

February 2022 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

For the more information on federal issues of importance to brewers, please link to the BA's [Federal Affairs Updates](#).

Treasury Department Releases *Competition in the Market for Beer, Wine and Spirits* Report

The U.S. Department of the Treasury, in conjunction with the U.S. Department of Justice and the Federal Trade Commission, released its report on competition in the markets for beer, wine, and spirits. The report addresses challenges to the growth of small businesses and new entrants into the marketplace and contains a series of recommendations to better level the playing field by enforcing existing laws that promote competition and modernizing outdated alcohol regulations. In a [statement](#), the Brewers Association applauded the report's focus and recommendations and stands ready to be continuing resource in the effort to translate the report's recommendations into a safe, competitive, and modern beverage alcohol market.

BA Submits Comments to FTC on Supply Chain Disruptions

In response to a Federal Trade Commission (FTC) study, the Brewers Association (BA) submitted [comments](#) documenting craft brewing's supply chain challenges during the pandemic, with sections on the aluminum can shortage, the CO2 shortage, transportation challenges, barley malt supply, glass bottles, and paperboard. The comments also touch on antitrust enforcement, category captaincy, and sponsorships.

THE STATES

Sales, Distribution and Franchise:

California

Amended prior to passing the Senate, [Senate Bill 620](#) establishes a regulatory process for specified distilled spirits manufacturers and producers and beer manufacturers to directly ship alcoholic beverages to a resident of California who is 21 years of age or older, for the resident's personal use and not for resale.

[A.B. 1734](#) seeks to authorize the holder of a beer manufacturer's license, winegrower's license, brandy manufacturer's license, distilled spirits manufacturer's license, craft distiller's license, any rectifier's license, or any importer's license, that holds more than one of those licenses for a single premises, to maintain a designated area upon that premises where retail sales authorized under any of those manufacturer's licenses may occur.

Delaware

Signed into law, [House Bill 289](#) would allow liquor stores, farm wineries, brewery-pubs, microbreweries, craft distilleries, and wine auctions to provide curbside service for the sale of alcohol.

Passing both legislative chambers, [H.B. 290](#) seeks to make permanent the ability for food and drink establishments to sell alcoholic beverages in transactions for take-out, curbside, or drive-through service.

Hawaii

[H.B. 2189](#) would allow the direct shipment of beer and distilled spirits by manufacturers.

Indiana

Passing the House, [H.B. 1298](#) would allow a county, city, or town to adopt an ordinance to allow the following at a farmers' market: (1) A small brewery, farm winery, or artisan distillery (craft manufacturer) to serve complimentary samples of the alcoholic beverages that they manufacture; (2) A small brewery or artisan distillery to sell their product in original containers.

Mississippi

Now under Senate consideration, [House Bill 512](#) seeks to privatize the sale of alcoholic beverages in Mississippi.

Passing the Senate, [S.B. 2844](#) counters efforts to privatize the sale of alcoholic beverages by authorizing the construction of a new warehouse and contracting for operations.

Missouri

[House Bill 2669](#) seeks to allow any person or establishment currently licensed in this state or any other state as an alcohol manufacturer to apply for an alcoholic beverage direct shipper license which allows a manufacturer to ship all types of alcoholic beverages that the licensee is authorized to sell. An alcoholic beverage direct shipper licensee is authorized to ship directly to a resident of this state who is at least twenty-one years of age for such resident's personal use and not for resale with the following aggregate limits: (1) Distilled alcohol, in quantities not to exceed nine liters per consumer per month; and (2) Undistilled alcohol, in quantities not to exceed eighteen liters or two cases, containing a maximum of nine liters per case, per consumer per month.

Nebraska

Scheduled for committee hearing, [L.B. 1239](#) would require franchise agreements between a manufacturer and wholesaler to be in writing and include, at a minimum: (1) the term in years and rights to termination or extension; (2) a list of the manufacturer's brands for which the wholesaler has the right to offer and sell within a specified geographic territory; (3) terms constituting consideration offered and accepted by each party; (4) notice provisions identifying the name, address, phone number, and email address for each party; and (5) terms addressing a sale or other transfer of each party's licensed business.

New Jersey

[Assembly Bill 542](#) would allow limited breweries to sell products of certain other alcohol manufacturers for consumption off the licensed premises, coordinate with third party restaurants to provide food directly to consumers on the licensed premises, to host fifty-two on-premises special events and fifty-two private parties annually, and removes the tour requirement. Finally,

the bill would increase the limit that restricted breweries may brew annually from 10,000 to 50,000 barrels.

[Assembly Bill 275](#) would allow the holder of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license to sell the licensee's products at a seasonal farm market for consumption off the premises.

[A.B. 1813](#) would remove the requirement that consumers take a brewery tour to purchase beverages for on-site consumption. Tours, however, must be available to consumers during business hours when the brewery is open to the general public and brewing, packaging, or maintenance operations allow for the conducting of a tour.

Rhode Island

[H.B. 7251](#) would increase the amount of malt beverages that a manufacturer can sell for offsite consumption from forty-eight (48) twelve-ounce (12 oz.) bottles and cans to fifty-five (55) bottles or cans.

Amended prior to Senate passage, [Senate Bill 2153](#) seeks to void the March 1, 2022, sunset provision contained in the act authorizing a holder of a Class B or brew pub manufacturer's license to sell specified amounts of wine, beer and mixed alcoholic beverages with takeout food orders; however, sale of all other alcoholic beverages and any delivery of alcoholic beverages would be prohibited.

Virginia

Held in subcommittee, [H.B. 328](#) seeks to privatize the sale of alcoholic beverages in Virginia.

Dying in committee, [House Bill 1250](#) sought to allow a winery, farm winery, or brewery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer, after obtaining a marketplace facilitator license from the Board of Directors for the Virginia Alcoholic Beverage Control Authority, to sell and ship wine and beer in closed containers to persons in the Commonwealth.

Wisconsin

[Senate Bill 959](#) eliminates the requirement that the sales territories for beer wholesalers be exclusive and also eliminates this requirement for self-distribution by brewers that manufacture 300,000 or fewer barrels of beer per year. The bill also clarifies that a brewer that self-distributes does not need to maintain a written agreement with itself and does not need to unload and reload beer at a wholesaler's warehouse.

Taxation:

Hawaii

Held in committee, [H.B. 1618](#) would impose a .10 cent per drink surcharge on alcoholic beverages effective July 1, 2022. Companion legislation S.B. 2441 remains under consideration in the Senate.

Illinois

Assigned to committee, [House Bill 4327](#) creates an income tax credit for Illinois licensed craft brewers and wine manufacturers awarded on the basis of costs related to the purchase of crops used in the manufacture of beer or wine that are grown and harvested in Illinois. The amount would be equal to 50% of the qualified costs incurred by a qualified taxpayer during the taxable year, not to exceed \$1,500.

Maryland

[H.B. 867](#) and companion S.B. 793 would set the tax rate for ready-to-drink cocktails (up to 12% ABV and packaged in a can or “metallic container” of not more than 12 oz. each) at 40 cents per gallon.

New Jersey

[Senate Bill 701](#) seeks to reduce the alcoholic beverage tax rate on low-percentage alcohol by volume (ABV) liquors with lower than 9.9 percent ABV from \$5.50 a gallon to \$0.12 a gallon, matching the tax rate for beer. The cider rate would also be reduced from \$0.15 a gallon to \$0.12 a gallon.

[S.B. 847](#) would provide credits against the New Jersey alcoholic beverage tax to manufacturers of brewed beverages in the amount of qualified capital expenses paid by the brewer during the tax year.

Washington

Subject of a committee hearing, [House Bill 1734](#) would impose a tax on the sale of low-proof beverages in the amount of \$1.19 per gallon and defines such beverages as any beverage that is 16 ounces or less and that contains more than 0.5 percent alcohol by volume and less than seven percent alcohol by volume, but does not include wine, malt beverages, or malt liquor.

As reported from Senate committee, [S.B. 5049](#) defines low-proof beverage to mean any beverage that is 16 ounces or less and contains more than 0.5 percent and less than 7 percent alcohol by volume, but does not include wine, malt beverages, or malt liquor. The bill also establishes a tax rate of \$0.99 per gallon tax on the distribution and sale of low-proof beverages.

Trade Practice & Other:

Alabama

[House Bill 328](#) creates a category of “spirits infused refreshments” defined as a single-serve beverage containing liquor, packaged in a can or an approved container no larger than 16 ounces and which contains no more than 10 percent alcohol by volume. Taxed at the beer rate, such products would be distributed like beer.

Alaska

Substituted version of [Senate Bill 9](#) adopted on the Senate floor, comprehensive alcohol regulatory review legislation, specifically addresses the regulation of manufacturers, wholesalers, and retailers of alcoholic beverages and common carrier approval to transport or deliver alcoholic beverages.

Arizona

[House Bill 2627](#) defines "ready-to-drink spirits products" as distilled spirits mixed with other beverages that may contain flavoring or coloring materials and other ingredients, that do not exceed twelve percent alcohol by volume and that are sold in the manufacturer's original packaging and sets the tax at the wine rate of eighty-four cents per gallon.

Florida

Receiving consideration in several committees, [H.B. 1451](#) addresses, among multiple provisions, issues related to contract brewing and alternating proprietorship brewing agreements.

Georgia

[S.B. 420](#) seeks to allow unlimited sales of malt beverages to individuals on a brewer's licensed premises (current limit is 288 ounces/individual/day) and provides for charitable donations from breweries and brewpubs.

Hawaii

[H.B. 2375](#) and companion S.B. 2344 seek to lower the threshold blood alcohol concentration (BAC) to .05 for the offense of operating a vehicle while under the influence of an intoxicant.

Idaho

[House Bill 530](#) seeks to authorize the Idaho Hop Grower's Commission to promote beer made with Idaho-grown hops.

Iowa

Recommended for amendment in subcommittee, [Senate Study Bill 3033](#) seeks to add high alcoholic content beer and canned cocktails to the definition of "beverage," which containers are subject to the beverage containers control deposit and refund provisions.

Maryland

[H.B. 854](#) and companion S.B. 698 establish the Advisory Commission on Maryland Alcohol Manufacturing and the Maryland Alcohol Manufacturing Promotion Fund to provide grants that promote the advantages and attributes of State breweries, distilleries, and wineries and their products.

Mississippi

Passing the Senate, [S.B. 2875](#) would redefine beer as a fermented beverage of any name or description having an alcoholic content of not more than 8% by weight, brewed or produced from malt, in whole or in part, or from any malt substitute, or as a product, not exceeding an alcoholic content of 8% by weight, described or defined as beer or a malt beverage in applicable federal code.

New Hampshire

Held for further study, [H.B. 1591](#) seeks to eliminate the enforcement division of the liquor commission.

New Jersey

[A.B. 637](#) seeks to allow the consumption of food on limited brewery premises.

[S.B. 1215](#) establishes farm brewery and winery-brewery beverage license and permits farm wineries to produce hard cider.

Oklahoma

[S.B. 1811](#) would allow brewer and small brewer licensees to hold off-site events under certain conditions.

[Senate Bill 1837](#) seeks to allow the holder of a brewer license who also holds a winemaker license to operate a brewery and winery on the same premises.

Rhode Island

[Senate Bill 2142](#) provides for farmer-brewery and farmer-distillery licenses to qualifying farms.

Utah

[S.B. 176](#) seeks to amend a variety of provisions of the Alcoholic Beverage Control Act and related provisions in part contained in the Malted Beverage Act addressing labeling and packaging and the power of relevant state commissions and departments to classify flavored malt beverages.

Washington

Passing initial committee consideration, [House Bill 2080](#) creates a license endorsement allowing domestic licensed alcohol manufacturers to provide contract packaging services to other alcohol manufacturing licensees within this state.

West Virginia

[House Bill 4397](#) seeks to authorize temporary 30-day licenses for out-of-state nonintoxicating beer brewers to import beer for test marketing and distribute to festivals and samplings.