

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

Results from Tamarron's Brewer Partnership Compass survey indicated that almost half of beer distributors (46.8%) offer or are considering **adding THC beverages to their portfolios**, up from 26.5% of those surveyed last year.

RNDC's **withdrawal from the California market** is set to be final as of early September. The withdrawal has left brands searching for new distributors in the market during the critical summer months and resulted in an estimated 1,700 lost jobs.

Better Business Bureau's National Advertising Division released its Influencer Trust Index. The survey found that 82.7% of U.S. marketers used influencers for marketing campaigns, but highlighted that consumers trust influencer marketing less than general advertising. Notably, the survey found that a brand partnership itself did little to impact the perception of trustworthiness (70% said an influencer doing a brand partnership did not make the influencer less trustworthy), but 70% of consumers reported feeling negative toward an influencer who failed to disclose brand partnerships. The survey results reinforce that **properly disclosing brand partnerships with influencers** decreases regulatory exposure and also builds consumer trust for both the brand and the influencer.

Federal/State Regulatory Updates

Federal Updates

President Trump's Executive Order 14247 mandates the **transition to electronic payments** for all federal receipts and disbursements, including those to and from TTB. Effective September 30, 2025, TTB will cease issuing paper checks for disbursements, including tax refunds and drawbacks. "As soon as practicable," TTB will begin processing electronically all payments made to TTB. For refunds and drawback claims, industry members will need to provide TTB with banking information to allow them to process and disburse funds electronically. TTB encouraged industry members to begin transitioning to electronic payments as soon as possible for those still paying excise tax via paper check/money order, but did not provide a firm deadline upon which they would no longer accept checks or money orders.

The Food and Drug Administration (FDA) amended its regulations to revoke the authorization for the use of **brominated vegetable oil** (BVO) in food (which includes alcohol beverages). Those removing BVO from their formulas should have submitted new formulas to TTB for approval prior to the August 2, 2025 compliance date.

Comment periods have closed for **TTB's Alcohol Facts Statements** and **Major Allergen labeling proposals**, and the major trade groups that represent the alcohol industry have all submitted their comments. The Beer Institute's comment took issue with the "Alcohol Facts" label, instead advocating for "Serving Facts" while FIVS's comment promoted the use of digital labeling (e.g., QR codes) to share mandatory and voluntary product information. The American Medical Association commented on the Alcohol Facts rulemaking, supporting the "Alcohol Facts" designation, but also advocating for the addition of the following warning statement on alcohol labels: "There is no safe amount of alcohol consumption, and consuming alcohol in any amount increases the risk of cancer and other illnesses."

The Brewers Association commented on the FDA's rulemaking regarding potential **front-of-pack labeling** requirements advocating for the exemption of beverage alcohol products from these proposed rules. These rules would impact fermented grain products without malted barley and hops (e.g., most hard seltzer products) and wine products with less than 7% ABV (e.g., most hard ciders).

The FDA has approved **gardenia (genipin) blue** for use in sports drinks, flavored or enhanced non-carbonated water, fruit drinks and ades, ready-to-drink teas, hard candy, and soft candy (the announcement did not specifically identify other beverages, like alcohol beverages, where the color additive is approved for use).

The FDA's original order that revoked the authorization for the use of **FD&C Red No. 3** gave companies until January 15, 2027 to remove the ingredients from foods/dietary supplements, but the FDA now "encourages food manufacturers to, as soon as is practicably possible, reformulate to stop using FD&C Red No. 3 in foods, including dietary supplements, with the goal

of completing phase out before the January 15, 2027, deadline." The statement did not indicate any formal attempt to accelerate the compliance deadline or identify any enforcement exposure for those that choose to remove the ingredient at or near the deadline.

U.S. House members Jan Schakowsky (IL-D) and Rosa DeLauro (CT-D) reintroduced the **Food Chemical Reassessment Act** which would require the FDA to reevaluate the safety of chemicals, including "Generally Recognized as Safe" (GRAS) substances, food dyes, and food contact substances every three years. The bill would require the new Office of Food Chemical Safety, Dietary Supplements, and Innovation in the FDA's Human Foods Program to study every three years the safety of at least ten chemicals added to food or food packaging, starting with ten chemicals specifically identified in the legislation.

U.S. Senators Ed Markey (D-MA) and Cory Booker (D-NJ) introduced the **Ensuring Safe and Toxic-Free Foods Act** that would upend the GRAS regulatory framework. The bill would essentially do away with the self-affirmation option for GRAS designations, amend the definition of GRAS to exclude things that are "carcinogenic," otherwise identified as toxic by the National Toxicology Program, and a host of other exclusions, and add a myriad of new obligations for the FDA related to the GRAS notification process. The bill also does not include language preempting states from enacting their own GRAS rules or restrictions.

President Trump signaled at a fundraiser and press conference in early August that his administration is considering whether to proceed with a plan to **reschedule marijuana** from a Schedule I to a Schedule III of the Controlled Substances Act that was started under President Biden's Administration. He indicated a decision would be announced in the "next few weeks."

President Trump has **revoked** President Biden's **Executive Order 14036, Promoting Competition in the American Economy**, which was the basis of the issuance of the 2022 Treasury report on competition in the alcohol industry. The report largely scrutinized the supplier and distribution tiers of the industry. The revocation of the order indicates that the current executive branch will not act on the Treasury's report.



Over 20 **consumer and public health groups** signed a letter sent to Secretary of the Department of Health and Human Services Robert F. Kennedy, Jr. and Secretary of the Treasury Scott Bessent advocating for alcohol labeling policies that “call attention to the negative health effects of alcohol.” The signatories endorsed adding Secretary Bessent to the Make America Healthy Again Commission and amending the mandatory warning statement language to include cancer risk.

The U.S. Department of Commerce **added can ends and lids** to the list of aluminum derivatives under Section 232 tariffs, effective Monday, August 18. The list already included beverage cans and can sheets. Those importing can ends may be subject to tariffs or licensing requirements, further increasing packaging costs to suppliers.

State Updates

Connecticut

HB 6854 passed and authorizes all of the new federally-approved **standards of fill**. The bill also **expands the sale of spirits-based RTDs** with 6% ABV or less at fairgrounds, ball parks, amusement parks, amphitheaters, public golf courses, and sports arenas. The laws go into effect October 1, 2025.

Delaware

HB 187 was signed into law and will allow **limited direct-to-consumer wine shipments** into the state. The law will go into effect next year and will allow certain out-of-state producers to ship wine to Delaware residents but prohibits the shipment of wine from a winery currently represented by a Delaware wholesaler, including subsidiaries of larger parent companies that have wholesaler representation in the state. The bill’s limited scope and potentially complex implementation has been met with criticism from the wine industry.

Louisiana

SB 14 has been signed into law and requires manufacturers to label food or beverage products intended for human consumption and offered for sale in the state with a disclaimer if the product contains specified ingredients. Like Texas, Louisiana has also made **alcoholic beverages exempt** from these disclosure requirements.

Maine

L.D. 1551 establishing conditions under which a licensed eating establishment vendor may **operate within a host establishment** licensed with the Bureau of Alcoholic Beverages and Lottery Operations was signed into law. It permits the vendor to sell food and alcoholic beverages, as long as the alcohol is supplied exclusively by the host establishment and served in compliance with state

training requirements. Previously, the law prohibited an establishment licensed with the bureau from allowing outside licensed eating establishments to prepare or sell food or alcohol on its premises.

Michigan

HB 4403, allowing **alternating proprietorships for distilling** in Michigan, has been signed into law.

Missouri

HB 1041 was signed into law and **decreases the tax assessed on domestically produced malt beverages** to \$0.62 per barrel, while retaining the current \$1.86 per barrel tax rate for imported or foreign produced beer. The legislation also expanded lawful serving hours specifically for the World Cup (Kansas City will host World Cup matches), allowing alcohol sales starting at 6am and ending at 5am from June 11 to July 19, 2026, and expanded the sale of alcohol by charities for fundraising purposes.

New Hampshire

HB 467 was signed into law. The legislation allows the sale of to-go alcoholic drinks from on-premise licensees and allow consumption of alcohol in designated public spaces known as “**social districts**” or “sip and stroll” areas. The law goes into effect on September 5, 2025, but cities and towns must first approve of the “social districts” within their municipalities. The New Hampshire Liquor Commission will maintain a list of all jurisdictions that approve social districts.

New Jersey

New Jersey Attorney General Matthew J. Platkin announced that his officer had **taken administrative action against nine out-of-state retailers** for allegedly violating New Jersey law by selling into the state without proper licensure. The press release indicated that two of the unlicensed retailers were issued Notices of Violation that sought \$4,000 penalties each, with the remaining seven retailers resolving the allegations by agreeing to stop selling into the state without a license and paying a \$2,000 penalty each.



New York

- New York's legislature is considering a bill that would **create a license for "brand owners."** A6277A would authorize the New York State Liquor Authority ("NYSLA") to issue a Brand Owner's License to individuals or entities that hold a federal basic permit and would allow holders to contract with licensed New York manufacturers for the production and packaging of alcohol beverages, appoint licensed New York wholesalers as exclusive agents to sell and deliver for the brand owner's products, and receive payments from wholesalers directly.
- S409A passed both chambers of New York's legislature and would **allow on-premises retail licensees to purchase wine and liquor from off-premises retail licensees** and off-premises retail licensees to purchase wine and liquor from on-premises retail licensees, subject to certain volume restrictions.

Oregon

- Oregon's bottle bill expansion that **added wine in a can** to its beverage container redemption program has gone into effect. As of July 1, 2025, table wine, sparkling wine, cider over 8.5% ABV, sake, mead, and fortified wine between 0.5% and 21% ABV in container sizes between 4oz and 1.5L sold in aluminum cans are eligible for a 10¢ redemption. Glass and plastic wine containers are exempt. Wine in a can became redeemable on July 1, regardless of what is on the label. Effective October 1, 2026, the covered containers will not be legally allowed to be sold or offered for sale in Oregon without indicating the verbiage 'OR 10¢'.
- A ballot initiative to **privatize spirits sales in Oregon**, Initiative Petition 43, received a certified ballot title from the Oregon Department of Justice, a key step in getting the necessary signatures to get the initiative actually on the ballot. However, IP 43 has no website or political action committee (PAC) and its backers remain somewhat mysterious.

Pennsylvania

Pennsylvania Liquor Control Board (PLCB) approved a **warehousing bailment fee of \$1 per case** on all wine and spirits sold through state stores. The fee will go into effect January 1, 2026.

Rhode Island

HB 6207 has been signed into law and although the bill as originally introduced would have created Extended Producer Responsibility and container deposit redemption programs in the state, the enacted legislation requires only a **study of the state's recycling needs** and the creation of a recycling advisory council. This "study bill" obligates the Rhode Island Department of Environmental Management to hire a third-party consultant by October of this year. The consultant will have to submit a report by December 1, 2026 that examines the state's existing recycling programs and makes recommendations for future initiatives.

Texas

- Texas Governor Greg Abbott signed SB 25 that would require a **warning label on foods containing 44 specified ingredients**. Products that contain the targeted ingredients would have to include the following statement: "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." Exempt from the requirement are "products labeled with a governmental warning with a recommendation from the surgeon general of the United States Public Health Service," which should exclude alcoholic beverages from having to comply with SB 25.
- Governor Abbott also signed SB 650 that will require **electronic ID readers** at grocery and convenience stores that sell alcohol.



Hemp/Cannabis Updates

Federal

Language that had been proposed in the Senate's agriculture funding bill which would have closed the "loophole" created in 2018 Farm Bill that allowed the sale of certain intoxicating hemp products was **removed** after Senator Rand Paul (R-KY) threatened to block the bill in its entirety if the language remained in. Senator Mitch McConnell has indicated that he wants closing the loophole to be part of his agricultural policy legacy before he retires.

Texas

Although Texas Governor Greg Abbott vetoed Senate Bill 3 that would have banned hemp-derived THC products in the state, Texas Senators voted on August 19 to approve Senate Bill 6 that would **ban intoxicating hemp THC beverages, edibles, and other products**. This is despite Governor Abbott's directive to enact a "regulatory framework" for the sale of the intoxicating hemp products.

California

The California Department of Public Health proposed making the emergency **ban on hemp-derived products** containing any detectable amount of THC permanent. A public comment period for the proposal closed at the end of July but a public hearing is expected prior to a final decision being made.



Noteworthy Litigation

Shane Waldrop v. Cinemark USA Inc.: Cinemark is facing a proposed class action over allegations that it advertised 24oz beer cups that only contain 22oz of beer. Waldrop's suit claimed that the missing 2oz were equal to approximately 80 cents in shorted value per beer purchased. Cinemark has sought to dismiss the case, arguing in part that while Waldrop claimed he was **misled by a menu board advertising** the size of the drink and the markings on the bottom of the cup, he failed to claim in his suit that he actually saw the board or the marking on his cup.

Victoria Palmer v. The Coca-Cola Co.: Coke is facing a proposed class action alleging that its Sprite and Fanta products are deceptively labeling as made with "100% natural flavors" despite containing **citric acid**. In seeking to dismiss the suit, Coke argued that the none of the ingredients identified in the plaintiff's complaint meet the FDA's definition of an "artificial flavor" and that the complaint failed to plausibly demonstrate that the ingredients in question were used for flavor.

BBSR LLC v. Anheuser-Busch LLC: the contract dispute between AB and Boathouse Beverages reported on in the last edition of *Beverage Breakdown* has ended after Boathouse agreed to **withdraw its claims against AB** and AB in turn dropped its counterclaim against Boathouse. The parties had been headed to trial over whether AB's Bon & Viv was an extension, evolution, or rebrand of Boathouse's seltzer product or if it was a new competition product. If fully litigated, the case would have given the court the chance to weigh in an issue often heavily negotiated in the industry about what constitutes a brand extension and what is a "new-to-world brand."

Michael Tempest et al. v. Safeway Inc.: Safeway lost its bid to force consumers, members of the Safeway Rewards program, to **arbitrate** their claims regarding allegedly false limited-time wine discount advertisements. Safeway argued that the plaintiffs' status as Safeway Rewards members required them to arbitrate the dispute. In rejecting that argument, the court ruled that "the record does not contain any evidence as to what, if anything, each plaintiff agreed to during the [Safeway Rewards] sign-up process." The judge ruled that no trier-of-fact could find that the customers formed an agreement to arbitrate with Safeway, despite that Safeway revised the Safeway Rewards terms of use last year to add an arbitration provision and allegedly emailed the customers regarding the change. The court found that the proposed class lacked actual and constructive notice of the revised terms because none read the email Safeway sent regarding the arbitration clause prior to making the purchases at issue.



Yvette Yuri Lanuza Digan v. Luxco Inc.: a lawsuit filed by a college student in Boston accuses Luxco, producer of Everclear, of a host of claims including **negligence** and breaches of various implied warranties after she suffered third degree burns when Everclear was poured near an open fire during a party. The suit alleges that Luxco knows of the extreme hazards posed by the product and that the product's strength "places it in a fundamentally different risk category than ordinary consumer alcohol beverages." The complaint specifically highlighted an alleged label redesign of Everclear that took place in 2018, where the plaintiff argues that Luxco reduced the warning content regarding the product's flammability by 85%.

Huda Beauty NAD Decision: A recent NAD decision highlights the need for brands to continue **monitoring the content of influencers** where a previous relationship, even an informal one, existed between the influencer and brand. NAD found that Huda Beauty was responsible for removing an influencer's TikTok that made disputed claims about the brand's makeup setting spray. Although Huda Beauty had no formal agreement with the influencer, the influencer had previously posted reviews of the makeup line on their social media and received gifted items from the brand. The brand's founder had also engaged with video subject to the dispute. Those connections were sufficient for NAD to rule that Huda Beauty needed to make a good faith effort to have the video taken down, despite having no formal agreement or relationship with the influencer.

Franz Haas GmbH/SRL v. Winebow Inc. et al.: The producer of Italian wine brand Kris wine has filed suit against Winebow, its former importer, alleging that Winebow **refused to accept** Kris's "lawful termination" of their supply agreement, assigned the brand as collateral to credit institutions without its consent, and sought to interfere with existing and prospective importers and distributors. The winery also has a separate suit pending that is seeking to enforce an arbitration award issued in Italy under the terms of the supply agreement. The plaintiff alleged over \$50 million in damages.

Suski et al. v. Coinbase, Inc. et al.: A \$2.25 million settlement was reached over allegations that sweepstakes participants were **not properly informed about the free method of entry** into a Dogecoin sweepstakes sponsored by crypto exchange Coinbase and administered by Marden-Kane, Inc. The suit claimed that the consumers thought the only way to enter the sweepstakes was to make a purchase but learned after entering that there was a free method of entry. The consumers argued they would have used the free option had it not been "buried" in the official rules requiring multiple webpage redirects to review.

Out of State Retailer/Producer Shipping Litigation

- *Chicago Wine Co., et al., v. Mike Braun*: The 7th Circuit ruled **in favor of the State of Indiana** regarding its retailer wine shipping law. The decision upheld the validity of the arguments made by Indiana regarding the need for the law requiring an in-state presence for retailers shipping wine to Indiana consumers on public health and safety grounds.

Hemp/Cannabis Litigation

- *Charm City Hemp LLC et al. v. Moore et al.*: Maryland sought to dismiss a group of hemp companies' challenge to the state's regulatory scheme that requires **licensing for intoxicating hemp products**. Maryland argued in part that the claims are barred by sovereign immunity under the 11th Amendment, and that the plaintiffs lacked standing to sue as they have not attempted to apply for cannabis licenses or demonstrated that applying would be futile. The hemp companies originally filed suit in June arguing that the State's Cannabis Reform Act is monopolizing the hemp market under retailers approved by the state.
- *Hemp Association of Louisiana et al. v. Legier et al.*: Louisiana asked the court to **pause a suit** challenging the state's hemp law given the ongoing debate regarding intoxicating hemp products in Congress. The motion requesting the stay highlighted that "the FY 2026 Agriculture appropriations bill — and any hemp-definition changes — will almost certainly be resolved in conference before the October 1, 2025."

- *Variscite NY Four, LLC v. New York State Cannabis Control Board*: The 2nd Circuit held that the **Dormant Commerce Clause applies even to the federally illegal marijuana industry**. The court found that New York's priority review track that is available to those directly affected by New York's enforcement of state laws that previously banned the sale or use of cannabis unconstitutionally favored in-state applicants.
- *Bio Gen LLC et al. v. Sanders et al.*: The 8th Circuit **overturned** a lower court ruling that had blocked enforcement of Arkansas' law restricting hemp-derived intoxicating products. The court found that Act 629 was not preempted by the 2018 Farm Bill, and rejected the lower court rulings that the law was written ambiguously enough to interfere with the interstate commerce of hemp products and that the law was unconstitutionally vague.

Wholesaler Transactions

- Scout Distribution sell-off:
 - Hensley Beverage announced its acquisition of Scout Distribution's Arizona footprint.
 - Sunset Distributing (owned by Hand Family Companies) announced its acquisition of Scout Distribution's Los Angeles, California portfolio.
 - Hayden Beverage Company announced its acquisition of a stake in Scout Distribution's Idaho footprint, previously owned by Columbia.
- Odom Corporation announced its acquisition of Crown Distributing Company of Aberdeen (Washington).
- Southern Glazer's Wine & Spirits announced its planned acquisition of Anheuser-Busch InBev's wholly-owned distributor that covers all New York City boroughs except Brooklyn (New York).
- Redwood Beverages (owner of Heidelberg) announced its acquisition of Ohio Eagle (Ohio).
- Eagle Brands Sales of Miami announced its acquisition of Stephens Distributing Co. (Florida).



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