

2018 STARTS STRONG WITH NEW ALCOHOL LEGAL DEVELOPMENTS



by
Richard M. Blau, Chair
Nationwide Alcohol Industry Team

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2018 has arrived, and the new year is starting off strong for the alcohol industry and those who regulate it. In preparation for what's ahead, here's a brief look at what's already here!

- **2018 Tax Cuts for Alcohol:** The White House signed a tax bill last month that made several changes to taxes on beer, wine and distilled spirits. Tucked away in the new legislation is the “Craft Beverage Modernization” provision, which cut federal excise taxes on alcohol producers, particularly small brewers. The changes will last up to 2019, whereupon they will be subject to renewal:
 - The new law reduces the beer tax from \$7 to \$3.50 per barrel on first 60,000 barrels and \$18 to \$16 per barrel on the first six million barrels.
 - The law changes the liquor tax rate from a fixed to tier system. It lowers the current liquor tax rate from \$13.50 to \$2.70 per proof gallon on the first 100,000 proof gallons. Taxes increase to \$13.34 on the next 22.1 million gallons. Anything above that is taxed at the current rate of \$13.50.
 - It extends wine tax credits to all domestic wineries whereas the credits currently are limited to small producers; the tax credit ranges between \$0.54 to \$1.00 per gallon.
- **New Alcohol Bills for 2018 Florida Legislative Session:** The following alcohol-related bills have been filed in the Legislature. A summary of each bill is copied below.
 - **SB 822 Beverage Law (Hutson)** Providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; prohibiting the manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors, etc.
 - **HB 775 Beverage Law (La Rosa)** Provides an exemption from provisions relating to tied house evil for specified financial transactions between manufacturer or importer of malt beverages & licensed vendor; provides conditions for exemption; prohibits manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors.
 - **SB 296 Beverage Law (Brandes; Regulated Industries)** Repealing provisions relating to limitations on the size of individual wine containers; authorizing the packaging, filling, refilling,

or sale of cider in growlers; revising provisions authorizing a restaurant to allow a patron to remove certain containers from a restaurant for off-premises consumption, etc.

- **HB 667 Beverage Law (Perez)** Provides for electronic orders received at vendor's licensed place of business to be construed as sale actually made at vendor's licensed place of business; provides for use of vehicles contracted with third party for deliveries.
- **HB 669 Beverage Law (Perez)** Repeals provisions relating to limitations on size of individual wine containers; authorizes packaging, filling, refilling, or sale of cider in growlers; revises provisions authorizing restaurant to allow patron to remove certain containers from restaurant for off-premises consumption.
- **SB 1020 Alcohol Deliveries (Young)** Including an electronic order as a type of order construed as a sale made at a vendor's licensed place of business; authorizing a manufacturer, distributor, or vendor to contract with a third party for certain deliveries, etc.
- ***Texas Case on Craft Brewer's Sale of Beer Distribution Rights:*** On December 15, 2017, the Texas Court of Appeals for the Third District, at Austin issued an opinion in *Texas Alcoholic Beverage Commission v. Live Oak Brewing Co., et al.* (Case No. 03-16-00786-CV) in which the court overturned a lower court's determination that a statute prohibiting self-distributing brewers from selling the distribution rights to their products was unconstitutional under the Texas Constitution. In 2014, Live Oak Brewing Co., Revolver Brewing and Peticolas Brewing Co. (all Texas-based craft breweries that self-distribute) joined together in a suit against the Texas Alcoholic Beverage Commission (Commission) challenging the constitutionality of a provision in Texas' alcohol beverage control law that prohibits brewers from selling the distribution rights to their products. The provision at issue, **Tex. Alco. Bev. Code § 102.75(a)(7)**, provides that it is unlawful for a brewer to "accept payment in exchange for an agreement setting forth territorial rights." The lower court rendered judgment in favor of the brewers, declaring the prohibition on a brewer's sale of its distribution rights unconstitutional under the "due course of law" guarantees of the Texas Constitution.

On appeal by the Commission, the Texas Court of Appeals reversed the lower court's decision and upheld the constitutionality of the challenged provision under the Texas Constitution. The brewers argued that the statute denied them the fundamental economic liberty interest recognized by the Supreme Court of Texas in *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2015). The Court of Appeals disagreed, noting that "unlike the entry barrier faced by the Threaders in Patel, [the brewers] have not demonstrated that section 102.75(a)(7) has deprived them of their occupational freedom, *i.e.*, that it has prevented them from operating within their chose trade - brewing and selling beer - within the confines of the unchallenged three-tier system."

- ***Kentucky Authorizes Private Collector Sales of Spirits:*** On January 1, 2018, Kentucky's new 'Vintage Spirits Law' took effect. The new law (actually, revisions to the commonwealth's existing alcohol beverage statute) says: "A person holding a license to sell distilled spirits by the drink or by the package at retail may sell vintage distilled spirits purchased from a nonlicensed person upon written notice to the department in accordance with administrative regulations promulgated by the department." It further defines 'vintage distilled spirit' as "a package or packages of distilled spirits that are in their original manufacturer's unopened container; are not owned by a distillery; and are not otherwise available for purchase from a licensed wholesaler within the Commonwealth." As of the January 1 start date, 'the Kentucky Alcoholic Beverage Control Department had issued no administrative regulations or guidelines. However, several industry groups have proposed draft regulations for the agency's consideration, and public comments are being collected by the KABC.

NOT A “LEGAL” DEVELOPMENT, BUT ...

- ***RNDC-Breakthru Merger: Continuing Concentration/Consolidation of the Wholesale Tier:*** On November 20, 2017, Republic National Distributing Company, LLC, a distributor and broker of premium wine and spirits, and Breakthru Beverage Group, LLC, a distributor and broker of beer, wine and spirits in the U.S. and Canada — both members of the *Forbes* list of “America’s Largest Private Companies -- announced their execution of a Letter of Intent to combine their assets and operations. **RNDC** is a distributor of premium wine and spirits with operations in Alabama, Arizona, Colorado, District of Columbia, Florida, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Virginia and West Virginia; RNDC employs more than 9,500 associates nationwide. **Breakthru Beverage Group** is a leading North American beverage wholesaler formed in 2016 through the merger of Charmer Sunbelt Group and Wirtz Beverage Group. Breakthru employs more than 7,000 associates representing a portfolio of premier wine, spirit and beer brands in the United States and Canada.

Among the advantages gained by joining forces, RNDC-Breakthru’s supplier profiles are complementary in a number of key markets. For example, both distributors already handle *Gallo* brands in Florida. The new company’s portfolio in Florida will also combine brands from *The Wine Group* (RNDC) and *Jackson Family* (Breakthru), as well as *Brown-Forman*(Breakthru) and *Sazerac* (RNDC) on the spirits side. Meanwhile, the deal will allow the combined group to leverage RNDC’s strength in Texas (where it has sales of \$2.2 billion and distributes brands from major suppliers such as Brown-Forman, Pernod Ricard, Sazerac, Constellation, Trinchero, The Wine Group, Jackson Family and Ste. Michelle) with Breakthru’s business in Illinois, which totals \$1.1 billion and includes major suppliers such as Diageo, Gallo, William Grant, Brown-Forman, Sazerac and others.

- ***Alcohol and Cancer Study Released:*** On January 3, 2018, a team from the Medical Research Council Laboratory of Molecular Biology at Cambridge University published the findings of a study in the scientific journal *Nature*, which they say shows how unprocessed acetaldehyde can break the DNA of Haematopoietic stem cells (which renew red and white blood cells), permanently altering the genetic code and allowing cancerous cells to form. It has long been known that a build-up of carcinogenic acetaldehyde – a chemical produced when the body processes alcohol – is the principal cause of seven types of cancer, especially breast cancer in women as well as bowel and mouth cancer. What was not known exactly was how acetaldehyde caused the damage that led to these cancers developing.

The study also showed, however, how the body protects itself from acetaldehyde by using a group of enzymes called aldehyde dehydrogenases 2 (ALDH2), which break acetaldehyde down into acetate which cells can use beneficially. DNA also has a range of repair systems that – for the most part – are able to fix damage although there is also the possibility that cells are improperly repaired which can also then turn cancerous.

Not surprisingly, the recently-published study has generated significant pushback from industry members and their advocates, as well as from a variety of other researchers. Press coverage includes a balanced review by [The New York Times](#).

- ***Diageo taps into at-home cocktail making via Alexa:*** Diageo has launched a new concept for the Amazon Echo Show in the UK to help consumers create cocktails at home. The new skill, called The Bar, is inspired by Diageo's website [thebar.com](#), which was launched in 2013 to help at-home cocktail making. In order to use the new function, consumers start by asking Alexa to open The Bar, and they are then presented with three different options: Make a Specific Cocktail, Help Me Choose or Learn Techniques.
 - Make a Specific Cocktail allows users to tell Alexa what they want to make and Alexa then provides them with a recipe and guides the user through preparing the cocktail.

- Help Me Choose is where Alexa suggests easy to make cocktails based on the consumer's preferences such as sweet or sour, or long or short.
- Learn Techniques is where Alexa helps consumers master mixology techniques with practical advice such as how to muddle your mojito to perfection, according to the company.

The Bar also allows consumers to send a shopping list of ingredients or a cocktail making kit to the Alexa mobile app on their phone or it directs them to purchase on Amazon. The launch will be supported by a marketing campaign with Amazon Media Group across Amazon's multiple platforms including Fire TV and Kindle.