

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) continues to gain support in both chambers of the 113th U.S. Congress. 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 [124 sponsors](#).

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 [33 Senate 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](#).

Federal Cider Legislation Introduced

[H.R. 2921](#) and companion [S. 1531](#) seek to change the tax rate for hard cider by modifying the alcohol by volume and carbonation levels and restricting fruit ingredients to apples and pears.

B. THE COURTS

Appeals Court Decision Underscores Primacy of States' Regulatory Role

A U.S. Appeals Court upheld a prior ruling from District Court that the state of Missouri is within its rights to require that a distributorship's directors and officers maintain residency in the state. Multi-state distributor Southern Wine & Spirits had challenged the legitimacy of the requirement, but the courts held that states have discretion to establish their own versions of the tree-tier system. Further, the court held that such seemingly "protectionist" provisions put in place by individual states are legitimate and do not run afoul of the U.S. Supreme Court's 2005 *Granholm* decision (SW&S argued they did) which only applies to suppliers and not the other tiers.

C. THE STATES

Taxation:

Michigan

[Senate Bill 506](#) specifies that, for beer manufactured in the state, the state excise tax is to be paid by the brewer or brewpub that produced the beer unless the brewer designates the wholesaler to

pay the tax on behalf of the brewer. If the beer is manufactured outside the state, the tax is to be paid by the wholesaler assigned to distribute that beer with the tax levied and collected on the number of barrels the wholesaler actually sold of that beer.

Sales, Distribution and Franchise:

Oregon

In what appears to be part of an effort to stave off a possible move to privatize sales of liquor, the Oregon Liquor Control Commission [announced](#) that a test program allowing four state-controlled liquor stores to also sell beer and wine has been successful and the Commission is inviting other stores to apply for the privilege.

Pennsylvania

Companions [Senate Bill 1088](#) and [House Bill 1666](#) seek to allow any manufacturer to terminate wholesalers without cause as long as the manufacturer is less than 20% of the volume of the wholesaler's house (wholesaler to receive the fair market value for that brand subject to arbitration), would require manufacturers and wholesalers to re-negotiate their distribution agreements in good faith every five years, requires that when a transaction occurs between wholesalers, manufacturers would be paid a percentage (10%) of transaction equal to brand rights and would allow any manufacturer to self-distribute up to 75,000 barrels in Pennsylvania, (both in-state and out-of-state manufacturers) but does not permit a wholesaler/importing distributor to be terminated in favor of self-distribution.

Trade Practice & Other:

California

Signed into law, [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. It also 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. Finally, it authorizes a licensed beer manufacturer or a brewpub-restaurant licensee to serve, for consumption on the premises, beer produced by the licensed beer manufacturer or brewpub-restaurant licensee to attendees at a meeting of a bona fide beer manufacturer trade association or brewers' guild held on the premises of a licensed beer manufacturer.

Approved by the Governor, [Assembly Bill 779](#) adds a new provision to the Alcoholic Beverage Control Act granting beer manufacturers producing more than 60,000 barrels of beer per year the ability to also manufacture cider or perry at their licensed premises and to sell the product to any licensee authorized to sell wine.

Signed into law, [A.B. 782](#) permits an on-sale retail licensee that obtained a caterer's permit to return unused and unopened beer, purchased for sale at the catered event, to the original selling licensee.

Failing to receive consideration, [Assembly Bill 1424](#) sought to permit beer manufacturers and winegrowers the ability 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.

Signed into law, [Assembly Bill 1425](#) authorizes, among other things, beer or wine made for personal or family use to be donated to a nonprofit organization and used at a fundraising event conducted solely by and solely for the benefit of the nonprofit organization, as specified. Donated beer and wine may be sold by the nonprofit organization only for consumption on the premises of the fundraising event.

Maryland

Governor O'Malley has proclaimed October 2 – November 2, 2013 [Maryland Beer Month](#). Partnering with the Brewers association of Maryland in the proclamation, O'Malley lauded Maryland beer as a value-added manufactured good that is produced by small businesses supporting quality job growth.

New York

Signed into law by the Governor, [Assembly Bill 8046](#) creates an exemption from the brand label registration fee for distilled spirits produced in small batches, modernizes the standards used in approving brand labels and reduces the amount of information that brand owners and wholesalers must provide to the State Liquor Authority when applying for brand label approval.