

A. FEDERAL / NATIONAL / INTERNATIONAL

Small Brewer Federal Excise Tax Legislation

Small brewer excise tax recalibration legislation, The Small Brewer Reinvestment and Expanding Workforce Act (Small BREW Act) has now been introduced in both chambers of the 113th U.S. Congress. On May 9, Senators Ben Cardin (D-MD) and Susan Collins (R-ME) introduced S. 917 in the U.S. Senate. The bill now has the support of [21 Senate sponsors](#).

H.R. 494 was introduced on February 5 by Representatives Jim Gerlach (R-PA) and Richard E. Neal (D-MA). Joining as original co-sponsors of the bill were Representatives Peter De Fazio (D-OR), Erik Paulsen (R-MN), Earl Blumenauer (D-OR) and Patrick McHenry (R-NC). The bill now has a total of [80 sponsors](#).

The Small BREW Act seeks to reduce the small brewer rate on the first 60,000 barrels by 50 percent (from \$7.00 to \$3.50/barrel) and institute a new rate \$16.00 per barrel on beer production above 60,000 barrels up to 2 million barrels. Breweries with an annual production of 6 million barrels or less would qualify for these tax rates. Legislation introduced last session, [H.R. 1236](#), gained a total of [174 total sponsors](#). In the Senate, companion legislation [S.534](#) realized [44 total sponsors](#).

BEER Act Hits Congress

H.R. 1918, the Brewers Excise and Economic Relief Act of 2013 (BEER Act), was introduced on May 9 by Representatives Tom Latham (R-IA) and Ron Kind (D-WI). The legislation provides for a rollback to the 1991 federal beer excise tax rate of \$9.00 per barrel for all brewers liable to pay the full rate. For brewers producing less than 2 million barrels per year, the bill calls for no federal excise tax on the first 15,000 barrels, \$3.50 on barrels 15,001-60,000 and \$9.00 on barrels 60,001 and up. The one year cost to the federal treasury is estimated at over 1.6 billion dollars.

Justice Department Reaches Settlement with ABInBev on Grupo Modelo Deal

The Department of Justice has [announced](#) that it reached a settlement with Anheuser-Busch InBev on the proposed acquisition of Grupo Modelo that maintains competition in the beer industry and benefits consumers. The agreement requires the companies to divest Modelo's entire U.S. business – including licenses of Modelo brand beers, its most advanced brewery, Piedras Negras, its interest in Crown Imports LLC and other assets – to Constellation Brands Inc., in order to go forward with the merger.

B. THE COURTS

California Lists, Then Delists Bisphenol A as a Toxic Chemical

Just a week after listing the chemical bisphenol A (BPA) on the Proposition 65 list (substances known to the state of California to cause reproductive toxicity) a court injunction has forced the Office of Environmental Health Hazard Assessment (OEHHA) to [remove](#) the listing. The

injunction comes as a result of a pending lawsuit brought by the American Chemistry Council, the resolution of which could impact the status of BPA which is commonly used in coatings for metal food and beverage containers.

C. THE STATES

Taxation:

Hawaii

Currently in conference committee to reconcile differences in the Senate and House versions, [Senate Bill 1261](#) provides for a reduced tax rate of \$0.23 per gallon of beer applied to 60,000 barrels of production during a taxable year by a small brewery or brewpub located in the state and defines the qualifying brewer as producing not more than 60,000 barrels annually.

Maine

[House Bill 1073](#) seeks to double the excise tax on malt liquors to a rate of 70 cents per gallon.

[House Bill 998](#) repeals the excise taxes and premiums imposed on spirits, wine and malt liquor and increases the sales and use tax imposed on lodging from 7% to 9% and on liquor sold for consumption on or off the premises of licensed establishments from 7% to 9%.

Minnesota

An omnibus tax bill ([H.F. 677](#)) recently passed by the House includes increases on all alcohol excise tax rates, with the barrelage rate on beer increasing by over \$27.00 from the current \$4.60.

New Mexico

Signed into law, [Senate Bill 81](#) imposes a “liquor excise tax” on beer of forty-one cents per gallon, except that those defined as microbrewers pay eight cents per gallon on the first ten thousand barrels sold and twenty-eight cents per gallon for all barrels sold over ten thousand barrels, but fewer than fifteen thousand barrels. The bill also increases the barrel limit to be considered a microbrewer from 5,000 to 15,000 annual production, such definition to be effective from 2014 until 2024, at which time it reverts to the previous barrelage.

Tennessee

[Senate Bill 422](#) has been signed into law by the Governor. The legislation amends the Tennessee Code to implement a volume-based formula for calculating the state beer tax. Under the current tax structure both a volume and a price calculation are used to compute the tax, so as beer prices rise, taxes also increase.

Sales, Distribution and Franchise:

Alabama

Failing to receive committee consideration, [House Bill 530](#) sought to allow brewpubs the ability to sell beer for off-premises consumption.

Delaware

Passing both chambers of the legislature, [House Bill 31](#) permits off-premises consumption licensees who obtain a Growler Filler permit to purchase kegs or partial kegs from wholesalers and fill and cap containers for the customer to consume off of the premises where sold.

Florida

Dying in committee, [House Bill 715](#) and [Senate Bill 1344](#) sought to authorize the sale of beer in the traditional 64 ounce “growler” package. Also failing to receive final passage, [S.B. 306](#) included language repealing container size restrictions.

Illinois

Passing the House and awaiting a full Senate floor vote, [House Bill 2606](#) makes clear the intent of legislation passed in the previous session which prohibited any beer manufacturer from owning a distributorship or engaging in self-distribution if the brewer produces more than 15,000 barrels annually.

Maine

[Senate Bill 364](#) allows off-premises retail liquor licensees to dispense liquor from kegs into sealable refillable containers (i.e. growlers) for resale.

Dying in committee, [H.B. 892](#) sought to strengthen existing franchise law to the benefit of distributors through the addition of further prohibited actions by a brewer and more stringent termination provisions.

Maryland

Receiving the Governor’s approval, [Senate Bill 223](#) creates a limited beer wholesalers license which would allow brewers producing not more than 22,500 barrels annually (effectively a brewpub license) to self-distribute not more than 3,000 barrels in a calendar year. Non-resident brewery permit holders (out-of-state breweries) are also eligible to obtain a limited beer wholesalers license under the same parameters as in-state breweries. The legislation also brings production brewery licensees, which currently enjoy unlimited self-distribution and no barrelage cap, under the same 3,000 barrel limitation.

Passing both chambers of the legislature, [Senate Bill 955](#) creates a refillable container permit allowing production breweries to sell draft beer in specified refillable containers for consumption off the licensed premises.

Approved by the Governor, companion bills [S.B. 32](#) and [H.B. 4](#) authorize a Class 5 brewery licensee (production brewery) to sell annually up to 500 barrels of beer brewed at the location for on-premises consumption. A licensee is authorized to serve to a person of legal drinking age who participates in a guided tour of the facility no more than six samples of beer brewed at the licensed premises, with each sample consisting of no more than 3 ounces from a single style of beer. A licensee may also sell up to 228 ounces, per person, of beer brewed at the brewery for off-premises consumption to anyone who participates in a guided tour of the brewery, provided the person is of legal drinking age.

Michigan

Passing the Senate and under House consideration, [Senate Bill 27](#) would permit bars and restaurants to fill and sell growlers with beer for off-premises consumption.

Minnesota

Signed into law by the Governor, [Senate Bill 541](#) allows a city with a municipal liquor store to issue a brewer taproom license and allows a brewer producing less than 20,000 barrels a year to make off-sales in growlers (prior to this legislation, a brewer had to produce under 3,500 barrels to have this ability). Finally, the legislation reduces the brewer self-distribution limit from 25,000 to 20,000 barrels.

Missouri

Franchise provisions have been amended into [Senate Bill 114](#), a bill that would allow homebrew to be removed from the premises where brewed for use at organized affairs, exhibitions, or competitions, such as home brewer contests, tastings, or judging. The franchise provisions seek to modify the definition of franchise under Missouri 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. If enacted, this would effectively 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 bill has passed the House. Similar franchise legislation was vetoed by the Governor last session.

Montana

Dead for this session, [House Bill 616](#) would have severely restricted the state's small brewers in their ability to operate a taproom. The bill sought to limit a brewer's ability to sell on premise based on annual production as follows: 300 barrels a year - 100% of production; 301-500 barrels a year - 60%; 501-1,000 barrels a year - 50%; 1,001 to 10,000 barrels a year - 40%; over 10,000 barrels – must have a retail license. Under the bill's provisions taprooms would have been required to close promptly at 8:00 PM (currently 9:00 PM) and no food, music or entertainment of any kind would have been permitted.

In response to H.B. 616 (above) and also dead for the session, [House Joint Resolution 18](#) sought a study of licensing issues relating to alcohol retailers, wholesalers and brewers.

Nevada

[Assembly Bill 153](#) seeks to reduce the qualifying threshold from 2,500 to 2,000 barrels for breweries exempt from the requirement to show good cause when terminating a wholesaler.

North Carolina

Passing the House, [House Bill 829](#) allows for holders of on-premises malt beverage licenses and off-premises malt beverage licenses to engage in growler sales for off-premises consumption.

[House Bill 781](#) increases the barrelage cap for self-distribution to 60,000 barrels annual production (current cap is 25,000 barrels).

Ohio

Signed into law, [S.B. 48](#) allows beer manufacturers that produce up to 1 million barrels annually to sell beer products for home use, for consumption on the premises where manufactured, and to retail and wholesale permit holders. The new permit, called an A-1c, will replace the A-1 permit for small brewers and reduce their annual licensing fee from \$3,906 to \$1,000. The new law also prohibits large brewers from owning or having a financial stake in wholesale distributors.

Oregon

[House Bill 3470](#) seeks to allow brewery-public house licensees or winery licensees to operate mobile premises for purpose of dispensing securely covered containers of alcoholic beverages from parked premises.

Tennessee

Eligible for the Governor's signature, [Senate Bill 747](#) seeks to allow a beer manufacturer that is also licensed as a restaurant or a limited service restaurant for purposes of selling alcoholic beverages for consumption on premises to sell beer manufactured at such brew pub for off premises consumption.

Texas

Under House consideration following Senate passage, [Senate Bill 515](#) raises a brewpub's annual production limit to 10,000 barrels while allowing a brewpub that only sells their own beer to self-distribute to holders of retail licenses and permits up to 1,000 barrels per year or 2,500 barrels per year for all brewpubs operated by the same licensee. No limit is set as to how much of the 10,000 annual production can be sold through a beer distributor in the traditional three-tier system.

Both passing the Senate and now under House consideration, [Senate Bill 516](#) and [Senate Bill 517](#) authorize brewers (producers of malt beverages over 5% ABW) and manufacturers (producers of malt beverages under 5% ABW) under 125,000 barrels of annual production to self-distribute up to 40,000 barrels annual of beer, ale and malt-liquor to retailers and extends that privilege to out-of-state breweries.

Passing the Senate and taken up by the House, [S.B. 518](#) authorizes a production brewery under 225,000 barrels of annual production to sell up to 5,000 barrels annually of beer produced by the brewery to ultimate consumers for consumption on the premise of the brewery.

Approved by the full Senate and under House consideration, [Senate Bill 639](#) would prohibit a manufacturer from engaging in reach-back pricing (when manufacturers—after the fact—alter the price charged to distributors based on the price a distributor has charged a retailer) and prohibits a manufacturer from accepting a payment for a territorial agreement setting forth territorial rights. It does not prohibit, however, a manufacturer or distributor from entering into contractual agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

Utah

Failing to advance, [Senate Bill 248](#) sought to change the maximum barrelage amount to be considered a “small brewer” to 70,000 (from 60,000) and remove the authority for a small brewer to sell directly to a retail licensee, off-premise beer retailer, or event permittee.

West Virginia

Passing the House and under Senate consideration, [House Bill 2956](#) would allow brewpubs the ability to sell growlers, prohibits caffeine additions to beer and limits self-distribution to 10,000 barrels for breweries under 25,000 barrels annual production.

Direct Shipping:

Maine

Dying in committee, [House Bill 411](#) would have allowed the purchase of wine online from a wine retailer as long as the wine retailer has obtained a wine direct shipper license and would have exempted a wine retailer or winery that qualifies for a wine direct shipper license and agrees to ship no more than 100 bottles into the State in a calendar year from the \$200 application fee.

Montana

Becoming law with the Governor’s signature, [House Bill 402](#) allows the direct shipment of wine to the state’s residents.

North Dakota

Signed into law, [H.B. 1077](#) allows direct sales to retailers, with certain volume limitations, by licensed wineries producing less than 50,000 gallons annually.

Trade Practice & Other:

Alabama

With the Governor’s signature, homebrew legalization bill [H.B.9](#) has become law. Homebrewing is now legal in all 50 states.

California

Passing committee, [Assembly Bill 647](#) requires that all beer sold in the state have a label affixed to the package or container showing the brand and type of beer, the true and correct name and address of the manufacturer of the beer and the true and correct name of the bottler of the beer if other than the manufacturer. Additionally, it requires a beer manufacturer that refills any container supplied by a consumer to affix a label, as specified, on the container prior to its resale to the consumer. Finally, it revises the definition of "beer manufacturer" to include only those persons that have facilities and equipment for the purposes of, and are engaged in, the commercial manufacture of beer.

Voted out of committee, [A.B.779](#) authorizes a licensed beer manufacturer that produces more than 60,000 barrels of beer per year to manufacture cider or perry at the licensed premises of production and to sell cider or perry to any licensee authorized to sell wine.

Connecticut

Passing the House, [House Bill 6540](#) allows for the sale of beer in mixed material containers which include the “pouches” made popular in the juice and flavored malt beverage segments.

Georgia

Signed into law, [House Bill 99](#) increases the amount of homebrewed beer an individual may make in a year and allows the removal of a portion of that production for home-brew special events.

Illinois

Following House passage, [House Bill 1573](#) which provides further for registered agents of manufacturers and that the Liquor Control Commission shall post a list of registered agents on the Commission's website, has stalled in the Senate.

Indiana

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

Kentucky

Signed into law, [House Bill 440](#) allow microbreweries to sell malt beverages produced on the premises for on-premises purposes, to sell malt beverages produced on the premises without having to transfer physical possession to a distributor if the microbrewery has a retail drink license and meets reporting requirements, and to sell malt beverages produced on the premises for off-premises purposes without having to transfer physical possession to a distributor if the microbrewery has a retail package license.

Montana

Dying for the session due to committee inaction, [House Bill 204](#) sought to create a boutique beer and wine license for the off-premises consumption of beer or wine at a specialty shop and to authorize limited tasting event permits on the premises of the boutique beer or wine licensee.

New Hampshire

Eligible for the Governor's signature, [House Bill 237](#) amends the statute authorizing and regulating home brewing to include the production of wine.

Oklahoma

Signed into law by the Governor, [H.B. 1341](#) allows the holder of a brewer license to serve free samples of beer produced by the licensee to visitors 21 years of age or older. Samples are limited to no more than 12 fluid ounces per day and sampling must occur in a designated sampling area.

Oregon

Receiving a favorable committee recommendation, [Senate Bill 816](#) establishes the Agricultural Experiment Station Fermentation Sciences and Value Added Program at Oregon State University to provide science-based research and innovation support to Oregon's wine, cheese, microbrew, distilled spirits, and artisan bread industries.

South Carolina

Receiving favorable Senate committee consideration following House passage, [House Bill 3554](#) specifies that samples and sales of beer at breweries must be restricted to products of fourteen percent alcohol by weight or less for on-premises consumption and, for sales, limited to a maximum of sixty-four ounces of beer per consumer in a twenty-four hour period.

Washington

Signed into law, [H.B. 1351](#) allows wineries, breweries, microbreweries, certificate of approval holders, and retail licensees to create private labels identifying the producers, for restaurants, private clubs, grocery stores, and beer and/or wine specialty shops.

Becoming law with the Governor's approval, [Senate Bill 5517](#) allows grocery stores licensed by the LCB to sell beer and wine to apply for an endorsement that allows them to offer beer and wine tasting if they operate a fully enclosed retail area encompassing at least 10,000 square feet.

West Virginia

Companion legislation [House Bill 3022](#) and [Senate Bill 590](#) seek to remove prohibition era liquor laws addressing the sale of alcohol on Sundays.

Signed into law by the Governor, [House Bill 3145](#) removes the 5 gallon limitation on beer that retailers can sell for off-premises consumption.