

# January 2021 Legal & Legislative Update

## A. FEDERAL / NATIONAL / INTERNATIONAL

### **Craft Beverage Modernization and Tax Reform Act**

Provisions of the Craft Beverage Modernization and Tax Reform Act of 2019 ([S. 362](#); [H.R. 1175](#)) were included in the year-end legislative package addressing further COVID relief measures and government operational funding, [signed into law by the President on December 27](#). The legislation makes permanent the tax and other provisions passed as part of the Tax Cut and Jobs Act which was signed into law in the closing days of 2017 on a temporary, two-year basis. 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 in-bond transfer of beer between breweries and modifications to the single taxpayer rule for beer, wine, and spirits.

### **BA Files Comments on Exempting Hops from Heightened Regulation**

The Brewers Association filed comments in support of the Federal Food and Drug Administration (FDA) recognizing hops as “rarely consumed raw” and therefore exempt from the Food Safety Modernization Act (FSMA) Produce Safety Rule, the Preventive Controls for Human Food Rule, and the Foreign Supplier Verification Program.

### **TTB Finalizes Rule on Malt Beverage Net Contents Labeling**

As part of [Treasury Decision TTB-165](#) effective December 29, 2020, the Tax and Trade Bureau has amended the labeling regulations to allow malt beverages to be labeled with the equivalent metric measure in addition to the mandatory U.S. measure.

### **USDA Releases 2020-2025 Dietary Guidelines**

The U.S. Departments of Agriculture (USDA) and Health and Human Services (HHS) have published [Dietary Guidelines for Americans, 2020-2025](#). Published every five years, the guidelines purport to provide science-based recommendations designed to foster healthy dietary patterns for Americans of all ages. There have been no changes to the recommendation for alcohol consumption in this latest edition: two drinks or less in a day for men and one drink or less in a day for women.

## B. THE STATES

### **Sales, Distribution and Franchise:**

#### **Arkansas**

[H.B. 1066](#) establishes a beer direct shipper permit.

[House Bill 1161](#) authorizes a microbrewery restaurant private club to sell beverages manufactured by the private club directly to other permit holders.

[Senate Bill 32](#) authorizes a retail liquor permit holder to deliver alcoholic beverages directly to a consumer.

### **California**

[Senate Bill 220](#) authorizes a licensed craft distiller to sell and ship distilled spirits directly to a California resident, who is at least 21 years of age, for the resident's personal use and not for resale, under specific conditions. Authorizes a person currently licensed in another state as a craft distiller, or licensed in a similar manner, that obtains a distilled spirits direct shipper permit to sell and ship distilled spirits directly to a California resident, who is at least 21 years of age.

### **Delaware**

Clearing initial committee consideration, [H.B. 1](#) would extend the ability of certain licensees to continue to sell alcoholic beverages as part of transactions for take-out, curbside, or drive-through food service so long as certain conditions are met and allows a licensee to continue to use outdoor seating for serving of food and drinks so long as the licensee satisfies certain conditions.

[House Bill 45](#) seeks to increase from 3 to 5 the number of establishments at which a brewery -pub that is licensed in Delaware may brew, bottle, and sell beer.

### **Indiana**

[House Bill 1058](#) relates to alcoholic beverage containers, allowing wine and flavored malt beverage to be sold and distributed in a can.

[S.B. 25](#) repeals provisions that prohibit a grocery store, including a convenience store, or a drug store from selling and delivering cold beer for carryout and removes references to the temperature of beer.

[Senate Bill 175](#) requires a primary supplier that wants to amend, cancel, terminate, or refuse to renew a distribution agreement entered into with a beer wholesaler to act in good faith, with good cause, and with due regard for the equities of the beer wholesaler, and provide written notice; provides that a primary source has a right to amend, cancel, terminate, or refuse to renew distribution agreements with all beer wholesalers that have entered into.

[H.B. 1207](#) provides that the holder of certain permits to sell alcohol in certain restaurants who has an interest in a production facility permit for a brewery, farm winery, or artisan distillery that is located on or adjacent to the premises of the restaurant may sell certain carryout beer, wine, or spirits that are manufactured at the production facility, and allow a minor to participate in a nondrinking tour of the production facility.

[S.B. 310](#) would allow a person who holds a restaurant permit in an economic development area and an interest in a brewery, farm winery, or artisan distillery located on or adjacent to the restaurant, to sell alcoholic beverages for carryout that are manufactured at the production

facility in a general merchandising area of the restaurant; provides that carryout may be sold from a self-service display in the general merchandising area.

[House Bill 1371](#) would allow small brewers and artisan distillers to sell their products for carryout at a farmers' market.

[H.B. 1528](#) seeks to allow a beer wholesaler to purchase and import liquor from a primary source of supply for beer and wholesale liquor if the wholesaler's primary source of supply for beer has been the wholesaler's primary source of supply for beer for at least three years preceding the selling of liquor to the wholesaler.

### **Kentucky**

The provisions of [H.B. 415](#), passed in early 2020 and which establishes a direct shipper license authorizing shipment of alcoholic beverages to consumers in Kentucky, have become effective with the implementation of the Alcoholic Beverage Control regulations. A manufacturer authorized to manufacture alcoholic beverages in or outside Kentucky or a licensed alcoholic beverage supplier is eligible to apply for the license. The bill requires shipment by common carrier and limits the amounts of alcoholic beverages a licensee may ship, as follows: distilled spirits – no more than 10 liters per consumer per month; wine – no more than 10 cases per consumer per month; and malt beverages – no more than 10 cases per customer per month.

[Senate Bill 67](#) seeks to allow alcohol to be purchased to go or for delivery in conjunction with a meal.

Among several provisions, [S.B. 108](#) allows a microbrewer to offer for sale in its giftshop products that were produced in collaboration with a distiller.

### **Maryland**

[House Bill 12](#) and Senate Bill 205 seek to allow the holders of certain licenses that authorize the sale of alcoholic beverages at a restaurant, bar, or tavern to sell certain alcoholic beverages for off-premises consumption or delivery.

### **Massachusetts**

Signed by the Governor, [Senate Bill 2841](#) provides that brewers producing under 250,000 barrels of beer annually may terminate a distributor without cause with 30 days-notice and payment of fair market value of the distribution rights for the terminated brands.

### **Michigan**

Vetoed due to the Governor's failure to act, [S.B. 934](#) sought to allow certain distillers the ability to ship to retailers and consumers.

### **Minnesota**

[Senate Bill 50](#) modifies off-sale packaging requirements for certain small brewers.

### **New Hampshire**

[Senate Bill 14](#) would allow the liquor commission to register trade names with the secretary of state to operate as a direct shipper of liquor and wine.

[H.B. 403](#) seeks to allow the sale of alcoholic beverages in misbranded refillable containers at the direction of the buyer.

### **New York**

[S.B. 556](#) relates to direct interstate and intrastate cider shipments, establishing requirements regarding age verification and shipping limits.

[A.B. 1272](#) seeks to authorize the sale of alcoholic beverages on Sundays and Christmas day.

[Senate Bill 589](#) would authorize retail licensees for on-premises consumption to sell and/or deliver alcoholic beverages for consumption off the premises, within certain size limitations, that such licensees are currently licensed to sell.

[S.B. 1533](#) seeks to expand the privileges of farm breweries, cideries, wineries and distilleries to allow for the sales of farm brewed alcoholic beverages for off-premises consumption.

### **North Dakota**

[H.B. 1265](#) seeks to allow a microbrew pub to: sell and deliver beer in brewery - sealed containers holding twelve ounces manufactured by the microbrew pub to licensed retailers within the state if: (1) the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer; (2) individual deliveries are limited to the case equivalent of eight barrels per day to each licensed retailer; (3) the total amount of beer sold or delivered directly to all retailers does not exceed ten thousand barrels per year; and (4) a common carrier is not used to ship or deliver the microbrew pub's product to the public or to licensed retailers.

### **Oregon**

[House Bill 2742](#) seeks to allow a holder of off-premises sales license to sell factory-sealed containers of malt beverages that hold more than seven gallons.

### **South Carolina**

[House Bill 3575](#) seeks to allow a qualifying retailer to offer curbside delivery or pickup service of beer or wine.

[H.B. 3013](#) provides that the sale of alcoholic liquors on Sunday may be authorized by referendum.

### **Tennessee**

[House Bill 189](#) and Senate Bill 177 would authorize beer manufacturers to self-distribute beer within a 100-mile radius of the manufacturer if the manufacturer brews 50,000 gallons or less.

### **Texas**

[House Bill 983](#) addresses issues related to the pickup and delivery of alcoholic beverages for off-premises consumption.

## **Virginia**

[House Bill 1735](#) expands the privileges of limited brewery licensees by allowing them to sell at retail wine manufactured by farm winery licensees for on-premises consumption and expands the privileges of farm winery licensees by allowing them to sell at retail beer manufactured by limited brewery licensees for on-premises consumption.

[S.B. 1428](#) would prohibit the Virginia Alcoholic Beverage Control Authority from selling in government stores low alcohol beverage coolers not manufactured by licensed distillers. Under current law, the Board may sell any low alcohol beverage coolers in government stores.

## **Taxation:**

### **New Jersey**

[A.B. 5201](#) allows temporary deduction of certain alcohol and food industry sellers' taxable sales with resulting sales tax retained by those sellers.

### **North Dakota**

[H.B. 1099](#) would allow the tax commissioner to waive penalties for late or non-filed alcoholic beverage tax returns.

### **Tennessee**

[Senate Bill 26](#) extends for an additional six years to June 30, 2028, the temporary tax on bottles of soft drinks and barrels of beer to fund programs for the prevention and collection of litter.

## **Trade Practice & Other:**

### **Delaware**

Voted out of committee, [House Bill 46](#) seeks to permit Delaware brewery-pub and microbrewery license holders to brew, bottle and sell hard seltzers and other fermented beverages made from malt substitutes and includes specific tax on fermented beverages. The language of the Act also mirrors the federal definition of a malt-substitute product.

### **Indiana**

[House Bill 1323](#) seeks to allow allows a microbrewery to locate within 200 feet of a school or church if the school or church does not object.

### **Kansas**

[S.B. 2](#) allows consumption of beer and wine on the Kansas state fairgrounds.

### **Maryland**

[Senate Bill 285](#) requires the Governor's Office of Small, Minority, and Women Business Affairs to conduct a study concerning the alcoholic beverages industry.

## **Missouri**

Under the provisions of [S.B. 299](#), a wholesaler or brewer may install non-refrigeration dispensing accessories at the retail business establishment for the purposes of beer equipment to properly preserve and serve draught beer or premixed distilled spirit beverages. A wholesaler or brewer may also lend, give, rent, sell, install, or repair nonrefrigeration dispensing accessories in order to facilitate the delivery to the retailers. A complete record of non-refrigeration dispensing accessories given, rented, sold, installed, and loaned, and repairs and services made to a retailer shall be retained for a period of not less than one year by the wholesaler, brewer, distiller, or winemaker.

## **Montana**

Passing the House, [H. B. 79](#) revises the definition of beer to include other fermented-style beverages.

## **New Hampshire**

[House Bill 162](#) seeks to allow liquor manufacturers to offer samples at farmers' markets.

[S.B. 17](#) seeks to allow municipalities to adopt ordinances to allow dogs in outdoor areas of brew pubs.

## **New Jersey**

[A.B. 5134](#) establishes hospitality business winter preparation purchase or reimbursement program.

Passing both legislative chambers, [Senate Bill 3340](#) seeks to expand opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining.

## **New York**

[A.B. 1235](#) seeks to credit any on-premises licensees or any manufacturing licensee with on-premises retail privileges for each day they were unable to operate due to coronavirus and provides that such credits shall be used for such licensee's license renewal.

[Assembly Bill 153](#) seeks to allow brewery supply stores to sell beer for off premises consumption.

[Senate Bill 386](#) would require that alcoholic beverages imported into New York be first delivered to a licensed New York state wholesaler and maintained at a premises or warehouse operated by the wholesaler for a period of twenty-four hours.

[A.B. 1910](#) would establish the New York craft beverage council within the department of economic development to develop a marketing strategy to promote the state's fine wines, spirits, and craft brews.

## **Ohio**

Signed into law, [House Bill 674](#), among many provisions: eliminates statutory limitations on Sunday sales of alcohol; addresses issues related to outdoor refreshment areas; exempts 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; allows 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 allows a distributor, manufacturer, trade marketing professional, solicitor, or broker of alcoholic beverages to use free services provided by social media to advertise certain events.

### **Oregon**

The Oregon Liquor Control Commission has issued [guidance](#) addressing when a hard seltzer qualifies as a malt beverage.

[S.B. 394](#) would allow nonprofit or charitable organization to sell alcoholic beverages at auction or through raffle once in three-month period.

[H.B. 2606](#) would include identification cards issued by a province or territory of Canada as acceptable forms of identification for purchase of alcoholic beverages.

### **South Carolina**

[S.B. 472](#) would require servers of alcoholic beverages for on premises consumption in licensed or permitted businesses to obtain alcohol server certificates.

### **Texas**

The Alcohol Beverage Commission (TABC) has implemented [changes](#) replacing the current label approval process with TABC product registration. This is now the required process of getting TABC authorization before alcoholic beverages can enter the distribution stream.