NOTE

BREWING UP CHANGES: PENNSYLVANIA SHOULD MODERNIZE ITS TAX LAWS AND POLICIES TO ENCOURAGE THE GROWTH OF ITS CRAFT BREWING INDUSTRY

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Suzanne Laucks*

I. INTRODUCTION

In 2015, $105.9 billion of beer was sold in the United States. Craft beer alone accounted for 18.5 percent of that figure, bringing in $22.3 billion dollars.1 While overall beer sales decreased by 0.2 percent in 2015, craft brewers produced over 24 million barrels of beer that year, resulting in a 12.8 percent increase in production volume from 2014. These rising numbers are consistent with the rise in the number of craft breweries themselves over the past few years. As of 2015, there were a total of 3,418 craft breweries in the

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1 National Beer Sales & Production Data, BREWERS ASS’N, https://www.brewersassociation.org/statistics/national-beer-sales-production-data/ (last visited Nov. 10, 2016). The Brewers Association defined a craft brewer as being “small, independent, and traditional.” The typical American craft brewer produces fewer than 6 million barrels of beer per year. “Less than 25 percent of the brewery is owned or controlled . . . by an alcoholic beverage industry member that is not itself a craft brewer . . . . [Additionally, a] craft brewer will have the majority of its total beverage alcohol volume in beers whose flavor derives from traditional or innovative brewing ingredients and fermentation.” Craft Brewer Defined, BREWERS ASS’N, https://www.brewersassociation.org/brewers-association/craft-brewer-defined/ (last visited Nov. 10, 2016).
United States—a 19 percent increase from 2013, and nearly double the number of craft breweries in 2010.

Bart Watson, the Brewers Association’s chief economist, pointed to craft brewers as the key to keeping the beer industry “innovative and growing.” While the craft beer industry has been rapidly expanding throughout the United States, five states in particular accounted for nearly 40 percent of the beverage’s contribution to the national economy in 2014. Second only to California, Pennsylvania craft brewers brought in $4.5 billion, from their production of 4.1 million barrels of craft beer. Pennsylvania is clearly a strong competitor in the craft beer industry. This paper will examine ways in which Pennsylvania can foster and encourage the growth of the craft brewing industry, particularly by modernizing its tax laws and policies. Doing so would cause a greater stream of revenue flowing to the state, as a thriving craft brewing industry will bring larger tax revenues from increased sales, employment opportunities, and tourism.

This paper will first examine the federal and state taxation of beer and the three-tier system of distribution, the three tiers of which are manufacturer, 


4 McLaughlin, supra note 2.


distribution, and retail. The first section will discuss the federal excise tax imposed on the production, importation, and sale of distilled spirits, beer, and wine, and the additional taxes levied by most state and local jurisdictions. This section will also look at the three-tier system of distribution, with a focus on Pennsylvania’s own distribution system. Next, this paper will examine the changes that have been made at both the federal and state levels to incentivize the craft brewing industry.

The following section will make the argument that Pennsylvania should modernize its distribution system to encourage the growth of its craft brewing industry. To embrace this expanding industry, Pennsylvania should next look to what other states have done to modernize their own distribution tax systems. The methods utilized by other states include: increasing the barrelage amounts permitted for self-distribution; permitting the direct shipment of beer by manufacturers to consumers; making distribution agreements more brewer-friendly; introducing the concept of a farm brewery license; and offering additional tax credits to craft breweries.

II. FEDERAL AND STATE TAXATION OF BEER AND THE THREE-TIER SYSTEM OF DISTRIBUTION

The three-tier system of distribution is a multi-layered set of overlapping federal and state statutes and regulations. It also permits a state to identify and monitor all participants in the alcohol beverage system, as well as maintain a degree of accountability for all alcoholic beverages in the state.

A. The Federal Excise Tax

The Code imposes federal excise taxes on the production, importation, and sale of distilled spirits, beer, and wine. "The Federal Alcohol Administration Act works in conjunction with the Code to provide the

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8 McLaughlin, supra note 2.


10 I.R.C. §§ 5001, 5041, 5051.
There are numerous reporting, payment, and compliance statutes, regulations, and rules related to the import, export, production, distribution, and sale of alcohol. Typically, either the producers or importers of alcohol will be responsible for filing all returns, paying all federal excise taxes, and complying with all related bonding, reporting, marketing, and regulatory requirements that arise. The federal excise tax rate differs depending on the type of alcohol. For beer, the tax rate is based on the number of barrels produced. The tax rate is $18 per barrel containing not more than 31 gallons, or $7 per barrel for craft beer on the first 60,000 barrels of


12 Mudd, supra note 7 (the Alcohol and Tobacco Tax and Trade Bureau administers and enforces the imposition of federal excise taxes on alcohol; its authority comes from the Federal Alcohol and Administration Act. 27 U.S.C. §§ 201 et seq. The Bureau of Alcohol, Tobacco, Firearms, and Explosives administers the criminal and regulatory provisions of federal alcohol laws).

13 See generally 27 U.S.C. §§ 203, 204 (providing various license and permit requirements prior to production, import, or sale of alcohol products); I.R.C. §§ 5551, 5173 (providing various bonding, reporting, and regulatory requirements); see also Mudd, supra note 7.


15 I.R.C. §§ 5001, 5041, 5051; see also Mudd, supra note 7.

16 I.R.C. § 5051.
The current federal excise tax rate was enacted as part of the Omnibus Budget Reconciliation Act of 1990.\(^\text{18}\)

The federal excise tax is determined when the product is “withdrawn” from bond, and it is payable upon “removal” from a bonded facility (the facility in which the product is produced) for sale or consumption.\(^\text{19}\) Brewers and importers are therefore responsible for remittance of the federal beer excise tax.\(^\text{20}\) There are numerous exceptions available to the federal excise tax, including for the personal or family use of beer.\(^\text{21}\) Returns are typically due on the fourteenth day after the close of a semimonthly period; however, to alleviate the administrative burdens on smaller businesses, quarterly filing and payment is permitted.\(^\text{22}\)
B. State and Local Taxation

In addition to the federal excise tax on alcohol, most state and local jurisdictions levy additional taxes on the production, distribution, and sale of alcohol. Those taxes amount to a significant portion of a state and local government’s revenue.23 There are four general types of state and local taxes imposed on beer. Excise or gallonage taxes are imposed on a volumetric or quantity basis, like the imposition of the federal beer excise tax.24 General sales taxes are applied to retail sales of beer at the same rate as the general retail sales tax applied to other products and services sold in the state.25 Special or selected sales taxes apply to retail sales of beer and are based on the price of the product.26 Those special or selected sales taxes are levied in lieu of or in addition to the normal retail sales tax.27 There are also additional taxes imposed on the sale or distribution of beer that do not fall into the other categories.28

C. The Three-Tiered System of Distribution

The 21st Amendment repealed Prohibition in 1933, but it left the control of alcohol to the individual states.29 Many states, including Pennsylvania, added an intermediate level of distribution to counteract the “tied houses” preceding Prohibition.30 This resulted in the modern three-tier system of distribution:

23 Mudd, supra note 7.
25 72 PA. CONS. STAT. § 7202 (2016).
26 2009 Report, supra note 9, at 10.
27 Id.
28 Id. The two most notable examples of this fourth category are the wholesale gross receipts imposed on beer distributors in Kentucky and Tennessee. Id.
30 McLaughlin, supra note 2. Prior to Prohibition, some alcohol manufacturers used heavy-handed business practices in order to pressure retail establishments to promote their products exclusively and aggressively. These close-knit relationships between manufacturer and retailer became known as “tied houses.” The intermediate level of distribution was added to counteract coercion and encourage competition. Scott, supra note 29, at 1.
distribution; manufacturers are required sell their products to distributors, and are not permitted to sell directly to retailers or consumers.31

At the first tier, there is the manufacturer; in this case, that is the brewery. To manufacture beer, the individual or entity must first apply for a permit from the TTB. Once a permit has been issued, the manufacturer pays a federal excise tax and can then sell its beer to a distributor in possession of a state-issued license. The distributor is the second tier. The distributor pays a state excise tax and can then sell the manufacturer’s beer to retailers. Retailers comprise the third tier.32 Retailers must be licensed by the state before they are permitted to sell beer to consumers.33 In Pennsylvania, beer is generally taxable in the state when sold by a manufacturer to a distributor,34 but sales by retailers are exempt from the Malt Beverage Tax.35 However, both the City of Philadelphia and Allegheny County impose certain local taxes on retail sales.36

1. The Three-Tier System in Pennsylvania

State statutory and regulatory schemes establishing the three-tier system vary widely, but states generally can be classified as either a license state or a control state.37 License states are the most prevalent. They regulate alcohol distribution using a hierarchical licensing system under which they approve

31 Scott, supra note 29, at 1. There are various exceptions to this rule; for example, a brewpub is simultaneously a producer and a retailer, with no requirement to sell to a distributor. California was the first state to allow this vertical integration of beer production and retail distribution in 1983. Justin M. Welch, The Inevitability of the Brewpub: Legal Avenues for Expanding Distribution Capabilities, 16 REV. LITIG. 173, 175–76 (1997).

32 McLaughlin, supra note 2. Interestingly, Michigan courts have found cause to introduce a fourth tier, warehouses, between manufacturers and wholesalers, although the state has a statutorily mandated three-tier system. Welch, supra note 31, at 186. See Traffic Jam & Snug v. Liquor Control Comm’n, 487 N.W.2d 768, 769 (Mich. Ct. App. 1992).

33 See, e.g., 47 PA. CONS. STAT. § 4-431(b) (2016); McLaughlin, supra note 2.

34 72 PA. CONS. STAT. § 9003(a)(1) (2016).

35 72 PA. CONS. STAT. § 9003. All alcohol sales by retailers are still subject to a general sales tax, however. Washington National Tax KPMG LLP, supra note 9, at 10.

36 ALLEGHENY CNTY. CODE art. II, § 475-12 (2000); PHILA. CODE §§ 19-2701(1), 19-2702(1).

and sell different licenses to businesses in each tier. Control states also have licensing requirements, but they can be distinguished from license states because, at some point in the distribution process, they obtain a direct interest in the revenues obtained by taking an ownership stake as distributors or retailers of the product.

Pennsylvania, a control state, is unique because it has taken an ownership stake in both the distribution and retail processes. The Pennsylvania Liquor Code enables the Commonwealth to strictly control the sale and distribution of alcohol. The Commonwealth exercises this control through the three-member Pennsylvania Liquor Control Board (PLCB), which has the exclusive authority to buy alcohol from manufacturers. It then sets a price for and sells that alcohol at Pennsylvania Fine Wine & Good Spirits stores (or Pennsylvania “Wine & Spirits” stores), imposing a mark-up on the price. Retail establishments such as hotels, restaurants, and clubs must be licensed by the PLCB and are also eligible to purchase alcohol from it.

However, in Pennsylvania, consumers can actually purchase beer from a restaurant, bar, licensed beer store, or distributor, while wine or liquor can only be purchased from a Wine & Spirits store. Bars, restaurants, and

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38 Id. at 401. There are 32 license states, including California and Colorado. Id.
39 Id.
42 Snyder, supra note 40, at 287.
44 47 PA. CONS. STAT. § 3-301 (2016); Snyder, supra note 40, at 287; FINE WINE & GOOD SPIRITS, http://www.finewineandgoodspirits.com/webapp/wcs/stores/servlet/StoreCatalogDisplay?storeId=10051&catalogId=10051&langId=-1 (last visited Nov. 11, 2016).
licensed retailers can sell six-packs, twelve-packs, and eighteen-packs, along with individual bottles of beer.\footnote{45} Beer distributors sell primarily kegs of beer and cases for consumption off-premises only, and can also sell any package intended for resale by a PLCB-approved brewery containing any variety of bottle or can arrangement greater than or equal to 128 ounces.\footnote{46}

The number of distribution licenses available is typically limited to one retail license for every 3,000 inhabitants in any county, and one wholesale license for every 30,000 inhabitants of a county.\footnote{47} Because the distributor is responsible for paying the state excise tax under the three-tier distribution system, the limited number of licenses available helps Pennsylvania to keep careful records of alcohol sales within its state. The excise tax imposed on distributors is often viewed as a necessary cost for the “privilege” of entering the business,\footnote{48} and distribution licenses are likewise part of that privilege. Due to the limited number of licenses available, the only way to obtain a license typically has been to purchase an existing one.\footnote{49} However, as a result of recent changes to Pennsylvania’s liquor laws,\footnote{50} “new” liquor licenses will be available annually for the first time since Prohibition. These licenses, which were previously revoked or “mothballed” for various violations, will


\footnote{46} Types of Licenses, supra note 43. This includes 12-packs. For years, beer distributors were only able to sell beer by the case or keg. However, on March 6, 2015, the PLCB issued a legal advisory informing distributors that they are able to sell 12-packs and 18-packs. Bill Toland, \textit{PLCB: Pennsylvania Beer Distributors Can Sell 12-Packs}, PITT. POST-GAZETTE (Mar. 6, 2015, 11:29 AM), http://www.post-gazette.com/business/2015/03/06/PLCB-Beer-distributors-can-sell-12-packs/stories/201503060310.


\footnote{49} Frequently Asked Questions, supra note 43.

\footnote{50} House Bill 1690 was signed into law as Act 39 on June 8, 2016, by then-Governor Tom Wolf. Act 39, which amended the Title 47 of the Pennsylvania Liquor Code, went into effect in August 14, 2016. PA. GENERAL ASSEMBLY P.L. 273, No. 39, CL. 47 (June 8, 2016).
be auctioned by the PLCB in every county, with the minimum bid set at $25,000.51

States also impose of other requirements on those involved in the distribution process of beer.52 In Pennsylvania, hours of operation for a distributor are only restricted by the state on Sundays.53 On Sundays, a special license is required to sell beer, and sales before 11 A.M. are prohibited.54 State law generally permits late-night beer sales by distributors, but local authorities have the right to place additional restrictions on those hours.55

III. CHANGES AT THE FEDERAL AND STATE LEVELS: INCENTIVIZING THE CRAFT BEER INDUSTRY

A. Changes at the Federal Level

At the federal level, Congress has entertained a number of different pieces of legislation aimed primarily at reducing the excise tax on certain alcohol beverage products.56 For example, the Small BREW Act would reduce the federal excise tax for small and independent breweries from $7 per barrel to $3.50 per barrel, with a new rate of $16 per barrel from 60,000 barrels up to 2 million barrels.57 The Fair BEER Act proposed that all brewers

52 Washington National Tax KPMG LLP, supra note 9, at 6.
53 47 PA. CONS. STAT. § 4-406 (2016).
54 47 PA. CONS. STAT. § 4-432(f) (2016).
55 Types of Licenses, supra note 43. Act 39 also increased the hours that Wine & Spirits stores can be open. Wine & Spirits stores are now permitted to extend their hours of operation, including Sundays and holidays. Wallace, supra note 51.
56 McLaughlin, supra note 2.
57 Small BREW Act, H.R. 232, 114th Cong. § 2(a)(1)(A)(i)-(b)(1)(A) (2015). The Small BREW Act was introduced on January 8, 2015. Senator Ben Cardin (D-MD), who introduced the Small BREW Act along with Senator Susan Collins (R-ME), stated that he believed that the federal excise tax had been enacted with big companies in mind. Smaller craft breweries, which create jobs, unique products, and new markets for beer in the United States, are essentially small businesses and are heavily burdened by the federal excise tax. This tax affects access to sufficient capital, which in turn makes it difficult for craft
and beer importers would pay a rising scale of federal excise tax based on the amount of barrels produced. The revised tax would range from $0 for an amount not exceeding 7,143 barrels, to $18 per barrel on an amount exceeding 2 million barrels.

More recently, the federal Craft Beverage Modernization and Tax Reform Act was introduced. This legislation, if enacted, would achieve the job creation and brewing capacity reinvestment goals of the Small BREW Act, and would cut taxes and modernize outdated regulations for craft brewers, cider makers, vintners, and distillers. The Craft Beverage Modernization and Tax Reform Act would also reduce compliance burdens for craft beverage producers by exempting nearly 90 percent of all industry members from complex bonding and biweekly tax filing requirements.

In terms of the federal excise tax, the Craft Beverage Modernization and Tax Reform Act would be $3.50 per barrel for any domestic brewery producing fewer than 2 million barrels a year on the first 60,000 barrels, and $16 per barrel on anything above 60,000 to 2 million barrels. Importers would pay $16 per barrels on the first barrel imported through 6 million barrels, and $18 per barrel on any barrel over 6 million.

B. Changes at the State Level: Modernization

Although there has been action at the federal level to incentivize the craft beer industry, much of the regulation of alcohol-related products is
governed by state law; namely, the laws providing for the three-tier distribution systems. Therefore, it is up to the individual states to modernize their systems of distribution to further encourage this growing industry. Several states, including the craft beer “meccas” such as California, Colorado, and Oregon, have already begun to modernize their systems, and Pennsylvania can look to what has been done in those other states to guide the modernization of its own distribution system.

IV. INCENTIVIZING PENNSYLVANIA’S CRAFT BEER INDUSTRY THROUGH MODERNIZATION

The enactment of § 3.93 in 2015 and Act 39 in 2016 demonstrate Pennsylvania’s willingness to embrace its growing craft beer industry and its liquor industry overall, but there is much more that can be done on the state’s part to further tap into this lucrative industry. This section will examine what other states have accomplished to advance their craft beer industries in terms of modernizing their own distribution systems. It will then recommend methods by which Pennsylvania might modernize its own system by modeling its own tax laws and policies after what other states have done to ultimately increase the tax revenue flowing to Pennsylvania.

A. Section 3.93: An Indication of Positive Feelings toward the Craft Beer Industry

In 2015, the PLCB proposed new legislation to ease the restrictions on Pennsylvania breweries. This legislation, 40 Pa. Code § 3.93 (2015), which became effective on May 30, 2015, allows the holder of a brewery license to serve its own beer for consumption on the licensed premises. Previously, a brewery licensee also had to obtain a separate brewery pub, or “brewpub,”

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63 McLaughlin, supra note 2.
license in order to serve beer for consumption on the premises under § 3.92. A separate brewery pub license may be obtained by brewery license holders to operate a restaurant or brewpub immediately adjacent to, but separate and distinct from, the brewery itself. 40 PA. CODE § 3.92 (2015). Because this separate brewery essentially would operate as a full-service restaurant, breweries had to meet space requirements, and obtain health and sanitation certificates from the proper municipality or state authority. On December 22, 2011, then-Governor Tom Corbett signed Act 113 into law, which, among other things, amended § 440 of the Liquor Code (prohibiting manufacturers from offering beer for consumption on their licensed premises) to permit manufacturers to sell their product on the licensed premises for consumption. However, this ultimately did not allow brewers to sell their product to patrons without obtaining a separate brewery pub license, due to a series of legal advisory opinions maintained by the PLCB. Mather, supra note 64.

Brewpubs are an exception to the three-tier system of distribution; the brewer/manufacturer is permitted to sell its own product directly to a consumer, bypassing the distribution level. Under § 3.93, instead of obtaining the separate brewpub license, breweries now are permitted to sell beer produced on the premises directly to the public, including six-packs, cases, and even kegs. The brewery must have at least ten seats for use by its patrons and must make snack foods available. Breweries are now also permitted to offer free tastings at their breweries.

These changes have put Pennsylvania more in line with neighboring states that permit similar practices. With the opportunity to have on-site tasting rooms, brewers will no longer have to invest in significant build-outs.
of separate restaurant space with fully operational kitchens; instead, brewers could choose to invest the money they would have spent back into the brewery’s operations.\textsuperscript{71} This will likely result in greater production volumes by Pennsylvania breweries,\textsuperscript{72} and thus an overall increase in tax revenue.\textsuperscript{73} Granting brewpubs this new right is not intended to bypass the three-tier system of distribution, however. The Brewers Association has maintained that the primary purpose of this change was to stimulate brand loyalty and improve customer relations and service.\textsuperscript{74}

\textbf{B. Changes to Pennsylvania’s Wine and Liquor Industry: Act 39}

House Bill 1690 was signed into law as Act 39 by then-Governor Tom Wolf on June 8, 2016, and it went into effect on August 14, 2016.\textsuperscript{75} Act 39 made changes to 35 sections of Pennsylvania’s Liquor Code.\textsuperscript{76} Most notably, Act 39 provides for better store hours, better sales, and better pricing, in addition to private wine stores, increasing the availability of liquor licenses, and allowing the direct shipment of out-of-state wine to Pennsylvania consumers.\textsuperscript{77} Wine & Spirits stores can now be open until 7 P.M. instead of

\textsuperscript{71} Mather, \textit{supra} note 64.

\textsuperscript{72} Mather, \textit{supra} note 64. The PLCB issued Rules and Regulations regarding § 3.93. The Rules and Regulations stated that the purpose of § 3.93 was to clarify the privileges of breweries with regard to on premise consumption of malt or brewed beverages produced or owned by the brewery, as a result of recent changes to Pennsylvania’s Liquor Code. This final-form rulemaking, intended to provide meaningful support to and benefit every licensed brewery in the Commonwealth, took into consideration the positive fiscal impact of Pennsylvania’s breweries on the economy and the impact on production volumes. For instance, in 2013, states that permitted on premise consumption by breweries had greater production volumes (2.8 gallons produced per adult resident over 21 years of age) than states that do not allow on premise consumption (1/2 gallons produced per adult resident over 21 years of age). Zeller, \textit{supra} note 68.


\textsuperscript{75} PA. GEN. ASSEMB. Pub. L. 273 No. 39, CL. 47 (June 8, 2016).


as well as be open on Sundays and some holidays. Additionally, casinos will be permitted to sell liquor around-the-clock, rather than their previous restriction of 19 hours per day.

Wine & Spirits stores will be able to offer sales, coupons, and membership programs. The PLCB will also no longer be required to proportionally price all wines, as opposed to the previous standard 30 percent markup. Act 39 will now permit private wine shops (primarily located at grocery stores, restaurants, bars, hotels, and delis with pre-existing liquor licenses) in the state of Pennsylvania, although the PLCB will control the availability and wholesale price of the wine. However, it will be up to the individual private stores on how to price their wines.

For the first time since Prohibition, “new” liquor licenses will be available annually. These licenses, ones that had been revoked or “mothballed” due to various violations, will be auctioned off by the PLCB in every country, with a minimum bid starting at $25,000. Additionally, out-of-state wineries will be able to ship to Pennsylvania consumers, although the wineries will be restricted to 36 cases per consumer annually.

While Act 39 amended Pennsylvania’s Liquor Code primarily in terms of its wine and liquor sales, there will be effects on Pennsylvania’s craft beer

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78 Id. at § 304; Craig, supra note 76, at 13.
82 Id. § 207(B)(2) (Pa. 2015) (enacted).
84 Wallace, supra note 51, at 9.
industry. In addition to serving Pennsylvania wine on site for consumer consumption, Pennsylvania breweries will also be permitted to serve Pennsylvania distilled spirits for on-site consumption, as well, thus extending the brewpub license. similarly, Pennsylvania wineries and distilleries will be permitted to sell spirits and beer for consumption on the premises. Act 39 also creates the Pennsylvania Malt and Brewed Beverages Industry Promotion Board, which is to oversee $1 million in annual grants aimed at promoting local brewing. These changes affecting Pennsylvania’s craft brewing industry are further indications of the State’s increasing willingness to promote this expanding industry, with predictions of as much as $150 million in revenue in the first year of implementation.

C. Modernization, Not Privatization

The effort to privatize Pennsylvania’s liquor stores has been percolating in the state’s General Assembly for years, with strong backing from the state’s Republican Party. In 2013, a bill was introduced to sell off the state’s state-run liquor stores, but it ultimately stalled in the Senate and never reached the desk of then-Governor Tom Corbett, who supported the legislation. On June 30, 2015, the Pennsylvania General Assembly once again voted to approve a bill to end the state’s monopoly on liquor sales. This bill, House Bill 466, would have allowed private businesses to sell wine and liquor and would also have impacted the beer industry. Existing beer distributors in the state would have been given the option to purchase an

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91 Scolforo, supra note 80.
92 Billy Hamilton, State Liquor Taxes: Still Crazy after All These Years, 75 STATE TAX NOTES 519 (2015). Money lies at the heart of the disagreement between the Republicans and Democrats over the privatization of the liquor market. Republicans believe that privatizing the market would bring in as much as $1 billion, partly from auctioning off liquor licenses and partly from continued taxation of alcohol sales, including the general sales tax. Id.
enhanced permit to sell wine and spirits. Governor Tom Wolf vetoed the bill only a few days later, citing a need for modernization over privatization. As Pennsylvania’s state liquor stores were already extremely profitable, bringing in between $80 million and $100 million in profits each year, he claimed that modernization would only increase profitability. Governor Wolf argued that H.B. 466 would have robbed the state of its stable stream of tax revenue in favor of a one-time influx of funds.

Although it is unclear what the repercussions of privatizing the liquor market would have been on the beer industry in Pennsylvania had H.B. 466 been passed, one can perhaps look to Washington for an indication of the resulting effects. Washington, previously a control state like Pennsylvania, privatized its liquor market in 2011 by passing Initiative 1183, known as the “Costco Initiative.” The Costco Initiative’s regulations applied to the sale and distribution of wine and liquor, but Initiative 1100, which never passed and ultimately failed to privatize Washington’s beer industry, would have extended the Costco Initiative’s provisions to repeal certain pricing and delivery restrictions for beer distributors, as well.

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95 While Act 39, signed into law by Governor Wolf on June 8, 2016 does permit private wine shops in the state of Pennsylvania, it is not fully privatizing wine sales. Individual stores will be permitted to determine how to price their wines, but the PLCB will control both the availability of and wholesale price of the wine. The PLCB will also tack on 10 percent to the wholesale cost, plus to an 18 percent “emergency tax,” also known as the Johnston Flood tax. Additionally, private wine shops will only be permitted to sell four bottles of wine at a time. Wallace, supra note 51.


97 Hamilton, supra note 92. The influx of funds would have been a result from auctioning off liquor licenses. Packel, supra note 96.


99 WASH. INITIATIVE MEASURE NO. 1100 (failed 2010), https://www.sos.wa.gov/elections/initiatives/text/i1100.pdf. See also Lam, supra note 98, at 213. Under Initiative 1100, the laws regulating pricing and delivery by beer distributors would have been repealed. Quantity discounts and sales below cost by distributors would have been permitted, and uniform pricing no longer would have been required.
generated a huge amount of backlash from the beer industry. Opponents claimed it would irreparably harm Washington’s craft beer industry, as allowing private retailers to sell beer would primarily only benefit large chain stores. Local single-location stores, which would include craft breweries, would have suffered due to their lack of purchasing power to negotiate deals with private retailers, forcing them to offer discounts and reducing their profits and their ability to compete in a crowded marketplace.

Washington’s failed initiative can be viewed as examples as to why the beer industry in Pennsylvania should not be privatized. Doing so would likely negatively impact on the industry and impede its growth, resulting in decreased tax revenues. Instead, the state should push for modernization. There are several ways in which Pennsylvania could attempt to modernize its distribution system, including: increasing the barrelage amounts permitted for self-distribution; permitting the direct shipment of beer by manufacturers to consumers; making distribution agreements more brewer-friendly; introducing the concept of a farm brewery license; and offering additional tax credits to craft breweries, among other options.

1. Permit Increased Barrelage Amounts for Self-Distribution

There are several exceptions to the three-tier system of distribution. A brewpub, for example, is simultaneously a producer and retailer, with no

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101 Id. at 214.
103 As of 2014, following the passage of the Costco Initiative, Washington residents paid more for a liter of alcohol than residents in any other state, and as a result, were spending less on alcohol overall than was projected by the state. Following privatization, Washingtonians paid $35.22 per gallon of spirits, which was $8.52 more than before privatization. Reid Wilson, *Two years after liquor privatization, booze in Washington state costs more*, WASH. POST (June 30, 2014), https://www.washingtonpost.com/blogs/govbeat/wp/2014/06/30/two-years-after-liquor-privatization-booze-in-washington-state-costs-more/?utm_term=.f59885c47903.
requirement to sell to a distributor. A number of states also are beginning to allow breweries that meet certain criteria to bypass the three-tier system and self-distribute their own products. In Pennsylvania, a brewery can self-distribute its beer to other licensed entities, including restaurants and distributors, by virtue of its brewery license. Out-of-state breweries, however, are still required to utilize the three-tier system. Self-distribution by craft breweries does not bypass the tax implications of the three-tier system of distribution; all brewers are still required to pay the state excise tax.

States vary on their self-distribution laws. Some states prohibit all self-distribution; others impose a barrel limit, while others have no restriction on barrelage. Craft breweries tend to push for increased latitude to self-distribute, because small and unknown brewers often find it difficult to access distribution networks. As a result, it may be more efficient and economical for some brewers to distribute in their local markets. A distributor often will not want to sign on with a brewer unless the brand has some value. By self-distributing their product, brewers can grow their brand and increase its value to ultimately convince a distributor that the brand

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104 Welch, supra note 31, at 175–76.
105 Scott, Don’t Forget the Beer, supra note 29, at 2; McLaughlin, supra note 2.
107 Scott, Don’t Forget the Beer, supra note 29, at 2.
110 Tomayo, supra note 109, at 2228, 2232.
112 Tomayo, supra note 109, at 2233. This value is built by developing relationships with retailers and developing the brand among the consuming public. Id.
will be profitable.\textsuperscript{113} Craft brewers usually will choose to abandon self-distribution after a period of growth, but not all choose to do so.\textsuperscript{114}

Craft brewers often maintain that a higher barrel limit is necessary for expansion.\textsuperscript{115} Not only does the ability to self-distribute help brewers to develop relationships with local retailers and create a demand for their product, but it also permits a brewer to begin putting its product out into the market before investing huge amounts of capital into its business.\textsuperscript{116} Arguably, a craft brewer would be its best salesperson, as the brewer would be the most invested in getting the product to retail.\textsuperscript{117} Some craft brewers reason that because a distributor would be able to offer a wide selection of different brands to a retailer, the distributor would have less incentive to sell a craft brewer’s brand than the craft brewer would itself.\textsuperscript{118}

Currently, craft brewers in Pennsylvania are permitted to self-distribute their own beer in unlimited amounts.\textsuperscript{119} Conceivably, unlimited distribution would be the most advantageous for craft brewers because self-distribution is highly efficient and more economical for a craft brewery, and it allows a craft brewer greater control over its product.\textsuperscript{120} Additionally, the ability to sell beer directly to consumers will enhance customer loyalty and help increase sales within the three-tier distribution system.\textsuperscript{121} However, there are

\begin{footnotesize}
\begin{enumerate}
\item Sorini, supra note 111, at 23; Tomayo, supra note 109, at 2233.
\item Tomayo, supra note 109, at 2236.
\item Id. at 2235–36. It is the position of the Brewers Association that the American consumer should have access to the widest range of domestically produced beers made available by licensed breweries. The Association maintains that the success or failure of a beer should depend on consumer demand, rather than artificial barriers to distribution. Therefore, to provide the greatest ongoing choice to consumers, small brewers should have the right to sell beer directly to consumers. See Government Affairs: BA Position Statements, supra note 74.
\item Tomayo, supra note 109, at 2235.
\item Id. at 2234.
\item Tomayo, supra note 109, at 2233, 2237.
\item Government Affairs: BA Position Statements, supra note 74. Black Cap Brewing Company in Red Lion, PA is an excellent example. The co-owners opened their brewery in order to bring fresh, high quality, hand-crafted beer to the local community, and have attempted to integrate Red Lion’s history into
\end{enumerate}
\end{footnotesize}
potential issues with having an unlimited barrelage amount that might arise.\textsuperscript{122}

On August 29, 2013, House Bill 1666 was sent to the Liquor Control Committee. Although nothing has ultimately become of this bill, it would have limited the barrelage amount that breweries were permitted to self-distribute to 75,000 barrels.\textsuperscript{123} The bill also would have allowed out-of-state distributors to self-distribute that same amount, something they are currently barred from doing; out-of-state brewers must utilize the three-tier system and go through a distributor.\textsuperscript{124} Thus, one could make the argument that Pennsylvania is treating in-state and out-of-state breweries differently, giving in-state breweries a competitive advantage. The United States Supreme Court ruled in Granholm v. Heald\textsuperscript{125} that similar systems regarding the distribution of wine in Michigan and New York violated the Dormant Commerce Clause, as they discriminated against out-of-state alcohol producers. Scott proposes

\textsuperscript{122} See McDermott, supra note 119.
\textsuperscript{123} Id. When looking at the production levels of Pennsylvania breweries, the permitted 75,000 barrels would probably be a generous amount. For comparison, Troegs Independent Brewing Company in Hershey, PA, produces around 55,000 barrels annually. Victory Brewing Company in Downingtown, PA, has an annual production of over 100,000 barrels. Id.
\textsuperscript{125} Granholm v. Heald, 544 U.S. 460, 476 (2005). The Supreme Court had “no difficulty” in concluding that the New York and Michigan statutes violated the Commerce Clause by discriminating against out-of-state alcohol producers, as the laws called for “differential treatment of in-state and out-of-state economic interests that benefited the former and burdened the latter.” Id. at 472. State regulations that discriminated between in-state and out-of-state alcohol producers was “limited” by the nondiscrimination principle of the Commerce Clause; these regulations were not saved by the 21st Amendment. See also Scott, supra note 29, at 2. Lynmore Seaton, Comment, Pennsylvania is Still in America, Right? An Examination of Pennsylvania’s Direct Shipment Laws (The Economics of Bad State Policy), 17 TEMP. POL. & CIT. RTS. L. REV. 675, 688 (2008). To determine if the states’ statutes could be saved, the Court analyzed whether they “advanced a legitimate local purpose” that [could] be adequately served by reasonable nondiscriminatory alternatives. Granholm, 544 U.S. at 489. New York and Michigan claimed that their exclusion of out-of-state producers was motivated by legitimate concerns of minors obtaining alcohol via the Internet and the difficulties of tax collection. Id. at 489–90. The Court found both of those concerns to be insufficient, and decided that the states’ “regulatory objectives” could be achieved without violating the Commerce Clause. Id. at 491.
that Pennsylvania allow all brewers to self-distribute, regardless of their geographic location, to bring Pennsylvania into compliance with *Granholm* while still promoting free enterprise and competition.126

2. Allow the Direct Shipment of Beer to Consumers

Following *Granholm*, subsequent case holdings have illustrated the confusion that still exists surrounding the extent of the states’ power in alcohol regulation.127 State regulations that do not forbid, but rather limit, the scope of producers’ ability to directly ship wine have been questioned on the same constitutional grounds,128 resulting in a circuit split.129 Similarly, the direct shipment of beer is an area of beer distribution law that is in flux.130 Unless otherwise specified by state law, *Granholm* only extends to the wine industry, while beer shipments are still illegal;131 Pennsylvania is one of the sixteen states that forbid the direct shipment of beer to its residents.132 However, other states such as California, New Hampshire, Oregon, and Vermont do permit legal direct shipment,133 and this is something that

126 See Scott, *supra* note 29, at 5 (noting that a state also could permissibly require all brewers, both in-state and out-of-state, to utilize the three-tier system equally, prohibiting self-distribution altogether).


128 Id. at 526–27.

129 See Black Star Farms LLC v. Oliver, 600 F.3d 1225 (9th Cir. 2010); Family Winemakers of Cal. v. Jenkins, 592 F.3d 1 (1st Cir. 2010); Cherry Hill Vineyards LLC v. Lilly, 553 F.3d 423 (6th Cir. 2008); Baude v. Heath, 538 F.3d 608 (7th Cir. 2008). With the implementation of Act 39 in 2016, out-of-state wineries will now be permitted to ship to Pennsylvania consumers. However, Act 30 only permits wineries to do so, not out-of-state retail wine stores. For an out-of-state winery to ship to a Pennsylvania consumer, the winery will be required to obtain a direct wine shipper license from the PLCB, which will cost $250 per year. Additionally, there will be two taxes imposed on the wines: a gallonage tax of $2.50 per gallon, adding $0.43 to the cost of each bottle, and Pennsylvania sales tax, in addition to any county-imposed taxes. Wallace, *supra* note 51.

130 Kurtz & Clements, *supra* note 37, at 408.


Pennsylvania could consider to encourage the growth of its craft beer industry.

Due to the smaller amounts of beer they are able to produce, craft brewers often struggle to find distributors willing to distribute their product.134 Allowing the direct shipment of beer to consumers would help brewers struggling to find a distributor to pick up their label to expand their market.135 It would also permit craft beer aficionados to easily sample a Pennsylvania brewery’s product without the individual having to come into the state to buy it, or having to purchase it online illegally.136

Those states that do permit direct shipment typically require the shipper to be a licensed brewer, distributor, or retailer in its state of origin, and to obtain a direct shipper permit in each state where it wants to ship its products before shipping into that state.137 However, allowing the direct shipment of beer raises some complications. For example, it is illegal to ship beer using the United States Postal Service, and Federal Express and United Parcel Service typically only ship for properly licensed shippers on a contract basis.138 Some states also have alcohol content restrictions or limit the amount of beer each resident may purchase on a monthly or annual basis.139 Additionally, a state might permit direct shipment by an in-state brewer, but still require out-of-state brewers to go through the three-tier system of distribution, potential Granholm issues regarding the Dormant Commerce Clause could arise.140

134 Kurtz & Clements, supra note 37, at 408.
135 Chen, supra note 127, at 542.
136 Rathke, supra note 133.
137 Kurtz & Clements, supra note 37, at 408–09. Vermont, for example, changed its laws in 2013 to permit both licensed in-state and out-of-state brewers holding a valid manufacturer’s license in another state to obtain a consumer shipping license permitted them to ship “no more than twelve cases of malt beverages containing no more than thirty-six gallons of malt beverages to anyone Vermont resident in any calendar year.” See VT. STAT. ANN. tit. 7 § 66(d)(2) (2016).
138 Kurtz & Clements, supra note 37, at 409. A “properly licensed shipper” would have to hold a valid brewer, wholesaler, or retail license. Id.
139 Id. Those opposing the direct shipment have raised concerns that it will be much more difficult to police the illegal sale of alcohol to minors. Id.
140 Welch, supra note 31, at 215. See supra note 124.
3. Make Distribution Agreements More Brewer-Friendly

Another option that Pennsylvania could utilize in order to promote the growth of its craft brewing industry would be to grant more rights to breweries under the traditional distribution agreement. In Pennsylvania, craft brewers are permitted to self-distribute; this helps many smaller brewers put their product out into the market, especially as craft brewers may find it difficult to find a distributor willing to distribute their product. However, brewers who self-distribute usually can only operate within a very limited geographic area, and distributors have the detailed knowledge to help smaller craft breweries branch out into a wider market. Distributors also serve as vital points of communication between the two other tiers, ensuring that breweries are well-represented, and that retailers get the brands that best fit them. Distributors are becoming more eager to take on craft breweries as craft beer grows in popularity.

Despite the introduction to a broader market that a distributor can offer, craft breweries may be hesitant to work with distributors because distributors are so heavily favored in distribution agreements. Not unlike franchising, which requires franchisees to make a substantial initial investment, beer distribution requires a substantial investment in infrastructure by distributors. As a result, most states have an array of statutes, rules, and regulations aimed at balancing power in favor of distributors.

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142 Kurtz & Clements, supra note 37, at 408; Tomayo, supra note 109, at 2233.

143 For example, on the retail side of things, distributors can offer detailed market knowledge while managing diverse brand portfolios. Weaver, supra note 67.

144 Weaver, supra note 67.

145 Tomayo, supra note 109, at 2217.

146 Kurtz & Clements, supra note 37, at 402. In the three-tier system of distribution, distributors function as the “go-between”: they are charged with transporting beer efficiently and safely between manufacturers and retailers. The distribution tier collects taxes and serves as a highly regulated, accountable midpoint to prevent things like underage drinking. Ideally, distributors serve as vital points
There are four general categories of these balancing protections: territorial protections, transfer protections, protections relating to termination, and dispute resolution protections and remedies.147 Upon entering the distribution agreement, the brewer typically grants the distributor the exclusive right to sell its product.148 Distributors are permitted to transfer their interest to another distributor under a distribution agreement, sometimes without the brewer’s consent.149 Brewers are not permitted to modify or terminate a distribution agreement without good cause, and the distributor typically will have the right to reasonable compensation if the brewer terminates the beer distribution agreement for any reason.150

To give more power to craft breweries under distribution agreements, Pennsylvania could give breweries enhanced termination rights, or the option to purchase its franchise rights from an underperforming distributor.151 For example, in New York, a brewery is permitted to switch distributors by paying the fair market value of the distribution rights if a brewery represents less than three percent of a distributor’s business and produces fewer than 300,000 barrels of beer annually.152 Were Pennsylvania to do something along similar lines, craft breweries would have much greater incentives to work with distributors. The distributors would then be able to expand the market for the breweries’ product by getting the craft beer to a greater range of retailers, thus ultimately resulting in increased revenue for the state.

147 Kurtz & Clements, supra note 37, at 402.
151 Weaver, supra note 67.
152 McLaughlin, supra note 2.
4. Introduce Farm Brewery Licenses

Craft breweries are often known for their special batch collaborations, unusual ingredients, and limited releases. As beer styles evolve, the demand for fruits, vegetables, and other raw ingredients used in beer rises. For example, over 72 million pounds of hops were produced in 2014, which is an increase of 26 percent over the last decade. Realizing the potential for their agricultural industries, several states have already begun to offer exclusive privileges to their craft breweries that use locally sourced ingredients. Although almost all of the hops in the United States are grown in Washington, Oregon, and Idaho, a farm brewery license would allow Pennsylvania to take advantage of Central Pennsylvania’s rich farming area to produce those ingredients.

In 2013, New York introduced a farm brewery license. This special license is both cheaper than a standard brewer’s license, and allows the licensee certain privileges in exchange for compliance with specific rules. Specifically, the farm brewery license allows the licensee to operate a brewery for the manufacture of “New York State labeled beer.” “New York State labeled beer” must be brewed with at least 20 percent New York-grown hops and barley, so this will lead to an increased demand for locally

153 Welch, supra note 31, at 227.
158 Scott, supra note 3.
159 N.Y. ALCO. BEV. LAW § 51-a (Consol. 2016); Hawkins, supra note 156, at 328.
160 N.Y. ALCO. BEV. LAW § 51-a(2) (Consol. 2016).
161 N.Y. ALCO. BEV. LAW § 3(20-d) (Consol. 2016).
grown farm products. As a result, New York breweries meeting those requirements will pay lower annual licensing fees, and will be exempted from burdensome tax rules that would otherwise require them to file information relating to sales tax. Massachusetts, Maryland, and Michigan also have similar schemes extending additional benefits to license holders.

In 2014, Michigan introduced its “Farm to Glass Bill” which, like New York’s legislation, aimed to provide tax incentives for beer, wine, mead, and cider makers using Michigan-grown ingredients such as hops and grain in their products. To be eligible for the credit, brewers would be required to source at least 20 percent of their hops and at least 40 percent of other ingredients from Michigan sources. However, many Michigan brewers remain skeptical about the feasibility of the new legislation, citing concerns that Michigan itself would be unable to supply the amount of ingredients needed to meet the requirements. This is similar to concerns that might also be raised in Pennsylvania should the state adopt something similar, as most of the hops used in craft beer are grown out West. However, introducing such a license would be a good way to incentivize Pennsylvania’s

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162 Hawkins, supra note 156, at 328. Starting January 1, 2019, the percentage requirements will increase to 60 percent. Beginning on January 1, 2024, that percentage will become 90 percent. Id.

163 Id. Hawkins notes the potential Granholm issues that may arise over New York’s farm brewery licenses, although no challenges have been brought at this time. Id. at 332. Hawkins argues that, like the wine distribution systems struck down in Granholm, farm brewery licenses favor in-state brewers. However, Hawkins does note the differences between New York’s farm brewery license and the Michigan law in Granholm. Unlike the Michigan law, the farm brewery licenses do not absolutely prohibit nor deny market access; they are only an encumbrance. Nor is the sourcing requirement imposed on all breweries; it is only imposed on those operating under a specific type of license. Additionally, the farm brewery license extends benefits to certain kinds of in-state breweries that, only if accepted by the breweries, in turn have a secondary effect of burdening out-of-state farmers. Id. at 337–38.

164 See, e.g., MASS. ANN. LAWS ch. 138, § 19c (LexisNexis 2016); MD. CODE ANN., ALCO. BEV. § 2-210 (LexisNexis 2016); MICH. COMP. LAWS SERV. § 436.1203(11) (LexisNexis 2016); see also Hawkins, supra note 156, at 330–32.


166 Hawkins, supra note 156, at 330–32.

167 Cibula, supra note 157, at 163.
own agricultural industry, and, like with New York’s farm brewery license, could be a way to ease tax restrictions on craft brewers by exempting them from sales tax requirements, thereby allowing them to produce a greater volume of their product.

5. Offer Tax Credits to Craft Breweries

To further promote its craft beer industry, Pennsylvania could offer additional tax credits to craft breweries. Act 39, enacted in 2016, offers a tax credit for capital expenditures up to $200,000 annually for breweries, in addition to the $1 million in annual grants aimed at promoting local brewing to be overseen by the newly created Pennsylvania Malt and Brewed Beverages Industry Promotion Board.168 While the combination of the grant and the tax credit will likely help to build up Pennsylvania’s brewing culture, Pennsylvania could further offer additional tax credits, similar to what other states have done.

As an example, New York introduced new legislation in 2012 giving tax credits specifically to small-batch breweries.169 Any brewery producing 60 million gallons or fewer in New York is eligible for a refundable tax credit to be applied against the state’s personal income and business taxes. The credit is worth 14 cents per gallon for the first 500,000 gallons produced, and 4.5 cents per gallon for the next 15 million gallons produced. Breweries producing 1,500 barrels or fewer annually, regardless of location, are exempt from paying the $150 annual brand label fee.170 In late 2014, New York also enacted its Craft Beverage Industry Tourism Promotion Grant, to be awarded to craft breweries for market-based tourism projects to create and retain jobs and increase tourism for the industry.171 Additionally, several other states, including California and North Carolina, have also begun to offer tax breaks

168 47 PA. CONS. STAT. § 4-446.1 (2016); Wallace, supra note 51.


on property taxes to entice breweries to remain in the area.\textsuperscript{172} Pennsylvania might look into these various tax credits that have been offered by other states and consider similar ones for its own craft breweries, in addition to what is now offered under Act 39. Doing so would result in increased tax revenue to the state.

6. Additional Proposals

There have been other proposals regarding how Pennsylvania could encourage the growth of its craft brewing industry, as well. One such proposal, most recently included in H.B. 466 that was vetoed by the Pennsylvania General Assembly on June 30, 2015, would be to permit the sale of beer in grocery stores and convenience stores.\textsuperscript{173} Pennsylvania could also allow sales, coupons, and membership programs, similar to what it has done under Act 39 regarding wine and liquor sales, to increase the sales of craft beer.\textsuperscript{174} An example of this might be a “Mug Club,” which offers beer at a discount price for beer poured into a mug club member’s one specific, special mug.\textsuperscript{175}

\textsuperscript{172} Kelsey Snell, \textit{Craft Beer: Tastes Great, Fewer Taxes}, POLITICO (Aug. 13, 2014, 1:51 PM EDT), http://www.politico.com/story/2014/08/craft-beer-taxes-109984. For example, in San Diego, California and Asheville, North Carolina, local officials have offered tax breaks to encourage craft breweries to either build in or remain in their cities. San Diego lawmakers offered tax cuts on future sales to two expanding local craft brewers, AleSmith and Ballast Point, to encourage them to remain in San Diego, rather than expending outside the city. \textit{Id.} The tax cuts were awarded under California’s California Competes Tax Credit, which is part of the Governor’s Economic Development Initiative. \textit{Cal. Code Regs. tit. 10, §§ 8000 et seq.} Similarly, Asheville announced it would provide New Belgium, one of the top-selling craft brewers in the United States, with a tax incentive that was dependent on the brewery’s construction of a new brewing facility in the city. Snell, supra note 172. North Carolina was able to offer this credit under its One North Carolina Fund, administered by the North Carolina Department of Commerce on behalf of its Governor. \textit{N.C. Gen. Stat. Ann. § 143B-437.71.}

\textsuperscript{173} Mudd, supra note 171. \textit{See supra} text accompanying note 56. The PLCB does allow some such stores to hold restaurant or eating-place licenses, allowing them to sell up to two six-packs; however, a grocery or convenience store is still not be permitted to sell beer without such a license. Currently, about half of the approximately 240 such licenses issued are held by chains such as Giant Eagle, Weis Markets, Giant, Wegmans, Acme Markets, and Whole Foods. Melissa Daniels, \textit{Pennsylvania Shoppers Have More Choices for Buying Beer}, TRIB. LIVE (Mar. 7, 2015, 6:56 PM), http://triblive.com/state/pennsylvania/7835428-74/beer-stores-grocery#axzz3xbgRFmPh.

\textsuperscript{174} Wallace, supra note 51.

\textsuperscript{175} Danya Henninger, \textit{6 Ways PA’s New Liquor Law Affects Brewers}, BILLYPENN (Aug. 13, 2016, 7:00 AM), http://billypenn.com/2016/08/13/6-ways-pas-new-liquor-modernization-law-affects-brewers/. One could make the argument, however, that utilizing sales, coupons, and membership programs to increase the sales of craft beer may lead to increased drunk driving and alcohol abuse. \textit{See, e.g.}, Robert
The state could also look for new alcohol products to regulate and include in the existing laws taxing alcohol. Another option would be to expand a craft brewery’s hours of operation by permitting Sunday sales like Act 39’s expansion of Wine & Spirit stores’ hours. However, one might make the argument that because craft breweries typically are small, they might not have the capacity to brew enough beer to sell, or have enough employees to work those extended hours. Regardless, the options suggested, if feasible, would all be ways to encourage the growth of Pennsylvania’s craft brewing industry and result in increased tax revenues.

V. CONCLUSION

The craft beer industry has been rapidly expanding over the past several years. Craft brewers have been credited with keeping the beer industry alive and thriving, and this can certainly be seen in Pennsylvania. In 2014, craft beer in Pennsylvania brought in $4.5 billion to the overall economy, second only to California. In addition to the sales bringing in revenue, the craft brewing industry also benefits Pennsylvania’s economy by providing jobs to its citizens and contributing to its tourism industry. Pennsylvania has indicated its interest in encouraging the growth of this industry, as evidenced by its enactment of § 3.93 in 2015 and Act 39 in 2016. However, the state could still be doing more to incentivize its craft brewing industry. Many other states have begun to modernize their distribution systems, rather

A. Hahn et al., Effectiveness of Policies Restricting Hours of Alcohol Sales in Preventing Excessive Alcohol Consumption and Related Harms, 39 Am. J. Preventive Med. 590 (Dec. 2010) (discussing the effects of increased availability of alcohol, particularly with increased hours available for sale, has on alcohol-related harms).

176 Mudd, supra note 171. The author offers powdered alcohol as an example of a new alcohol product to regulate; however, powdered alcohol was recently banned under Act 39. Scolforo, supra note 80.

177 Hamilton, supra note 92; Wallace supra note 51.

178 Scott, supra note 3.

179 McLaughlin, supra note 2.

180 Scott, supra note 3.

181 Mudd, supra note 7.

182 Mather, supra note 64.
than privatizing the industry, Pennsylvania should look to what those states have done to likewise modernize its own system.

Other states have come up with several methods to modernize their systems and encourage their craft brewing industries. Those methods include, among other options: increasing the barrelage amounts permitted for self-distribution; permitting the direct shipment of beer by manufacturers to consumers; making distribution agreements more brewer-friendly; introducing the concept of a farm brewery license; and offering additional tax credits to craft breweries. In various ways, these methods will provide tax benefits to craft breweries, ultimately permitting them to increase their production and put capital back into their businesses. As a result, the craft breweries can expand and grow; resulting in increased sales, employment opportunities, and tourism, and thus boosting the tax revenue flowing back to the state.