

## February 2023 Legal & Legislative Update

### THE STATES

#### Arizona

[H.B. 2769](#) would define "ready-to-drink spirits products" to mean distilled spirits mixed with other beverages that may contain flavoring or coloring materials and other ingredients, that do not exceed twelve percent alcohol by volume, that are sealed in an original container of not more than twenty-four ounces and that are sold in the manufacturer's original packaging. It would also set the tax rate for such products at \$1.25/gallon.

#### Arkansas

Considered and amended, [House Bill 1021](#) seeks to allow microbrewery-restaurants to sell and transport beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant licensee to licensed retailers in an amount not to exceed five thousand barrels per year.

Amended multiple times, [H.B. 1162](#) would authorize microbrewery-restaurants to manufacture and sell ready-to-drink products, which are defined as containing spirituous liquor with a final finished product of no greater than fifteen percent (15%) alcohol by weight.

[House Bill 1380](#) would allow wholesaler or manufacturing representatives to conduct tasting events, reduces the relevant permit fees and increases the number and sizes of samples.

#### California

[Senate Bill 269](#) seeks to authorize the holder of a beer manufacturer's license, a winegrower's license, or craft distilled spirits manufacturer's license that holds any combination of those licenses for a single premises to have alcoholic beverages that are authorized under those licenses at the same time anywhere within the premises and to maintain a designated area upon that premises where retail sales and consumption authorized under those licenses may occur.

[S.B. 277](#) seeks to authorize a retail package off-sale beer and wine licensee to also sell low alcohol-by-volume spirits beverages not exceeding 10 percent ABV in containers no larger than 16 ounces.

[Assembly Bill 546](#) would revise tied-house restrictions related to paying, crediting, or compensating a retailer or retailers for advertising, display, or distribution service in connection with the advertising and sale of all alcoholic beverages, rather than only distilled spirits.

#### Connecticut

[Senate Bill 905](#) provides, among a number of provisions, that liquor, certain alcohol, and liquor coolers of not more than 7% ABV are taxed at the same rate as beer.

Among a host of provisions, [H.B. 6548](#) addresses alternating proprietorship and contract manufacturing agreements, subjects beer manufacturers to beer keg identification, receipt and refund requirements, and allows a permitted manufacturer of spirits or beer that also holds a

farmers' market sales permit to sell, and offer free tastings of, its spirits or beer at a farmers' market operated as a nonprofit enterprise or association .

## **Hawaii**

[House Bill 374](#) and companion S.B. 480 would alter the definition of “beer” to expressly exclude sake, cooler beverages, or any products of distillation, by whatever name known, that contain distilled spirits, alcoholic spirits, or spirits.

Companion bills [Senate Bill 676](#) and House Bill 898 seek to impose a one cent per drink surcharge based on 1.50 ounces of distilled spirits, five ounces of sparkling wine or still wine, and twelve ounces of cooler beverages, beer other than draft beer, or draft beer beginning July 1, 2023, and ending June 30, 2026.

Amended in committee, [S.B. 687](#) would increase the amount of malt beverages, wine, and alcohol that a small craft producer pub licensee may produce during the license year. For malt beverages, the amount would increase from 70,000 to 150,000 barrels. Senate Bill 1103 contains identical provisions.

[Senate Bill 717](#) expands the definition of "beer" under the liquor regulatory laws to mean any alcoholic beverage containing no less than 0.5 per cent alcohol by volume obtained by fermentation of any infusion or decoction of malt or any substitute, including alcohol seltzer beverages and excluding sake, cooler beverages, and other distilled products. It further authorizes brewpubs to sell beer they manufacture, or beer manufactured on their premises, subject to certain conditions.

Amended and passing second reading, [H.B. 647](#) expands the definition of "beer" under the State's liquor tax and liquor regulatory laws, to specify that the term includes an alcohol by volume of no less than 0.5 per cent and alcohol seltzer beverages, but excludes certain other forms of distillation.

[H.B. 1259](#)/S.B. 1571 seek to allow direct shipment of all forms of liquor, rather than just wine, by certain licensees.

[House Bill 1458](#)/Senate Bill 1103 would increase the volume of malt beverages, wine and liquor produced by small craft producer pub license holders.

Deferred in committee, [H.B. 1084](#) sought to increase the gallonage tax on all alcohol beverages, with beer rising from 93 cents per wine gallon on beer other than draft beer and 54 cents per wine gallon on draft beer to \$1.24 per wine gallon on beer other than draft beer and 72 cents per wine gallon on draft beer.

Passing committee, [Senate Bill 160](#) seeks to lower the threshold blood alcohol concentration to .05 for the offense of operating a vehicle while under the influence of an intoxicant.

## **Illinois**

[Senate Bill 2193](#) creates a brewer shipper's license that allows a person with a brewer, class 1 brewer, class 2 brewer, class 3 brewer, or brewpub license or who is licensed to make beer under the laws of another state to ship beer made by that licensee directly to a resident of this state who is 21 years of age or older for that resident's personal use and not for resale.

[S.B. 2216](#) provides, among several provisions, that a class 3 brewer licensee who meets certain criteria may obtain a self-distribution exemption to allow the sale of not more than 77,500 (instead of 6,200) gallons of beer from each in-state or out-of-state class 3 brewery premises, which shall not exceed 232,500 (instead of 18,600) gallons annually in the aggregate, to retail licensees and certain brewers.

[Senate Bill 2433](#) seeks to prohibit the display of any alcopop beverage in premises licensed to sell alcoholic liquor at retail adjacent to soft drinks, fruit juices, bottled water, candy, or snack foods portraying cartoons or youth-orientated photos.

## **Indiana**

Amended in committee, [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.

[House Bill 1510](#) would allow certain brewers to sell or transfer beer to certain food manufacturers for the purpose of adding or integrating the beer into a product or recipe. The bill further provides that a product that contains the transferred beer may not contain more than 0.5% of alcohol by volume when the product leaves the food manufacturer's facility and requires the brewer to destroy a finished product that contains more alcohol by volume than is permitted.

Passing the House as amended, [H.B. 1544](#) provides a definition for "mixed beverage" to mean a prepared cordial, cocktail, or highball that is in a can or container that holds not more than twenty-four (24) ounces of the beverage and is a mixture of: (1) whiskey, neutral spirits, brandy, gin, or another distilled spirit; and (2) carbonated or plain water, pure juice from a flower or plant, or other flavoring materials; that is suitable for immediate consumption and contains not less than five-tenths percent (0.5%) of alcohol by volume and not more than fifteen percent (15%) of alcohol by volume. The bill further provides for the sale, transport and delivery of mixed beverages by wine wholesalers.

Passing the House as amended, [House Bill 1624](#) establishes the Indiana craft beverage council, the Indiana craft beverage council fund, and the Indiana craft beverage foundation fund for promotion and industry support purposes.

## **Iowa**

Clearing initial subcommittee consideration, [House Bill 158](#) would require the Alcoholic Beverages Division of the Department of Commerce to adopt as rules the substance of federal regulations concerning the placement of alcoholic beverage products and the offering of inducements by a manufacturer or a wholesaler of alcoholic liquor, wine, or beer.

[S.B. 191](#) would allow a manufacturer of beer to engage in alternating proprietorship arrangements with other in-state manufacturers of beer.

[H.B. 260](#) provides for the direct shipment of beer.

### **Massachusetts**

A Commonwealth of Massachusetts Superior Court judge has ruled that the application of the state's franchise termination provisions, which were amended in 2021 to allow breweries to terminate wholesalers in the absence of cause, in a case involving Atlantic Importing Co. and Jack's Abby Brewing, LLC is unconstitutional due to the use of arbitration to determine what the brewer owed the wholesaler upon termination. The ruling vacates the previously arbitrated award, and the Court will meet with both parties to determine further proceedings.

[House Bill 3101](#) / Senate Bill 931 seek to double the excise tax on alcoholic beverages.

### **Michigan**

The Michigan Brewers Guild has recognized Representative Pauline Wendzel with its inaugural [Defender of Michigan Beer Award](#).

### **Mississippi**

Under House consideration following Senate passage, [S.B. 2018](#) would remove the tax on wholesale sales of beer.

Dying in committee, [House Bill 934](#) would require the holder of an on-premises retailer's permit under the local option alcoholic beverage control law to have at least one breath analysis device that measures blood alcohol content, that, upon request by a patron, may be used to test the patron's blood alcohol content.

Passing the full House, [H.B. 1140](#) revises the types of manufacturers of beer, light wine or light spirit products that are prohibited from having an interest in wholesalers or distributor to include an entity that is the manufacturer of a product or substance that is infused into or becomes part of any beer, light wine or light spirit products regardless of whether the entity manufactures the final product. This provision also shall apply to all related companies, wholly-owned subsidiaries, joint ventures or any similar type of arrangement.

### **Missouri**

[House Bill 680](#) would allow homebrewed beer on licensed microbrewery premises, limited to no more than three times per year for any homebrewer unless the microbrewery premises is designated the primary meeting location for a homebrewing association by the organization's bylaws. Additionally, the bill requires every homebrewing association in the state and every person or organization hosting an organized homebrewing event to carry homebrewing liability insurance.

[S.B. 573](#) would allow charitable donations of beer from manufacturers.

### **Montana**

Passing the House, [House Bill 97](#), among several provisions, modifies the definition of “small brewery” to include brewers that produce not less than 200 gallons and no more than 60,000 barrels per year.

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

Passing the Senate, [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 initial House committee consideration after clearing the Senate, [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 both legislative chambers, [H.B. 48](#) seeks to allow breweries, distilleries, and wineries to maintain and operate storage depots.

Now under Senate consideration, [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.

Passed by the full House, [House Bill 305](#) would allow manufacturers, including brewers, to own up to three retail licenses, one of which must be co-located at a manufacturing premises with two available for satellite locations.

[Senate Bill 312](#) would allow for collaboration beers and for brewers to serve beer not brewed on the premises if made in collaboration with another Montana small brewery.

### **Nebraska**

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

Scheduled for a committee hearing, [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.

[L.B. 512](#) seeks to increase the number of retail locations a craft brewery-manufacturer licensee may operate from five to ten.

### **New Hampshire**

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

Passing committee, [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.

[Senate Bill 137](#) repeals the nano brewery license and provides that beverage manufacturer license holders with an annual production under 2,500 barrels shall not enter into a contract brewing arrangement with a contract brewer if the licensee does not brew at least 10 barrels annually and may only enter such arrangement after the licensee has been in operation for one year.

### **New Mexico**

Passing committee, [House Bill 230](#) increase liquor excise tax rates (beer is increased from .41 cents/gallon to .25 cents per twelve ounce serving) and eliminate the rate differentials for microbrewers, small winegrowers and craft distillers. Companion S.B. 259 has been introduced in the Senate.

[House Bill 343](#) provides for the direct interstate shipping of beer. The direct beer shipment permit would allow two twelve-quart cases of beer to be shipped monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use. The bill also provides for a competitions and tastings permit allowing for seventy-five gallons of beer to be shipped into New Mexico for individually identified events.

### **New York**

Companions [Senate Bill 1999](#) and A.B. 3912 provide for direct interstate and intrastate cider shipments.

[S.B. 2852](#)/A.B. 3132 authorize the direct intrastate and interstate shipment of liquor, cider, mead, and braggot.

[S.B. 3028](#) / A.B. 2954 creates a tax credit for small businesses, including breweries, that sell a certain percentage of products produced in New York state.

[Senate Bill 3459](#) and Assembly Bill 3864 would allow brewery supply stores to sell New York state labelled beer for off-premises consumption.

[A.B. 3821](#) would authorize the sale of merchandise other than beer by licensed breweries and licensed farm breweries, the operation of another business on a licensed premises, and allow licensed breweries and farm breweries to charge for tours and tastings.

[Assembly Bill 3844](#) authorizes the direct intrastate and interstate shipment of liquor.

### **North Dakota**

Failing on a floor vote after being given a “do not pass” recommendation in committee, [House Bill 1303](#) sought to provide a new definition "diluted beverages" to mean 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 would not have included beverages containing twelve and one - half percent or more of alcohol by volume.

Failing on a floor vote, [H.B. 1504](#) sought to provide an alcoholic beverage tax credit for qualified microbrew pubs and brewer taproom licensees and an income tax credit for qualified brewers for certain barley purchases from in-state growers.

Passing the Senate, [S.B. 2319](#) would alter the parameters of special event permits for microbrew pub and brewer taproom license holders.

Amended in committee, [Senate Bill 2363](#) seeks to allow, under certain conditions, an individual under twenty - one years of age to enter and remain in a brewer taproom.

### **Oklahoma**

[H.B. 1715](#) seeks to exempt brewers who manufacture less than 25,000 barrels annually from the provisions relating to the termination of beer distribution agreements, removes the ability to terminate an agreement with a beer distributor at any time by giving written notice, and provides for small brewer fair market value payments to a terminated distributor.

[S.B. 639](#) provides a definition of hard seltzer to mean any beverage containing more than one-half of one percent (0.50%) of alcohol by volume and obtained by the alcoholic fermentation of grain or sugar and combined with carbonated water and other flavoring and labeled as a "malt beverage" by the United States Department of Treasury Alcohol and Tobacco Tax and Trade Bureau or as beer by the Food and Drug Administration. For the purposes of taxation, distribution, sales, and regulation, hard seltzer shall mean the same as beer as provided in this section; provided, that hard seltzer shall not include carbonated beverages mixed with wine and spirits.

Advanced from committee, [Senate Bill 799](#) would allow a manufacturer or brewer whose products are made outside the state to hold an ownership interest in an Oklahoma licensed retailer under certain conditions.

[House Bill 2349](#) provides for a 19 cent/liter tax rate on spirits with an alcohol-by-volume (ABV) of less than fifteen (15%) percent.

### **Oregon**

Clearing committee, [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.

### **Rhode Island**

[Senate Bill 78](#) and House Bill 5397 seek to exempt from the sales and use tax the sale of beer and malt beverages at retail.

### **Tennessee**

Companion bills [S.B. 304](#) and H.B. 376 seek to make definitional changes to the terms "alcoholic beverage," "beverage," "beer," and "high alcohol content beer" to change alcohol by weight designations to alcohol by volume and in the case of "beer" to allow beverages,

regardless of the process by which it was manufactured or the fruit, grain, or product from which the alcohol was derived, to fall within that definition.

### **Texas**

Companions [H.B. 2003](#) and S.B. 752 provide for delivery and direct shipment of specified alcoholic beverage products, including malt beverages, to consumers.

[House Bill 2200](#) seeks to define “spirit coolers” to include products up to 17% ABV and would permit retail sales by holders of wine and malt beverage retailer's off-premise permits.

### **Vermont**

[House Bill 158](#) seeks to require all manufacturers and distributors of covered beverages to participate in a producer responsibility organization that shall manage the collection and disposition of beverage containers. In addition, the bill would increase from four cents a container to five cents a container the fee a manufacturer or distributor of a beverage container pays to a retailer or redemption center for redemption of a container of a beverage brand that is not part of a commingling program.

### **Virginia**

Passing both legislative chambers, [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.

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

Each failing to advance from committee, [H.B. 1971](#) and companion S.B. 1387 sought to 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.

Failing to clear committee, [House Bill 2001](#) sought 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.

Amended multiple times in the House and again in the Senate, [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.

Failing to receive committee consideration, [Senate Bill 1371](#) sought to create 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**

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

Both receiving public hearings, 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.

Amended in their respective committees, [H.B. 1131](#) and S.B. 5154 require producers of certain paper products and packaging (covered PPP) to participate in and fund the operations of a producer responsibility organization (PRO) to collect and manage covered PPP from consumers; make changes to minimum post-consumer recycled content (PCRC) requirements, including: requiring additional types of products to meet PCRC requirements, moving responsibility for the registration and reporting of covered PPP products that are also subject to PCRC requirements to the PRO, and amending existing PCRC requirements for products subject to PCRC requirements that are not covered PPP; and provide for producers of certain beverage containers to satisfy producer responsibility obligations for the beverage containers through the formation of a distributor responsibility organization and the establishment of a deposit return system.

### **West Virginia**

[H.B. 3136](#) and companion S.B. 513 clarify that licensed brewers and licensed resident brewers may have more than one location so long as the brewer or resident brewer does not produce more than 50,000 barrels of nonintoxicating beer or nonintoxicating craft beer in the aggregate for a calendar year, and to allow for brewers to enter into contract brewing services agreements for purposes of sharing equipment and facilities as part of the manufacturing process.

[Senate Bill 534](#), among a host of provisions, would permit authorized brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries a limited off-site retail privilege at private fair and festivals for off-premises consumption sales, and would allow multiple places of manufacture for certain brewers or resident brewers.

### **Wyoming**

Failing to advance from committee, [Senate Bill 64](#) specified 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.

Failing to be considered, [H.B. 237](#), the Beer Freedom Act, sought to repeal the excise tax on malt beverages.