

June 2023 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

USPS Shipping Equity Act Introduced in 118th Congress

Introduced by Representatives Dan Newhouse (R-Wash.) and Jennifer Wexton (D-Va.), along with eight other original co-sponsors, the [United States Postal Service \(USPS\) Shipping Equity Act \(H.R. 3721\)](#) would allow the USPS to ship alcohol (beer, wine, and spirits) in states where it is currently legal to do so.

THE STATES

Alabama

[House Bill 484](#) seeks to allow brewpubs to transfer beer between brewpubs under the same ownership in certain circumstances and would require beer to be transferred to certain tanks prior to sale for the purpose of determining the tax due on beer sales.

Signed into law, [S.B. 117](#) authorizes a licensed manufacturer or importer of alcoholic beverages to donate a limited number of alcoholic beverages to a licensed nonprofit special event.

[Senate Bill 321](#) 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" and requires them (other than those distributed by the Alcoholic Beverage Control Board) to be distributed through a licensed wholesaler. The bill also provides for the levy of a privilege or excise tax on mixed spirit beverages.

SJR 92/SJR 95 create the Mixed Spirit Beverage Task Force for the purpose of recommending legislation that would provide for the distribution, sale, and taxation of mixed spirit beverages.

California

Referred to Assembly committee, [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.

Passing the Senate, [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.

Referred to Assembly committee, [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

Signed by the Governor, [Senate Bill 264](#) authorizes 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

Undergoing several procedural actions, [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.

[Senate Bill 1082](#) seeks to lower the general blood alcohol content (BAC) per se limit for impaired driving and boating from 0.08% to 0.05%.

Delaware

Signed by the Governor, [House Bill 69](#) would eliminate the requirement of a daily average of no less than 25 full time employees to operate a beer garden.

Hawaii

Now in conference committee, [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

Now on third 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.

Indiana

Signed into law, [H.B. 1200](#), among a number of provisions, makes the following changes regarding breweries: (1) Removes a requirement that the 90,000 barrel limit per calendar year applies to beer manufactured at a brewery located in Indiana. (2) Allows a small brewery to receive, bottle, and package beer from another small brewery if certain requirements are met. (3) Allows a small brewery to sell or transfer beer to certain food manufacturers for the purpose of adding or integrating the beer into a product or recipe. (4) Provides that a product that contains transferred beer may not contain more than 0.5% of alcohol by volume when the product leaves the food manufacturer's facility.

Louisiana

Now under House consideration, [S.B. 194](#) would prohibit any person under the age of 18 from entering a Class A-General retail establishment (defined as a retail outlet where alcohol is sold on the premises for consumption on the premises), except for a musician under the supervision of his parent or guardian.

Maryland

Approved by the Governor, [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

A hearing has been scheduled for [Senate Bill 478](#) which seeks to expand the sale of products by farmer breweries and pub brewers.

Montana

Signed by the Governor, [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.

Signed into law, [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.

Signed by the Governor, [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.

Signed into law by the Governor, [Senate Bill 312](#) allows for collaboration beers and for brewers to serve beer not brewed on the premises if made in collaboration with another Montana small brewery.

New Hampshire

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

New Jersey

[A.B. 5496](#) creates new taxable category of alcoholic beverages called flavored malt beverages defined as a beverage having an alcoholic content of one half of one per centum (1/2 of 1%) or more by volume for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Tax and Trade Bureau, and taxed at a rate of \$4.40/gallon.

Substituted in committee, [A.B. 4630](#) would allow craft alcoholic beverage manufacturers (defined as a limited brewery license, cidery and meadery license, and craft distillery license holder) to hold an unlimited number of off-premises special events, on-premises special events, and private parties; to hold not more than 25 social affair events hosted by the holder of a social

affair permit; to offer for sale or make the gratuitous offering of de minimis food items including, but not limited to, packaged crackers, chips, nuts, and similar snacks to consumers; to sell non-alcoholic beverages; coordinate with a food vendor, including food trucks and restaurants, for the provision of food on the licensed premises and provide menus to consumers for the sale of food; to deliver the licensee's products directly to the residence of a consumer within New Jersey who is 21 years of age or older in original containers for personal consumption and not for resale. By means of a third party delivery service or in a vehicle owned, operated, or otherwise used in connection with the licensed premises; to show or display any televised program on televisions or other screening devices of any number or size on the licensed premises; to sell beverages for on-site consumption without having to give a tour; and to allow holders of restricted brewery licenses to manufacture 300,000 barrels/year (currently 10,000 barrels/year) and to sell and distribute beer to retailers.

New York

Now under Senate consideration, [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.

[Senate Bill 6724](#) would require that alcoholic beverages imported into state be first delivered to a licensed state wholesaler and maintained at a premises or warehouse operated by the wholesaler for a period of twenty-four hours.

Now under Senate consideration, [A.B. 6941](#) would permit beer to be sold for off-premise consumption between the hours of 3AM and 5AM on Sundays.

Oklahoma

Now before the Governor after being substituted in conference committee, [H.B. 1715](#) 1) defines seltzer and modifies the definition of beer to mean any beverage containing more than 0.5% of alcohol by volume and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, sugar, malt or similar products; 2) adds cider to the list of products a brewer may manufacture, sell, and serve at events attended by the public; 3) allows the holder of a small brewer license to purchase from other licensed brewers within the state, and to import beer into the state for use in manufacturing; 4) 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, and authorizes 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. In the instance that a particular brand of beer is transferred by purchase or otherwise from a brewer to a successor brewer, and the successor brewer holds a brewer's license in the state as of January 1, 2023 and has an existing distribution agreement with a beer distributor, the measure allows the successor brewer to terminate the distribution agreement, in whole or in part, in order to transfer the brand rights to the successor brewer's beer distributor. A 60 day written notice must be provided to the terminated distributor along with payment to the terminated beer distributor for the fair market value of the distributor's business with the brand or brands.

Now in conference committee after passing the House in amended form, [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.

Oregon

Failing a floor vote 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.

Passing the full House, [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.

Clearing committee with amendments, [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.

Pennsylvania

[Senate Bill 688](#) provides a definition of ready-to-drink cocktail to mean a beverage, composed in part of spirits, combined with other nonalcoholic ingredients, carbonated or still, by whatever name such beverage may be called, premixed and packaged in original containers, containing not more than sixteen ounces, provided that it is not mixed or adulterated on the licensed premises of a licensee. It shall mean any beverage consisting of at least one-half of one per centum, but not greater than twelve and one-half per centum, alcohol by volume. It shall not mean any beverage composed, in part, of wine or malt or brewed beverages. It shall be treated like liquor unless the context clearly indicates otherwise. The bill would allow distribution through both the state system and the traditional three-tier and would impose a tax at the rate of 18% of the net price of ready-to-drink cocktails sold for off-premises consumption.

South Carolina

Signed into law, [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.

Texas

Signed by the Governor, [House Bill 3712](#) authorizes 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 the Senate 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.