qualified retailers to retain the resulting sales tax collected as assistance for lost revenue as a result of the economic disruptions due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

Trade Practice & Other:

Colorado

Signed by the Governor, [Senate Bill 20B-001](#) provides \$37 million for direct relief payments to small businesses located in counties subject to, and in compliance with, severe capacity restrictions pursuant to a public health order, with payments allocated to the counties for distribution to eligible small businesses, which businesses include breweries, restaurants, bars, movie theaters, and fitness and recreational sports centers.

Montana

[Draft Bill 409](#) seeks to allow alcoholic beverage licensees to use Department of Revenue-provided responsible server and sales training in areas where responsible server and sales training is not readily available.

New Jersey

Passing the Assembly after being 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.

Passing both chambers of the legislature, [Assembly Bill 4525](#) seeks to allow the owners and operators of restaurants, bars, distilleries, or 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.

Pennsylvania

The Pennsylvania Liquor Control Board (PLCB) approved the forgiveness of an estimated \$1.8 million in license fees in 2021 for brewery, winery, and distillery manufacturing licensees.

Texas

Pre-filed for the 2021 session, [HJR 40](#) proposes a constitutional amendment to prohibit the governor from regulating alcoholic beverages, firearms, explosives, or combustibles by order or proclamation.