July 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.

Restaurant Revitalization Fund Replenishment Act Introduced
Introduced in both chambers of the United States Congress, H.R.3807/S.2091, the Restaurant Revitalization Fund Replenishment Act seeks to add an additional $60 billion to the Restaurant Revitalization Fund, thereby providing critical funding for the recovery of small hospitality businesses.

Biden Issues Executive Order on Promoting Competition in the American Economy
Recognizing the need to promote a fair, open, and competitive marketplace, President Joe Biden signed an Executive Order promoting competition in the American economy. Covering a wide range of businesses and activities, provisions of the order specific to beverage alcohol include:

(j) To protect the vibrancy of the American markets for beer, wine, and spirits, and to improve market access for smaller, independent, and new operations, the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the FTC, not later than 120 days after the date of this order, shall submit a report to the Chair of the White House Competition Council, assessing the current market structure and conditions of competition, including an assessment of any threats to competition and barriers to new entrants, including:
   (i) any unlawful trade practices in the beer, wine, and spirits markets, such as certain exclusionary, discriminatory, or anticompetitive distribution practices, that hinder smaller and independent businesses or new entrants from distributing their products;
   (ii) patterns of consolidation in production, distribution, or retail beer, wine, and spirits markets; and
   (iii) any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.

(k) To follow up on the foregoing assessment, the Secretary of the Treasury, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau, shall, not later than 240 days after the date of this order, consider:
   (i) initiating a rulemaking to update the Alcohol and Tobacco Tax and Trade Bureau’s trade practice regulations;
   (ii) rescinding or revising any regulations of the beer, wine, and spirits industries that may unnecessarily inhibit competition; and
   (iii) reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.

THE STATES
Sales, Distribution and Franchise:

**Illinois**
House Bill 2620, amended to include certain provisions the Brewers Economic Equity & Relief Act, has been sent to the Governor. 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.

**Louisiana**
Passing through both legislative chambers, House Concurrent Resolution 106 creates a task force to study issues associated with the direct-to-consumer shipment of wine in Louisiana.

**Michigan**
Before the Governor for action, H.B. 4746 seeks to make the use or offer for use, possession, sale, or offer for sale of marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits a misdemeanor.

**Minnesota**
H.B. 37 and companion S.B. 31 seek to allow, among several provisions, brewery sales for off-premises consumption in containers of 64 ounces or less.

Senate Bill 70 seeks to allow brewers with an annual production of up to 150,000 barrels the ability to engage in off-premises sales. The current production limitation is 20,000 barrels.

**New Hampshire**
Signed by the Governor, 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.

**Oregon**
Signed into law, 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.

Becoming law with the Governor’s signature, House Bill 2742 allows the holder of an off-premises sales license to sell factory-sealed containers of malt beverages that hold more than seven gallons.

**Rhode Island**
On the Governor’s desk, Senate Bill 199 seeks to modify limitations on quantities of malt beverages that can be sold at retail by brewery and brewpub manufacturer license holders for off-premises consumption. Allowable sales of malt beverages would increase from one case to two cases of twelve ounce containers and a maximum of forty-eight sixteen ounce containers per person/day.
Signed into law, H.B. 5105 authorizes a holder of a Class B or brew pub manufacturer's license to sell specified amounts of wine, beer and mixed alcoholic beverages with take-out food orders. The sale of all other alcoholic beverages and any delivery of alcoholic beverages is prohibited.

**Taxation:**

**New Jersey**
Reported from 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.

**North Carolina**
Passing the House, House Bill 619 seeks to exempt from sales and use tax sales of machinery, parts, accessories, supplies, and ingredients to certain ABC permittees for use in the manufacturing of beer, wine, and spirituous liquor for which the purchaser would otherwise be ineligible because the purchaser is primarily engaged in the restaurant business.

**Oklahoma**
Signed by 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:**

**California**
Amended several times in Senate committee, Assembly Bill 1330 prohibits an alcohol licensee from delivering alcoholic beverages to a consumer pursuant to any order received for an alcoholic beverage by telephone or other electronic means unless specified conditions are met. In addition, the bill exempts a licensed premise operated under a beer manufacturer license from a current requirement in the Alcoholic Beverage Control (ABC) Act that requires an on-sale retail licensee that give, sell, or otherwise dispense 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, as provided.

**Delaware**
Passing the legislature, H.B. 81 allows two or more microbreweries to share brewing equipment if the microbreweries maintain separate premises to sell their product to consumers and wholesalers.

**Michigan**
Senate Resolution 71 commemorates July 2021 as Craft Beer Month.

**Missouri**
Signed by the Governor, Senate Bill 126, among multiple provisions, adds 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 allows 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.

**New Hampshire**
Passing both legislative chambers, [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**
Passing committee in substitute form, [S.B. 72](#) establishes farm brewery and winery-brewery beverage licenses.

[Senate Bill 3977](#) establishes an advisory council for the brewery, cidery, meadery, and distillery industries in NJ and provides for funding through certain alcoholic beverage tax receipts.

**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.