

## A. FEDERAL / NATIONAL / INTERNATIONAL

### Small Brewer Federal Excise Tax Legislation Update

Small brewer excise tax recalibration legislation, The Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) HR 494, was introduced in the 113<sup>th</sup> Congress on February 5 by Representatives Jim Gerlach (R-PA) and Richard E. Neal (D-MA). Joining as original co-sponsors of the bill were Representatives Peter De Fazio (D-OR), Erik Paulsen (R-MN), Earl Blumenauer (D-OR) and Patrick McHenry (R-NC).

The Small BREW Act seeks to 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.

Legislation introduced last session, [H.R. 1236](#), gained a total of [174 total sponsors](#). In the Senate, companion legislation [S.534](#) realized [44 total sponsors](#).

### BA Submits Comment on TTB Proposed Tax and Operational Reporting Changes

The Brewers Association submitted comments on the Tax and Trade Bureau's proposed rule ([NPRM 131](#)) concerning a reduction in bond amount and the quarterly filing of tax returns, tax payments and operational reports for brewers with an annual federal tax liability of \$50,000 or less. Forty-one small brewers submitted individual comments detailing how these changes would affect their businesses. [Read the BA comments](#)

## B. THE COURTS

### Department of Justice Files Suit to Block ABI Acquisition of Modelo

Citing concerns that Anheuser-Busch InBev's proposed acquisition of full ownership and control of Grupo Modelo would substantially lessen competition in the market for beer in the United States as a whole and specifically in 26 individual metropolitan areas, the U.S. Justice Department has filed an [anti-trust lawsuit](#) in federal court. Other concerns expressed in the filing include consumers paying more for beer and having fewer new products in the marketplace should the acquisition be allowed to proceed. AB InBev has announced its intention to fight the suit in court.

## C. THE STATES

### Taxation:

#### **Hawaii**

[Senate Bill 1261](#) and House companion [H.B. 1123](#) 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 (not more than 2 million barrels annual production) in the State to \$0.23 per gallon of beer.

## **New Hampshire**

After the Governor announced her intention to veto [House Bill 168](#) should it be passed by the legislature, the bill was voted as inexpedient to legislate and has died in committee. The bill sought to increase the beer excise tax by 10 cents to 40 cents per gallon, with the additional revenue going to fund alcohol abuse prevention and treatment.

## **Oregon**

Companion bills [H. B. 2515](#) and [S.B. 118](#) remove the prohibition against local government enactment of taxes on alcoholic beverages.

## **Pennsylvania**

[Senate Bill 55](#) provides for a tax credit on capital improvements up to \$200,000 for brewers with an annual production of 1.5 million barrels or less.

## **Tennessee**

[Senate Bill 422](#) would amend [Section 57-6-103](#) of the Tennessee Code to implement a volume-based formula for calculating the state beer tax. Under the current tax structure both a volume and a price calculation are used to compute the tax, so as beer prices rise, taxes also increase. This has led to Tennessee's dubious distinction as the state with the highest beer tax rate. Both [brewer and wholesaler organizations](#) are actively supporting the legislation.

Companion bills [H.B. 200](#) and [S.B. 218](#) seek to lower the per-gallon tax levied on manufacturers of high alcohol content beer to the beer tax rate instead of the wine tax rate.

## **Washington**

Companion bills [S.B. 5039](#) and [H.B. 1122](#) would extend until December 31, 2016 a tax imposed on all beer set to expire in June of this year. The additional tax is fifteen dollars and fifty cents per barrel, with revenues funding the education legacy trust.

## **Distribution and Franchise:**

### **Maryland**

[Senate Bill 223](#) creates a limited beer wholesalers license which would allow brewers producing not more than 22,500 barrels annually to self-distribute not more than 3,000 barrels in a calendar year. Non-resident brewery permit holders (out-of-state breweries) are also eligible to obtain a limited beer wholesalers license under the same parameters as in-state breweries.

### **North Dakota**

Withdrawn from further consideration, [S.B. 2103](#) sought the creation of a domestic brewery license and defined, among other things, the allowable distribution and sampling abilities.

### **Virginia**

Passing both chambers of the legislature, [House Bill 1587](#) seeks to empower the Alcoholic Beverage Control Board to render a determination in response to a petition from a private party

or Board staff, filed pursuant to the provisions of the Beer Franchise Act requesting the issuance of a case decision declaring whether contemplated action of a named party would be lawful or unlawful if carried out. The bill also provides that the ABC Board may, if it finds that a brewery or beer wholesaler has frivolously maintained a petition or defense to a petition pursuant to the Beer Franchise Act, award reasonable costs and attorney fees to the prevailing party.

## **Direct Shipping:**

### **Indiana**

Among other provisions, [Senate Bill 15](#) removes the requirement that a face-to-face transaction precede the direct shipment of wine to a consumer.

### **North Dakota**

Passing the House, [House Bill 1077](#) allows licensed wineries that produce no more than fifty thousand gallons of wine per year may sell and deliver, onsite or offsite, the wine produced by the winery directly to licensed retailers.

### **South Dakota**

[Senate Bill 100](#) provides for the direct shipment of wine to the state's consumers.

### **Tennessee**

Companion bills [H.B. 200](#) and [S.B. 218](#) seek create a direct beer shipper's license that would allow an in-state or out-of-state entity to ship beer or high alcohol content beer or both directly to consumers age 21 or older in this state for personal use.

## **Trade Practice & Other:**

### **Connecticut**

[Senate Bill 217](#) would allow the sale of Connecticut manufactured beer and spirits at farmers' markets.

### **Florida**

Setting out the parameters and requirements for craft distilleries, [S.B. 347](#) defines such a distillery as one producing not more than 75,000 gallons annually.

### **Hawaii**

[S.B. 1260](#) and companion [H.B. 1126](#) would require beers sold or distributed in the State whose labels convey the impression that the beers were produced in Hawaii to indicate otherwise if not produced in the State.

### **Indiana**

The provisions of [S.B. 14](#) would allow the holder of a beer dealer's permit issued to a grocery store or drug store to sell and deliver cold beer that was manufactured in Indiana by a microbrewery to customers for carry-out or for delivery to a customer's residence or office in a

quantity that does not exceed eight hundred sixty-four (864) ounces in a single transaction.

[Senate Bill 100](#) seeks to allow a small brewer (defined as not more than 30,000 barrels annual production) to sell beer to consumers for carryout at a farmers' market that is operated on a nonprofit basis, in a quantity of not more than 576 ounces per consumer at any one time.

[Senate Bill 231](#) provides for an exception to the law prohibiting the sale of cold beer by allowing a microbrewer to determine the temperature range at which a wholesaler, dealer, or retailer may store and sell the beer manufactured by the microbrewer, and allowing a holder of a beer dealer's permit to sell and deliver cold beer manufactured by a microbrewery if necessary to meet the microbrewer's storage and sale temperature requirements.

Passing committee, [House Bill 1293](#) creates an artisan distiller's permit for a person who desires to commercially manufacture not more than 10,000 gallons of liquor in a calendar year.

## Kansas

[Senate Bill 112](#) authorizes the production and transportation of homemade fermented beverages.

## Maryland

The provisions of [House Bill 230](#) would allow a farm brewery license holder to contract with a microbrewery license holder to brew and bottle beer from ingredients produced on the licensed farm.

## Mississippi

[House Bill 431](#), seeking to legalize homebrewing, has been reported from committee.

## Missouri

Companion bills [Senate Bill 114](#) and House Bill 165 seek to allow homebrewed beer to be removed from the premises where brewed for personal or family use and to be poured, but not sold, at organized affairs, exhibitions, or competitions, such as home brewer contests, tastings, or judgings.

## Montana

[House Bill 204](#), seeking to create a “boutique beer or wine license” for the off-premises consumption of beer or wine at a specialty shop, has been tabled.

An effort by the Montana Tavern Association to introduce legislation limiting the amount of beer small breweries could sell on-site to 10 percent of annual production has stalled after the sponsor removed those provisions from the bill.

## New Hampshire

[House Bill 275](#) seeks to establish a pilot program for the sale of New Hampshire microbrewery and nano brewery beers at certain state liquor stores.

[H.B. 253](#) seeks to repeal the serving size limitation on sales by nano breweries for consumption on the premises.

## **New York**

Companion legislation [Senate Bill 2321](#) and [House Bill 2745](#) would give the State Liquor Authority the ability to consider the economic development and job opportunities that can be created by promoting the prudent expansion of the manufacture of beer, wines, and liquors, and other ancillary activities that can help to promote tourism and recreational activities.

## **North Dakota**

[Senate Bill 2284](#) provides for a brewer taproom license which would enable breweries to offer on-premises sales and sampling and engage in limited self-distribution.

## **Oklahoma**

[H.B. 1341](#) would allow the holder of a brewer license to serve free samples of beer produced by the licensee. Samples are limited to no more than 12 fluid ounces per day and sampling must occur in a designated sampling area.

## **Pennsylvania**

Governor Tom Corbett has announced his [plan to privatize](#) all sales of alcoholic beverages in the Commonwealth. Highlights of changes affecting sales of beer include the ability of beer distributors (retail sales) to sell six-packs (currently case only sales allowed) and potentially wine and spirits if they obtain a license at auction.

## **Rhode Island**

Modeled on legislation that recently passed in Massachusetts, [House Bill 5190](#) would allow farm breweries and farm wineries to sell beer and wine for off-premises consumption at farmers markets.

## **Washington**

[H.B. 1022](#) would allow beer and/or wine specialty shop licensees to provide samples without prior Liquor Control Board approval and would also allow a brewery, distributor, winery, distiller or importer to furnish samples of beer, wine, or spirits to other licensees to negotiate sales, without being subject to regulations adopted by the Board.

[House Bill 1351](#) seeks to expand the exception to the tied house laws for private labeling by allowing breweries, microbreweries, wineries, and retail licensees to create private labels identifying the producers, for restaurants, private clubs, grocery stores, and beer and/or wine specialty shops.