#### Brewery Legal and Legislative Issues

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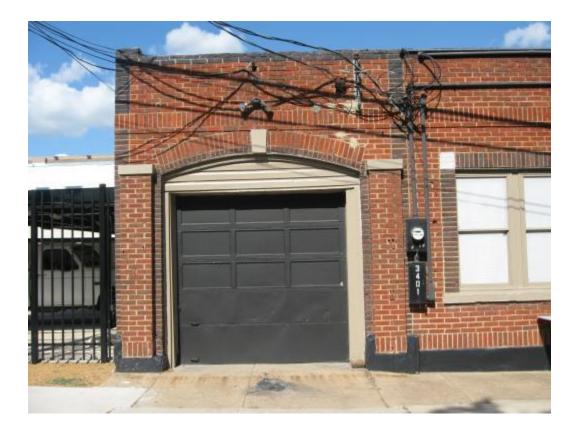


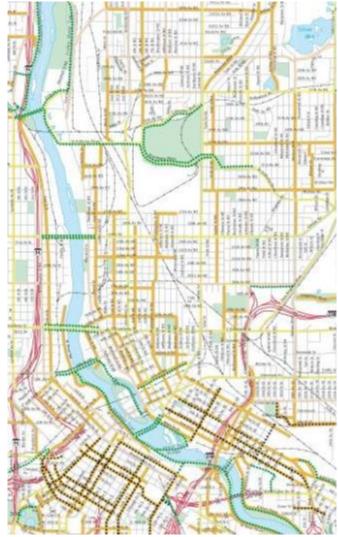
# The basics: Entity formation





#### **Real estate requirements**







#### Start-up costs/Financing







## Licensing questions

suspension, or revocation during the jumpse period.

Subd. 6c. Microdistilleries. (a) icrodistillery may provi premises samples of distilled spirits ed on its premises, in a amount not to reced 15 mill variety per person. No more than man und his parag 45 nmay be nerson rodistilleries mat adequately covers the cost II est blish a fee (b) The commit suing the license and are appropriated the shall be I in an account in the his subdivision. the purp he comm wer licensed under subdivisi bd. 6d. Small brewer I clause (c), (i), or (j), may be issue license by a municipal malt liquor at its sed premises that ha roduced mmissioner. The ar and packaged by th e approved by the sold at off-sal ally. Off-sale of or shall be lin diction in which for off-sale at s in the er is located. efore the applicable off-sale mu closi premi stores. The r ontainers cor ly know milliliter bo t-type c e. co ODEL OF L the sale, a paper a dhesive ill be applied to extended over of the twist-ty or plug forming must be opening of th@ontainer or bottle. The e and address of the sleeve shall be containers or bottles shall b he malt liquor, bear brey uor, contain the address of the brewer selling shall be consid the moxicating liquor unless the with the provisions t is labeled as otherwise in a nnesota Rules, part 7515.L only have one license under this subcosi ality may not issue a license under this subewer if the brewer seeking the on having an economic interest in the br he license or exercising control over te license, is a brewer that brews more of its own brands of malt winery that produces more than 250,00 liquor an IIv. nicipality shall impose a licensing fee on a b under this subdivision. (d) The

subject to limitations applicable to license fees under section 340

Subd. 7. Interest in other business. (a) Except as provide manufacturer, brewer, importer, or wholesaler may not have any holding a retail intoxicating liquor or 3.2 percent malt liquor license.

license under this section to a manufacturer, brewer, importer, or wholesater if a retailer of intoxicating liquor has a direct or indirect interest in the manufacturer, brewer, importer, or wholesater. A manufacturer or



3, paragraph (a).

n whole or in part, in a business

nmissioner may not issue a

n, a holder of a license as a

#### Legislative changes and their effect on industry growth



New York got the breaks from Utah. The lid is off! The 36th and most necessary State to ratify (cass) of the Probibilion Amendment had dillied and dallied yesterday while New York funned and then "out of the Probibilition Amendment had dillied and dallied yesterday while New York funned and then "out of



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)





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).





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 onsale if they have a cocktail room license.





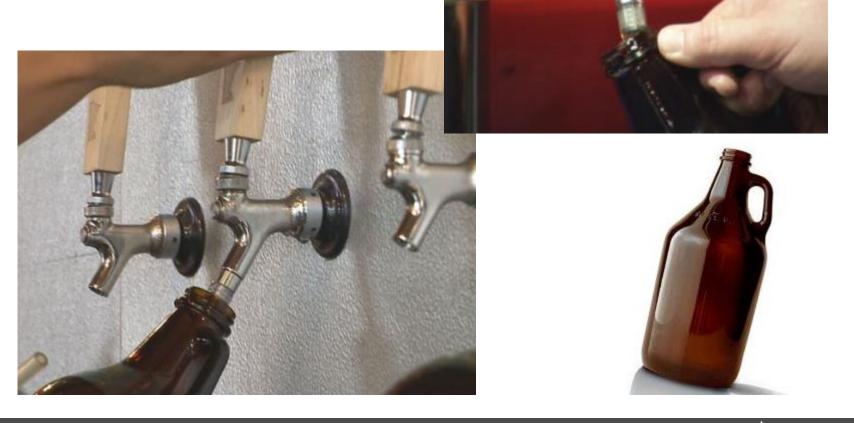
Key changes including in the 2015 Omnibus Liquor Bill were:

- 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.



LOMMEN ABDO

# Impact of Sunday growler sales on the brewery movement





#### **Trademarks**





#### **Common Claims**

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

STATE LAW





#### **Slow Ride**







# CASE UPDATE Bell's v. Innovation



#### Inspired Brewing®

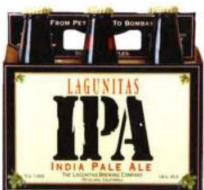






#### Lagunitas v. Sierra Nevada













#### **Immoral or Scandalous?**

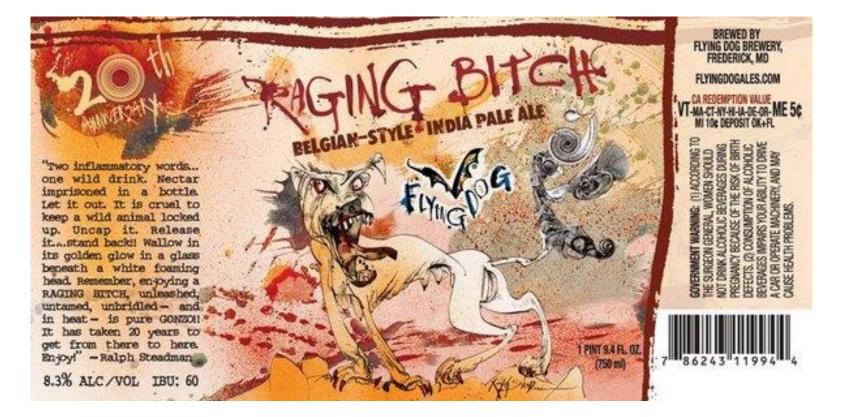








#### **Immoral or Scandalous?**











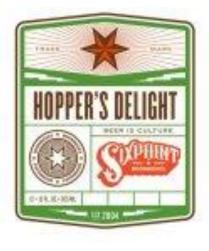
#### **MORE CASES**













#### 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





LAW FIRM

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

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