

January 2023 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

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

Brewers Association Submits “TTB Unaddressed Issues” Petition

The Brewers Association (BA) has submitted a formal [petition](#) to the Alcohol and Tobacco Tax and Trade Bureau (TTB) composed of a number of items related to regulatory modernization from a variety of past BA submissions which to date have either remained unaddressed or have been deferred for future consideration. These represent a variety of incremental, as well as some more substantive, updates that will provide both brewers and TTB with increased efficiencies, reduced paperwork and a better path to compliance.

TTB Extends Comment Period for Trade Practice Rulemaking

The comment period for the advance notice of proposed rulemaking (ANPRM) on trade practices has been extended until June 7, 2023. Comments can be seen and/or submitted at Regulations.gov docket [TTB-2022-0011](#).

THE STATES

Arizona

[House Bill 2223](#) provides a new definition of “craft producer” to mean a licensed farm winery, a licensed microbrewery or a licensed craft distiller and further provides that such craft producer’s representative may consume small amounts and may serve the products of the licensed craft producer on the premises of an off-sale retailer or a retailer with off-sale privileges for the purpose of sampling the products of the craft producer. Additionally, the bill provides for the issuance of microbrewery festival and fair licenses and increases the total market value of promotional items furnished by a wholesaler to a retailer in any calendar year from \$500 to \$700 and specifically prohibiting the provision of refrigerators.

Arkansas

[House Bill 1021](#) seeks to allow microbrewery-restaurants, if located in a county with a population of fifty thousand (50,000) or less, to sell, deliver, or transport beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant to licensed retailers.

Indiana

[House Bill 1217](#) provides for a primary source of supply or wholesaler to allow a permittee on a nondiscriminatory basis to use equipment that is owned by the primary source of supply or wholesaler. The permittee may only use the equipment to hold and dispense alcoholic beverages to a consumer on a temporary basis during a special event.

[H.B. 1310](#) seeks to allow a small brewery to receive, bottle, and package beer from another small brewery if certain requirements are met.

Kentucky

[SJR 12](#) directs the Department of Alcoholic Beverage Control to study its licensing fee structure.

Mississippi

[S.B. 2018](#) would remove the tax on wholesale sales of beer.

Montana

Among several provisions, [House Bill 97](#) modifies the definition of “small brewery” to include brewers that produce less than 100 gallons per year and prohibits industry members from giving glassware and cups to retailers.

Passing the House, [H.B. 124](#) provides for the quarterly collection of beer, wine, and hard cider taxes.

Draft bill [L.C. 3265](#) seeks to amend the definition of certain beers to increase the limit on alcohol by volume from 14% to 19%.

Amended in committee, [S.B. 75](#) addresses the registration of out-of-state breweries, certain sales and shipping of beer and revises laws related to beer shipped by beer wholesalers.

Clearing the Senate and now under House consideration, [S.B. 20](#) addresses a variety of tax issues related to alcohol beverages. Specific to brewers, it clarifies that licensed brewers selling directly to retailers, special permittees, or the public are liable for paying the tax imposed on beer and specifies a tax due date on such sales.

Passing committee, [H.B. 48](#) seeks to allow breweries, distilleries, and wineries to maintain and operate storage depots.

Amended in committee, [H.B. 95](#) specifies, in part, that a brewer, beer importer, or beer wholesaler may not sell or deliver beer unless a retail licensee pays within 7 days of the delivery and may not extend more than 7 days' credit for payment for the beer to a retail licensee.

[Draft bill 779](#) would allow for collaboration beers and the serving of beer not brewed on the premises if made in collaboration with another Montana small brewery.

Nebraska

[L.B. 301](#) seeks to increase the gallonage tax on ready-to-drink cocktails from \$0.95/gallon to \$3.75/gallon.

[L.B. 403](#) would increase the amount a craft brewery can self-distribute from 250 to 5,000 barrels/year.

[L.B. 404](#) provides for freely negotiated contracts between small producers and wholesalers and specifies that a franchise or agreement does not mean a small producer contract entered into or renewed on or after January 31, 2024.

New Hampshire

[House Bill 167](#) removes the requirement that nano breweries manufacture beverages in a public building.

[H.B. 407](#) seeks to add nano breweries to the list of licensees liable for an additional 30 cent/gallon fee on beverages sold or transferred for retail sale or to the public.

[S.B. 21](#) seeks to change the due date for monthly reports by licensees to the liquor commission and authorizes the commission to accept payments and reports electronically.

New York

[Senate Bill 1441](#) would credit any on-premises licensees or any manufacturing licensee with on-premises retail privileges for each day they were unable to operate due to COVID-19, such credits being applied to the licensee's license renewal.

[S.B. 1546](#) seeks to increase taxes on alcohol by fifty 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.

North Dakota

[House Bill 1303](#) provides the new definition "diluted beverages" which means alcoholic beverages prepared from the admixture of spirits or wine with water, dairy products, fruit juices, or vegetable juices, to which natural flavors, artificial flavors, sweetening agents, or food additives may be added to produce a beverage distinct from the spirits or wine. The term does not include beverages containing twelve and one - half percent or more of alcohol by volume.

Oklahoma

[Senate Bill 8](#) would, among several provisions, allow brewers and small brewers to host off-site events under specified conditions.

[S.B. 263](#) seeks to create a new small brewer self-distribution license fee classification of \$350.00 for those producing fifteen thousand (15,000) barrels or less in the previous calendar year.

[Senate Bill 422](#) further provides for the termination of distribution agreements.

Oregon

[Senate Bill 616](#) would allow the holder of direct shipper permit to ship up to five cases of cider or malt beverages, each containing not more than nine liters, per month to an Oregon resident.

Utah

[H.B. 100](#) would permit an off-premise beer retailer to make off-premise beer deliveries under certain circumstances.

Virginia

Amended in committee, [S.B. 809](#) would require licensees that sell wine and beer for off-premises consumption, when displaying such wine and beer outside a clearly discernible location reserved solely for alcoholic beverages, to not place such wine or beer in an area immediately adjacent to nonalcoholic beverages containing the same or similar brand name, logo, or packaging as an alcoholic beverage and equip any such display with signage that indicates the product.

[Senate Bill 885](#) directs the Virginia Alcoholic Beverage Control Authority to convene a work group to study an alternative beer distribution program.

[H.B. 1971](#) and companion S.B. 1387 would require retail licensees to keep complete, accurate, and separate records of all slotting fees, as defined in the bill, received from a manufacturer of both alcoholic and nonalcoholic beverages, including a manufacturer that licenses its nonalcoholic products brand to another manufacturer for use with an alcoholic product.

[House Bill 2001](#) seeks to require retail licensees that are authorized to sell and serve alcoholic beverages for on-premises consumption to provide customers with information regarding the alcohol by volume content for each type of alcoholic beverage sold and served on the premises.

[H.B. 2258](#) creates a restricted wholesale beer license that authorizes the licensee to provide wholesale beer distribution services to brewery and limited brewery licensees, provided that no more than 500 barrels of beer shall be distributed by the licensee in any one calendar year.

[Senate Bill 1371](#) creates an exception to the tied house restriction on the retail sale of beer by allowing brewery licensees to sell no more than 5,000 barrels of beer per year to retail licensees for resale.

Washington

[Senate Bill 5002](#) seeks to lower the allowable blood alcohol concentration (BAC) limit to .05.

Companion bills [S.B. 5375](#) and H.B. 1344 provide a definition of "low-proof beverage" to mean any beverage that is 16 ounces or less and that contains more than 0.5 percent alcohol by volume and less than seven percent alcohol by volume, but does not include wine, malt beverages, or malt liquor. Additionally, the bill imposes a \$2.50/gallon tax on such beverages.

Companion bills [H.B. 1131](#) and S.B. 5154 would create both Producer Responsibility Organizations (PRO) that producers of packaging and paper products must join and fund, and Distributor Responsibility Organizations (DRO) as an alternative to PROs for producers and distributors of beverage containers (sealed glass, metal, or plastic bottle or can) which would be tasked with establishing, operating, and funding a deposit return system for beverage containers.

West Virginia

[House Bill 2349](#) seeks to authorize temporary 30-day licenses for out-of-state nonintoxicating beer brewers to import beer for test marketing and distribute to festivals and samplings.

[S.B. 94](#) seeks to remove limitations on nonintoxicating craft beer delivery licenses.

Wyoming

[Senate Bill 64](#) specifies that provisions governing relations between malt beverage distributors and manufacturers do not apply to those who manufacture or import less than fifty thousand (50,000) barrels of malt beverages per calendar year.