

March 2022 Legal & Legislative Update

FEDERAL / NATIONAL / INTERNATIONAL

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

TTB Publishes Next Round of Labeling Modernization Rulemaking

The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a [final rule](#) implementing phase two of its rulemaking on modernizing labeling and advertising regulations for malt beverages and distilled spirits. Effective March 11, 2022, the changes are relatively modest in scope and will not require any changes to current labels.

Consignment Sales Clarification Issued by TTB

The Tax and Trade Bureau (TTB) has published [Industry Circular 2022-1](#), clarifying how TTB views extended payment terms under the consignment sales provisions of the Federal Alcohol Administration Act (FAA Act).

THE STATES

Sales, Distribution and Franchise:

Arizona

Passing the Senate with amendments, [Senate Bill 1248](#) would make it unlawful for a supplier to coerce or attempt to coerce a wholesaler to accept delivery of beer or any other commodity that has not been ordered by the wholesaler or for which the order was canceled and outlines the conditions when a supplier may impose reasonable inventory requirements on a wholesaler.

California

[Assembly Bill 2307](#) relates to existing law that prohibits a beer manufacturer from selling alcoholic beverages to consumers for consumption on or off the licensed premises, or providing authorized tastings to consumers, at more than six branch locations. The bill increases the number of authorized branch locations from six to twelve and deletes the limitation on the number of branch offices that may be bona fide eating places.

Connecticut

[H.B. 5331](#), among several provisions, would authorize a brewer to sell at retail on its premises beer brewed in collaboration with another brewer; the holder of a craft cafe permit and a beer manufacturer permit to sell at the craft cafe any beer that such holder brewed in collaboration with another brewer; and provides that water pollution control authorities shall not consider the volume of water consumed by brewers in establishing or revising charges to brewers for the use of sewerage systems.

Delaware

Signed by the Governor, [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.

Indiana

Passing both chambers of the legislature, [H.B. 1298](#) creates a temporary craft manufacturer hospitality permit (hospitality permit) that allows a craft manufacturer to participate in a convention, a trade show, an exposition, or a similar event on the licensed premises of a particular host permittee.

Kentucky

[H.B. 660](#) seeks to make the three tier system for alcoholic beverage sales optional, allowing manufacturers, wholesalers, and retailers to sell to consumers, customers, and other licensees and to hold a direct shipper license.

Louisiana

[House Bill 370](#) provides that brewers who produce less than 93,000 gallons of beer annually may self-distribute up to 46,500 gallons to certain retailers.

[H.B. 494](#) would authorize a manufacturer or brewer who operates one or more brewing facilities located in the state to sell or serve products brewed at those facilities at wholesale to licensed retail dealers and special events, and at retail to the public at those facilities for consumption on or off the premises, but not for resale and that the total amount of sales (calculated from sales to retail dealers, special events, and to the public) not exceed 10% of the total amount of product brewed at each facility monthly or 250 barrels for each facility, whichever is greater.

[House Bill 554](#) provides that a microbrewer may sell up to 250 barrels of its finished products per month at wholesale to other licensed retail dealers and authorizes the sale of such brewed beverage from any licensed premises owned by the microbrewer or at wholesale.

Minnesota

Companions [S.B. 3246](#) and H.B. 3017 seek to raise the barrelage threshold allowing for brewery off-sales from 20,000 to 150,000 barrels.

[Senate Bill 3304](#) eliminates the prohibition on growler sales for brewers producing more than 20,000 barrels annually.

Mississippi

[House Bill 512](#), has been amended in the Senate to reflect the language in S.B. 2844 authorizing the construction of a new warehouse and contracting for operations. [S.B. 2844](#) has been amended in the House to reflect the language in H.B. 512 privatizing the sale of alcoholic beverages in Mississippi. The two pieces of legislation now head to a conference committee to reconcile their differences.

Nebraska

[L.B. 1236](#) would allow craft brewery licensees (up to 20,000 barrels/year production) to self-distribute up to 250 barrels per year to retail licenses in Nebraska if the licensee: (1) only self-distributes its beer in a territory in which the craft brewery licensee has not entered into a distribution agreement with a licensed Nebraska wholesaler; (2) self-distributes its beer utilizing only persons employed by the licensee in vehicles owned and leased by the licensee; and (3) complies with all relevant statutes, rules, and regulations that apply to Nebraska beer wholesalers regarding distribution.

New Jersey

[Senate Bill 2075](#) 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.

Rhode Island

Signed into law, [S.B. 2153](#) removes the expiration date for a holder of a brewpub manufacturers license to be permitted to sell, with a take-out food order, up to a specified amount of wine bottles or equivalent wine in smaller containers, a specified amount of mixed wine based drinks, a specified amount of beer or mixed beverages, and a specified amount of draft beer or mixed beverages and prohibits delivery of alcoholic beverages with food from a brewpub licensee.

[Senate Bill 2492](#) and companion H.B. 7727 would authorize manufacturer-breweries to sell up to three drinks on premises per visitor per day, where a drink is defined as up to sixteen ounces.

Utah

Failing to advance from committee, [House Bill 453](#) would allow an alcoholic beverage retail location on the licensed premises of a brewery manufacturing licensee to sell beer manufactured on the premises.

Taxation:

Illinois

With proposed amendments under committee consideration, [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.

Kentucky

[H.B. 752](#) seeks to apply the tax rate of twenty-five cents (\$0.25) per gallon to distilled spirits of 14% or less alcohol by volume which are placed in containers for sale at retail (currently stipulated as 6% or less ABV).

[House Bill 627](#) / Senate Bill 325 provide for a tax credit related to stillage management, with spent brewers grain classified as an eligible material.

New Jersey

[Senate Bill 1853](#) creates a new category of alcoholic beverages termed “flavored malt beverages” and sets a tax rate of \$4.40 per gallon to account for its reliance on distilled spirits during the production process.

Trade Practice & Other:

Alabama

[H.B. 411](#) and companion S.B. 259 provide that a beer manufacturer that produces more than 60,000 barrels annually may have a financial interest in no more than one brewpub (existing law states that a beer manufacturer that sells less than 60,000 barrels of beer annually may have a financial interest in a brewpub) and that the annual barrel production limit includes beer produced by affiliate producers and beer produced exclusively for that manufacturer.

Alaska

Sent to the House for consideration, [Senate Bill 9](#), 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

Referred to committee, [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.

California

Amended in Assembly committee, [S.B. 38](#) would require beverage manufacturers, as defined, in the state to form a beverage container stewardship organization which would be required to develop and submit to the department a plan, annual report, and budget for the recovery and recycling of empty beverage containers. The organization would also establish a stewardship fee, to be paid by beverage manufacturer members of the organization, to assist in covering the costs of implementing the beverage container stewardship program.

[Assembly Bill 2301](#) states the intent of the Legislature to enact legislation relating to craft breweries.

Hawaii

[Senate Bill 2331](#) and companion H.B. 2370 seek to expand the definition of "beer" to specify an alcohol by volume of no less than 0.5 per cent and to include alcohol seltzer beverages.

Idaho

Passing the full House and initial Senate committee consideration, [House Bill 530](#) seeks to authorize the Idaho Hop Grower's Commission to promote beer made with Idaho-grown hops.

Iowa

Largely addressing licensing stipulations and fees, [S.B. 2350](#) (Senate Study Bill 3140) also proposes to change the definition of “high alcoholic content beer” from those with not more than fifteen percent alcohol by volume to those with not more than nineteen percent alcohol by volume.

Kansas

Amended in House committee, [S.B. 2](#) provides for the consumption of beer and wine on the Kansas state fairgrounds.

Louisiana

[House Bill 523](#) seeks to authorize manufacturers or brewers to host up to twelve private events at the brewing facility under certain conditions.

Minnesota

[House Bill 3626](#) seeks to define “beer” as a malt liquor, which is itself defined as “any beer, ale, or other beverage made from malt by fermentation, or by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses, that has not undergone distillation, and containing not less than one-half of one percent alcohol by volume.” The bill would also define “brew pub” as “a brewer who also holds one or more retail on-sale licenses and who manufactures fewer than 3,500 barrels of malt liquor in a year, at any one licensed premises, the entire production of which is solely for consumption on tap on any licensed premises owned by the brewer, or for off-sale from those licensed premises.”

Mississippi

Dying in House committee, [S.B. 2875](#) sought to 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 Jersey

[Senate Bill 1647](#) permits the holders of a limited brewery, restricted brewery, plenary winery, farm winery, out-of-state winery, cidery and meadery, and craft distillery license to offer retail memberships to their customers. A "retail membership" is defined as a membership program offered by a license holder to customers, which provides discounts or other benefits related to the products manufactured by the license holder in exchange for a membership fee.

[A.B. 2500](#) authorizes limited breweries, commonly referred to as microbreweries, to hold certain on-site and off-site events open to the general public. Additionally, the bill provides that the requirement that a consumer take a tour of the brewery as a prerequisite to consuming malt alcoholic beverages on the premises can be satisfied by taking either an on-site tour or a virtual tour of the brewery, and that an on-site or virtual tour is not required for the licensee to sell its

product at retail for off-premises consumption and that the product may be sold in a keg, sixtel, case, six-pack, growler, or crowler.

[S.B. 2210](#) seeks to allow dogs in sampling and tasting areas of breweries.

Oklahoma

Amended in committee, [S.B. 1811](#) would allow brewer and small brewer licensees to hold off-site events under certain conditions and provides that the holder of multiple small brewer licenses may sell beer produced at up to 3 breweries for which the licensee has a license.

Additionally, all manufacturer's licenses held by brewers during the first calendar year beginning October 1, 2018, shall automatically convert to brewer licenses and be deemed effective as of the date of the first issuance of the manufacturer's license.

Utah

Passing both legislative chambers in substituted version, [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

[S.B. 5982](#) seeks to lower the blood alcohol concentration limit to .05.