

Beverage Breakdown

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Welcome to Nutter's *Beverage Breakdown*, a periodic legal update on developments related to the alcohol beverage industry, including industry news, federal and state updates, noteworthy litigation, and more. We look forward to sharing our insights with you as we cover everything that's brewing across the sector.

Industry News

Molson Coors announced a **strategic partnership** with Fever-Tree, taking an 8.5% stake in the mixer company and granting Molson Coors exclusive U.S. commercialization rights to the brand, effective February 1.

Aldi announced the **sale** of a significant portion of its Southeastern Grocers (SEG) stores under the Winn-Dixie and Harveys Supermarket brands to a group of private investors backed by SEG leadership.

Vermont Information Processing (VIP) announced that it entered into a **"strategic capital partnership"** with global private equity firm Warburg Pincus.

Athletic Brewing announced a **partnership** with Live Nation. Under the terms of the deal, Athletic Brewing will be available at over 100 live music venues in the U.S., including The Shoreline Amphitheatre and The Gorge Amphitheatre, and music festivals, including Bonnaroo and BottleRock.

Referencing the former U.S. Surgeon General's advisory, the World Health Organization (WHO) released a report also calling for **mandatory cancer warning labels** on alcohol beverages. "Clear, highly visible health warning labels increase consumers' awareness of the risks associated with drinking, and should be standard in Europe and around the world."

Amcors PLC and Berry Global Group Inc. announced that shareholders of both companies voted to approve **Amcor's planned purchase of Berry Global**. The parties also announced the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), satisfying another closing condition necessary for completion of the transaction. The transaction remains slated to close in mid-2025.

According to research from Cornell University published in the *American Journal of Agricultural Economics*, when a grocery store starts selling beer, beer-purchasing households visit the store more frequently and increase their total monthly grocery expenditures. The study found that beer-purchasing households visited a grocery store **3.6% more often** and increased their grocery store expenditures by 8% per month.

Federal/State Regulatory Updates

Federal Updates

President Trump's **tariffs**, both threatened and imposed, continue to impact the alcohol and food & beverage industry. Tariffs are taxes imposed by a government on goods imported from other countries. Tariffs are typically charged as a percentage of the price a buyer pays a foreign seller. U.S. tariffs are collected by Customs and Border Protection (CBP). Importers pay tariffs, not foreign countries. The information below is accurate as of the date of publication, but this situation is evolving rapidly.

- Trump has imposed 25% taxes on all steel and aluminum imports.
- Trump has imposed 20% taxes on Chinese imports. China responded with up to 15% duties on U.S. farm goods, including chicken and pork, which went into effect on March 10.
- Trump's 25% tariffs on Mexico and Canada went into effect on March 4 but by March 6, Trump had paused tariffs on goods and services compliant with the United States–Mexico–Canada Agreement (USMCA) until **April 2**, a day Trump has begun referring to as "Liberation Day." Trump may announce additional tariffs on new countries on this day but may also announce tariff rollbacks. Recent reporting has indicated that some tariffs' pauses may continue beyond this "Liberation Day," there may be modifications of what goods are covered, etc.
- The European Union had intended to impose retaliatory tariffs in two phases but has instead decided to impose its retaliatory tariffs all at once in mid-April, pending negotiations. As proposed, tariffs will apply to a host of goods, including whiskey, beer, poultry, beef, and produce.
- Some have promoted the use of foreign-trade zones (FTZs) as a means of managing exposure from tariffs. The Foreign-Trade Zones Act allows the importation of goods without being subject to duties or taxes until the goods are withdrawn from the FTZ, which can allow companies to defer payment of duties and taxes until goods actually enter the U.S. market.

President Trump signed an executive order establishing the "**Make America Healthy Again Commission**" that is initially going to focus on childhood chronic disease. Relevant for the food & beverage industry, the order builds on statements from Trump and Secretary of the U.S. Department of Health and Human Services Robert F. Kennedy Jr. criticizing the nation's food supply and pushing for changes to federal agriculture and public health policies. The order calls for an assessment, within 100 days, on the impact of certain food ingredients



and chemicals on chronic inflammation or other mechanism of disease. Key external stakeholders have raised many concerns with the Commission, particularly the lack of external participants in the Commission and the limited detail on how the public will be able to engage in the process. How this Commission will directly impact the alcohol or food & beverage industry overall remains unclear.

The U.S. Department of Health and Human Services (HHS) issued a statement that it had directed the Food and Drug Administration (FDA) to explore rulemaking on **eliminating the self-affirmation option** for determining that a food ingredient is "generally recognized as safe" (GRAS). The Food, Drug, and Cosmetics Act considers any substance intentionally added to food as a food additive subject to FDA's review and approval unless the substance is GRAS. FDA allows manufacturers to voluntarily notify FDA of their determination that a particular use of a substance in food is GRAS. Companies may also self-affirm that a substance they use is GRAS for its intended use without notifying FDA. This self-affirmation must be based on careful assessment of data, and companies often hire expert panels to assess a substance's safety for its intended use. HHS's statement advocates for eliminating of the self-affirmation process either via rulemaking or in conjunction with Congressional legislation and strongly encourages manufacturers to submit GRAS notices. The statement fails to address how FDA would handle an increase in GRAS notifications if self-affirmation were no longer an option, particularly in light of the mass firings at FDA done at the behest of the Department of Government Efficiency.

The comment period is open for TTB's rulemaking on **allergen labeling**. TTB has proposed requiring labeling of all major food allergens used in production of alcohol beverages. The proposed rule would have a compliance date of five years from the date that a final rule is published. Comments are due by April 15, 2025. According to the Beer Institute, the Office of Budget and Management has withdrawn the proposed rulemaking on ingredients that would have required an "Alcohol Facts" statement. The Federal Register's publication of rulemakings and TTB's website have not been updated to reflect this as of the date of publication. Stay tuned for further updates on this change.

State Updates

Arkansas

Two new laws impacting the alcohol industry have passed in Arkansas. SB98 allows grocery and convenience stores to **deliver alcohol** to customers in wet counties. Previously, only liquor stores had delivery privileges. SB97 allows liquor store owners to have **multiple store locations**. Previously, the state allowed only one retail permit for individual liquor stores. The law imposes a maximum of one license per county, and additional licenses must be in counties with over 200,000 people.

Colorado

Colorado's Liquor and Tobacco Enforcement Division **implemented new rules** to enforce legislation that took effect in 2024. Some noteworthy changes: the agency has created an option for two-year license renewals (as opposed to one year previously); provisions in lease agreements between landlords and tenants with retail licenses that allow a landlord to collect 18% or more of a tenant's gross revenue from the sale of alcohol can make that landlord an "owner" in the tenant's liquor license and subject the landlord to disclosure requirements and background checks; the public hearing requirement for new retail liquor licenses was shifted from mandatory to discretionary, meaning localities can decide individually if they want to keep the requirement; all manufacturers may now operate a primary facility with up to two additional facilities within a 10-mile radius, not just wineries; wholesalers may now become licensed as importers and vice versa; and local law enforcement is ramping up sting operations, particularly for retail licensees.

Georgia

Georgia is considering adding some **self-distribution privileges** for craft brewers. The Craft Beer and Local Economy Revitalization Act, SB122, was introduced by State Sen. John Albers (R-Roswell) and would permit small breweries to sell up to 3,000 barrels annually "to retailers licensed in this state that are located within a 100-mile radius of the small brewer's licensed premises." The Georgia Beer Wholesalers Association has opposed the legislation, arguing that the way "small brewer" is defined in the bill could potentially allow self-distribution to regional and national brands.

Illinois

SB1618 would **remove restrictions** that currently prohibit craft distillers from simultaneously self-distributing and having on-site, full bars or engaging in direct-to-consumer shipping. The bill would remove these prohibitions for small in-state distillers.

Maryland

Maryland lawmakers are now considering **expanding beer and wine sales channels** in the state. HB1379 would expand beer and wine sales beyond liquor stores and into grocery stores, convenience, and big box retailers. The bill proposes a 5% surcharge on beer and wine sold in these potential new channels.

Massachusetts

Boston City Council is debating a **sugary drinks tax**. City Council member Sharon Durkan called for a \$0.02 per ounce tax. This comes years after several cities adopted "soda taxes" on sugary beverages, including San Francisco, Philadelphia, Seattle, and Chicago. Suppliers looking to sell products direct-to-consumer (for products that may lawfully be sold DTC) should consider whether these types of taxes may apply to their activities in a particular market.

Michigan

Michigan Attorney General Dana Nessel filed suit against Pellegrini Vineyards (New York) and RRJ Real Properties also known as Tsillan Cellars (Washington) for allegedly **shipping alcoholic beverages to Michigan residents without a license**. Despite receiving a cease and desist from the state following a previous investigation in 2022, both defendants fulfilled orders placed by the Attorney General in 2024. The suits seek both preliminary and permanent injunctions against the defendants and a \$25,000 fine for each violation.

Mississippi

Mississippi passed legislation to **allow direct-to-consumer shipment** of up to 12 cases of wine to Mississippi residents per year. The bill enacts a 15.5% tax on direct wine shipments. The law takes effect on July 1.



Nebraska

LB113 would modify the Nebraska Liquor Control Act to **expand the number of potential retail locations for manufacturers, craft breweries, and microdistilleries** from five to ten locations. The bill would increase the number of separate physical locations that can be included under a single license for these types of businesses. The bill would also increase the amount of product a microdistillery can directly sell to retail licensees from 500 to 5,000 gallons per calendar year. The bill would also allow manufacturers of spirits and microdistilleries to operate rickhouses (warehouses for aging spirits) with commission authorization.

Ohio

Ohio's Senate is considering **two bills** that would impact the alcohol beverage industry. SB23 would exclude any person producing less than 250,000 barrels of beer a year from the definition of "manufacturer" under the franchise law. SB320 would require state store employees to (1) open a bottle of spirituous liquor that is sold; and (2) reseal the opened bottle in accordance with rules adopted in accordance with the law. The SB320's sponsor said, "My entire goal is to stop the flipping of liquor, the illegal selling on the secondary market, and to make it fairer for every Ohioan..."

Oregon

Oregon is considering two pieces of legislation relevant to the alcohol beverage industry. HB3433 would **add wine containers to the bottle bill**. If passed, the change would take effect on July 1, 2026. Oregon is also considering HB3730 that would **allow grocery stores to sell spirits-based canned cocktails**, up to 14% ABV, with a currently proposed tax rate of \$8 per gallon.

Texas

Texas is considering bills, SB2225 and HB4077, that would add a "spirit cooler" definition to the Texas Code, add a "spirit cooler certificate," **add "spirits cooler" products to the franchise law**, and would allow these spirits-based ready-to-drink products to be sold in grocery and convenience stores. Texas is also considering SB650 that would require the use of electronically readable information to verify a purchaser's age in the retail sale of alcoholic beverages.

Washington

Washington State Liquor and Cannabis Board (LCB) commenced a rulemaking process that would address certain **alcohol merchandising** policies and practices. The current draft of the rules would (1) require retailers to avoid displaying alcohol products next to, or in the same aisle as, certain non-alcohol products, like soft drinks, soda, fruit juice, flavored water, toys, candy, and items marketed for child consumption, (2) secure mini bottles of liquor, (3) remove liquor from end-caps and free-standing displays unless the aisle or broader area is solely dedicated to alcohol, and (4) avoid placing alcohol products within view of any point of sale or check out area. These rules would apply to all alcohol products, not just crossover products.



Hemp Updates

James Lankford (R-OK) and Pete Ricketts (R-NE) filed the No Deductions for Marijuana Businesses Act which would continue to **ban certain federal tax deductions** for cannabis companies, regardless of whether cannabis is rescheduled under the Controlled Substances Act. Currently, Internal Revenue Code Section 280E prohibits cannabis operators from deducting certain business expenses on federal tax returns. This bill aims to solidify that prohibition, regardless of cannabis regulatory reform efforts.

Alabama

SB132 filed in February would amend state law to remove an exception for THC found in hemp products from Schedule 1 of Alabama's controlled substances law, thereby making all THC a Schedule 1 controlled substance. This would **ban products** containing delta-8, delta-9, and delta-10 THC.

Arizona

SB1556 would **establish requirements** for the manufacture, distribution, and sale of adult hemp beverages, including licensure with the Arizona Department of Liquor Licenses and Control (DLLC). It would modify the statutes governing spirituous liquor products by incorporating adult hemp beverage products.

California

California has multiple bills and regulatory actions attempting to address hemp-derived THC products in the state. California implemented emergency regulations that require hemp food and beverages intended for human consumption to have **no detectable THC per serving**. These regulations were readopted by the state, with an effective date of March 24, 2025. California's Senate also introduced SB 378 that aims **prohibit the online sale of unlicensed hemp and cannabis products** in the state. The bill's sponsor says it would hold online retailers liable for consumers harmed by the sale of the products by enhancing consumer protections, adding reporting mechanisms, and requiring a disclaimer that the products are not verified under a California license. Opponents of the bill argue that it imposes heavier burdens on compliant hemp companies.

Kentucky

SB202 advanced in the legislature to **regulate intoxicating hemp-derived beverages**. The bill would add regulation of intoxicating hemp-derived beverages to the state laws that regulate alcoholic beverages, giving the Kentucky Department of Alcoholic Beverage Control the authority to oversee the products' distribution and sale. It also includes a cap of 5mg of THC on cannabis-derived drinks.

Massachusetts

HD3303 would **regulate hemp beverages**, like alcohol, in the Commonwealth. Beverages would be limited to 5mg of intoxicating cannabinoids per container or the limit for marijuana-infused beverages, whichever is greater.

Mississippi

HB1502 would **legalize consumable hemp beverage products**. It would impose a 0.3% THC limit on these products. Mississippi has also proposed regulating these products like alcohol.

Missouri

Missouri has **multiple competing bills** that would regulate intoxicating hemp products moving through the legislature. Although the bills vary substantially, each of the bills would largely direct regulation of hemp products to the Division of Alcohol and Tobacco Control.

Nebraska

Nebraska's Attorney General sent **cease and desist** letters to over 100 retailers in the state alleging that they are selling products with THC above the state's legal limit. Police tested products from retail locations and found that each store where products were tested had at least one product that was marketed as hemp but contained delta-9 THC at concentrations that would classify the products as cannabis. The letters demand the parent companies of these retailers cease sales immediately or face a lawsuit and require submission of documents demonstrating their compliance with the demand.



New Mexico

A bill was introduced to **establish an enforcement arm** of New Mexico's Regulation and Licensing Department and to allow the Cannabis Control Division to prosecute violators of the Cannabis Regulation Act. Currently, the CCD may only issue administrative penalties like civil fines or license revocation but must refer acts it identifies as illegal to local law enforcement agencies.

Pennsylvania

Governor Josh Shapiro included in his budget proposal a **plan to legalize marijuana**, including a July 1 effective date with retail sales beginning at the start of 2026. Medical marijuana has been legal in Pennsylvania since 2016, but proposals to legalize recreational use have failed in the state legislature.

Texas

The Texas Senate has approved SB3 which would **ban consumable products with hemp-derived cannabinoids**. The bill would make the manufacture, delivery, and possession of hemp products (excluding some products like those with CBD) illegal and create additional criminal prohibitions on selling such products to minors or marketing them in a way that appeals to minors. The bill moves to the House for consideration.

Noteworthy Litigation

- *Federal Trade Commission v. Southern Glazer's Wine and Spirits LLC*: Federal Trade Commission (FTC) defended its suit against Southern Glazer's in opposing the motion to dismiss filed by the wholesaler earlier this year. Southern's motion argued that FTC's suit failed to satisfy the Robinson-Patman Act's "in-commerce" requirement, which only allows sales in interstate commerce to be targeted. **Southern says its sales occur intrastate**. FTC responded in early March, telling the court that while final sales (sales to retailers) may not have crossed state lines, the company moves purchased goods across state lines, and all if its sales occurred within the interstate flow of commerce. FTC pointed to *Standard Oil Co. v. FTC* where the Supreme Court held that gas sold by Standard Oil was still sold interstate, despite that Standard Oil shipped gas across state lines and temporarily stored it within the state of final sale prior to consummation of the final sale. Any finding other than that Southern's sales were in interstate commerce, according to FTC's response, would "allow interstate firms to escape RPA liability by distributing through state-specific warehouses." This legal dispute comes after portions of FTC's complaint were unsealed, revealing that FTC believes Southern charges small retailers up to 67% more for the same products as large chain stores.
- *CB Brand Strategies LLC et al. v. Oz Trading Group, Inc.*: Constellation sought and received **preliminary injunction** against Oz Trading Group to stop the company from importing and selling beers with nearly identical names, labels, and color schemes to Modelo, Corona, Pacifico, and Barrilito. Oz Trading Group allegedly obtained Certificates of Label Approval (COLA) for the products, but Constellation's motion sought to bar Oz Trading from continuing to "illegally" use Constellation's marks or the COLAs Oz Trading had received for importing the offending products. The motion was swiftly granted.
- *NAD Brings Challenges Related to Celebrity Social Media Promotions*: The National Advertising Division (NAD) identified several posts by actor and comedian Kevin Hart that promoted the athletic apparel brand Fabletics. NAD alleged that Hart had **failed to adequately disclose his relationship** to Fabletics in the posts. NAD took the somewhat unusual step of bringing challenges not only against Fabletics but against Hart himself. Fabletics and Hart both argued that because Hart is an equity owner of Fabletics and has been prominently featured in marketing materials since the brand started in 2020, consumers are aware of the affiliation between Hart and Fabletics. This, they argued, negated the need for disclosure of the relationship. NAD was not persuaded by these arguments, finding that "a significant minority of the audience might not be aware of Hart's affiliation with



Fabletics” and therefore Hart needed to clearly and conspicuously disclose the relationship when posting about the company.

- *Consejo Regulador del Tequila, A.C. v. Additive Free Alliance, Inc.*: The Consejo Regulador del Tequila (CRT), the non-profit that regulates tequila and owns the TEQUILA trademark in the U.S., filed a lawsuit against the Additive Free Alliance (AFA) for allegedly **misrepresenting themselves** as certifiers of tequila and falsely certifying tequila as “additive free.” The lawsuit claims AFA is **misleading consumers** by “certifying/confirming that Tequilas are “additive free” when that claim is false and/or misleading...” CRT’s suit seeks a permanent injunction against and damages from AFA.
- *Daly et al. v. The Wonderful Company LLC*: a judge dismissed a proposed class action against the maker of Fiji Water that alleged the producer is illegally labeling Fiji Water as “natural” despite knowing it contains microplastics. The order found that the consumers’ claims were conclusory as they had failed to point to scientific evidence directly tying the product to their claims. The plaintiffs’ suit argued that reasonable consumers would not expect microplastics to be in a product labeled as “natural,” and while the judge acknowledged that expecting the consumers to have tested their own water for microplastics may be unreasonable given that the product had been consumed, the suit likely could have been substantiated had they performed “relatively contemporaneous” testing of other Fiji Water. The suit only referenced testing of other bottled water brands and a study that did not include Fiji Water to describe how the microplastics allegedly enter the products. In sum, the mere **plausibility** that microplastics could be in a product were not sufficient to allow this suit to proceed.

Out of State Retailer Shipping Litigation

- *Jean Paul Weg, LLC v. Director of New Jersey Division of Alcohol Control*: Hours after issuing a decision in this case, an order was published **vacating the decision** saying it was “issued in error.” The now-vacated Third-Circuit decision had upheld a New Jersey law that allows only in-state retailers with a physical presence in New Jersey to ship wine directly to New Jersey consumers. The judges found that the law does not violate commerce clause and is within the state’s authority over alcohol regulation granted by the 21st Amendment. The panel cited *Tennessee Wine & Spirits Retailers Association v. Thomas* in finding for the state, “Tennessee Wine clarified that it is not a standard dormant commerce clause inquiry that controls when a state’s alcohol regulations are challenged, but instead a ‘different inquiry’ that asks of discriminatory regulations ‘whether the challenged requirement can

be justified as a public health or safety measure or on some other legitimate nonprotectionist ground...” At 9AM, New Jersey’s law was justifiable on public health grounds, according to the judges. By 7PM the same day, the decision was vacated, and it remains unclear why or what comes next in this case.

- *Day et al. v. Henry et al.*: the Ninth Circuit held that Arizona’s law requiring retailers shipping wine to consumers in the state to have a business location in Arizona is **not discriminatory**. The court found that the Arizona’s requirement for a wine-shipper to have an Arizona location in order to ship to an Arizona resident was evenly applied to all wine retailers, no matter whether the whether that retailer was headquartered, incorporated, or otherwise based in another state. Because it found that the law was not discriminatory, the Ninth Circuit did not have to analyze whether the law violated the commerce clause of the U.S. Constitution.
- *Block v. Canepa*: a federal judge in Ohio ruled in favor of the state regarding its regulations on importation of alcoholic beverages by out-of-state retailers. The plaintiffs, which included an out-of-state wine retailer, argued that the state’s regulation violated the Constitution’s commerce clause. The judge ruled that that Attorney General Dave Yost was entitled to summary judgment because Ohio’s regulations fall under the authority granted to states to protect public health and safety by the 21st Amendment, and the state demonstrated that the challenged laws were aimed at **protecting health and safety**.

Hemp/Cannabis Litigation

- *Hemp Association of Louisiana et al. v. Landry et al.*: Louisiana filed a **motion to dismiss** the hemp industry association’s suit, arguing that the association is ignoring other court rulings on similar issues. “[T]hey continue to ignore that virtually every court to consider these identical claims has rejected them for defects in jurisdiction, the merits, or both.” The suit seeks an injunction that would block enforcement of Act 752 which imposes restrictions on consumable hemp products, arguing that the Act is either preempted by the 2018 Farm Bill or unconstitutional due to its impact on interstate commerce in the consumable THC market.
- *Doctors for Drug Policy Reform et al. v. Drug Enforcement Administration et al.*: Doctors for Drug Policy Reform have alleged that the Drug Enforcement Administration (DEA) has given preferential treatment to opponents of efforts to **reschedule cannabis** under the Controlled Substances Act in administrative process. The suit argues the DEA’s selection of who was allowed to participate in the process demonstrated the agency’s “impermissible goal of creating an

evidentiary record that would allow it to reject the proposed rule to reschedule marijuana.” The doctors have asked the circuit court to vacate the DEA’s selection of participants and instruct the agency to redo the process.

- *Northern Virginia Hemp and Agriculture LLC et al. v. Commonwealth of Virginia et al.*: Northern Virginia Hemp and Agriculture agreed to **dismiss their suit** against the Commonwealth, without providing further information about why the suit was being dropped. This came after the Fourth Circuit affirmed that the Commonwealth’s law restricting the sale of hemp-derived THC products was not preempted by the 2018 Farm Bill.
- *CCH Acquisitions LLC et al. v. J&J&D Holdings LLC et al.*: a breach of contract suit over the sale of a cannabis business was dismissed by a federal magistrate judge in Ohio who said the contract itself was illegal because of the federal prohibition against marijuana. J&J&D had agreed to purchase CCH’s property and business (which included cannabis plants) but required co-defendant Donovan Wade to obtain approval from the Michigan Cannabis Regulatory Agency before the sale could be completed. CCH alleged in the suit that Wade did not try to get the approval and that the defendants terminated the contract with a due diligence notice. Ultimately, the judge sided with the defendants’ argument, that the suit should be dismissed because it concerned an **illegal enterprise**. The judge’s order

acknowledged that while some courts have enforced contracts between cannabis businesses, the sale of cannabis was so intertwined with the contract that the federal court could not step in, “as it stands, the purchase agreement plainly violates federal law.”

Wholesaler Transactions

- Anheuser-Busch InBev agreed to acquire Sound Beverage Distributors (WA).
- House of LaRose notified suppliers that its deal to sell to Central Ohio’s Columbus Distributing Company is off (OH).
- Southern Crown Partners entered into an agreement to acquire KW Beverage (SC).



Beverage Breakdown: The Webinar

On April 8, Nutter’s Regulatory Team will provide an in-depth review of crucial legal updates and emerging trends in the Alcohol, Cannabis & Hemp, and Food & Beverage industries.

The webinar will address key regulatory changes, highlight major litigation developments, and offer expert tips and strategies to stay ahead of the curve, including updates on tariffs, federal agency changes, and employment issues, among other areas.

About Nutter

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