

Changes on Tap: What's Next for Law Changes in the Craft Beverage Industry?



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Introduction

Minnesota's craft beverage industry has experienced exponential growth in the past five years. Much of this growth can be attributed to changes in the law at all levels of government which have removed barriers to entry into the marketplace.

Despite some who believe that our craft beverage industry is approaching a saturation point, there is significant growth potential across all product categories – beer, spirits and wine (including cider and mead). All it will take to further this growth is some additional law changes.

With a new president on the federal level and a new majority in the Minnesota Senate, what should we expect in 2017? Here are just a few thoughts and predictions on some potential law changes on the horizon:

FEDERAL

1. **Small BREW Act**: The Brewers Association, which is the trade organization of the U.S. craft beer industry, has championed the Small BREW Act for the past few years. The Small BREW Act would halve the federal excise tax for small brewers who produce 60,000 or fewer barrels of beer per year. Their rate would go from \$7 to \$3.50 per barrel. Small brewers who pay the \$18 per year rate for barrels 60,001 to 2 million would see

a reduction on the rate for those barrels from \$18 to \$16. Domestic brewers of 6 million barrels or fewer per year would qualify for the new rate if it becomes law. Congressman Eric Paulsen from Minnesota's 3rd Congressional District has been a co-sponsor of the House bill in the past, and Senator Amy Klobuchar has championed the Small BREW Act in the Senate.

2. Clarification of FDA's Calorie Content Requirements: As part of the Affordable Care Act ("Act"), the U.S. Food and Drug Administration ("FDA") enacted guidelines which require restaurants, retail food establishments and vending machines to list the calories for all foods they provide. The guidelines provide only one exception for alcoholic beverages: bottles that are on display behind a bar and used by bartenders. Otherwise, alcoholic beverages' calorie content must be listed according to the data in the FDA's nutrition database.

With the future of the ACA in doubt, look for repeal of the FDA's labeling requirements, or at a minimum, an exemption created for alcoholic beverages.

STATE

1. Sunday Cocktail Room Hours: Since 2014, Minnesota microdistilleries have been permitted to operate "cocktail rooms" within their production facilities where customers can enjoy a cocktail made with the distilleries' products. That same year, Minnesota breweries were permitted to open their taprooms on Sundays for on-premises consumption (one year later they were granted permission to sell growlers on Sundays). Cocktail rooms, however, must remain closed on Sundays under current law. Do not be surprised if Minnesota distillers seek parity with Minnesota breweries in 2017 and ask that they also be allowed to open and serve on Sundays.
2. "Taprooms" for Cideries: Under Minnesota law, the manufacture of hard cider requires a wine license. While some breweries have created their own "malted cider" or graff to serve in their taprooms, "true" gluten-free cider remains the purview of Minnesota wineries. As interest in cider grows, more wineries are looking to locate their business in the Twin Cities rather than on agricultural land. While legally permissible, these businesses must deal with additional restrictions in comparison to their farm winery brethren. While non-farm wineries may not achieve 100 percent equality vis-à-vis the farm wineries in the 2017 session, look for a push to allow non-farm wineries to have taprooms that could serve pints, flights and food.
3. Sunday Sales: Sunday sales. The "holy grail" of Minnesota liquor law reforms. Despite vehement opposition from some very well-funded interest groups (namely, the Minnesota Licensed Beverage Association, the Minnesota Municipal Beverage Association, the Minnesota Beer Wholesalers Association and the Teamsters), support for Sunday sales has gradually increased in recent years. The 2015 session saw more "yes" votes for repeal than ever, and many former opponents of repeal have switched their votes on grounds that repeal is inevitable.

With the Republicans in the majority in both the Minnesota House and Minnesota Senate, look for Sunday sales repeal to rear its head again in 2017. There are, however, significant hurdles to passage that remain – the chairs of both committees which would hear the proposed repeal legislation are opposed to repeal, as is Senator Paul Gazelka, the new Majority Leader. Still, several Republicans see Sunday sales repeal as a populist issue that can help raise the party's popularity with millennials. If repeal does not pass in 2017, look for an even closer vote than in 2015.

Conclusion

Given the history of modern liquor law arising out of the ashes of Prohibition, change has been slow to come to the industry. Well-funded and entrenched special interests that benefit from the current system go to great lengths to resist changes. Still, the clear evidence is that Minnesota's craft beverage industry has seen significant growth due

to seemingly minor law changes, and look for this trend to continue in 2017 and beyond.