

February 2021 Legal & Legislative Update

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.

COVID Impact Relief Bills Introduced in Congress

The RESTAURANTS Act, creating a restaurant revitalization fund of \$120 billion that will provide grants to hospitality businesses that have been hit especially hard by COVID-19, has been introduced in both chambers of Congress ([H.R. 793](#) and [S. 255](#)). This legislation includes language specifically stating that brewpubs, tasting rooms, taprooms, licensed facilities or premise of a beverage alcohol producer where the public may taste, sample, or purchase products, or other similar place of business, have access to the grants.

THE STATES

Sales, Distribution and Franchise:

Alabama

[S.B. 126](#) creates a delivery service license which allows transport and deliver, for personal use, of up to 48 twelve ounce containers of beer, up to 288 ounces of draft beer, up to six 750 milliliter bottles of wine, and up to 1,750 milliliters of spirits, sold by off-premises licensees.

Arizona

[House Bill 2688](#) would allow the direct shipment of distilled spirits.

Arkansas

Failing to clear the House following Senate passage, [Senate Bill 32](#) authorizes a retail liquor permit holder, including small breweries and microbrewery-restaurants, to deliver alcoholic beverages directly to a consumer.

California

The California Office of Environmental Health Hazard Assessment has adopted [amendments](#) to Proposition 65 warning regulations relating to the methods for providing warnings for alcoholic beverages purchased over the internet or through mobile apps. The regulation takes effect on April 1, 2021.

Delaware

Passing the House, [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.

Georgia

[House Bill 278](#) would: permit small brewers and other brewers to sell a limited quantity of malt beverages at retail on the premises for consumption on and off of the premises; eliminate the daily quantity limitation on sales by brewers directly to consumers; provide for the transfer of a limited quantity of malt beverages by small brewers and brewpubs; increase the amount of malt beverages a brewpub may sell to wholesalers; and provide for donations of malt beverages to bona fide nonprofit civic organizations.

Hawaii

Passing initial committee consideration, [S.B. 65](#) seeks to allow direct shipment of all forms of liquor, rather than just wine, by certain licensees and requires the county liquor commissions to adopt rules and regulations.

Indiana

Passing the Senate, [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.

Passing the Senate, [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.

[H.B. 1396](#) seeks to allow the holder of a food hall vendor's permit and a retailer's permit who also holds a permit for a small brewery, a farm winery, or an artisan distillery to sell carryout alcoholic beverages at the retailer's permit premises that are produced under the craft manufacturer's permit.

Kansas

[House Bill 2057](#) would require alcoholic liquor manufacturers who obtain a drinking establishment license to acquire any beer sold at that establishment through a licensed wholesaler or retailer.

Kentucky

[Senate Bill 15](#) seeks to allow a microbrewery licensee to sell and deliver up to 2,500 barrels of product to any retail licensee and to set forth terms of contracts between microbrewers and distributors.

Maine

[Senate Bill 133](#) clarifies that licensed Maine manufacturers of spirits, wine, malt liquor and low-alcohol spirits products may sell and ship their products to a person located in another state, as long as the sale and shipment are both authorized by and conducted in accordance with the requirements of the law of the state where the shipment is delivered.

Maryland

[House Bill 1232](#) proposes to codify the provisions set forth under Executive Orders issued by the Governor which grant alcohol delivery and shipment privileges and clarifies statutory provisions with respect to special event and off-premise permits by consolidating permitting language.

Michigan

[S.B. 49](#) allows, under certain conditions, for an on-premises tasting room and an off-premises tasting room held at same location.

Minnesota

[H.B. 739](#) seeks to authorize food retailers to sell wine and beer.

Missouri

[House Bill 940](#) would allow for direct shipments of distilled spirits to state residents.

Montana

[House Bill 226](#) addresses curbside delivery and to-go drinks for all on and off premises retailers including manufacturers with limited retail privileges.

New Hampshire

Clearing initial committee consideration, [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.

New Mexico

[House Bill 8](#) addresses home delivery of alcohol.

New York

[Senate Bill 4245](#) and companion A.B. 3275 authorize the direct intrastate and interstate shipment of liquor.

North Dakota

[Senate Bill 2321](#) would allow a microbrew pub licensee to sell or direct ship malt beverages manufactured on the licensed premises to an individual in the state.

Oklahoma

[House Bill 1920](#) provides that a manufacturer, brewer, or importer of beer shall not commit certain acts relating to beer distribution.

Passing committee, [S.B. 85](#) seeks to authorize holders of multiple small brewer licenses to sell beer at multiple locations.

[Senate Bill 945](#) prohibits any beer distribution agreement with a manufacturer, brewer, or importer of beer from requiring wholesalers to submit certain records, mandate hiring decisions, contribute to marketing, attribute risk of loss to a wholesaler, invoice or initiate electronic funds transfer payment for point of sale advertising, or invoice for any quantity of beer exceeding an order.

Rhode Island

[House Bill 5255](#) and companion Senate Bill 199 seek to modify limitations on quantities of malt beverages and distilled spirits that can be sold at retail by certain licensed breweries and distilleries for off-premises consumption.

[H.B. 5324](#) seeks to increase the amount of malt beverages that a manufacturer can sell for offsite consumption from 24 twelve-ounce and 24 sixteen-ounce (16 oz.) bottles or cans to 55 twelve-ounce (12 oz.) and 41 sixteen-ounce (16 oz.) bottles and cans respectively.

South Dakota

Passing the House, [S.B. 109](#) authorizes certain interstate shipments of distilled spirits.

[H.B. 1208](#) seeks to establish a distilled spirits direct shipment license and distilled spirits carrier license to enable the direct shipments of certain distilled spirits in South Dakota.

Amended in committee, [Senate Bill 110](#) seeks to revise certain provisions for authorizing wholesalers to purchase alcoholic beverages.

Failing to advance from committee, [House Bill 1123](#) would permit in-state alcohol manufacturers to deliver alcoholic beverages to state customers under certain conditions.

Tennessee

Referred to committee, [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.

Virginia

Passing the Senate, [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.

Washington

[H.B. 1432](#) seeks to authorize direct to consumer sales of distilled spirits by out-of-state manufacturers.

[House Bill 1480](#) and companion Senate Bill 5417 provide that certain licensees, including domestic breweries and microbreweries, may sell alcohol products at retail for curbside and takeout service or delivery or both.

Wyoming

Passed by the legislature, [House Bill 13](#) clarifies that businesses with a retail liquor licence, microbrewery permit, winery permit, winery satellite permit or a manufacturer licence with a satellite location are able to “deliver or contract to have delivered alcoholic liquors and malt beverages to customers.”

Taxation:

Hawaii

Advancing from first committee consideration, [Senate Bill 1232](#) establishes an as yet undefined three-year surcharge on the liquor tax.

Maine

[House Bill 96](#) seeks to permit retailers selling prepared food or liquor sold by establishments licensed for on-premises sales to retain 1/8 of the sales tax collected on those sales to cover administrative expenses.

Maryland

[H.B. 796](#) seeks to reduce from 9% to 6% the rate of the sales and use tax imposed on the charge for an alcoholic beverage.

[Senate Bill 172](#) seeks to increase the sales and use tax rate for the sale of an alcoholic beverage from 9% to 10% of the charge for the alcoholic beverage in two phases: for off-sale retailers, the rate increase takes effect October 1, 2021; for on-sale retailers, the rate increase is delayed by two years until October 1, 2023. Revenues generated will be credited to the Health Equity Resource Community Reserve Fund.

New York

[Senate Bill 3675](#) would increase taxes on alcohol by 50 percent, allocating the increased revenue to a special fund to be used for the purposes of alcohol and substance abuse addiction prevention and recovery services and programs.

[Senate Bill 3863](#) establishes the gallon as the standard measurement for purposes of taxation of alcoholic beverages.

[S.B. 3870](#) seeks to exempt alcoholic beverages sold at retail by a licensed producer of alcoholic beverages to a customer where such sale occurs either at the brewery, winery or distillery where

such alcoholic beverage was produced or as a direct delivery from the tax on alcoholic beverages.

[Assembly Bill 4291](#) would provide a tax credit to taxpayers who grow the base ingredients necessary for the production of beer.

Tennessee

[House Bill 852](#) reallocates 3 percent of revenue derived from the beer barrelage tax that is provided to the general fund to the department of agriculture for the purposes of supporting growth in the utilization of Tennessee agricultural products in brewing and in the promotion of the growth of the Tennessee brewing industry.

Trade Practice & Other:

Alaska

[Senate Bill 9](#) addresses comprehensive alcohol regulatory issues review.

Arizona

Passing the House, [H.B. 2050](#), liquor omnibus legislation, addresses many facets of alcohol regulation.

[House Bill 2305](#) relates to alternating proprietorships.

[H.B. 2753](#) would allow a microbrewery licensee to hold a craft distiller license.

Among several provisions, [House Bill 2844](#) would alter the definition of beer.

[Senate Bill 1293](#) would allow a person engaged in the business of producing or wholesaling liquor to loan or sell a refrigerated cooler to a liquor retailer subject to certain conditions.

California

[S.B. 298](#) would authorize any person that has a brewpub-restaurant license to exchange that license for a bona fide public eating place license.

Connecticut

[H.B. 5016](#) excludes beer manufacturers, their employees and the dependents of their employees from various provisions of the insurance statutes concerning small employer health insurance coverage.

[House Bill 6225](#) seeks to allow patrons to either purchase meals at or bring meals to permit premises of establishments that serve beer to the public.

Delaware

Before the Governor for action, [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.

[House Bill 81](#) seeks to allow two or more microbreweries to share brewing equipment if the microbreweries maintain separate premises to sell their product to consumers and wholesalers.

Florida

[House Bill 6051](#) repeals provisions relating to tied house evil.

Hawaii

[Senate Bill 565](#) expands the definition of "beer" to specify an alcohol by volume of no less than 0.5 percent and to include alcoholic seltzer beverages.

Idaho

[House Bill 71](#) further provides for the donation of liquor for benevolent, charitable, or public purposes.

Illinois

[House Bill 547](#) provides that if a person purchases a mug, cup, or other glassware from a retail licensee, then that retail licensee may offer a discount to fill or refill that mug, cup, or other glassware.

Iowa

[H.B. 297](#) would authorize local alcohol licensing or permitting authorities to require training for employees who serve alcohol.

Massachusetts

[House Bill 26](#) contains recommendations of the Department of the State Treasurer on modernizing the Massachusetts alcohol laws, including the ability of a licensee to serve alcoholic beverages on non-contiguous premises.

Montana

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

[House Bill 157](#) would allow a brewery or winery to be located adjacent to an on-premises retail license.

New Hampshire

[Senate Bill 125](#) makes changes to the requirements for serving samples for beverage manufacturers and nano breweries and allows wholesale distributors to sell specialty cider.

New Jersey

Signed into law, [Senate Bill 3340](#) seeks to expand opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining.

New York

[Senate Bill 3971](#) requires a refundable deposit on kegs and taps.

[Sente Bill 4006](#) modifies licensing restrictions for manufacturers and wholesalers of alcoholic beverages on licensees who sell at retail for on premises consumption, and restrictions on retail licensees interested directly or indirectly in licensed manufacturers or wholesalers of alcoholic beverages.

[S.B. 4090](#) relates to the definition of New York state labelled beer, requiring such labelled beer to be processed in New York state.

[A.B. 4545](#) requires a retail licensee for on-premises consumption to maintain and make available to customers, at no charge, a device which measures blood alcohol content.

[Assembly Bill 863](#) designates a portion of the state highway system as the North Country Craft Beer Trail.

Oklahoma

[House Bill 1096](#) would authorize certain social media exchanges.

Passing committee, [S.B. 385](#) authorizes a retail spirits licensee to serve samples of beer, wine, and spirits to consumers on its licensed premises.

Oregon

[House Bill 3132](#) provides that a person commits the offense of driving while under influence of intoxicants if that person drives a vehicle and has 0.05 percent or more by weight of alcohol in their blood.

Rhode Island

[House Bill 5280](#) would create a refundable ten cent deposit for non-reusable beverage containers and further provides for a four cent handling fee to be paid by distributors.

Washington

Passing the Senate, [S.B. 5272](#) waives temporarily the fees for certain liquor license renewals, including brewery licenses, beer/wine and beer/wine/spirits restaurant licenses, and tavern licenses.