

## A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation Update. [H.R. 1236](#), the Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) introduced by Representatives Jim Gerlach (PA-6) and Richard E. Neal (MA-2), now has [102 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [35 co-sponsors](#).

H.R. 1236 and S. 534 mirror the provisions contained in last session's H.R. 4278 and S. 3339 which gained the support of 132 U.S. Representatives and 28 Senators respectively. Specifically, the bills would reduce the small brewer rate on the first 60,000 barrels by 50 percent (from \$7.00 to \$3.50/barrel) and institute a new rate \$16.00 per barrel on beer production above 60,000 barrels up to 2 million barrels. Breweries with an annual production of 6 million barrels or less would qualify for these tax rates.

Federal Restaurant Menu Labeling Update. The Brewers Association (BA) has filed a second round of formal [comments](#) with the Food and Drug Administration (FDA) in response to that agency's [proposed rule](#) concerning implementation of the requirement for restaurants and similar retail food establishments that are part of a chain with 20 or more locations to provide calorie and other nutrition information for standard menu items. As part of the proposed rule, the FDA has tentatively exempted alcohol from these labeling requirements (the relevant section begins on page 19202, 3. Food Covered).

Additionally, the BA has joined an industry coalition in submitting a [second comment document](#) to the FDA.

Small Brewers Gain Unified Senate Voice. Citing the strong economic contributions of American small brewers, as well as their innovative and entrepreneurial spirit, U.S. Senators Max Baucus (D-Montana) and Mike Crapo (R-Idaho) have formed the [Senate Small Brewers Caucus](#). In a letter to their Senate colleagues, Baucus and Crapo outlined the mission of the caucus which includes learning about the cultural, economic and social contributions of community-based small brewers as well as the technical and innovative aspects of brewing. Importantly, the Senators also refer to the caucus as providing "a forum to discuss the issues important to small brewers while exploring what we as lawmakers can do to strengthen the growth and role of these small businesses in main street economies across the country."

The Senate-side caucus joins its House of Representatives counterpart, the [House Small Brewers Caucus](#) formed four years ago, to give small brewers a truly bi-cameral, bi-partisan voice among national decision makers in Washington, DC.

## B. THE COURTS

2009 Illinois Alcohol Tax Hikes Affirmed. The Illinois Supreme Court has [ruled](#) that a package of bills passed in 2009 to fund a \$31 billion public works program is not in violation of the Illinois Constitution. Spirits and wine distributor Rocky Wirtz filed a lawsuit claiming that the

package was unconstitutional because it bundled unrelated legislation in an effort to finance the capital expenditures program. The package included tax hikes on beer, wine and spirits and one of the key points of the legal challenge was the disparity of the tax increases on the different types of alcohol. Spirits received the biggest increase in tax rate, with the levy on a fifth of spirits rising from 90 cents to \$1.71, while the tax on a bottle of wine increased 13 cents and on a six pack of beer about 2.6 cents. Those increases will remain in place, as the court found ample precedent for taxing alcohol of varying strength at different rates.

## **C. THE STATES**

### **Distribution and Franchise:**

#### **North Carolina**

Passing the Senate, [Senate Bill 745](#) provides for small brewer franchise termination in the absence of good cause with the payment of fair market value to the affected wholesaler. Other provisions in the bill specify that franchise agreements apply to all supplier products under the same brand name, including different categories of products manufactured under a common identifying trade name and enumerate additional supplier prohibitions.

#### **Wisconsin**

[Legislative language](#) added to the recently signed-into-law state budget bill severely limits access to market for small brewers and several legislators have stated they plan to work to have those provisions repealed. Ostensibly designed to block large brewer ownership of distributorships, and despite the fact that it increases the amount of beer brewers could self-distribute, the language takes away the ability of small brewers to hold a wholesalers permit, engage in the sale of beer for on- and off-premises consumption and vacates all municipal permitting authority to the state.

### **Direct Shipping:**

#### **Louisiana**

Signed into law by the Governor, [Senate Bill 55](#) provides for the direct shipment of wine by in-state retailers.

### **Taxation:**

#### **Texas**

Signed into law, [H.B. 2582](#) repeals the partial state tax exemption allowed to in-state small beer producers, but not to out-of-state brewers. Concerned about Granholm-related legal challenges and costly litigation, the state leveled the playing field down to the detriment of Texas brewers.

### **Trade Practice & Other:**

## **Alabama**

[S.B. 192](#), seeking to allow brewpub licensees to enter the distribution channel and to allow production breweries to have on-premise sales, has been signed into law by the Governor.

## **California**

Undergoing another round of amendment, [Senate Bill 39](#) is now worded to “prohibit the import, production, manufacture, distribution, or sale of *beer to which caffeine has been directly added as a separate ingredient* at retail locations within the state.” Previously, the language was “prohibit the import, production, manufacture, distribution, or sale of *caffeinated beer beverages, as defined*, at retail locations within the state” where caffeinated beer beverages were defined as “*a beer for which the manufacturer has filed with the United States Alcohol and Tobacco Trade and Tax Bureau as an ingredient, directly added caffeine.*” That definition has been removed as has language stating “*this section is not intended to apply to any beer that has an incidental amount of caffeine as a constituent of a natural ingredient, such as coffee, chocolate, or tea.*”

[A.B. 1014](#), which has passed the Assembly and the Senate and is awaiting concurrence, exempts premises set aside by a beer manufacturer, as defined, for beer tasting, from the definition of a food facility, thereby, exempting beer tasting premises from the provisions of the California Retail Food Code. The bill is sponsored by the California Small Brewers Association.

Successfully passing both legislative chambers, [Assembly Joint Resolution 11](#) urges Congress to defeat H.R. 1161 in order to protect and preserve the ability of California wineries, and all wineries in the United States, to ship wine directly to consumers without discrimination or unnecessary limitation between in-state and out-of-state wine producers.

## **Connecticut**

Signed into law by the Governor, [Senate Bill 464](#) creates the Connecticut Beer Trail for purposes of promoting the manufacture and sale of Connecticut-made beer.

## **Illinois**

Awaiting gubernatorial action, [Senate Bill 1782](#) provides that any person having been licensed as a manufacturer shall be permitted to receive one retailer's license for the premises in which he or she actually conducts such business, permitting only the retail sale of beer manufactured at such premises and only on such premises.

## **Maryland**

Becoming law with the Governor's signature, [House Bill 1202](#) alters the number of beer samples that a holder of a brewery license may provide to a person of legal drinking age who participates in a tour, promotional event, or other organized activity at the licensed premises; increases the sample size that a holder may provide at a promotional event; and allows for the sale of up to 288 ounces of beer to tour attendees for off premises consumption.

## **Michigan**

Passing the House and under Senate consideration, [H.B. 4061](#) would allow homebrewers to serve their home brewed beer at meetings held on licensed brewery premises.

The Michigan Liquor Control Commission has given [Flying Dog Brewery](#) permission to sell its Belgian style India Pale Ale after initially denying them that right due to concerns that the name is potentially offensive. While welcoming the decision, Flying Dog Brewery is proceeding with its First Amendment lawsuit against the state.

### **Nevada**

[A.B. 200](#) authorizes a brew pub to obtain a special permit for the transportation of malt beverages which are manufactured on the premises of the brew pub and which the brew pub is donating for charitable or nonprofit purposes. The bill has been signed into law.

### **New York**

Companion bills [Senate Bill 5664](#) and [Assembly Bill 8397](#) seeks to remove all flavored malt beverages and wine products from the shelves of grocery stores and bodegas. The sale of these beverages would be limited to liquor stores. "Flavored malt beverage" means and includes any alcoholic beverage of any name or description that is manufactured from malt, wholly or in part, or from any substitute therefor including, but not limited to, liquor, spirit or wine; and containing more than one per centum sugar by volume which is manufactured with the addition of flavorings or other ingredients including, but not limited to, fruit, fruit juice or fruit flavor, or herbs, nuts or spices (including, but not limited to, chocolate, licorice or vanilla), or stimulants (including, but not limited to, caffeine, guarana, ginseng, taurine or wormwood oil). While a flavored malt beverage is a beer, naturally fermented or traditionally brewed beers, such as ales, bitters, browns, lagers, porters, stouts, seasonal beers, wheat beers or other specialty beers shall not be deemed flavored malt beverages.

### **Washington**

[S.B. 5942](#) calls for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations. The bill has been signed into law.

Another liquor sales privatization effort is picking up steam in Washington. [Supporters](#) of I-1183 have collected more than 350,000 signatures with the intent of getting the proposal, which they claim will raise \$200 million in additional revenue beyond what the state currently collects through liquor sales, on the ballot. Big box retailer Costco is once again providing the lion's share of funding to drive the initiative, which is also supported by the Washington Restaurant Association.