

June 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](#).

USPS Shipping Equity Act Introduced

The United States Postal Service (USPS) Shipping Equity Act ([H.R. 3287](#)/S. 1663), seeking to allow breweries, distilleries, wineries, cideries, and meaderies to utilize the USPS to ship products to consumers where state laws permit, has been introduced in Congress.

Kombucha Taxation Bill Introduced in Congress

[H.R. 2124](#), the “Keeping Our Manufacturers from Being Unfairly taxed while Championing Health Act” or “KOMBUCHA,” seeks to amend the Internal Revenue Code of 1986 to ensure that kombucha is exempt from any excise taxes and regulations imposed on alcoholic beverages.

THE STATES

Sales, Distribution and Franchise:

Alabama

Signed into law, [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.

Delaware

Signed by the Governor, [House Bill 46](#) allows 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. Defines fermented beverage as any product similar to beer, including sake and seltzer, containing one-half of one percent or more of alcohol by volume, brewed from substitutes for malt, including rice, grain, bran, glucose, sugar, and molasses. The tax on fermented beverages is equalized to that for beer at \$8.15/barrel.

Illinois

[House Bill 2620](#), amended to include certain provisions of the Brewers Economic Equity & Relief Act, has passed the legislature. The legislation provides for continued curbside pick-up for all licensed brewers, addresses issues related to limited brewpub self-distribution, and codifies the ability to maintain self-distribution for manufacturers producing more than one type of alcohol.

Kansas

Signed into law, [H.B. 2137](#), among a multiplicity of provisions, allows the transfer and receipt of bulk alcoholic liquor and cereal malt beverage for canning and bottling purposes, authorizes the issuance of a drinking establishment license to manufacturers under certain conditions, and allows the sale and removal of beer and cereal malt beverage in certain containers.

Louisiana

[House Concurrent Resolution 106](#) creates a task force to study issues associated with the direct-to-consumer shipment of wine in Louisiana.

Maryland

Signed into law, [H.B.1232](#) codifies 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

A package of four bills addressing distribution, taxation, and other issues related to mixed spirit drinks ([Senate Bills 141-144](#)) has been signed into law.

Signed into law, [S.B. 49](#) allows a person to hold an on-premises tasting room permit and an off-premises tasting room license in conjunction at the same location under certain conditions.

Nevada

Signed into law, [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, including a provision stating that of any contract or other agreement that attempts to alter or waive the provisions of law governing a franchise between a supplier and a wholesaler of malt beverages, distilled spirits and wines is void and unenforceable.

New Hampshire

Passing both chambers of the legislature, [Senate Bill 14](#) would allow the liquor commission to operate as a direct shipper of liquor and wine, both in-state and out-of-state.

New York

[Assembly Bill 7732](#) seeks to allow a manufacturer with retail on-premises consumption privileges or a retail licensee for on-premises consumption to sell for takeout and deliver alcoholic beverages for off-premises consumption.

Oregon

Passing the legislature, [H.B. 2363](#) allows certain holders of temporary event licenses to sell specified alcoholic beverages for on and off-premises consumption at more than one location on licensed premises or have up to three premises licensed under single temporary sales license and operate for up to 30 days.

Passing both legislative chambers, [House Bill 2742](#) would allow the holder of an off-premises sales license to sell factory-sealed containers of malt beverages that hold more than seven gallons.

Tennessee

Signed by the Governor, [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.

Taxation:

Illinois

Re-referred within the Senate, [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.

New Jersey

Amended in Senate committee, [Senate Bill 3452](#) seeks to reduce the alcoholic beverage tax rate on cider and low-percentage alcohol by volume (ABV) liquors so that they match the tax rate for beer at 12 cents/gallon.

Oklahoma

Emerging from conference and sent to the Governor, [House Bill 2684](#) clarifies the procedure for paying excise tax on beer when it is self-distributed by a brewer to certain locations.

Trade Practice & Other:

Alabama

Held in House committee, [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.

California

Passing the Senate and referred to Assembly committee, [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.

Amended in Senate committee to address alcohol delivery issues, [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

Signed by the Governor, [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.

Louisiana

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

[H.R. 104](#) designates May 19, 2021, as Louisiana Craft Brewers' Day in Louisiana.

Mississippi

Signed by the Governor, [House Bill 1091](#) provides a definition of "microbrewery": a person having a permit under this chapter to manufacture or brew light wine, light spirit product or beer in this state and who manufactures or brews not more than three thousand (3,000) barrels of light wine, light spirit product or beer at its permitted location and stipulates that such a brewery shall not sell at retail more than eighty percent (80%) of light wine, light spirit product or beer produced annually at its brewery.

Missouri

Before the Governor for action, [Senate Bill 126](#), among multiple provisions, would add the definition of "nonrefrigeration dispensing accessories" (which includes beer and gas hoses, faucets, taps, and other accessories necessary to preserve and serve intoxicating liquor that are not self-refrigerating) and allow a wholesaler or brewer to install non-refrigeration dispensing accessories at a retail business establishment to properly preserve and serve draught beer or premixed distilled spirit beverages. Additionally, a distiller, wholesaler, winemaker, or brewer may furnish, give, or sell cleaning and sanitation services to a retailer to preserve product integrity of distilled spirits, wine, or malt beverages. The bill also provides that the replacement of similar permanent point-of-sale advertising materials that are damaged and non-functioning shall not apply toward the annual allowed maximum of \$500 and the definitions of "equipment and supplies", "temporary point-of-sale advertising materials", "permanent point-of-sale advertising materials", and "product display" are modified.

Nebraska

Approved by the Governor, [L.B. 274](#), provides for a promotional farmers market special designated license, defines "ready-to-drink cocktail" and establishes a per gallon tax rate of ninety-five cents per gallon that is separate and lower than that for distilled spirits.

New Hampshire

Amended prior to House passage, [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 York

[A.B. 7746](#) seeks to amend the definition of New York State labelled beer to require that at least 60% , by weight, of its hops and at least 60% of any other ingredients, excluding water, are grown in New York. The bill would also authorize a farm brewery to manufacture or sell beer other than New York labelled beer if the total aggregate of hops used by the farm brewery is at least 60% grown in New York and the total aggregate of other ingredients, excluding water, is at least 60% grown in New York.

Oregon

Signed into law, [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.

Texas

Signed by the Governor, [Senate Bill 1226](#) allows brewpubs to conduct tastings and samplings at retailer locations.