

May 2021 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

For the latest information on federal issues of importance to brewers, please link to the BA's [Federal Affairs Updates](#).

TTB Collects Six-Figure OIC Relating to Alleged Violations in Illinois

The Alcohol and Tobacco Tax and Trade Bureau (TTB) [announced](#) that it had accepted an \$850,000 “offer-in-compromise” payment to settle allegations that three entities associated with Illinois’ Lakeshore Beverage had violated tied-house and exclusive outlet provisions of the Federal Alcohol Administration Act (FAA Act).

THE STATES

Sales, Distribution and Franchise:

Alabama

Before the Governor for action, [H.B. 539](#) revises the daily limit on how much beer and liquor may be sold by brewpubs and certain breweries and distilleries to customers for off-premises consumption; provides further for calculating which breweries qualify to sell beer at their breweries for off-premises consumption; provides further for manufacturer licenses issued by the Alcoholic Beverage Control Board; revises the amount of beer a brewpub may donate to charitable events.

Arkansas

Signed into law, [House Bill 1763](#) authorizes distillery self-distribution and out-of-state direct to consumer shipments.

Georgia

Signed into law, [H.B. 273](#), among several provisions, would allow for the transfer of malt beverages between a brewer’s licensed premises.

Indiana

Signed into law, [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.

Signed by the Governor, [H.B. 1396](#) provides, among many provisions, for an amended definition of “beer” that includes the fermentation of cereal byproducts and an amended definition of “flavored malt beverage” to include canned beverages.

Massachusetts

[House Bill 440](#) relates to the termination of sales to wholesalers by suppliers of alcoholic beverages.

[H.B. 475](#) relates to the selling of malt beverages or malt beverage products produced by a pub brewery.

[House Bill 940](#)/S.B. 526 expands the sale of products by farmer breweries.

Montana

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

Nevada

Passing the Senate, [S.B. 307](#), among several provisions, authorizes a person who operates one or more brew pubs to manufacture and sell an additional 20,000 barrels of malt beverages to an out-of-state wholesaler. Additionally, the bill imposes several restrictions on suppliers relative to their dealings with wholesalers.

New Jersey

[S.B. 3673](#) seeks to authorize limited breweries and craft distilleries to sell at retail and offer for sampling purposes product bottled and stored off-site under certain circumstances and authorizes craft distilleries to manufacture redistilled alcoholic beverages.

North Dakota

Signed by the Governor, [Senate Bill 2321](#) allows a microbrew pub licensee to sell or direct ship malt beverages manufactured on the licensed premises to an individual in the state and addresses issues related to contract brewing.

Oklahoma

Signed into law, [Senate Bill 85](#) authorizes holders of multiple small brewer licenses to sell beer at multiple locations.

Pennsylvania

[S.B. 623](#) provides for a required renegotiation of a supplier-distributor franchise agreement prior to the fifth anniversary of said agreement and non-good cause termination with sixty days' notice as long as the termination does not cause irrevocable loss (defined as the loss of volume of such brand or brands accounting for more than ten percent 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) and the supplier pays to the distributor an agreed to fair market value of the distributor's business with respect to the terminated or rescinded brand or brands.

Tennessee

On the Governor's desk, [Senate Bill 177](#) has been amended to allow breweries producing 25,000 barrels or less annually to self-distribute up to 1,800 barrels statewide before they must enter into a distribution agreement with a wholesaler.

Washington

Signed into law, [House Bill 1480](#) includes authorizations related to curbside delivery and takeout service or delivery of alcohol products, the sale by restaurants of premixed cocktails, cocktail kits, and wine drinks, and the sale of growlers by certain licensees.

West Virginia

Signed by the Governor, [House Bill 2025](#) provides liquor, wine, and beer licensees with new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

Taxation:

Idaho

Signed by the Governor, [House Bill 232](#) authorizes over the course of three years, 5% of tax revenues derived from "strong beer" to be reallocated from the Idaho Grape Growers and Wine Producers Commission to the Idaho Hop Growers Commission.

Illinois

[House Resolution 272](#) states opposition to any additional excise taxes on businesses that produce beer, wine, or liquor or their related industries.

Reassigned to committee, [Senate Bill 2035](#) provides that a brewer who is a class 1 brewer, class 2 brewer, or brew pub licensee shall accurately measure the quantity of beer transferred into its final packaging container to determine the brewer's tax liability by converting beer production into the amount of beer sold and to ensure compliance with any production or self-distribution quantity limitations applicable to the class 1 brewer, class 2 brewer, or brew pub.

Iowa

[House Bill 885](#) seeks to increase in the barrel tax on beer by \$3.10 to fund substance abuse prevention and treatment.

Massachusetts

[S.B. 179](#) seeks to increase alcohol excise taxes.

[H.B. 2973](#) would increase the excise tax on alcoholic beverages.

New Jersey

[S.B. 3776](#) provides a temporary deduction for food and beverage establishments, including breweries, distilleries, wineries, and brew pubs, from certain sales and use tax remittances.

North Carolina

Passing initial committee consideration, [House Bill 619](#) provides a sales tax exemption for equipment, machinery, and supplies used in creating certain types of alcoholic beverages.

Tennessee

Signed by the Governor, [S.B. 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; makes other related revisions.

Wisconsin

Amended prior to passing the Assembly, [A.B. 242](#) provides for a sales and use tax “holiday” for certain businesses, including brew pubs, distilleries, craft breweries, and wineries that serve alcoholic beverages on the premises, from June 1 to August 31, 2021.

Trade Practice & Other:

Alabama

Under House consideration following Senate passage, [S.B. 322](#) provides that beer transferred from a brewery in accordance with federal law to a brewery of the same ownership is deemed to have been manufactured by the receiving brewery at its licensed premises and that when calculating whether a brewery produces less than 60,000 barrels annually, only beer provided by a contract brewery which is produced exclusively for the brewery shall be considered.

Alaska

Substituted in committee, [Senate Bill 9](#), comprehensive alcohol regulatory review legislation, specifically addresses the regulation of manufacturers, wholesalers, and retailers of alcoholic beverages and common carrier approval to transport or deliver alcoholic beverages.

Arkansas

[House Bill 1950](#) sets a minimum container size of sixteen ounces for beer to be sold for off-premises consumption.

California

Passing the Senate, [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. Such exchange does not count towards that county’s alcohol license limit.

Passing the Assembly, [Assembly Bill 1330](#) seeks to exempt licensed premises of beer manufacturers from the current requirement that any on-sale retail licensee that gives, sells, or otherwise dispenses draught beer to include specified information regarding the beer upon the faucet, spigot, or outlet from which the beer is drawn or in the place of service or consumption.

Colorado

Advancing in the House following Senate passage, [Senate Bill 82](#) would authorize certain alcohol beverage license holders, including brew pub licensees and beer manufacturers operating

a sales room, to hold festivals where they can conduct joint tastings and engage in any retail operations authorized by their licenses or permits.

Hawaii

On the Governor's desk, [Senate Bill 765](#) establishes sentencing guidelines for highly intoxicated drivers and requires that ignition interlock devices be installed on all vehicles operated by a person upon license revocation.

Awaiting gubernatorial action, [S.B. 263](#) addresses the parameters under which the "Grown in Hawaii with Aloha" phrase may be used in advertising.

Louisiana

Passing the House, [H.B. 219](#) creates a definition for "ready-to-drink beverages" and provides for delivery of ready-to-drink beverages from restaurants.

Massachusetts

[House Bill 373](#) relates to notification of alcohol by volume in beers to be consumed on-premises.

[House Bill 397](#) relates to the ability of farmer brewers and pub brewers to fill growlers.

[H.B. 453](#) provides that no licensee shall give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing or contracting for the purchase of any particular brand or kind of alcoholic beverages. This prohibition shall include furnishing a retailer with human resources to perform merchandising or other functions, with the expectation of stocking, rotation, or pricing services of the industry member's own product.

Minnesota

[House Bill 2620](#) seeks to replace the current 3.2 malt liquor definition with a 5.5 alcoholic beverage definition, which would include, but not be limited to, beer, ale, hard cider, hard seltzer, and canned cocktails.

Missouri

Clearing initial Senate committee consideration, [House Bill 533](#) has been amended to provide that the replacement of allowable manufacturer/wholesaler supplied permanent point-of-sale advertising materials to retailers that are damaged and non-functioning shall not apply toward the current maximum of \$500. The definitions of "equipment and supplies", "temporary point-of-sale advertising materials", "permanent point-of-sale advertising materials", and "product display" are modified and the definition of "non-refrigeration dispensing accessories" is added, which includes beer and gas hoses, faucets, taps, and other accessories as provided in the bill. Under this bill, 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.

Nebraska

Continuing to advance, [L.B. 274](#), which provides for a promotional farmers market special designated license, has been amended to define “ready-to-drink cocktail” and establish a per gallon tax rate separate and lower than that for distilled spirits.

New Hampshire

Under House consideration, [Senate Bill 125](#) makes changes to the requirements for serving samples for beverage manufacturers and nano breweries; provides for contract brewing arrangements for nano breweries and brew pubs; and requires reports for intrastate direct shippers of alcohol.

New Jersey

[A.B. 5550](#) permits holders of certain alcohol manufacturing licenses to offer retail memberships to customers.

New York

[Senate Bill 6632](#) authorizes the sale of merchandise other than beer by licensed breweries and licensed farm breweries and the operation of another business on a licensed premise; authorizes licensed breweries and farm breweries to charge for tours and tastings.

North Carolina

Now under Senate consideration, [House Bill 768](#) directs the Legislative Research Commission to study the alcoholic beverage control laws in this state, including a comparative analysis on how the federal government and other states regulate the manufacturing, sale, possession, and consumption of alcoholic beverages, including how the federal government and other states regulate the labeling of alcoholic beverages, the distribution of alcoholic beverages, and the assortment of alcoholic beverages that may be manufactured, sold, possessed, or consumed.

Passing the House, [H.B. 722](#) seeks to allow growler sizes of up to four liters capacity.

[House Bill 904](#) defines low alcohol beverage coolers, otherwise known as ready-to-drink cocktails, and addresses sales of those products.

Oklahoma

Signed by the Governor, [House Bill 1096](#) authorizes certain social media exchanges.

Oregon

Passing the House [H.B. 2264](#), among several provisions, defines “malt beverage” as beer, ale, porter, stout and other similar fermented beverages that contain more than one-half of one percent and not more than 16 percent of alcohol by volume and that are brewed or produced from malt, wholly or in part, or from rice, grain, bran, glucose, sugar or molasses as a substitute for malt. “Malt beverage” does not include cider, mead, sake, or wine.

Rhode Island

Held in committee, [S.B. 748](#) sought to authorize the issuance of farmer-brewery and farmer-distillery licenses to qualifying farms.

Texas

Passing the legislature, [Senate Bill 1226](#) would allow brewpubs to conduct tastings and samplings at retailer locations.