

# Brewery Legal and Legislative Issues

Jeffrey C. O'Brien



LOMMEN ABDO

L A W F I R M

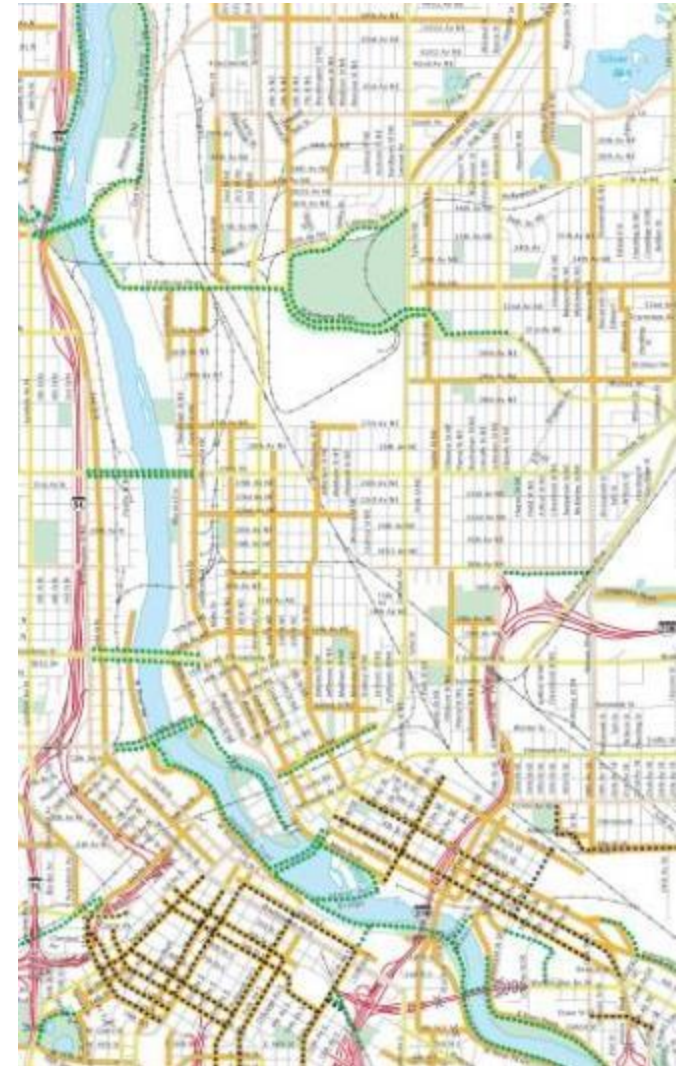
**The goal:**



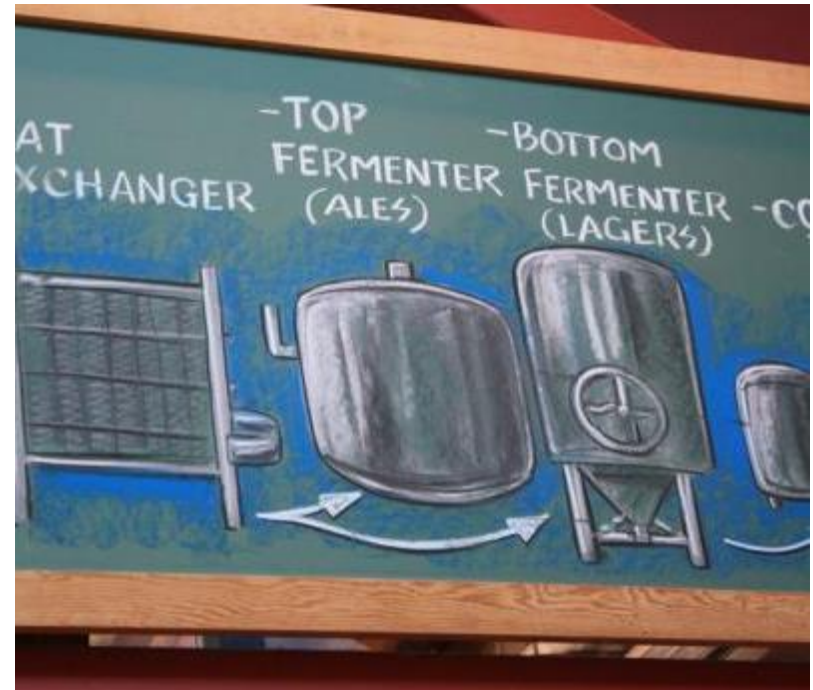
# The basics: Entity formation



# Real estate requirements



# Start-up costs/Financing





# Legislative changes and their effect on industry growth



# Recent Changes to Liquor Laws in Minnesota

Over the last five years, the Minnesota Legislature has taken important, incremental steps in modifying the state's liquor laws.

In 2011 the Legislature passed a bill dubbed the “**Surly bill.**” This legislation enabled breweries that produce fewer than 250,000 barrels a year to serve pints of beer on site.

(Source: Senator Roger Reinert)





# Recent Changes to Liquor Laws in Minnesota

Notable measures included in the 2013 Omnibus Liquor Bill passed by the Legislature were:

- **Microdistilleries are able to provide samples of their goods** to customers touring the microdistillery.
- **Small licensed brewers are able to get an off-sale brewer license.** This license authorizes the off-sale of beer that was produced and packaged in an amount not to exceed 500 barrels annually. Beer would be sold in growlers (64-ounce containers).



# Recent Changes to Liquor Laws in Minnesota

The 2014 Omnibus Liquor Bill passed by the Legislature included a number of provisions, including:

- **Taprooms can offer beer for on-sale on Sundays** if they receive municipal authorization;
- **Small brewers can re-fill any growler, including growlers from other breweries, for customers.** The bill did clarify, however, that they are not required to do so.
- **Microdistilleries can sell their product on-sale** if they have a cocktail room license.



# Recent Changes to Liquor Laws in Minnesota

Key changes including in the 2015 Omnibus Liquor Bill were:

- **Small breweries and brewpubs are allowed to sell growlers off-sale on Sundays**, provided they have local approval;
- A provision known as the “**Bloody Mary Bill.**” With this change, bars and restaurants that have an on-sale license can start selling alcohol at 8 am instead of 10 am on Sundays;
- **Microdistilleries are able to sell customers one 375 milliliter (mL) souvenir bottle of their product per day.**



# Impact of Sunday growler sales on the brewery movement



# Trademarks



# Common Claims

- ❑ TRADEMARK INFRINGEMENT 15 U.S.C § 1114
- ❑ FALSE DESIGNATIONS OF ORIGIN 15 U.S.C § 1125(a)
- ❑ FEDERAL DILUTION OF TRADEMARK 15 U.S.C § 1125(c)
- ❑ COMMON LAW TRADEMARK INFRINGEMENT STATE LAW
- ❑ UNFAIR COMPETITION DECEPTIVE TRADE PRACTICES STATE LAW
- ❑ UNJUST ENRICHMENT STATE LAW

# CASE UPDATE

## *Slow Ride*



# CASE UPDATE

## *Bell's v. Innovation*

BELL'S®



Inspired Brewing®





# CASE UPDATE

## *Lagunitas v. Sierra Nevada*



# CASE UPDATE

## *Immoral or Scandalous?*



# CASE UPDATE

## *Immoral or Scandalous?*

20th Anniversary

**RAGING BITCH**  
BELGIAN-STYLE INDIA PALE ALE

FLYING DOG

"Two inflammatory words... one wild drink. Nectar imprisoned in a bottle. Let it out. It is cruel to keep a wild animal locked up. Uncap it. Release it...stand back! Wallow in its golden glow in a glass beneath a white foaming head. Remember, enjoying a RAGING BITCH, unleashed, untamed, unbridled - and in heat - is pure GONZO! It has taken 20 years to get from there to here. Enjoy!" -Ralph Steadman

8.3% ALC/VOL IBU: 60

BREWED BY  
FLYING DOG BREWERY,  
FREDERICK, MD  
FLYINGDOGGALES.COM

CA REDEMPTION VALUE  
VT-MA-CT-NY-NH-IA-DE-OR-ME 5c  
MI 10c DEPOSIT OK+FL

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

1 PINT 9.4 FL. OZ.  
(750 ml)

7 86243 11994 4

# MORE CASES



# Has Minnesota's Brewing Industry Reached a Saturation Point?



**NO!**

# What we have is a distribution problem.



# Minn. Stat. Chapter 325B

- ❑ Agreement can be created without a written contract (M.S. § 325B.01, Subd. 2)
- ❑ Brewery can only terminate agreement for “good cause” (M.S. § 325B.04, Subd. 2)
- ❑ Brewery must provide wholesaler with 90 day written notice and wholesaler has opportunity to cure (M.S. § 325B.05)
- ❑ Several states have enacted “small brewer exemption” to level the playing field between breweries and wholesalers



**LOMMEN ABDO**

L A W F I R M

**For more information, contact Jeff O'Brien:**

**[jobrien@lommen.com](mailto:jobrien@lommen.com)**

**612.336.9317**

**<http://site.jeffreyobrienesq.com/Beer.html>**