

May 2023 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

FDA Issues Revised Guidance on the Labeling of Certain Beers

The U.S. Food and Drug Administration has issued a revised guidance “[Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration](#)” to add sesame to the list of major food allergens that are part of mandatory label information on packaged beers that are subject to the Food and Drug Administration’s (FDA’s) labeling laws and regulations.

Brewers Association Advocates in Support of Funding for Hops and Barley Research

The Brewers Association recently worked with the House Small Brewers Caucus, along with the National Barley Growers Association, National Barley Improvement Committee, Hops Research Council, and Hop Growers of America to build congressional support for [appropriations funding for hops and barley research](#).

THE STATES

Alabama

[Senate Bill 194](#) defines a new category of ready to drink mixed liquor beverages containing no more than 12.5 percent alcohol by volume called "mixed spirit beverages."; requires all mixed spirit beverages, other than those distributed by the Alcoholic Beverage Control Board, to be distributed through a licensed wholesaler; and requires each importer and manufacturer of mixed spirit beverages to designate sales territories for each of its brands and enter into an exclusive franchise agreement with a licensed wholesaler for each sales territory.

[H.B. 425](#) seeks to allow brewery or winery employees 18 years of age or older to serve alcoholic beverages under certain conditions.

Arizona

Signed by the Governor, [House Bill 2223](#) provides microbrewery festival/fair licenses, addresses craft producer sampling abilities, and increases, from \$500 to \$700, the cap on the total market value of promotional items that a wholesaler may furnish without cost to an on-sale retailer in any calendar year.

Arkansas

Failing to advance, [Senate Bill 284](#) sought to repeal the ability of microbrewery-restaurants, small breweries, and retail liquor permit holders to deliver alcoholic beverages.

Failing to advance prior to adjournment, [S.B. 411](#) sought to amend the definition of beer to change the maximum alcoholic content to 12% ABW and to provide that the minimum container size of beer to be sold for off-premises consumption is sixteen ounces.

Signed into law, [House Bill 1760](#) repeals residency requirements currently in effect for obtaining a wholesaler license for alcoholic beverages.

California

Now under Assembly consideration, [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.

Advancing after initial committee consideration, [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.

Passing the Senate, [S.B. 788](#) seeks to remove the barrel production requirement that a licensed beer manufacturer must meet in order to manufacture cider or perry at the licensed production premises and to sell cider or perry to any licensee authorized to sell wine.

Colorado

Passed by the legislature, [Senate Bill 264](#) seeks to authorize licensees with the ability to sell alcohol beverages to jointly participate in up to fifty-two festivals held by another licensee within a 12-month period.

Connecticut

Moving between Senate committees, [Senate Bill 905](#), among a number of provisions, establishes a new \$3.57 per wine gallon alcoholic beverage tax for liquor coolers with an alcohol by volume of over 7% ABV by manufacturers that produce up to 50,000 proof gallons and decreases, from weekly to biweekly, the frequency at which certain permittees must clean beer or wine pipes and barrel tubes.

Florida

Passing both legislative chambers, [House Bill 1459](#) provides that the annual registration fee of \$30 for each malt beverage brand and label only applies to a brand or label that is sold to a distributor, not to a brand or label that is kept in-house, and specifies that no other annual registration fee for a brand or label is authorized.

Hawaii

Now in conference committee, [Senate Bill 717](#) expands the definition of "beer" 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. The bill would also authorize brewpubs to sell beer so-defined that they manufacture, including beer manufactured on their premises, subject to certain conditions.

Moving to conference after the House disagreed with Senate amendments, [H.B. 647](#) provides a definition of "low alcohol by volume spirits beverage" to mean any alcoholic beverage containing no more than five per cent alcohol by volume and includes distilled spirits mixed with

other ingredients, including both nonalcohol and alcohol components and establishes a tax on low alcohol by volume sprits beverages at a rate of \$1.98 per wine gallon.

Amended in the Senate, [House Bill 1458](#) would increase the volume of malt beverages, wine and liquor produced by small craft producer pub license holders, with the malt beverage cap increasing from 70,000 to 150,000 barrels.

Illinois

Receiving a first reading in the Senate, [H.B. 2502](#) provides that no retail establishment with a retail sales floor that exceeds 2,500 square feet shall display alcopops immediately adjacent to soft drinks, fruit juices, bottled water, candy, or snack foods portraying cartoons or youth-oriented photos and that any retail establishment with a retail sales floor that is equal to or less than 2,500 square feet shall either not display alcopops immediately adjacent to soft drinks, fruit juices, bottled water, candy, or snack foods portraying cartoons or youth-oriented photos or equip the display with specified signage.

Iowa

Signed into law, [H.B. 478](#) provides for brewpub alternating proprietorship arrangements.

Signed by the Governor, [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.

Kansas

Signed by the Governor, [House Bill 2059](#), among several provisions, provides a specific exception from the Kansas Food Code for microbreweries to allow dogs in inside areas upon meeting specified conditions and would allow distributors to provide a sample of up to three gallons of any brand of beer or cereal malt beverage to be provided to a licensee so long as the sample is of a product the licensee has not purchased from the distributor within the previous twelve months.

Louisiana

[S.B. 194](#) seeks to increase the age to enter a Class A-General retail establishment (defined as a retail outlet where alcohol is sold on the premises for consumption on the premises) from 18 to 21 and removes the exception for a minor who performs in a band to be on the premises of the establishment.

Maine

[Senate Bill 682](#) would allow distilleries, small distilleries, and rectifiers within and outside the state to ship their spirits products to Maine consumers in a manner similar to that presently allowed for wineries to ship their wine products.

Maryland

Before the Governor for action, [Senate Bill 448](#) provides that a holder of a Class 1 distillery license, Class 4 limited winery license, Class 5 brewery license, Class 7 micro-brewery license,

Class 8 farm-brewery license, or Class 9 limited distillery license may not directly ship to a consumer during a calendar year (1) more than the equivalent of 18 standard size 750 milliliter bottles of liquor or (2) more than 3,456 ounces of beer.

Massachusetts

Moving through multiple committees, [Senate Bill 478](#) seeks to expand the sale of products by farmer breweries and pub brewers.

Mississippi

Approved by the Governor, [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 applies to all related companies, wholly-owned subsidiaries, joint ventures or any similar type of arrangement.

Missouri

Passing committee, [H.B. 1160](#) would allow the donation of beer to a charitable, religious, or educational organization for the sole purpose of being auctioned by the organization or institution for fund-raising purposes.

Montana

Passing both legislative chambers, [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.

Passed by both chambers of the legislature, [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 legislature, [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.

Sent to the Governor for action, [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

Signed by the Governor, [L.B. 376](#), among several provisions and under certain conditions, allows channel pricing that differentiates the price charged for a product based upon the type of license held by the retailer and the primary use of the premises on which the retailer operates.

Nevada

Failing to advance from committee, [Senate Bill 108](#) sought to authorize a person who operates one or more brew pubs to sell at retail: (1) malt beverages that are manufactured on or off the

premises of any of the brew pubs for consumption at any other location operated by the person; and (2) malt beverages that are manufactured on the premises of any of the brew pubs and which are sealed in packages at any other location operated by the person for consumption off the premises. The bill also sought to allow such a person to transport malt beverages to and store malt beverages at any location operated by the person for the purpose of conducting such sales and to transport malt beverages to another person who operates a brew pub for the purpose of selling the malt beverages at a special event in this state defined as an event that lasts not longer than 3 calendar days and for which a permit has been issued by the local government where the event is conducted.

New Hampshire

Passed by both legislative chambers, [House Bill 167](#) removes the requirement that nano breweries manufacture beverages in a public building.

New Mexico

Falling victim to the Governor's line item veto, provisions in [House Bill 547](#) seeking to raise taxes on all alcoholic beverages has been stricken. Under the bill, the excise tax imposed on beer manufactured or produced by a microbrewer and sold in the state would have been set at the following rates: eight cents (\$.08) per gallon on the first thirty thousand barrels sold; twenty-eight cents (\$.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels sold; and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold. For all other manufacturers or producers, the rate would be forty-nine cents (\$.49) per gallon sold.

New York

Now on third reading in the senate, [S.B. 2852](#) authorize the direct intrastate and interstate shipment of liquor, cider, mead, and braggot.

Advanced to third reading, [Assembly Bill 6134](#) provides the liquor authority the ability to set the duration of brewer's licenses, farm brewery licenses and restaurant-brewer licenses to three years.

[S.B. 6512](#) seeks to exempt from sales tax alcoholic beverages sold at retail by a licensed producer of alcoholic beverages to a customer where such sale occurs either at the brewery, winery, or distillery where such alcoholic beverage was produced, or as a direct delivery from the licensed producer of alcoholic beverages to the customer.

[Senate Bill 6515](#) establishes the gallon as the standard measurement for purposes of taxation of alcoholic beverages.

Oklahoma

Passing the Senate with amendment, [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.

Failing to advance from Senate committee, [House Bill 2349](#) sought to exempt spirits manufactured in the state for export from alcohol excise tax.

Amended in House committee, [S.B. 8](#) adds cider to the list of products a brewer may manufacture, sell, and serve at events attended by the public. The measure also allows visitors under the age of twenty-one to tour the premises excepting the service area and authorizes brewer, small brewer, winemaker, distiller, or small farm winery licensees to host off-site events.

Amended and passing the House, [Senate Bill 422](#) modifies the procedures that must be in place for a brewer to terminate a distributor agreement with any beer distributor to include requiring the brewer to establish good cause for such termination. The measure also requires the arbitration panel to order that 100% of arbitration costs be paid by the smaller brewer if the panel determines that the small brewer's payment upon termination was not a good faith estimate of the fair market value. The measure also exempts brewers that produce less than twenty-five thousand barrels of beer annually from the termination provisions.

Signed into law, [H.B. 2843](#), among multiple provisions, provides that it shall not be deemed an inducement or a discriminatory action for a brewer, beer distributor, small brewer self-distributor, brewpub self-distributor, or a wine and spirits wholesaler to establish individualized servicing and delivery schedules for its retailers based on each retailer's actual needs, including, without limitation, on the basis of the retailer's sales volume. The measure further provides that it is not an inducement or discriminatory action for a brewer, beer distributor, small brewer self-distributor, or brewpub self-distributor to periodically perform product resets, with permission of the retail licensee, pursuant to a provided shelf plan or shelf schematic as it relates to merchandising.

Oregon

The subject of a public hearing in the House, [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.

Amended and advancing from initial committee consideration, [H.B. 2013](#) would fully open direct to consumer shipping from out-of-state producers and creates a direct to retailer permit for out-of-state manufacturers of malt beverages, wine or cider to allow manufacturer to sell at wholesale and transport malt beverages, wine or cider to specified licensees.

Considered in a public hearing, [House Bill 3610](#) seeks to establish the Task Force on Alcohol Pricing and Addiction Services to study issues related to alcohol addiction, including the benefits and drawbacks of imposing taxes on beer and wine.

South Carolina

Advancing from House committee, [Senate Bill 566](#), the South Carolina Craft Beer Economic Development Act, provides that beer sold for on-premises consumption must be produced by the brewery on its permitted premises or transferred to the brewery, subject to the following conditions: (a) the transferring and receiving breweries operate under one hundred percent

identical ownership, and (b) the annual volume of beer received by a brewery does not exceed the annual volume of beer produced by such brewery on its permitted premises. The bill also increases the maximum amount of beer that brewery permittees may sell to an individual per day for off-premises consumption to eight hundred sixty-four ounces in total.

Tennessee

Awaiting subcommittee consideration, [H.B. 376](#) seeks 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

Referred to subcommittee by the committee chair, [H.B. 2003](#) provides for delivery and direct shipment of specified alcoholic beverage products, including malt beverages, to consumers.

Left pending in committee, [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. Identical legislation has been introduced in the Senate (S.B. 1288).

Amended in committee and passed by the House, [House Bill 3712](#) would authorize malt beverage distributors to give the owner or general manager of a retail account a sample of no more than 72 ounces of a new brand of beer before deciding to carry the beverage in their stores.

Vermont

Passing initial Senate committee consideration with amendment, [House Bill 158](#) seeks to require all manufacturers and distributors of covered beverages to participate in a producer responsibility organization that manages the collection and disposition of beverage containers. In addition, the bill would increase the deposit amount to five cents per container, with wine containers being set at fifteen cents per container.

[Senate Bill 149](#) proposes to require Vermont establishments that serve alcohol to the public to carry dram shop liability insurance.

Washington

Held in committee, [S.B. 5375](#) provides 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.

Failing to pass the House, [H.B. 1131](#) sought to: 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 to 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.

Signed by the Governor, [House Bill 1772](#) provides that it is unlawful under liquor statutes and the Uniform Controlled Substances Act to manufacture, import, offer, or sell a consumable product that contains cannabis or any form of tetrahydrocannabinol in combination with beer, wine, spirits, or any other type of liquor in the same product.

Wisconsin

[Senate Bill 268](#), among many provisions, seeks to expand the definition of a fermented malt beverage to include any beverage that is recognized under federal regulations as beer, except sake or similar products.