

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. With the close of the 111<sup>th</sup> Congress, [H.R. 4278](#) garnered 132 co-sponsors and [Senate Bill 3339](#) had the support of 28 U.S. Senators. As the 112<sup>th</sup> Congress gets underway, the Brewers Association expects both measures to be reintroduced early in the session.

Brewers Association Revises Craft Brewer Definition. The Board of Directors of the Brewers Association (BA) has voted to [revise the definition](#) of a craft brewer through a change to what constitutes “small.” Whereas the previous definition referenced a 2 million barrel annual production cap to be considered small, the new definition increases that number to 6 million barrels.

Federal Restaurant Menu Labeling Update. The federal Food and Drug Administration (FDA) has rescinded their initial interpretation of the effective date for menu labeling requirements passed as part of the comprehensive federal health care legislation approved in March 2010. This requirement, which applies to alcohol beverages, was originally considered effective upon implementation of the statute. The agency has now determined that the process will proceed with the issuance of a Notice of Public Rulemaking (NPRM) with public comments requested prior to any final rulemaking determination.

The Brewers Association filed formal [comments](#) with the Food and Drug Administration addressing issues of importance to small brewers such as maintaining consistency with current TTB regulations, accounting for normal batch-to-batch variations and how seasonal and other short-term brands will be regulated.

Beyond Caffeine: Marin Institute Pushes ABV and Container Size Limits. Following the federal ban on pure caffeine additions to alcohol beverages, anti-alcohol group Marin Institute has developed [model state legislation](#) restricting the size and alcohol content of “alcopops.” In Marin’s words: “Many products (such as Joose and Four Loko), while no longer containing caffeine, are still a public health menace, sold in supersized, super-sweet, fruit-flavored, 23.5 oz, single-serving cans, with up to 12% alcohol content—the equivalent of 4.7 standard drinks of alcohol.”

## B. THE STATES

### Distribution and Franchise:

#### **Massachusetts**

Legislation (House Docket 2759) allowing a small brewer (defined as producing less than 6 million barrels of beer a year and who accounts for less than 20 percent of the wholesaler’s business) to move without cause to a different wholesaler as long as fair market value compensation is provided, is under consideration by the legislature.

#### **Missouri**

[H.B. 258](#) and [Senate Bill 64](#) prohibits brewers or beer manufacturers as well as their officers, directors, agents, employees or affiliates, from having any direct or indirect interest in the license, business, assets or corporate stock of a wholesaler.

### **Nebraska**

[L.B. 279](#) eliminates the exception in the Liquor Control Act that allows a beer manufacturer to also own a beer distributorship.

### **New York**

Companion bills [Senate Bill 1315](#) and [Assembly Bill 789](#) seek to permit brewers with less than 300,000 barrels annual volume and which represent 3% or less of a wholesaler's brand sales measured in case equivalents to terminate an agreement with that wholesaler without having good cause. The legislation also requires payment of fair market value of the applicable distribution rights lost and allows for an arbitration panel to review the fair market value.

## **Direct Shipping:**

### **Indiana**

[House Bill 1081](#) and [House Bill 1132](#) seeks to allow the direct shipping of wine to Indiana consumers.

### **Maryland**

Companion bills [H.B. 234](#) and [S.B. 248](#) establish a direct wine shipper's permit enabling holders to ship to individual consumers.

### **Pennsylvania**

[House Bill 110](#) provides for the direct shipment of wine to the state's consumers.

### **Washington**

Companion bills [S.B. 5256](#) and [H.B. 1482](#) wine shipper's permit is created to allow licensed wine manufacturers, suppliers, importers, wholesalers, distributors, and retailers to ship wine to individuals in Washington who are at least 21 years of age.

## **Taxation:**

### **Hawaii**

Companion bills [H.B. 365](#) and [S.B. 644](#) seek to reduce the gallonage tax on the first 60,000 barrels of beer brewed or produced during a taxable year by a small brewery or brewpub in the state to \$0.23 per gallon.

### **Iowa**

[Senate Study Bill 1007](#) proposes an increase in the beer excise tax from the current \$5.89 per barrel to 73 cents per gallon (\$22.63 per barrel).

## **Maryland**

Companion bills [Senate Bill 168](#) and [House Bill 121](#) would increase the tax rates for alcoholic beverages sold in Maryland from 9 cents to \$1.16 per gallon for beer, from \$1.50 to \$10.03 per gallon for distilled spirits and from 40 cents to \$2.96 per gallon for wine. The additional revenue would be used for funding specified health services.

## **New Mexico**

[H.B. 23](#) seeks to increase the excise tax rate on beer brewed by in-state microbrewers to \$1.15 per gallon (the current rate is 8 cents/gallon).

## **Trade Practice & Other:**

### **Connecticut**

Proposed legislation ([Senate Bill 464](#)) would create the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

[H.B. 5279](#) seeks to allow the sale of alcohol on Sunday in places operating under package store permits, drug store permits, manufacturer permits for beer or grocery store permits.

### **Indiana**

Companion legislation [S.B. 197](#) and [H.B. 1239](#) seek to allow Sunday carryout sales and would also permit the sale of cold beer.

### **Iowa**

A House companion bill ([House File 25](#)) joins [Senate File 1](#) in seeking to prohibit the manufacture, sale, or distribution of caffeinated alcoholic beverages, defined as any beverage containing more than one-half of one percent of alcohol by volume, including alcoholic liquor, wine, and beer, to which caffeine is added.

### **Kansas**

[S.B. 54](#) seeks, in part, to allow the sale of strong beer in grocery and convenience stores.

### **Michigan**

Provisions of [House Bill 4061](#) would allow microbreweries and brewpubs to serve as host facilities to homebrew competitions and tastings under certain conditions.

### **Mississippi**

Died in committee: [House Bill 1164](#) allows holders of beer manufacturers permits who operate breweries to provide certain samples in conjunction with tours of premises.

Died in committee: [H.B. 1068](#), creating a special permit for package retailers to host tasting events.

Died in committee: [H.B. 744](#) seeks to raise the allowable alcohol content in beer from 5% to 8% by weight.

Died in committee: [Senate Bill 2064](#) provides for raising the allowable alcohol content in beer from 5% to 8% by weight and for the ability to make homebrewed beer for domestic or household use.

Died in committee: [S.B. 2673](#) seeks to raise the allowable alcohol content in beer from 5% to 17% by weight and provides for the ability to make homebrewed beer for domestic or household use.

### **Montana**

[S.B. 202](#) seeks to shift the allowable serving hours of small breweries.

[Senate Bill 203](#) allows for the sale of beer by off-premises retailers in growlers for off-premises consumption.

### **New Jersey**

[S.B. 2639](#) creates a craft distillery license.

### **New York**

Companion bills [S.B. 1515](#) and [A.B. 2412](#) provide that the state policy with regard to the alcoholic beverage control law shall be to promote economic development and job opportunities in the beer, wine and liquor industries of the state.

[Senate Bill 1652](#) would allow licensed brewers to serve small samples of their beer or malt beverages at certain events and includes the privilege to sell such beverages for consumption off-premises.

### **North Dakota**

[H.B. 1339](#) creates a domestic brewery license allowing holders to sell beer produced at that brewery for on- and off-premises sale. Holders may sell or ship beer to persons inside or outside of the state in a manner consistent with the laws of the place of sale or delivery in total quantities not in excess of twenty-five thousand gallons in a calendar year. Holders may offer free samples of beer for sale but may not engage in any wholesaling activities. According to the bill's sponsor, the legislation was initiated so that homebrewers could offer their beer at tastings and for sale through the state's distribution network.

### **Oregon**

[House Bill 2924](#) removes limitations on alcohol content, minimum amount, source and place of consumption for malt beverages sold by brewery; allows a brewery to sell malt beverages at retail at one premises other than premises where manufacture occurs; allows a brewery to obtain a special events license.

[S.B. 434](#) prohibits licensees of Oregon Liquor Control Commission from manufacturing, importing, storing, delivering, distributing or selling alcoholic beverages containing caffeine or containing other substances used for increasing energy levels.

Of the half a dozen bills introduced to amend a 2010 Oregon Liquor Control Commission reinterpretation of statutory language that limited homebrewers to the production of beer or wine for home consumption (which resulted in the cancellation of the Oregon State Fair's beer and wine competitions), [S.B. 444](#) has received the support of the Oregon Homebrewers Association and the American Homebrewers Association as the most comprehensive measure.

### **South Carolina**

Companion bills [Senate Bill 375](#) and [House Bill 3246](#) would ban the importation, production, manufacture, distribution, or sale of alcoholic energy drinks and caffeinated malt beverages in the state. Both classes of beverage are defined as: (1) a beverage containing at least 0.5 percent alcohol by volume that is produced by a brewer, as defined in Section 5092 of Title 26 of the United States Code, to which is added or infused caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine; or (2) a beverage containing at least 0.5 percent alcohol by volume that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer, as described in Section 25.55 of Title 27 of the Code of Federal Regulations, to which is added a flavor or other ingredient containing alcohol, except for a hop extract, and caffeine or other stimulants, alone or in combination, including, but not limited to, guarana, ginseng, and taurine.

### **Virginia**

The provisions of [H.B. 2456](#) provide for the full implementation of retail privatization of distilled spirits by January 1, 2013.

[Senate Bill 1192](#) allows manufacturers of alcoholic beverages to sell their product in retail establishments that they own or in which they have an ownership interest, something prohibited by current law.