

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 [147 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 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.

Tax & Trade Bureau Existence Threatened? The Office of Management and Budget has asked the Department of the Treasury, parent agency of the Tax & Trade Bureau (TTB), to investigate and report on the feasibility of moving the bureau's tax collection function to the Internal Revenue Service and the regulatory and public safety responsibilities to the Food and Drug Administration, effective in fiscal year 2013. This would essentially and effectively dismantle the agency. The Brewers Association believes this would be detrimental to small brewer interests and will be monitoring developments closely.

Changes to Certificate of Label Approval. TTB has opened a public comment period on proposed changes to TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval, (Certificate of Label Approval, or COLA). Part of the bureau's efforts to streamline the COLA application and review process, the contemplated changes would affect the application portion of the form, including elimination of the requirement to show wording appearing on caps and seals and other materials firmly affixed to the container. Other changes affect the conditions of approval and circumstances under which approved labels may be modified without submission of a new COLA.

See the [Federal Register notice](#) to learn more details and to comment on the proposed revisions by February 27.

B. THE COURTS

Texas Small Brewer Wins Partial Victory Against State Alcoholic Beverage Commission. In a decision handed down earlier this week by the U. S. District Court for the Western District of Texas, several provisions of Texas alcohol law have been found to violate the First Amendment of the Constitution. The court found in favor of Jester King Craft Brewery, one of several parties that filed suit in federal court against the Texas Alcoholic Beverage Commission (TABC), invalidating provisions that do not allow: 1) accurate labeling of a brewery's products (requiring the use of the terms "beer" and "ale" in a manner inconsistent with general industry use); 2) the ability to inform customers of where they can purchase the brewery's products; and

3) the ability to state alcohol content or the use of terms indicative of strength on labels or in advertising.

The provisions challenged in the suit, but left in place following the ruling, include the prohibition on production brewers selling their beer directly to consumers on the brewery premise and the requirement that out of state breweries obtain a separate license in order to sell their products in Texas.

In [Jester King's reaction to the ruling](#), the brewery left the door open to potential future action, stating "...small brewers still face many unjust and unnecessary obstacles that need to be removed before we can stand on equal footing with Texas winemakers and brewers in other states." Early indications are that the Texas Alcoholic Beverage Commission will not appeal this week's ruling.

C. THE STATES

Direct Shipping:

New Jersey

Passing the Senate and under consideration by House committee, [Senate Bill 3172](#) creates a new out-of-State winery license governing New Jersey direct sales by wineries licensed in other states. Under the bill's provisions, wineries that produce a maximum of 250,000 gallons per year and farm wineries will be permitted to directly sell their products to licensed retailers.

Vermont

[Senate Bill 168](#) proposes to allow retail wine merchants to ship wine in and out of state.

Distribution and Franchise:

New Hampshire

Introduced and sent to the Commerce and Consumer Affairs Committee, [House Bill 1411](#) seeks to establish a committee to study small brewer relationships with distributors.

Trade Practice & Other:

Michigan

Recently signed into law, [House Bill 5087](#) removes the 200,000 barrel limit under which a brewery permit holder may sell its beer for on-premises consumption at not more than one location that is on any of its licensed brewery premises and sell to consumers for off-premises consumption where the beer is produced. Microbrewers already enjoy these privileges.

Nebraska

The Nebraska Liquor Control Commission has made a number of recommendations to the Governor and legislature concerning the regulation of alcohol within the state, among which is increasing the gallonage production cap on microbreweries and brewpubs. The Commission recommends that the current cap, set in 1988 at 10,000 barrels, should be increased to 20,000 barrels so that these breweries can “compete in the changing marketplace.”

New Hampshire

[H.B. 1172](#) authorizes nano brewery licensees to sell their products at farmers’ markets.

[H. B. 1208](#) would increase the size of servings that may be consumed on the premises of a nano brewery (from 4 ounces to 16 ounces) and would prohibit the liquor commission from requiring federal label approval for beverages sold exclusively in the state of New Hampshire.

[House Bill 1236](#) allows beverage manufacturers, nano breweries, and brew pubs to obtain up to 5 on-premises licenses.

New Jersey

Passing the legislature and awaiting gubernatorial action, [A.B. 4012](#) eliminates the permit requirement for home production of wine and beer for personal use.

North Carolina

Signed into law by the Governor, [House Bill 796](#) allows all brewery permit holders to sell at retail malt beverages that have been manufactured at the brewery or at another out of state location by the same permittee only on the premises of the brewery.

Ohio

Signed into law by the Governor, [House Bill 243](#) allows beer manufacturer permit holders to offer for sale tasting samples of beer manufactured on the premises. Under the bill, "tasting sample" is defined to mean a small amount of beer that is provided in not more than four servings of not more than two ounces each to an authorized purchaser and that allows the purchaser to determine, by tasting only, the quality and character of the beer.

Pennsylvania

[House Bill 11](#) passed committee, but has not been taken up by the full House for a vote. Among many provisions, the bill would permit the Pennsylvania Liquor Control Board to extend Sunday store hours for beer distributors from 9 a.m. to 9 p.m., allow them to sell 16-ounce six packs or 16-ounce 12 packs of beer and permit them to sell wine, although it would not allow beer distributors to sell 12-ounce six packs. Other businesses that hold a liquor license (e.g. bars, supermarkets, delis) would be allowed to sell cases of beer.

Signed into law by the Governor, [House Bill 242](#) provides that a manufacturer may sell malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the licensed premises where sold if it complies with the conditions and regulations placed upon holders of brewery licenses. A manufacturer also may sell any malt or brewed beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption off the licensed premises in containers or packages of unlimited quantity and of any volume.

Amended and passed out of committee, [Senate Resolution 216](#) directs the Budget and Finance Committee to conduct an economic impact study of the brewery industry in the Commonwealth.

Washington

Opponents of the recently passed ballot initiative I-1183 have filed suit to block implementation of its provisions. The measure closes state liquor stores, selling those assets, with the state licensing private parties to distribute spirits and to sell spirits in retail stores meeting certain criteria. The measure establishes licensing fees for the sale and distribution of spirits based on the licensee's sales revenues. It also changes some wine distribution laws and allows non-uniform wholesale pricing for wine and spirits. Although a preliminary injunction to stop implementation was denied, the court challenge remains active.

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 [153 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 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.

Proposed Federal Changes to Organic Labeling Affect Hops and Yeast. The U.S. Department of Agriculture (USDA) recently published a proposed rule that would affect both yeast and hops in products labeled as "organic" or "made with organic [specified ingredients or food group(s)]". The proposal includes an amendment to the listing for yeast used in products labeled as "organic" (see the first full item on page 2006 of the notice) and addresses a phase out of the current exemption permitting non-organic hops to be used in beer labeled "organic" (the relevant entry is on page 2007).

See the [Federal Register notice](#) to learn more and to comment on the proposed revisions by February 13, 2012.

TTB Issues Guidance on Retail Program Participation. The Tax and Trade Bureau (TTB) recently issued an [industry circular](#) providing guidance on TTB's view of permissible and impermissible activities for industry members who provide promotional support to alcohol beverage retailers.

Tie-In Sales Prohibition Guidance Issued by TTB. In another [industry circular](#), the Tax and Trade Bureau calls the attention of the alcohol industry to the fact that tie-in sales of alcohol beverage products are prohibited inducements under the "Tied-House" provisions of the Federal Alcohol Administration Act (FAA Act). Tie-in sales are those in which a retailer is required to purchase a product that the retailer did not want to purchase, in order to obtain the product the retailer wants.

B. THE STATES

Distribution and Franchise:

New Hampshire

The subject of a public hearing in the Commerce and Consumer Affairs Committee, [House Bill 1411](#) seeks to establish a committee to study small brewer relationships with distributors.

New York

Companions [Assembly Bill 8962](#) and [Senate Bill 1315](#) allow small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

Taxation:

Arizona

The Alcohol and Substance Abuse Prevention and Early Intervention Health Initiative has been filed with the Arizona Secretary of State, seeking to increase the state tax, through voter referendum, to one dollar per gallon of beer (spirits and wine are also implicated). The current rate of taxation is 16 cents per gallon of beer. Revenue raised through increasing the tax rate would fund community programs to prevent substance.

West Virginia

[House Bill 3178](#) seeks to provide funding for substance abuse services through an increase in alcohol excise taxes. For beer, the barrelage tax would be increased from \$5.50 to \$11.00.

Direct Shipping:

Indiana

[S.B. 149](#) removes requirements that before a direct wine seller may sell to a consumer: (1) the consumer must provide information in one face-to-face transaction at the seller's place of business; or (2) under certain circumstances, the consumer must provide a verified statement that the consumer is at least 21 years of age.

New Jersey

Passing both legislative chambers and signed into law by the governor, [Senate Bill 3172](#) creates a new out-of-state winery license governing New Jersey direct sales by wineries licensed in other states. Under the bill's provisions, wineries that produce a maximum of 250,000 gallons per year and farm wineries will be permitted to directly sell their products to licensed retailers.

Washington

Reintroduced in the 2012 legislative session, companion bills [House Bill 1482](#) and [Senate Bill 5256](#) allow liquor licensees to ship wine directly to Washington consumers.

Trade Practice & Other:

Connecticut

The Governor has [announced](#) that he intends to introduce legislation in the upcoming session to update state laws regulating the sale of alcohol. This would include allowing the sale of alcohol on Sundays and the elimination of minimum pricing.

Idaho

A liquor privatization initiative has been filed with the Secretary of State by the “smaller government group” Reagan Republicans. The group has until April 30 to collect 47,000+ signatures to get the initiative on the ballot.

Indiana

[House Bill 1057](#) seeks to 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 in a quantity not exceeding 864 ounces in a single transaction. The bill also would allow Sunday carryout sales.

[H.B. 1227](#) creates an artisan distiller's permit for a person who desires to commercially manufacture not more than 40,000 gallons of liquor in a calendar year (excluding liquor sold through a liquor wholesaler).

Passing the House and under Senate consideration, [House Bill 1299](#) allows the alcohol and tobacco commission to issue an order directing a holder of an alcoholic beverage permit to cease and desist in: (1) the manufacturing, rectifying, distributing, transporting, or selling of; or (2) otherwise dealing in; an alcoholic beverage that the commission reasonably believes has a dangerously harmful effect on the health or well-being of individuals who consume the alcoholic beverage.

[House Bill 1354](#) would allow small brewers to participate in a trade show or an exposition at which products of each small brewer participant are displayed, promoted, and sold. It also seeks to allow a small brewer to sell the brewery's beer to consumers for carryout by means of a glass container or can at a farmers' market that is operated on a nonprofit basis.

[House Bill 1355](#) seeks to allow a brewer manufacturing not more than 30,000 barrels of beer in a calendar year the ability to sell and deliver beer to a retailer or a dealer and that any barrels sold and shipped outside Indiana are excluded from the 30,000 barrel limit. For brewers that manufacture not more than 60,000 barrels of beer in a calendar year, certain other abilities are allowed, including that of selling the brewery's beer by the glass for consumption on the premises. Brewers permitted to sell beer by the glass under this clause must furnish the minimum food requirements prescribed by the alcohol beverage commission.

[Senate Bill 121](#) exempts a person who manufactures wine or beer for personal use from the law prohibiting a person from refilling a container with alcoholic beverages or possessing a container that has been refilled with alcoholic beverages.

Maryland

[House Bill 401](#) and companion [S.B. 874](#) create “refillable container licenses” for restaurants in the city of Baltimore, excluding those establishments that do not serve food.

Mississippi

[House Bill 26](#) increase the amount of alcohol beer may contain from 5% by weight to 8% by weight.

[H.B. 25](#) would authorize making of homemade beer for domestic or household uses.

Missouri

[House Bill 1306](#) prohibits a caffeinated malt beverage from being imported, produced, manufactured, distributed, or sold at any retail outlet in this state. A “caffeinated malt beverage” is defined as a beverage containing caffeine or other stimulants, has at least .5% alcohol by volume, and is either produced by a brewer or produced from a formula that must be approved by the United States Alcohol and Tobacco Trade and Tax Bureau.

[Senate Bill 663](#) establishes Boulevard Brewery Company and Saint Louis Brewery, Inc. as the official breweries of the state.

Nebraska

[L.B. 781](#) would change the point at which the state excise tax is attached to products manufactured at farm wineries, craft breweries and microdistilleries. Currently, the tax is attached after production. This legislation would attach the tax at the point the product leaves the bonded portion of the licensed premise.

[Legislative Bill 978](#) prohibits grocery and liquor stores from selling beer and other liquor for less than its wholesale cost.

New Hampshire

[House Bill 1411](#) establishes a committee to study small brewer relationships with distributors.

New Jersey

Companion bills [A.B.933](#) and [S.B. 90](#) establish farm brewery and winery-brewery beverage licenses and permit farm wineries to produce hard cider.

[Assembly Bill 943](#) permits breweries to offer samples and to sell directly to consumers at brewery premises.

Companion bills [A.B. 1277](#) and [S.B. 641](#) permit limited breweries to increase their annual production from 300,000 to 500,000 barrels annually. The bills also permit these breweries to sell their products at retail to consumers on the licensed premises of the brewery for consumption on or off the premises, and to offer samples. Additionally, the bills increase the quantity of malt alcoholic beverages that may be produced by a restricted brewery (brewpub) from 3,000 to 10,000 barrels annually.

[A.B. 1464](#) creates a “Craft Distillery License” which would permit the licensee to manufacture up to 20,000 gallons of distilled alcoholic beverages, provided that at least 51 % of the raw materials used in production are grown in New Jersey. [Senate Bill 463](#) contains identical provisions.

Gaining the Governor's signature and thereby becoming law, [A.B. 4012](#) eliminates the permit requirement for home production of wine and beer for personal use.

New York

[S.B. 3109](#) permits persons with retail and wholesale licenses to provide beer samples at licensed premises or establishments.

[Senate Bill 5078](#) authorizes the liquor authority to issue farm brewery licenses for the manufacture and sale of beer on farms.

[Senate Bill 1652](#) relates to permits for licensed brewers to serve small samples of their beer or malt beverages at certain events, includes fees and definition of small sample and allows the privilege to sell such beverages for consumption off-premises.

Pennsylvania

Adopted by the Senate, [Senate Resolution 216](#) directs the Legislative Budget and Finance Committee to conduct an economic impact study of the brewery industry in the Commonwealth.

Rhode Island

[Senate Bill 2163](#) would allow the holder of a manufacturer's license to make sales not in excess of 375 ml per visitor of distilled spirits and 72 oz. per visitor of malt beverages at the licensed place of the manufacturer to visitors in conjunction with a tour and/or tasting for off-premises consumption only.

Tennessee

Companion bills [S.B. 2167](#) and H.B. [2783](#) require the alcoholic beverage commission to promulgate rules and regulations that:

- (1) Require retail package stores to place a limit on the sale of "certain high alcohol content beverages" to a customer in one day; and
- (2) Limit the amount of "certain high alcohol content beverages" sold or served to a single customer in one day at a location that has an on-premises consumption license. The bill does not define the meaning of "certain high alcohol content beverages."

Virginia

[H.B. 359](#) relates to the conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner.

[S. B. 604](#) allows a brewery licensee to sell beer at retail at premises described in the brewery license for on-premises consumption and in closed containers for off-premises consumption. The bill also allows these licensees to offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the licensed premises.

Washington

[Senate Bill 5029](#), creating a pilot project for beer and wine tasting at farmers markets, has been reintroduced for the 2012 legislative session.

Seeking to allow a microbreweries and domestic breweries to sell beer of another domestic brewery for on and off-premises consumption from its premises, [S.B. 5709](#) has been reintroduced.

[Senate Bill 5711](#) allows a specialty shop licensee to sell growlers.

[S.B. 6196](#) would allow breweries and microbreweries to be listed as the producer when they specially brew beer for restaurants or retailers.

West Virginia

[Senate Bill 528](#) creates the Scrap Metal Theft Prevention Act which includes the following provision relating to beer kegs: no scrap metal dealer may knowingly purchase, possess or receive a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognized part thereof, for the intended purpose of reselling it as scrap metal unless the scrap metal dealer receives the keg or keg parts from the beer manufacturer or its authorized representative.

Wisconsin

Companion bills [A.B. 521](#) and [Senate Bill 395](#) clarify that "homemade" wine and beer is wine and beer made by a person's own efforts and not for a commercial purpose, and is not limited to wine or beer made in the person's home. Under the bills, no license or permit is required for the making of homemade wine or beer, and allows the possession, transportation, or storage of homemade wine or beer, if all of the following apply: 1) the person who makes the wine or beer receives no compensation; 2) the wine or beer is not sold or offered for sale; and 3) the total quantity of wine or beer made by the person and any other person living in the same household does not exceed 100 gallons or 200 gallons per calendar year, depending on how many persons of legal drinking age live in the household.

If wine or beer is made in compliance with these requirements, this homemade wine or beer may also be used, without any license or permit, for purposes of exhibition, demonstration, judging, tasting, or sampling or as part of a contest or competition (collectively "home maker's event"). Finally, the bill also allows a person, including an alcohol beverage retailer or other permit holder, to conduct, sponsor, or host, at a public or private place under the control of the person, a home maker's event if the person does not sell, or acquire any ownership interest in, the homemade wine or beer.

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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.

TTB Announces COLA Streamlining Accomplishments. The Tax and Trade Bureau (TTB) has [announced details](#) of bureau efforts to date of making the certificate of label approval process more efficient. In addition, longer term initiatives are detailed, including draft rulemaking to update labeling regulations to better reflect current industry practices and make them easier to read and more useful.

B. THE COURTS

Washington Privatization Initiative Still Under Scrutiny. Following oral arguments in county court in the continuing challenge to the recently passed ballot initiative I-1183, a summary judgment has been issued upholding all provisions of the initiative except the public funding section which violates the single subject rule of ballot initiatives. Further hearings have been scheduled to determine which provisions caused voters to pass the initiative, the in violation funding provision or the privatization components.

Recall that the measure closes state liquor stores, selling those assets, with the state licensing private parties to distribute spirits and to sell spirits in retail stores meeting certain criteria. The measure establishes licensing fees for the sale and distribution of spirits based on the licensee's sales revenues. It also changes some wine distribution laws and allows non-uniform wholesale pricing for wine and spirits.

Pittsburgh, PA Drink Tax Upheld. An appeals court ruling has denied a challenge claiming an Allegheny County (City of Pittsburgh) tax on the sale at retail of liquor, malt and brewed beverages within the county is unconstitutional.

Nebraska High Court Rules FMB's are Spirits. The Nebraska Supreme Court has reversed a state Liquor Control Commission (LCC) determination that flavored malt beverages (FMB's) with less than 49% of their alcohol derived from distilled spirits flavors would be considered beer for tax purposes (mirroring the federal definition). The court found the LCC exceeded its authority in making such a determination, finding instead that because the LCC itself defines a spirits as

those beverages containing alcohol obtained by distillation and that up to 49% of the alcohol in flavored malt beverages is distilled alcohol, a flavored malt beverage, therefore, must be a spirit. There are significant tax implications to the court's decision in that beer is taxed at 31 cents/gallon and the spirits rate is \$3.75/gallon. A bill currently moving in the legislature (see below initial Nebraska entry in Trade Practices and Other section) seeks to statutorily define FMB's as beer.

C. THE STATES

Distribution and Franchise:

Illinois

[S.B. 3399](#) provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler represents 10% or less, rather than the current 15% or less, of the wholesaler's business for all beer products supplied by all brewers.

Maryland

Both measures now withdrawn from consideration, companion bills [H.B. 1127](#) and [S.B. 957](#) sought to establish a limited beer wholesaler's license available to beer manufacturers that: (i) produces not more than 4,500 barrels of its own beer annually; and (ii) holds a class 7 micro-brewery manufacturer's license issued under this article. Such license holders may sell and deliver their own brand of beer produced at the licensee's premises to a retail licensee or permit holder in the state authorized to acquire the beer. Further, these bills would have allowed holders of a microbrewery license to provide samples of beer that the licensee produces, in amounts not exceeding 2 fluid ounces per sample, to consumers at the licensed location at no charge or for a fee.

Missouri

[H.B. 1841](#), as passed by House committee, would invalidate a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights.

New York

Passing the Senate, [Senate Bill 1315](#) allow small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

Wisconsin

[A.B. 695](#) further defines "fair market value" when a wholesaler's distribution rights to a beer brand are terminated and the successor wholesaler must compensate the terminated wholesaler for the fair market value of the terminated distribution rights. This bill specifies that "fair market value," for these purposes, does not include any amount related to a brewer's or brewpub's sale of beer that it brews and sells at retail within the terminated wholesaler's territory.

Taxation:

Minnesota

[H.B. 2280](#) expands the definition of qualified brewer, increasing the amount of production a qualified brewer may have, from 100,000 barrels per year to 250,000 barrels per year, to determine eligibility for a tax credit.

Mississippi

[House Bill 306](#) levies an additional excise tax of 64.02 cents on beer.

Direct Shipping:

Rhode Island

[H.B. 7681](#) would allow for the direct shipping of wine to the state's residents.

Trade Practice & Other:

Alabama

Passing the Senate and under House consideration, [S.B. 294](#) would allow beer to be sold in containers not to exceed 25.4 ounces. Currently, all beer, except draft or keg beer, must be sold by retailers in containers not to exceed 16 ounces.

[House Bill 289](#) would allow brewpub licensees to conduct on-premise tastings or samplings of their products and sell their products for off-premises consumption.

Receiving favorable committee consideration, [H.B. 354](#) would allow the production of homebrewed beer, mead, cider, and wine in limited amounts for personal use.

California

Agreed to in both legislative chambers, [Senate Concurrent Resolution 66](#) proclaims the month of February 2012 as California Craft Brewery Month.

Connecticut

The Governor has introduced [H.B. 5021](#) which seeks to update state laws regulating the sale of alcohol. Changes, among others, would include allowing the sale of alcohol on Sundays, the elimination of minimum pricing, and adding the ability to sell beer by the glass in tasting rooms, as well as up to 9 liters for off premise consumption, for beer manufacturer permit holders.

[Senate Bill 72](#) seeks to allow beer manufacturer permittees to serve and sell food on the permit premises and to allow such permittee to also hold a restaurant permit.

Georgia

Passing the House, [House Bill 472](#) increases the number of barrels that a brewpub can produce from 5,000 to 10,000 and increases from 500 to 5,000 barrels the volume they would be allowed to sell to distributors. Finally, the restriction that the amount sold to distributors be in draft form only is lifted.

Iowa

An [Amendment S-5084](#) to HF 2337 seeks to transfer funding and control of the Iowa Wine and Beer Promotion Board from the state's Tourism/Economic Development Department to the Midwest Wine Institute at Iowa State University. The Iowa Brewers Guild is opposing the measure due to concerns with the level of representation brewing interests would receive under the new structure.

Kansas

Passing the Senate and under House consideration, [S.B. 358](#) would allow the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premises. Samples could not be removed from the licensed premise and the licensee would not be permitted to sell any alcoholic liquor for consumption on the premises.

Maryland

[House Bill 1126](#) and [Senate Bill 579](#) create a farm brewery manufacturer's license.

Passing the Senate, [S.B. 874](#) creates a "refillable container licenses" for restaurants in the city of Baltimore, excluding those establishments that do not serve food.

Mississippi

[H.B. 25](#), authorizing the making of homemade beer for domestic or household uses, has died in committee.

Passing the House, [House Bill 1422](#) would raise the allowable alcohol by weight on beer sold in the state from 5 percent to 8 percent alcohol by weight. [S.B. 2878](#), containing similar provisions, has passed the Senate and is before the House for consideration.

[S.B. 2600](#), allowing breweries to provide samples on the licensed premises, has passed the Senate and been sent to the House for consideration. Companion [House Bill 1019](#) has passed the House.

[Senate Bill 2370](#) permits the manufacture of beer of more than 5% alcohol volume by weight if the beer is only intended for sale outside the state.

Missouri

Referred to House committee, [House Bill 1306](#) prohibits a caffeinated malt beverage from being imported, produced, manufactured, distributed, or sold at any retail outlet in this state. A "caffeinated malt beverage" is defined as a beverage containing caffeine or other stimulants, has at least .5% alcohol by volume, and is either produced by a brewer or produced from a formula that must be approved by the United States Alcohol and Tobacco Trade and Tax Bureau.

Nebraska

Gaining committee approval, an [amendment](#) to [L.B. 824](#) specifies that the definition of spirits does not include flavored malt beverages, which L.B. 824 seeks to define as a beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation. This definition mirrors the federal definition for a flavored malt beverage.

The above bill has also been amended to include the provisions of [L.B. 781](#), which seeks to change the point at which the state excise tax is attached to products manufactured at farm wineries, craft breweries and microdistilleries. Currently, the tax is attached after production. This legislation would attach the tax at the point the product leaves the bonded portion of the licensed premise, mirroring federal tax treatment of alcohol beverages.

Signed into law by the Governor, [L.B. 780](#) increases the maximum number of barrels a microbrewery or a brewpub may produce per year from 10,000 barrels to 20,000 barrels.

New Hampshire

[House Bill 1411](#), establishing a committee to study small brewer relationships with distributors, has failed to receive consideration.

New Jersey

Amended and reported from committee, [S.B. 641](#) permits limited breweries (microbreweries) to sell their products at retail to consumers on the licensed premises of the brewery for consumption on or off the premises, and to offer samples. Additionally, the bills increase the quantity of malt alcoholic beverages that may be produced by a restricted brewery (brewpub) from 3,000 to 10,000 barrels annually.

New Mexico

[Senate Bill 282](#), allowing certain licensees to conduct beer, wine and spirits tastings, has died in committee.

Oklahoma

[House Bill 2725](#) would disallow the sales of low point beer at self-serve checkout stands in the state.

[H.B. 2477](#), seeking to authorize a brewer license holder to serve free samples of beer produced on premises, has died for the session.

Pennsylvania

[House Resolution 567](#) congratulates D.G. Yuengling & Son, Inc., for its many accomplishments, including recently becoming America's largest domestically owned and operated brewery.

Rhode Island

[House Bill 7301](#) would allow brewers and winegrowers to sell their products at farmer's markets and establish a farmer-brewer license.

Held for further study in committee, [Senate Bill 2163](#) would allow the holder of a manufacturer's license to make sales not in excess of 375 ml per visitor of distilled spirits and 72 oz. per visitor

of malt beverages at the licensed place of the manufacturer to visitors in conjunction with a tour and/or tasting for off-premises consumption only.

Tennessee

In their original form, companion bills [S.B. 2167](#) and H.B. [2783](#) sought to require the alcoholic beverage commission to promulgate rules and regulations that:

(1) Require retail package stores to place a limit on the sale of "certain high alcohol content beverages" to a customer in one day; and (2) Limit the amount of "certain high alcohol content beverages" sold or served to a single customer in one day at a location that has an on-premises consumption license. Both have been amended to require the alcoholic beverage commission to report to the State and Local Government Committees of the Senate and House of

Representatives by January 30, 2013 all of the following:

(1) A proposal of recommended rules and regulations regarding restricting the sale of certain high alcohol content beverages; (2) A recommended definition of "high alcohol content beverage"; and (3) Information on how other states regulate the sale of such high alcohol content beverages.

Texas

In the wake of the *Authentic Beverages Company, Inc. v. Texas Alcoholic Beverage Commission* decision, the Texas Alcoholic Beverage Commission (TABC) has issued a [bulletin](#) proclaiming the ability of the manufacturing and wholesaler tiers to advertise retail locations where their products may be purchased.

Vermont

[House Bill 623](#) proposes to allow a manufacturer or rectifier of vinous or malt beverages to dispense up to 16 ounces of beverage at a tasting event.

Virginia

[House Joint Resolution 522](#) commends the good work of the Virginia Craft Brewers Guild in promoting Virginia's small breweries.

Passed by both legislative chambers, [H.B. 359](#) relates to the conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner.

Awaiting the Governor's signature, [S. B. 604](#) allows a brewery licensee to sell beer at retail at premises described in the brewery license for on-premises consumption and in closed containers for off-premises consumption. The bill also allows these licensees to offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the licensed premises.

Washington

The Olympia City Council voted unanimously to create an Alcohol Impact Area in which a voluntarily ban on the sale for off premise consumption of single-serve containers of beer, malt liquor and fortified wine with high alcohol content would be in effect. The voluntary ban could

become mandatory after six months with approval from the Liquor Control Board. According to news reports, the beverages targeted have an alcohol content of 5 percent or more and include Boone's Farm, Colt 45, Four Loco, Steel Reserve and Sierra Nevada beer.

[S.B. 6196](#), allowing breweries and microbreweries to be listed as the producer when they specially brew beer for restaurants or retailers, has failed to receive committee consideration this session.

[Senate Bill 6475](#) has died in committee. The measure sought to require that at least 50 percent of the gross sales of a store must be from retail sales of grocery products for off-premise consumption, or the store must be a membership organization, to obtain an endorsement to offer beer and wine tasting,

West Virginia

Awaiting the approval of the Governor, [Senate Bill 528](#) creates the Scrap Metal Theft Prevention Act which includes the following provision relating to beer kegs: no scrap metal dealer may knowingly purchase, possess or receive a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognized part thereof, for the intended purpose of reselling it as scrap metal unless the scrap metal dealer receives the keg or keg parts from the beer manufacturer or its authorized representative.

[House Bill 4603](#) prohibits the sale of beer and wine at self-scan registers.

Wisconsin

Awaiting gubernatorial approval, [Senate Bill 395](#) clarifies that "homemade" wine and beer is wine and beer made by a person's own efforts and not for a commercial purpose, and is not limited to wine or beer made in the person's home. Under the bill's provisions, no license or permit is required for the making of homemade wine or beer, and allows the possession, transportation, or storage of homemade wine or beer, if all of the following apply: 1) the person who makes the wine or beer receives no compensation; 2) the wine or beer is not sold or offered for sale; and 3) the total quantity of wine or beer made by the person and any other person living in the same household does not exceed 100 gallons or 200 gallons per calendar year, depending on how many persons of legal drinking age live in the household.

If wine or beer is made in compliance with these requirements, this homemade wine or beer may also be used, without any license or permit, for purposes of exhibition, demonstration, judging, tasting, or sampling or as part of a contest or competition (collectively "home maker's event"). Finally, the bill also allows a person, including an alcohol beverage retailer or other permit holder, to conduct, sponsor, or host, at a public or private place under the control of the person, a home maker's event if the person does not sell, or acquire any ownership interest in, the homemade wine or beer.

Continuing to receive consideration, [A.B. 290](#) provides that a person is not required to hold a license or permit to manufacture wine or beer at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers, or to taste the wine or beer at this business, if the wine or beer is not sold or offered for sale. A person is also not required to hold a license or permit to manufacture wine or beer for educational purposes, or to taste the wine or

beer at the place of manufacture, if the wine or beer is not sold or offered for sale. A person who manufactures wine or beer under these circumstances is also not required to pay an occupational tax, however any person providing wine or beer for tasting at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers must hold an operator's license (i.e., a bartender's license).

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 [161 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [37 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.

FDA Rejects Petition to Ban BPA. In a [Consumer Update](#) released on the last day of March, the federal Food and Drug Administration announced that the scientific evidence at this time does not suggest that the very low levels of human exposure to BPA through the diet are unsafe. Bisphenol-A (BPA) is a chemical used in the food contact liners (including beer cans and crowns) that was first approved by the Food and Drug Administration (FDA) in the early 1960s. The update was in response to a petition filed by the Natural Resources Defense Council in 2008 which called for an end to the use of BPA.

B. THE COURTS

Status of Washington Liquor Privatization Initiative Still in Question. A county court judge has reversed his earlier ruling that upheld all provisions of the recently passed ballot initiative I-1183 except for the public funding section which he originally found in violation of the single subject rule of ballot initiatives. The judge has now ruled the entire liquor privatization measure constitutional. The state Supreme Court is scheduled to hear an appeal May 17 while the initiative is set to take effect on June 1.

The measure closes state liquor stores, selling those assets, with the state licensing private parties to distribute spirits and to sell spirits in retail stores meeting certain criteria. The measure establishes licensing fees for the sale and distribution of spirits based on the licensee's sales revenues. It also changes some wine distribution laws and allows non-uniform wholesale pricing for wine and spirits.

C. THE STATES

Distribution and Franchise:

Illinois

Prior to passing the Senate, [S.B. 3399](#) was [amended](#) to provide that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the brewer agrees to pay reasonable compensation and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 10% or less of the total annual gross receipts (rather than the total annual volume) of the wholesaler's business for all beer products supplied by the wholesaler to the retailer (rather than supplied by all brewers).

Missouri

Passing the House and now under Senate committee consideration, [H.B. 1841](#) would invalidate a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights.

The subject of a public hearing, [House Bill 1858](#) delineates certain prohibitions on brewers having an ownership interest in a wholesaler, but also addresses circumstances wherein a brewer can act as their own wholesaler.

New York

Passing the Assembly, [Assembly Bill 789](#) allows small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

Wisconsin

Failing to pass committee, [A.B. 695](#) sought to further define "fair market value" when a wholesaler's distribution rights to a beer brand are terminated and the successor wholesaler must compensate the terminated wholesaler for the fair market value of the terminated distribution rights. The bill specified that "fair market value," for these purposes, did not include any amount related to a brewer's or brewpub's sale of beer that it brews and sells at retail within the terminated wholesaler's territory.

Taxation:

Idaho

[House Bill 489](#) would exempt beverages including, but not limited to, wine and beer, from the payment of use tax if given as a free tasting to a potential customer.

Mississippi

Dying in committee, [House Bill 306](#) sought to levy an additional excise tax of 64.02 cents on beer.

Direct Shipping:

Mississippi

Failing to gain committee approval, [Senate Bill 2043](#) would have allowed the direct shipment of wines that are not listed by the alcoholic beverage control division as a part of its inventory and distribution operation.

Pennsylvania

[S.B. 790](#), providing for a direct wine shipper license, has passed the Senate.

Rhode Island

Held for further study, [H.B. 7681](#) would allow for the direct shipping of wine to the state's residents.

Trade Practice & Other:

Alabama

Receiving favorable House committee consideration, [S.B. 294](#) would allow beer to be sold in containers not to exceed 25.4 ounces. Currently, all beer, except draft or keg beer, must be sold by retailers in containers not to exceed 16 ounces.

California

[Senate Bill 1393](#) would allow the return of beer that is recalled or that is considered to present a health and safety issue by the manufacturer, importer, or governmental entity if distributed, offered for sale, or sold in the state, and would allow for the exchange of beer or a credit memorandum.

Delaware

Receiving committee approval, [S.B. 180](#) seeks to create a craft distillery license.

Georgia

Passing both chambers of the legislature and before the Governor, [House Bill 472](#) increases the number of barrels that a brewpub can produce from 5,000 to 10,000 and increases from 500 to 5,000 barrels the volume they would be allowed to sell to distributors. Finally, the restriction that the amount sold to distributors be in draft form only is lifted.

Idaho

The purpose of [Senate Bill 1344](#) is to allow a brewer who produces fewer than 30,000 barrels of beer annually to be allowed to have a financial interest in one additional brewery that produces fewer than 30,000 barrels of beer annually.

Indiana

Signed into law by the Governor, [H.B. 1054](#) specifies that the 30,000 barrel production limitation for small Indiana breweries does not apply to the manufacture of beer for sale or distribution outside Indiana. Provides that a small Indiana brewery may sell the brewery's beer on Sunday at any address for which the brewer holds a brewer's permit if the address is located within the same city boundaries in which the beer was manufactured. (Current law provides that a small

Indiana brewery may sell the brewer's beer only at the address for which the brewer's permit was issued.)

Kentucky

[House Bill 543](#) would establish a craft distillery license that permits the holder to distill less than 50,000 gallons of distilled spirits per year, to serve samples on the premises in an amount not to exceed 1 ounce per patron, and to sell to a wholesaler.

Maine

Referred to House committee, [S.B. 667](#) amends provisions related to manufacturer licenses to provide for greater consistency with regard to taste testing and the provision of samples and other regulatory requirements.

Maryland

[House Bill 595](#), specifying that a holder of certain manufacturer's licenses may apply for and obtain additional manufacturer's licenses for the same premises or elsewhere, has received favorable committee action.

Each bill receiving its originating chamber's approval, [House Bill 1126](#) and [Senate Bill 579](#) create a farm brewery manufacturer's license.

Passing both the Senate and House, [S.B. 874](#) creates a "refillable container licenses" for restaurants in the city of Baltimore, excluding those establishments that do not serve food.

Minnesota

Companion bills [House Bill 2719](#) and [Senate Bill 2374](#) would allow an out of state craft brewer to bring in craft beer one day per year, without needing to comply with licensing and brand registration laws.

Mississippi

[House Bill 7](#) has died in committee. The legislation sought to authorize the manufacture of beer of more than 5% by weight for sale in another state.

Passing the House and under Senate consideration, [H.B. 1019](#) seeks to allow beer manufacturers the ability to provide limited amounts of beer on the premises of the brewery for tasting or sampling.

Dying in committee, [House Bill 800](#) sought to allow beer manufacturers the ability to sell limited amounts of beer on the premises of the brewery.

Signed into law by the Governor, [S.B. 2878](#) raises the allowable alcohol in beer sold in the state from 5 percent to 8 percent alcohol by weight.

Passing both legislative chambers, [S.B. 2600](#) allows breweries to provide samples on the licensed premises.

Amended and passed by the House and returned to the Senate for concurrence, [Senate Bill 2370](#) permits the manufacture of beer of more than 5% alcohol volume by weight if the beer is only intended for sale outside the state.

Missouri

The subject of a public hearing, [House Bill 1306](#) prohibits a caffeinated malt beverage from being imported, produced, manufactured, distributed, or sold at any retail outlet in this state. A “caffeinated malt beverage” is defined as a beverage containing caffeine or other stimulants, has at least .5% alcohol by volume, and is either produced by a brewer or produced from a formula that must be approved by the United States Alcohol and Tobacco Trade and Tax Bureau.

Nebraska

Awaiting gubernatorial action, [L.B. 824](#) specifies that the definition of spirits does not include flavored malt beverages (FMB’s), defining them as beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation. This legislation, if passed, would invalidate a Nebraska Supreme Court decision that determined FMB’s are, by their very nature, distilled spirits and must be taxed as such at a rate of \$3.75/gallon (beer is taxed at a rate of at 31 cents/gallon).

New Hampshire

Passing the House, [H.B. 1172](#) authorizes nano brewery, beverage manufacturer, and brew pub licensees to sell their products at farmers’ markets.

Approved by the House and sent to the Senate, [H. B. 1208](#) would prohibit the liquor commission from requiring federal label approval for beer sold exclusively in the state of New Hampshire.

[House Bill 1236](#), seeking to allow beverage manufacturers, nano breweries, and brew pubs to obtain up to 5 on-premises licenses has been held over for study.

New York

[Assembly Bill 7449](#) authorizes the liquor authority to issue farm brewery licenses for the manufacture and sale of beer on farms.

Oklahoma

[H.B. 2477](#) authorizes a brewer license holder to serve free samples of beer produced on premises.

Rhode Island

Held for further study in committee, [House Bill 7301](#) would allow brewers and winegrowers to sell their products at farmer’s markets and establish a farmer-brewer license.

Tennessee

Passed by both legislative chambers and before the Governor for action, [S.B. 2167](#) requires the alcoholic beverage commission to report to the State and Local Government Committees of the Senate and House of Representatives by January 30, 2013 all of the following:

(1) A proposal of recommended rules and regulations regarding restricting the sale of certain

high alcohol content beverages; (2) A recommended definition of "high alcohol content beverage"; and (3) Information on how other states regulate the sale of such high alcohol content beverages.

[H.B. 1892](#) seeks to increase the maximum percentage of alcohol a beverage may have and still be considered "beer" from 5 percent to 12 percent by weight. In addition, the legislation would allow retail package stores to sell beer.

Virginia

Agreed to by both the House and Senate, [House Joint Resolution 522](#) commends the good work of the Virginia Craft Brewers Guild in promoting Virginia's small breweries.

Becoming law with the Governor's signature, [House Bill 279](#) provides that a person who is convicted of DUI may drive only with an ignition interlock after the first offense, as a condition of a restricted license and is required to have an ignition interlock installed in each vehicle owned by or registered to him after a second offense.

Signed into law by the Governor, [H.B. 359](#) relates to the conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner.

Signed into law by the Governor, [S. B. 604](#) allows a brewery licensee to sell beer at retail at premises described in the brewery license for on-premises consumption and in closed containers for off-premises consumption. The bill also allows these licensees to offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the licensed premises.

West Virginia

Signed into law by the Governor, [Senate Bill 528](#) creates the Scrap Metal Theft Prevention Act which includes the following provision relating to beer kegs: no scrap metal dealer may knowingly purchase, possess or receive a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognized part thereof, for the intended purpose of reselling it as scrap metal unless the scrap metal dealer receives the keg or keg parts from the beer manufacturer or its authorized representative.

Wisconsin

Signed into law by the Governor, [Senate Bill 395](#) clarifies that "homemade" wine and beer is wine and beer made by a person's own efforts and not for a commercial purpose, and is not limited to wine or beer made in the person's home. Under the bill's provisions, no license or permit is required for the making of homemade wine or beer, and allows the possession, transportation, or storage of homemade wine or beer, if all of the following apply: 1) the person who makes the wine or beer receives no compensation; 2) the wine or beer is not sold or offered for sale; and 3) the total quantity of wine or beer made by the person and any other person living in the same household does not exceed 100 gallons or 200 gallons per calendar year, depending on how many persons of legal drinking age live in the household.

If wine or beer is made in compliance with these requirements, this homemade wine or beer may also be used, without any license or permit, for purposes of exhibition, demonstration, judging, tasting, or sampling or as part of a contest or competition (collectively "home maker's event"). Finally, the bill also allows a person, including an alcohol beverage retailer or other permit holder, to conduct, sponsor, or host, at a public or private place under the control of the person, a home maker's event if the person does not sell, or acquire any ownership interest in, the homemade wine or beer.

Becoming law with the Governor's signature, [A.B. 290](#) provides that a person is not required to hold a license or permit to manufacture wine or beer at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers, or to taste the wine or beer at this business, if the wine or beer is not sold or offered for sale. A person is also not required to hold a license or permit to manufacture wine or beer for educational purposes, or to taste the wine or beer at the place of manufacture, if the wine or beer is not sold or offered for sale. A person who manufactures wine or beer under these circumstances is also not required to pay an occupational tax, however any person providing wine or beer for tasting at a business primarily engaged in selling supplies and equipment for use by homebrewers or home winemakers must hold an operator's license (i.e., a bartender's license).

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 [163 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [38 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.

B. THE COURTS

New York Small Brewers Lose Tax and Fee Exemptions. As the result of a lawsuit brought by Massachusetts-based beer importer Shelton Brothers against the New York State Liquor Authority and the Department of Taxation and Finance, the Liquor Authority has issued an [advisory](#) concerning the unconstitutionality of the excise tax exemption for small brewers in New York. Prior to the finding of unconstitutionality (based on the Supreme Court *Granholm* decision that in-state and out-of-state interests cannot be treated differently), small brewers did not pay excise tax (14 cents/gallon) on the first 200,000 barrels produced annually and were also exempt from paying brand label registration fees (\$150 per label) if production was below 1,500 barrels. [Legislation](#) has been introduced to effect a tax credit of 14 cents per gallon on the first 200,000 barrels for in-state small brewers.

California Flavored Malt Beverage Tax Slashed. A state appeals court has ruled that flavored malt beverages should be taxed as beer, not as spirits, striking down the higher tax rate put into effect in 2008 by the state Board of Equalization. Distilled spirits are taxed anywhere from \$3.30 or \$6.60 a gallon (depending on abv), whereas the tax on beer is levied at a rate of 20 cents a gallon.

C. THE STATES

Distribution and Franchise:

Illinois

After being amended and passed by the Senate, [S.B. 3399](#) has been stripped of those changes in the House and is once again as introduced. The bill provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler

represents 10% or less, rather than the current 15% or less, of the wholesaler's business for all beer products supplied by all brewers.

Missouri

Passing both legislative chambers, [S.B. 837](#) modifies the definition of franchise under Missouri franchise law, specifically for agreements between alcohol wholesalers and suppliers so that a franchise may exist even without a license to use a trade name, trademark, or service mark and regardless if there is a community of interest in the marketing of the products. This effectively invalidates a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights.

[House Bill 1858](#) delineates certain prohibitions on brewers having an ownership interest in a wholesaler, but also addresses circumstances wherein a brewer can act as their own wholesaler. A recent motion to pass the bill failed.

New York

Passing the Assembly and sent back to the Senate for consideration, [S.B. 1315](#) allows small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

Taxation:

District of Columbia

The District of Columbia Council is considering raising the excise tax on all alcohol. The beer excise tax would increase from \$2.79 per barrel to approximately \$22.00 per barrel.

Idaho

With the Governor's signature, [House Bill 489](#) becomes law. The bill exempts beverages including, but not limited to, wine and beer, from the payment of use tax if given as a free tasting to a potential customer.

New York

[Senate Bill 7344](#) would allow a 14 cent per gallon tax credit on the first 200,000 barrels produced by New York breweries with an annual production of six million barrels or less.

Trade Practice & Other:

Alabama

Passing the House and before the full Senate for a floor vote, [H.B. 354](#) would allow the production of homebrewed beer, mead, cider, and wine in limited amounts for personal use.

Awaiting gubernatorial action, [S.B. 294](#) would allow beer to be sold in containers not to exceed 25.4 ounces. Currently, all beer, except draft or keg beer, must be sold by retailers in containers not to exceed 16 ounces.

[S.B. 538](#) seeks to allow those of legal drinking age the ability to produce home brewed beer, mead, cider and table wine in limited quantities for personal use.

Alaska

[Senate Bill 128](#) allows the holder of a brewery license to sell not more than 36 ounces of the brewery's beer per day to a consumer for on premises consumption. The tasting room cannot open before 9:00AM and must cease serving by 10:00PM.

California

Passing the Assembly, [Assembly Bill 1812](#) provides that beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as "beer" and shall not be considered a dilution or mixture of any other alcoholic beverage.

Passed out of committee, [A.B. 2349](#) revises the direct inquiry provisions in the Alcoholic Beverage Control Act to remove the requirement that manufacturers and distributors can only provide consumer information on where they can find a specific product at an on-sale establishment if that on-sale retailer operates and is licensed as a restaurant. By removing that requirement, manufacturers and distributors can add bars to the list they provide consumers of on-sale establishments that serve their specific products.

Passing the Senate and under Assembly consideration, [Senate Bill 1393](#) would allow the return of beer that is recalled or that is considered to present a health and safety issue by the manufacturer, importer, or governmental entity if distributed, offered for sale, or sold in the state, and would allow for the exchange of beer or a credit memorandum.

Colorado

Passing a House Committee, but receiving no further consideration, [House Bill 1347](#) sought to increase the production limit for brewpubs from 60,000 barrels to 300,000 barrels.

Connecticut

Signed into law by the Governor, [House Bill 521](#) allows, among many provisions, the sale of alcohol on Sundays, creates a new manufacturer for beer and brew pub permit that allows a holder (must produce at least 5,000 gallons of beer annually) to manufacture, bottle, store, distribute at wholesale, sell beer, and offer free samples in the state. Beer may also be offered for retail sale for on-premises consumption with or without food. In addition, brewery permittees may provide beer tastings without requiring the visitor to first take a tour of the premises and the amount of beer both brewery and brewpub permittees may sell at retail to an individual is increased from eight to nine liters per day.

Failing to receive consideration, [Senate Bill 72](#) sought to authorize a beer manufacturer permit holder to serve and sell food on the permit premises and to allow such permittee to also hold a restaurant permit.

Delaware

Passing both chambers of the legislature, [S.B. 180](#) seeks to create a craft distillery license.

Georgia

Signed into law by the Governor, [House Bill 472](#) increases the number of barrels that a brewpub can produce from 5,000 to 10,000 and increases from 500 to 5,000 barrels the volume they would be allowed to sell to distributors. Finally, the restriction that the amount sold to distributors be in draft form only is lifted.

[House Bill 505](#) allows holders of craft brewery licenses (annual production not to exceed 250,000 barrels) to provide free tastings, offer food and to sell for on-premises consumption up to 1,000 barrels of its and other licensed craft brewery beer.

Idaho

Signed into law, [Senate Bill 1344](#) allows a brewer who produces fewer than 30,000 barrels of beer annually to be allowed to have a financial interest in one additional brewery that produces fewer than 30,000 barrels of beer annually.

Kansas

[H.B. 2689](#) contains a provision allowing licensed retailers to conduct wine, beer, and distilled spirits tasting on a licensed premise or adjacent premises.

Maine

Signed into law by the Governor, [S.B. 667](#) amends provisions related to manufacturer licenses to provide for greater consistency with regard to taste testing and the provision of samples and other regulatory requirements.

Maryland

[House Bill 595](#), specifying that a holder of certain manufacturer's licenses may apply for and obtain additional manufacturer's licenses for the same premises or elsewhere, has been signed into law.

Each bill receiving approval from both chambers, [House Bill 1126](#) and [Senate Bill 579](#) create a farm brewery manufacturer's license.

Signed into law by the Governor, [S.B. 874](#) creates a "refillable container licenses" for restaurants in the city of Baltimore, excluding those establishments that do not serve food.

Minnesota

[Senate Bill 2551](#) relates to licensing fees for small and craft brewers, changing the barrelage thresholds for various licensing categories.

Mississippi

Sent to conference committee, [H.B. 1019](#) seeks to allow beer manufacturers the ability to provide limited amounts of beer on the premises of the brewery for tasting or sampling.

Dying in committee, [House Bill 1422](#) sought to raise the allowable alcohol by weight on beer sold in the state from 5 percent to 8 percent alcohol by weight.

Awaiting gubernatorial action following passage by both legislative chambers, [S.B. 2600](#) allows breweries to provide samples on the licensed premises.

Signed into law by the Governor, [Senate Bill 2370](#) permits the manufacture of beer of more than 5% alcohol volume by weight if the beer is only intended for sale outside the state.

Missouri

Failing to receive consideration, [House Bill 1306](#) prohibits a caffeinated malt beverage from being imported, produced, manufactured, distributed, or sold at any retail outlet in this state. A “caffeinated malt beverage” is defined as a beverage containing caffeine or other stimulants, has at least .5% alcohol by volume, and is either produced by a brewer or produced from a formula that must be approved by the United States Alcohol and Tobacco Trade and Tax Bureau.

Nebraska

Signed into law by the Governor, [L.B. 824](#) specifies that the definition of spirits does not include flavored malt beverages (FMB's), defining them as beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation. This legislation, if passed, would invalidate a Nebraska Supreme Court decision that determined FMB's are, by their very nature, distilled spirits and must be taxed as such at a rate of \$3.75/gallon (beer is taxed at a rate of at 31 cents/gallon).

New Hampshire

Passing the House and the Senate, [H.B. 1172](#) authorizes nano brewery, beverage manufacturer, and brew pub licensees to sell their products at farmers' markets.

Approved by both chambers of the legislature, [H. B. 1208](#) would prohibit the liquor commission from requiring federal label approval for beer sold exclusively in the state of New Hampshire.

Tennessee

Signed by the Governor and becoming law, [S.B. 2167](#) requires the alcoholic beverage commission to report to the State and Local Government Committees of the Senate and House of Representatives by January 30, 2013 all of the following:

(1) A proposal of recommended rules and regulations regarding restricting the sale of certain high alcohol content beverages; (2) A recommended definition of "high alcohol content beverage"; and (3) Information on how other states regulate the sale of such high alcohol content beverages.

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 [165 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [40 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.

Senate Postal Reform Bill Passes; Includes Alcohol Shipping Provision. The 21st Century Postal Service Act of 2012 ([S. 1789](#)) has passed the U. S. Senate and been received by the House of Representatives for consideration. Section 405 of the bill allows for the shipping of malt beverages, wine and distilled spirits through the U.S. Postal Service to an age-verified addressee in accordance with the laws and regulations of both the originating and receiving states or territories.

TTB Issues Interim Policy for Gluten Content Statements on Alcohol Labeling. On May 24 the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued [Ruling 2012-2](#) (the findings section begins on the bottom of page 5) to address labeling and advertising issues when and use of the term "gluten-free.". TTB reserves the right to modify the interim guidance provided in this ruling when the Food and Drug Administration (FDA) issues final regulations on use of the term "gluten-free" on food labels.

B. THE COURTS

Washington Liquor Privatization Initiative Gets State Supreme Court Nod. Ballot initiative I-1183, approved by voters in the last general election, has sustained a constitutionality challenge with the Washington Supreme Court [decision](#) that it was not in violation of the single-subject rule for such initiatives. Privatization of liquor sales was effective on June 1.

C. THE STATES

Distribution and Franchise:

Illinois

Passing both chambers of the legislature, [S.B. 3399](#) provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler

represents 10% or less, rather than the current 15% or less, of the wholesaler's business for all beer products supplied by all brewers.

The Illinois Liquor Control Commission has released a set of [findings](#) in the on-going and unresolved situation concerning the ability of Anheuser-Busch owning a stake in Chicago wholesaler City Beverage.

Massachusetts

[House Bill 1877](#), authorizing certain farmer-distillers to hold a manufacturers or wholesalers license, has been set aside for further study.

Missouri

Awaiting gubernatorial action, [S.B. 837](#) modifies the definition of franchise under Missouri franchise law, specifically for agreements between alcohol wholesalers and suppliers so that a franchise may exist even without a license to use a trade name, trademark, or service mark and regardless if there is a community of interest in the marketing of the products. This effectively invalidates a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights.

New York

Passing the Assembly and sent back to the Senate for consideration, [S.B. 1315](#) allows small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

North Carolina

Signed into law by the Governor, [Senate Bill 745](#) strengthens wholesaler franchise rights with the imposition of uniform statewide pricing and additional limitations on "good cause" terminations and the rights of suppliers to amend existing agreements. The bill does allow the reversion of self-distribution rights for small brewers (under 25,000 barrels) in the absence of good cause with the payment of fair market value and the use of mediation to reach a settlement.

Taxation:

District of Columbia

Although the District of Columbia Council was considering raising the excise tax on all alcohol beverages (under the proposal, the beer excise tax rate would increase from \$2.79 per barrel to approximately \$22.00 per barrel), the provision was not contained in the final Council budget.

New York

Companion legislation [Senate Bill 7344](#) and [Assembly Bill 10181](#) would allow a 14 cent per gallon tax credit on the first 200,000 barrels produced by New York licensed breweries.

Trade Practice & Other:

Alabama

Failing to receive a Senate floor vote before the close of the legislative session, [H.B. 354](#) sought to allow the production of homebrewed beer, mead, cider, and wine in limited amounts for personal use.

Becoming law with the Governor's signature, [S.B. 294](#) allows beer to be sold in containers not to exceed 25.4 ounces. Previously, all beer, except draft or keg beer, was required to be sold by retailers in containers not to exceed 16 ounces.

California

Passing the Assembly, [A.B. 2349](#) revises the direct inquiry provisions in the Alcoholic Beverage Control Act to remove the requirement that manufacturers and distributors can only provide consumer information on where they can find a specific product at an on-sale establishment if that on-sale retailer operates and is licensed as a restaurant. By removing that requirement, manufacturers and distributors can add bars to the list they provide consumers of on-sale establishments that serve their specific products.

Delaware

Becoming law with the Governor's approval, [S.B. 180](#) creates a craft distillery license.

Kansas

Signed into law by the Governor, [H.B. 2689](#) contains a provision allowing licensed retailers to conduct wine, beer, and distilled spirits tasting on a licensed premise or adjacent premises.

Maryland

Companion bills [House Bill 1126](#) and [Senate Bill 579](#), creating a farm brewery manufacturer's license, have been signed into law by the Governor.

Receiving the Governor's approval and thereby becoming law, [S.B. 874](#) creates a "refillable container license" for restaurants in the city of Baltimore, excluding those establishments that do not serve food. The holder of the license is thus allowed to sell draft beer for consumption off the licensed premises in a specified refillable container.

Mississippi

Signed into law by the Governor, [S.B. 2878](#) raises the allowable alcohol in beer sold in the state from 5 percent to 8 percent alcohol by weight.

Dying in conference committee, [H.B. 1019](#) sought to allow beer manufacturers the ability to provide limited amounts of beer on the premises of the brewery for tasting or sampling.

Approved by the Governor, [S.B. 2600](#) allows breweries to provide samples on the licensed premises.

New Hampshire

Signed into law by the Governor, [H.B. 1172](#) authorizes nano brewery, beverage manufacturer, and brew pub licensees to sell their products at farmers' markets.

Approved by the Governor, [House Bill 1241](#) amends the definition of "specialty beer" as follows: "Specialty beer shall possess the character and flavor of a beer and may contain added ingredients such as, but not limited to, molasses, maple syrup, honey, spices, herbs, fruits, nuts, chocolate, vanilla, or other non-beverage ingredients. Specialty beer shall not include a caffeinated or stimulant-enhanced malt beverage or flavor."

Becoming law with the Governor's signature, [H. B. 1208](#) prohibits the liquor commission from requiring federal label approval for beer sold exclusively in the state of New Hampshire.

New Jersey

Passing committee favorably as substitute language for [Assembly Bill 1277](#) permits limited breweries (production microbreweries) to sell and distribute their products to a consumer on the licensed premises of the brewery: 1) for consumption on the premises only in connection with a tour of the brewery; 2) in an amount of up to 15.5 fluid gallons for consumption off the licensed premises; and 3) for sampling if properly permitted. Licensees are prohibited from selling food or operating a restaurant on the licensed premises. In addition, the quantity of malt alcoholic beverages that a restricted brewery (brewpub) may annually produce increases from 3,000 to 10,000 barrels. Finally, the bill allows a restricted brewery to sell its products to licensed wholesalers and acquire up to 10 restricted brewery licenses (currently capped at 2).

New York

Passing out of committee, [A.B. 2412](#) provides 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.

Pennsylvania

Receiving favorable committee consideration, [House Bill 2429](#) would allow breweries with an annual production of less than 25,000 barrels a year to provide samples at farmers markets and educational food expositions and to sell up to two six-packs at farmers markets.

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 [170 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [41 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.

FDA Requests Comments on Generally Recognized As Safe (GRAS) Notice. The U.S. Food and Drug Administration (FDA) has asked for comments on a [new form](#) that would be used in cases where a manufacturer voluntarily notifies the FDA that, in their view, a particular use of a substance in a product is [generally recognized as safe \(GRAS\)](#) and therefore not subject to premarket approval. Typically, TTB requires that additives used in alcohol beverages be recognized as GRAS by the FDA. Comments must be received by July 30, 2012.

TTB Announces Changes to Organic Documentation Requirements for COLAs. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued an [announcement](#) concerning changes to required documentation when submitting for label approval of alcohol beverages labeled as "100% Organic", "Organic", and "Made with Organic (specified ingredients or food group(s))". In certain situations, the submission of an organic certificate is no longer required.

B. THE COURTS

Washington Liquor Privatization Initiative Back in Court...Again. Ballot initiative I-1183, approved by voters in the last general election and recently surviving a constitutionality challenge from opponents in the State Supreme Court, is now the subject of a lawsuit brought by the supporters of the measure. The Washington Restaurant Association, the Northwest Grocery Association and Costco Wholesale Corporation have brought suit in Thurston County Superior Court claiming the state Liquor Control Board is improperly implementing the provisions of the initiative and thereby creating an anti-competitive environment for Washington businesses through discriminatory pricing and product availability restrictions.

C. THE STATES

Distribution and Franchise:

Illinois

Before the Governor for action after passing both chambers of the legislature, [S.B. 3399](#) provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler represents 10% or less, rather than the current 15% or less, of the wholesaler's business for all beer products supplied by all brewers.

New York

Before the Governor for consideration, [S.B. 1315](#) allows small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are (3%) or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement providing they pay the wholesaler fair compensation, except when the termination is for "good cause."

North Carolina

[House Bill 1193](#) seeks to increase the small brewer production threshold for self-distribution rights from the current 25,000 barrels to 100,000 barrels.

Taxation:

New York

Under the provisions of a [legislative agreement](#) announced by the Governor, any brewery that produces 60 million or less gallons of beer in New York would be eligible for a refundable tax credit applied against New York State personal income and business taxes. The credit amounts would be 14 cents per gallon for the first 500,000 gallons produced in New York, and 4.5 cents per gallon for the next 15.5 million gallons produced in the State. Both in-state and out-of-state brewers with an annual production of less than 1,500 barrels would also be exempt from the fees associated with brand label registration. The agreement also creates a farm brewery license that would allow craft brewers that use products grown in New York State similar tasting, restaurant and retail sales privileges that farm wineries already enjoy.

The agreement comes in the wake of a recent court settlement by the state that struck down an excise tax exemption granted for the first 200,000 barrels of beer produced in New York. The settlement also invalidated an exemption for New York brewers from paying brand label registration fees (\$150 per label) if a brewer's production was below 1,500 barrels.

Trade Practice & Other:

California

Before the Governor for action, [A.B. 1812](#) seeks to clarify that beer aged in empty wooden barrels previously used to contain wine or distilled spirits will continue to be defined as "beer" in order to protect the existing regulatory and licensure structure in California. The California Craft Brewers Association, the sponsor of this bill, sought this clarification due to concerns that current law creates ambiguity on how wooden barrel-aged craft beers are defined and categorized for purposes of regulation, distribution, retail sales and taxation.

Kansas

Dying in House committee after passing the Senate, [S.B. 358](#) sought to allow the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premises. Samples could not be removed from the licensed premise and the licensee would not be permitted to sell any alcoholic liquor for consumption on the premises.

Michigan

Michigan's Office of Regulatory Reinvention (ORR) has issued a [report](#) to the Governor containing 72 recommendations for improving the liquor control system. Brewers Association member Matt Greff (Arbor Brewing Co., Ann Arbor, MI) served as a member of the Advisory Rules Committee that developed the recommendations and is quoted in the ORR press release:

"These recommendations enhance economic freedom and opportunity for Michigan's craft brewers and remove competitive disadvantages compared to breweries from other states. Getting government out of the way and allowing Michigan's brewers the same opportunities already enjoyed by Michigan's wine-makers to make critical business decisions will be a catalyst for growth in this expanding industry... Supply chain decisions and other marketing considerations should be left to businesses. These recommendations should be applauded by everyone in the state who supports job growth and small business development."

The report is now before the Governor for his consideration and action.

[Senate Resolution 160](#) designates July 2012 as Michigan Craft Beer Month and commends the state's craft brewers.

New Hampshire

[House Bill 1236](#), allowing beverage manufacturers, nano breweries, and brew pubs to obtain up to 5 on-premises licenses, has been set aside for further study.

New Jersey

Passing both chambers of the legislature and awaiting gubernatorial action, [Assembly Bill 1277](#) permits limited breweries (production microbreweries) to sell and distribute their products to a consumer on the licensed premises of the brewery: 1) for consumption on the premises only in connection with a tour of the brewery; 2) in an amount of up to 15.5 fluid gallons for consumption off the licensed premises; and 3) for sampling if properly permitted. Licensees are prohibited from selling food or operating a restaurant on the licensed premises. In addition, the quantity of malt alcoholic beverages that a restricted brewery (brewpub) may annually produce increases from 3,000 to 10,000 barrels. Finally, the bill allows a restricted brewery to sell its products to licensed wholesalers and acquire up to 10 restricted brewery licenses (currently capped at 2).

New York

[Assembly Bill 9505](#) seeks to enable food stores to develop restaurant areas within their stores where beer and/or wine may be served for on-premises consumption, subject to the same rules that apply to restaurants and taverns.

Passing both legislative chambers, [Senate Bill 7216](#) allows an individual who holds a brewpub license to also hold a restaurant license (and vice versa), and to sell beer brewed by their brewpub through a wholesaler to retail establishments they own.

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 [172 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [43 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.

TTB Increases Allowable Changes to COLAs. The Tax and Trade Bureau has issued an expanded list of items that may be changed on approved labels which do not require you to obtain a new COLA. Read the details in TTB's [Allowable Changes to Approved Labels](#)

B. THE STATES

Distribution and Franchise:

Missouri

Vetoed by the Governor, [S.B. 837](#) sought to modify the definition of franchise under Missouri franchise law, specifically for agreements between alcohol wholesalers and suppliers so that a franchise may exist even without a license to use a trade name, trademark, or service mark and regardless if there is a community of interest in the marketing of the products. This would have effectively invalidated a recent court decision favorable to the franchise rights of very small brands by requiring Missouri statutes to be interpreted through a prior court decision favorable to distributor brand rights. [Read the Governor's veto message.](#)

New York

Signed into law by the Governor, [S.B. 1315](#) allows small brewers whose annual volume is less than 300,000 barrels of beer and whose sales to a wholesaler are 3% or less of a multi-brand beer wholesaler's annual business, the right to terminate an agreement in the absence of "cause" providing the wholesaler is paid fair market value compensation.

Taxation:

New York

[Legislation](#) has been signed by the Governor restoring tax benefits to brewers after they were invalidated by a court settlement. Under the provisions of the legislation, any brewery that produces 60 million or less gallons of beer in New York is eligible for a refundable tax credit

applied against New York State personal income and business taxes. The credit amounts equal 14 cents per gallon for the first 500,000 gallons produced in New York, and 4.5 cents per gallon for the next 15.5 million gallons produced in the State. Both in-state and out-of-state brewers with an annual production of less than 1,500 barrels are also exempt from the fees associated with brand label registration. The legislation also creates a farm brewery license that allows craft brewers using products grown in New York State the same tasting, restaurant and retail sales privileges that farm wineries already enjoy.

Trade Practice & Other:

California

Signed into law by the Governor, [A.B. 1812](#) clarifies that beer aged in empty wooden barrels previously used to contain wine or distilled spirits will continue to be defined as "beer" in order to protect the existing regulatory and licensure structure in California. The California Craft Brewers Association, the sponsor of this bill, sought this clarification due to concerns that current law creates ambiguity on how wooden barrel-aged craft beers are defined and categorized for purposes of regulation, distribution, retail sales and taxation.

Signed into law by the Governor, [Senate Bill 1393](#) allows distributors and breweries eligible to self-distribute to remove recalled beer from the marketplace in exchange for identical product or, if safe product is unavailable, to issue a refund or credit.

[A.B. 351](#), moved to the inactive file, sought to permit winegrowers and beer manufacturers to describe the "composition" of their products, in addition to other characteristics already permitted, when engaging in tastings or instructional events for their licensees or employees.

Reported out of Senate committee after previously passing the Assembly, [A.B. 573](#) corrects inconsistencies in existing provisions of the Alcoholic Beverage Control (ABC) Act in order to allow all licensed manufacturers and wholesalers the same opportunity to inspect, clean and replace their tapping equipment.

Delaware

Passed by both chambers of the legislature, [House Concurrent Resolution No. 56](#) designates October 15 through 21, 2012 to be "Delaware Wine & Beer Week."

New York

Signed into law by the Governor, [Senate Bill 7216](#) allows an individual who holds a brewpub license to also hold a restaurant license (and vice versa), and to sell beer brewed by their brewpub through a wholesaler to retail establishments they own.

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 [172 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [43 co-sponsors](#).

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Request for Comments on Foreign Trade Barriers. The Office of the U.S. Trade Representative has requested comments on prior to publishing the annual National Trade Estimate Report on Foreign Trade Barriers. Further information, including how to submit comments, can be found in the August 15 [Federal Register entry](#). All comments must be received by October 15, 2012.

B. THE COURTS

Court Upholds Ohio Franchise Ruling on Terminations. An Ohio appeals court has upheld a district court decision blocking the termination of several distributors by MillerCoors. Following the joint venture that created MillerCoors in 2008, a move to consolidate distributors through terminations based on the "successor manufacturer" provision was initiated, however, distributors argued that MillerCoors was not, in fact, a successor manufacturer because the individual business entities that existed pre-joint venture still exercised control over the new business. The courts have agreed with this interpretation and therefore, in the absence of cause, the distributors cannot be terminated under the Ohio franchise law.

Kentucky Alcohol Sales Restrictions Deemed Unconstitutional. A U.S. District Judge has ruled Kentucky's ban on grocery store, gas station and convenience store sales of wine and liquor unconstitutional under the equal protection clause of the 14th Amendment. The ruling referenced the arbitrary nature of the restriction, given that drug stores are allowed to sell wine and liquor, as the rationale for striking it down. The ban will remain in effect temporarily, however, pending the resolution of related legal issues.

C. THE STATES

Distribution and Franchise:

Illinois

Signed into law by the Governor, [S.B. 3399](#) provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler represents 10% or less, rather than the current 15% or less, of the wholesaler's business for all beer products supplied by all brewers.

Trade Practice & Other:

California

Passing both chambers of the legislature, [A.B. 573](#) corrects inconsistencies in existing provisions of the Alcoholic Beverage Control (ABC) Act in order to allow all licensed manufacturers and wholesalers the same opportunity to inspect, clean and replace their tapping equipment.

[Senate Bill 778](#), allowing manufacturers or licensed suppliers of beer, wine or spirits to offer the chance to win prizes via a consumer contest, sweepstakes or by sponsoring a sweepstakes, has passed the legislature and been presented to the Governor for action.

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 [172 co-sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [43 co-sponsors](#).

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B. THE COURTS

Decision Finding Kentucky Alcohol Sales Restrictions Unconstitutional Stayed. Following a U.S. District Court decision that Kentucky's ban on grocery store, gas station and convenience store sales of wine and liquor were unconstitutional under the equal protection clause of the 14th Amendment, the ruling has been stayed pending an appeal by state regulators.

Game Changer for State Franchise Laws? After the Reyes Beverage Group entered into an agreement to purchase Virginia's Chesbay Distributing Company, MillerCoors filed a court motion to block the purchase based on the brewer's contractual right of first refusal. Alleging that, in coming to an agreement with Reyes, Chesbay violated its distribution agreement with MillerCoors, the brewer now seeks to assign distribution rights to a party of its choosing.

Chesbay subsequently filed a complaint before the Virginia Alcoholic Beverage Control claiming the brewer exceeded its authority under the state franchise law and MillerCoors responded by amending its complaint to claim that trademark integrity and control issues are at the core of its concerns. Many distributors view this as an abrogation of state franchise law, with federal trademark law taking precedence, a claim MillerCoors denies. However, if this argument is successful, there could be far-reaching implications to the three-tier system.

C. THE STATES

Trade Practice & Other:

California

Signed into law by the Governor, [A.B. 573](#) corrects inconsistencies in existing provisions of the Alcoholic Beverage Control (ABC) Act in order to allow all licensed manufacturers and wholesalers the same opportunity to inspect, clean and replace their tapping equipment.

[Senate Bill 778](#), allowing manufacturers or licensed suppliers of beer, wine or spirits to offer the chance to win prizes via a consumer contest, sweepstakes or by sponsoring a sweepstakes, has been signed into law by the Governor.

Georgia

The Georgia Department of Revenue adopted an [emergency rule](#) that requires the use of the Georgia Tax Center (GTC) when applying for an alcohol license or the renewal of a license. Additionally, licensees must submit excise tax returns and other reports electronically via the GTC.

New Jersey

Signed into law by the Governor, [Assembly Bill 1277](#) permits limited breweries (production microbreweries) to sell and distribute their products to a consumer on the licensed premises of the brewery: 1) for consumption on the premises only in connection with a tour of the brewery; 2) in an amount of up to 15.5 fluid gallons for consumption off the licensed premises; and 3) for sampling if properly permitted. Licensees are prohibited from selling food or operating a restaurant on the licensed premises. In addition, the quantity of malt alcoholic beverages that a restricted brewery (brewpub) may annually produce increases from 3,000 to 10,000 barrels. Finally, the bill allows a restricted brewery to sell its products to licensed wholesalers and acquire up to 10 restricted brewery licenses (currently capped at 2).

Pennsylvania

Passing the House, [House Bill 2429](#) would allow qualified breweries to provide samples and sell up to two six-packs at farmers markets and educational food expositions.

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation. [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 [174 total sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [44 total 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.

B. THE COURTS

Threat to State Franchise Law Averted – MillerCoors, Reyes and Chesbay Settle. After coming to an agreement and withdrawing all complaints and claims concerning the Reyes Beverage Group's proposed acquisition of Chesbay Distributing, the perceived threat to the three-tier system posed by MillerCoors' legal argument has disappeared.

Recall that the Reyes Beverage Group entered into an agreement to purchase Virginia's Chesbay Distributing Company and MillerCoors filed a court motion to block the purchase based on the brewer's contractual right of first refusal. Alleging that, in coming to an agreement with Reyes, Chesbay violated its distribution agreement with MillerCoors, the brewer sought to assign distribution rights to a party of its choosing.

Chesbay subsequently filed a complaint before the Virginia Alcoholic Beverage Control claiming the brewer exceeded its authority under the state franchise law and MillerCoors responded by amending its complaint to claim that trademark integrity and control issues were at the core of its' concerns. Many distributors viewed this as an abrogation of state franchise law, with federal trademark law taking precedence, a claim MillerCoors denied.

C. THE STATES

Distribution and Franchise:

Illinois

On a 4-2 vote, the Illinois Liquor Control Commission has ruled that Anheuser-Busch InBev may continue to own its 30% stake in distributor City Beverage, citing a lack of clarity in the law concerning cross-ownership among the three tiers of the industry. In its [ruling](#), the Commission specifically called on the state legislature to consider amending "the Liquor Control Act to

clearly redefine the historic three tier system of alcohol regulation in Illinois as it applies to allowable ownership interests...”

Trade Practice & Other:

California

Signed into law by the Governor, [A.B. 2349](#) allows manufacturers and distributors to add bars to the list they provide consumers of on-sale establishments that serve their specific products.

Illinois

[House Bill 6229](#) clarifies a variety of issues related to homebrewed beer, particularly that homemade beer may be used for purposes of an exhibition, demonstration, judging, tasting, sampling, contest, or competition, if the event is held at a private residence or on a licensed premises.

Maryland

[Legislation](#) to allow growler sales in Montgomery County has been drafted for introduction in the 2013 legislative session.

New York

Governor Andrew M. Cuomo convened a [New York Wine, Beer and Spirits Summit](#) to discuss plans for a new marketing campaign to promote state-produced wine, beer, cider and spirits and tourism, as well as a series of regulatory reforms that will significantly reduce business costs for beverage producers.

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation

[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 [174 total sponsors](#). [S.534](#), companion legislation in the Senate introduced by Senators John Kerry (MA-D) and Mike Crapo (ID-R), has [44 total 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.

Change to TTB Brewer's Bond Requirements

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has issued a [temporary rule](#) setting the minimum bond amount required for those brewers eligible to make quarterly excise tax payments (those with an excise tax liability expected to be not more than \$50,000 in the current calendar year and that was not more than \$50,000 in the preceding calendar year) at \$1,000. This temporary rule is effective for three years beginning on December 7, 2012.

Previously, those filing quarterly were required to have a bond in place with a penal sum that represented 29% of the expected tax liability for the year. The practical effect of requiring this much higher amount (compared to the 10% penal sum amount required of those filing semimonthly) was that many brewers eligible to file quarterly simply did not due to the increased cost of obtaining the necessary bond. With this change, it is hoped that more brewers eligible to file quarterly will take advantage of that option, thereby reducing the time and costs associated with more frequent filings.

TTB Proposes Tax and Operational Reporting Changes

The federal Tax and Trade Bureau has published [Notice of Proposed Rulemaking 131](#) in which it proposes to adopt the \$1,000 penal sum amount for the brewer's bond described above as a permanent regulatory change. Additionally, TTB is proposing that brewers eligible to file quarterly tax returns no longer have the option to file semimonthly, thereby **requiring** them to file Federal excise tax returns and payments quarterly, as well as to submit reports of operations quarterly. Finally, TTB is soliciting comments generally on how regulations governing brewers' operations might be modified to reduce the burden on brewers while still allowing the agency to meet its statutory requirements. The deadline to comment on the issues addressed in Notice 131 is February 5, 2013.

TTB Seeks Comments on Revisions to Brewery Operations Reports

The Tax and Trade Bureau has announced it is seeking comments on proposed revisions to forms 5130.9, Brewer's Report of Operations, and 5130.26, Brewpub Report of Operations. The intent of the revisions is to reduce the burden on brewers, particularly small brewers. For more information, including how to submit comments and to view the proposed revised forms, see [TTB's November 9 announcement](#).

TTB Issues Ruling on Allowable Returns of Malt Beverages

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has provided further information concerning the allowable circumstances under which retailers may return to wholesalers, and wholesalers may receive, malt beverage products that have been deemed unsuitable for sale due to freshness concerns. [Read TTB Ruling 2012-4](#)

From the Fiscal Cliff: Some Advocating for Increase, Equalization in Alcohol Tax

While it may not be a surprise that anti-alcohol group [Alcohol Justice](#) (formerly the Marin Institute) is pushing a [variety of scenarios](#) to increase and equalize alcohol excise taxes as a means to address the nation's fiscal crisis, there is a growing chorus of such calls both inside and outside the Beltway. One of the most high profile comes from the [Center for American Progress](#), a self-described independent nonpartisan educational institute dedicated to improving the lives of Americans through progressive ideas and action. The recently released [Reforming Our Tax System, Reducing Our Deficit](#), contains a provision that would raise the excise tax on alcoholic beverages to a uniform \$16 per proof gallon. If enacted, such a proposal would almost triple the full federal barreage rate of \$18 on a 5% abv beer.

French Beer Tax Skyrockets 160%

The French Parliament has passed legislation enacting a 160% increase in the nation's beer tax. According to a press release from the [Brewers of Europe](#), the European brewing trade association, breweries of all sizes will be affected by the increased levy, including foreign breweries exporting to France.

B. THE STATES

Trade Practice & Other:

District of Columbia

The DC Council unanimously agreed to consider the Omnibus Alcoholic Regulation Amendment Act of 2012 at a future date. Included among a wide-ranging number of proposals to restructure DC liquor law are Sunday sales by certain retailers and the ability of full-service grocery stores to sell 64-ounce "growlers" for off-premises consumption.

Indiana

The Indiana Alcohol and Tobacco Commission has [announced](#) it will be holding an alcohol summit in March, 2013 and has invited the participation of industry members. The objective is to

provide a forum through which business representatives can pose concerns to state regulators, who will then address those issues through panel discussions.

New Jersey

[Senate Bill 2286](#) seeks to create a craft distillery license.