

February 2024 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

TTB Announces Action on Three Major Rulemakings

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is initiating action on mandatory allergen labeling, mandatory “alcohol facts” labeling, and mandatory ingredient labeling. This action may eventually result in new regulations applicable to brewers and other producers and importers of alcohol beverages. TTB will hold virtual listening sessions and will additionally accept written comments until March 29, 2024. For more information, see [Notice 232](#).

THE STATES

Alaska

[House Bill 298](#) addresses the posting of warning signs for alcoholic beverages.

Arizona

[H.B. 2185](#), among several provisions, would allow a special event license to be issued concurrently with a microbrewery license.

California

[A.B. 1940](#) would allow a wholesaler or manufacturer, or a successor, to accept the return of a seasonal brand of beer from a retail licensee if the beer is exchanged for a quantity of beer of similar quality of a brand produced or sold by the same manufacturer, or of another manufacturer if the original manufacturer has ceased doing business, with a value no greater than the original sales price to the retail licensee of the returned beer.

Colorado

[S.B. 48](#) addresses, among a number of provisions, where and how malt beverage and wine retailers may display alcohol beverages.

Florida

[House Bill 1107](#) and companion S.B. 1348 seek to authorize manufacturers of malt beverages to transfer malt beverages to another manufacturer for brewing under certain conditions; specify conditions under which licensed craft breweries may conduct tastings and sell malt beverages; delete the definition of the term “keg”; revise a provision to limit the number of barrels, rather than kegs, of malt beverages certain vendors may brew annually; authorize contract brewers to transfer malt beverages to contracting brewers and to contract with other contracting brewers if certain conditions are met; provide requirements for contract brewing and alternating proprietorship brewing; and specify instances in which certain manufacturers, brewers, bottlers, distributors, and importers of malt beverages must register their names and brands or labels that will be sold to a distributor.

[Senate Bill 696](#) / House Bill 339 seek to prohibit local governments from adopting ordinances, regulations, rules, or policies that require certificates of use for certain agricultural lands, facilities, and venues or that limit certain activities associated with agritourism including the limitation of any state-regulated activity associated with agritourism, including a farm stand, farmers market, brewery, winery, distillery, food processing and preparation activity, food truck, or mobile food service operation associated with agritourism agricultural products.

Georgia

[S.B. 163](#) provides for small brewer self-distribution, modifies provisions of franchise agreements, lifts the limit on sales for off premises consumption, and provides for donations to charitable events.

Hawaii

[Senate Bill 2096](#) would amend the definition of "cooler beverage" to include spirits-based beverages thereby qualifying them for a lower tax rate. The bill also seeks to establish a separate, reduced tax rate on beer for qualified small brewers (defined as producing one hundred fifty thousand barrels of beer or less annually).

[S.B. 2848](#) provides for the direct shipment of beer and distilled spirits.

[Senate Bill 2354](#) and companion H.B. 2522 expand 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. The bills further authorize brewpubs to sell beer they manufacture, or beer manufactured on their premises, subject to certain conditions.

[S.B. 3275](#) seeks to increase alcohol tax rates to reflect inflation since 1998 (when rates were last set), with the draft beer rate increasing forty-seven cents to \$1.01/wine gallon and the rate on beer other than draft increasing eighty-two cents to \$1.75 /wine gallon. The bill further provides for adjusting rates for future inflation.

[House Bill 1982](#) defines "low alcohol by volume spirits beverage" as any alcoholic beverage containing no more than five per cent alcohol by volume including distilled spirits mixed with other ingredients and establishes a tax on low alcohol by volume spirits beverages at a rate of \$1.98 per wine gallon.

[House Bill 2589](#) establishes a three-year surcharge on all alcohol taxes, the amount being unspecified.

[H.B. 2624](#) establishes a substance abuse treatment special fund, increases alcohol tax rates to unspecified amounts, and allocates increased liquor tax revenues to the substance abuse treatment special fund.

Illinois

Carried forward from the previous session, [Senate Bill 2625](#) provides that no retail establishment with a retail sales floor that exceeds 2,500 square feet shall display alcohol-infused products and co-branded alcoholic beverages immediately adjacent to similar products that are not alcohol-infused products or immediately adjacent to soft drinks, fruit juices, bottled waters, candies, or snack foods portraying cartoons or youth-oriented images 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 alcohol-infused products or co-branded alcoholic beverages immediately adjacent to specified products or equip the display with specified signage. Finally, the bill prohibits retail licensees from keeping, exposing for sale, or displaying alcohol-infused products immediately adjacent to products marketed toward children.

Indiana

Now under consideration in the House, [Senate Bill 205](#) allows a small brewery to manufacture beer for another small brewery if certain requirements are met (contract brewing).

Advancing to the Senate, [H.B. 1025](#) defines "mixed beverage" as 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 would further allow the holder of a wine wholesalers permit to distribute such products.

Now in Senate committee, [H.B. 1197](#), among many provisions, repeals a provision concerning residency requirements for beer wholesalers.

Passing the House, [House Bill 1086](#), in part defines a craft manufacturer as a person who holds a small brewery permit, a farm winery permit, or an artisan distiller's permit.

Iowa

[H.F. 2277](#) would prohibit a brewer from requiring a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting the wholesaler from utilizing, or requiring the wholesaler to utilize, a business-to-business electronic commerce platform offered by a brewer.

[H.F. 2167](#) provides for the direct shipment of beer.

[Senate Study Bill 3154](#) seeks to allow for the direct shipment of beer within the state.

Maryland

[H.B. 663](#) defines "ready-to-drink cocktail" as a beverage that contains distilled spirits mixed with nonalcoholic beverages and may contain wine, is 12% or less alcohol by volume, and is contained in original packaging consisting of a metallic container or can that is not more than twelve ounces. The bill further sets the tax rate for such products at 40 cents per gallon.

[Senate Bill 1041](#) seeks to establish direct-to-consumer alcoholic beverages permits authorizing the direct delivery or shipment of beer, wine, or liquor to a consumer.

Mississippi

[House Bill 777](#) seeks to renounce prohibition as the policy of this state in favor of the legal manufacture, sale, distribution and transportation of alcoholic beverages, except in counties that vote to institute prohibition after holding an election on the issue.

New Jersey

[Assembly Bill 104](#) would allow the holder of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license to sell the licensee's products at a seasonal farm market for consumption off the premises.

[A.B. 242](#)/S.B. 1343 establish a farm brewery license that would permit the licensee to produce malt alcoholic beverages for retail sale to consumers for consumption off the licensed premise and a winery-brewery sublicense that would permit wineries to produce malt alcoholic beverages for retail sale to consumers for off-premise consumption. A farm brewery licensee would be permitted to brew up to 2,000 barrels of malt alcoholic beverages per year for retail sale and would be required to be actively engaged in farming on or adjacent to the brewery site and to be actively cultivating hops or other products used in the production of the malt alcoholic beverages.

[Assembly Bill 722](#) seeks to provide tax credits to the owners and operators of breweries and wineries for purchases of Jersey Fresh products equal to the full price of commodities purchased from a Jersey Fresh Quality Grading Program licensee to be used in the production of beer or wine. The value of the credits allowed under the bill would not exceed \$10,000.

[Assembly Bill 937](#) expands permitted sales and activities on licensed premises of certain alcohol manufacturers.

[A.B. 940](#) / S.B. 1272 would allow limited breweries, certain wineries, cideries, meaderies, and craft distilleries to sell each other's products for consumption off the licensed premises.

[Senate Bill 1267](#) would allow the holder of a limited brewery license to operate up to fifteen salesrooms apart from the brewery premises; sell their products in original containers or open containers for consumption on the salesroom premises; and to jointly operate a salesroom with the holder of a winery license who produces 250,000 gallons or less.

[S.B. 2432](#) provides for the inclusion of alcohol manufacturers on highway signs and for an internet site for alcohol manufacturers in New Jersey.

New Mexico

Both bills reported from committee, [House Bill 179](#) and Senate Bill 147 seek to increase alcohol excise tax rates. The tax on beer produced by microbrewers and sold in the state would remain at the current rate of eight cents/gallon on the first 30,000 barrels sold, but then increases through

three different production levels to end at \$3.08/gallon for those producing more than 200,000 barrels.

[S.B. 163](#) would allow a small brewer or craft distiller to engage in the direct shipment of alcohol.

[House Bill 212](#) seeks to change the liquor excise tax from a fixed amount of tax to a tax rate on the wholesale price. All wholesalers would pay an excise tax of six percent of the wholesale price of beer, nine percent of the wholesale price of wine, and twelve percent of the wholesale price of spirits. The tax on wholesale craft products is levied at the same proportion as it is currently.

[H.B. 213](#) would change the liquor excise tax to one on the retail transaction. All consumers would pay an excise tax equivalent to two percent of the price of beer, three percent of the price of wine, and four percent of the price of spirits. Retailers are defined as any person having a place of business who sells alcoholic beverages.

New York

Now on third reading, [S.B. 1999](#) addresses direct interstate and intrastate cider shipments.

Oklahoma

[S.B. 1937](#) exempts label registration for those labels already approved federally.

Rhode Island

[H.B. 7277](#) seeks to exempt from the sales and use tax the sale of beer and malt beverages at retail.

Tennessee

[S.B. 2427](#) /H.B. 2607 authorize retail package store licensees and beer permittees to sell hemp-based products.

[S.B. 2636](#)/H.B. 2845 seeks to prohibit a beer permittee from selling at retail refrigerated or cold beer.

Virginia

Each passing their respective chambers, companions [S.B. 182](#) and H.B. 522 direct the Board of Directors of the Virginia Alcoholic Beverage Control Authority to promulgate regulations that prescribe the terms and conditions under which manufacturers, brokers, importers and wholesalers may advertise and promote alcoholic beverages via the Internet, social media, direct-to-consumer electronic communication, or other electronic means.

Washington

Now on second reading, [Senate Bill 5002](#) seeks to reduce the breath or blood alcohol concentration limit for operating a motor vehicle from 0.08 to 0.05.

[H.B. 2049](#) requires 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 and carry out other specified activities and makes changes to minimum postconsumer recycled content (PCRC) requirements for certain plastic products.

[H.B. 2493](#) provides a definition for "ready-to-serve alcoholic beverages" and addresses the taxation of those products.

West Virginia

[Senate Bill 369](#) provides that: a licensed brewer or resident brewer may not produce more than 50,000 barrels per calendar year at a brewer or resident brewer's principle place of business and manufacture; may have multiple locations; and may enter into contract brewing services agreements with another licensed brewer or resident brewer in good standing in its domicile state for purposes of producing nonintoxicating beer or nonintoxicating craft beer.

[S.B. 316](#) provides that it is unlawful for brewers or distributors to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$250.00 per stock keeping unit, to either trade or consumer buyers.