

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 [128 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 [32 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](#).

FDA Proposed Rule Would Impact Sales of Spent Grain

The U.S. Food and Drug Administration (FDA) has published its proposed [Preventive Control Rule for Feed](#) which includes provisions to regulate breweries and distilleries if they sell spent grain to farmers for use in animal feed. Requirements would include establishing and implementing hazard analysis and risk-based preventive controls including a written food safety plan, development of a hazard analysis document, a recall plan for animal food with a hazard that is reasonably likely to occur, monitoring, corrective actions and record keeping. Included in the proposed rule is an exemption for smaller companies with a suggested range of sales between \$500,000 and \$2.5 million. [Further information](#) is provided on the FDA web site.

The comment period is open until February 26, 2014.

B. THE COURTS

Successor Manufacturer Termination Provision Upheld in Ohio

The Ohio Supreme Court has ruled that successor manufacturers do have the right under Ohio franchise law to terminate a distributor without cause as long as the distributor is appropriately compensated. Esber Beverage had argued in its suit that KPS Capital Partners, which acquired Labatt USA as part of the Anheuser-Busch acquisition by InBev, could only terminate without cause in the absence of a written franchise agreement. The Court ruled that the law is clear and unambiguous in allowing such terminations even when contracts are in place.

Pennsylvania Distributor Suit Dismissed

The suit filed by Pittsburgh-based Frank B. Fuhrer Wholesale Co., an ABI and Coors distributor, against MillerCoors for denying the company the right to sell new MillerCoors specialty beers (e.g. Batch 19) simply because the distributor also handles a competitor's products, has been dismissed. The court found that under the parties' existing contract, MillerCoors has the option, but not the obligation, of assigning the new brands to the distributor.

C. THE STATES

Taxation:

Michigan

Passing the Senate and under House consideration, [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:

Michigan

Passing the Senate, [Senate Bill 650](#) would allow a "qualified micro brewer", or an out-of-state business that was the substantial equivalent of a qualified micro brewer, to sell and deliver beer to a retailer under certain conditions. A qualified micro brewer is defined as one that produces less than 1,000 barrels of beer per year (all brands and labels combined, whether brewed within or outside of Michigan).

A package of three House bills seeks to redefine production restrictions and consumption regulations affecting small brewers:

[House Bill 4709](#) would amend the definition of "microbrewer" to increase the amount of beer that a business could brew and still be considered a microbrewer from 30,000 to 60,000 barrels per year.

[House Bill 4710](#) would allow a brewpub to have an interest in up to five other brewpubs as long as the combined production of all the locations in which the brewpub has an interest does not exceed 18,000 barrels of beer in a calendar year. Under current law, brewpubs are limited to an interest in up to two other brewpubs if the combined production does not exceed 5,000 barrels of beer per calendar year.

[House Bill 4711](#) would allow a brewer to sell its beer for on-premises consumption at up to two locations that are on any of its licensed brewery premises where the brewer is engaged in the production of beer (defined in the bill to mean the full and complete brewing process, not just a

portion of the brewing process). Currently, a brewer can only sell its beer for on-premises consumption at one location.

Trade Practice & Other:

Michigan

[House Bill 5040](#) seeks to prohibit on-premises licensees from advertising or selling any glass of beer as a pint unless that glass contains at least 16 ounces of beer.