



Volume 14 (2016) | ISSN 1932-1821 (print) 1932-1996 (online)
DOI 10.5195/taxreview.2016.53 | <http://taxreview.law.pitt.edu>

NOTE

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

Suzanne Laucks



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.



This journal is published by the [University Library System](#) of the [University of Pittsburgh](#) as part of its [D-Scribe Digital Publishing Program](#), and is cosponsored by the [University of Pittsburgh Press](#).

NOTE

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

*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

* Suzanne Laucks earned her J.D. from the University of Pittsburgh School of Law in 2016. She is currently practicing in York, Pennsylvania, in the areas of Estate Planning, Estate Administration, Real Estate, and Business and Corporate Law. She would especially like to thank Pitt Law Professors Anthony C. Infanti and Danshera Cords and the editorial staff of the Pittsburgh Tax Review for all their assistance and valuable feedback with this note in preparation for publication. She would also like to thank her brother for introducing her to good craft beer.

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 2013,² and nearly double the number of craft breweries in 2010.³

Bart Watson, the Brewers Association’s chief economist, pointed to craft brewers as the key to keeping the beer industry “innovative and growing.”⁴ 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 2014.⁵ Second only to California, Pennsylvania craft brewers brought in \$4.5 billion, from their production of 4.1 million barrels of craft beer.⁶ 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.⁷

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,

² Matthew P. McLaughlin, *Craft Beer’s Growth is Causing Congress to Brew Reforms*, LAW360 (June 30, 2015), <http://www.law360.com/articles/684416/craft-beer-s-growth-is-causing-congress-to-brew-reforms>.

³ Jason Scott, *No Ceiling Yet for Central Pennsylvania Brewery Licenses*, CENT. PENN BUS. J. (Sept. 11, 2015), <http://www.cpbj.com/article/20150911/CPBJ01/309109995/no-ceiling-yet-for-central-pennsylvania-brewery-licenses>.

⁴ McLaughlin, *supra* note 2.

⁵ Scott, *supra* note 3. See also *State Craft Beer Sales & Production Statistics*, 2015, BREWERS ASS’N, <https://www.brewersassociation.org/statistics/by-state/> (last visited Nov. 10, 2016) (identifying the five states as California, Pennsylvania, Texas, New York, and Colorado).

⁶ Scott, *supra* note 3. California brought in \$6.9 billion from craft beer. Pennsylvania also ranked first in the barrels of craft beer produced in 2014. *State Craft Beer Sales & Production Statistics*, *supra* note 5.

⁷ Daniel G. Mudd, *Alcohol Taxes and Incentives—The Spirit of the Law and What’s Hoppin’*, 2015 EMERGING ISSUES 7346 (2015). For example, at the local level, brewpubs help to “revitalize downtown areas and redevelop older buildings, thus providing a boost to local economies.” Jeremy D. Frey, *A Guide for Brew Pub Entrepreneurs*, BARLEY SNYDER ATTORNEYS AT LAW: NEWS & EVENTS (Feb. 2013), <http://www.barley.com/?t=40&an=30557&anc=538&format=xml&p=6933>. See also STUDY OF THE ECONOMIC IMPACT OF THE BREWING INDUSTRY IN THE COMMONWEALTH: A REPORT IN RESPONSE TO SENATE RESOLUTION 2012–216, LEGIS. BUDGET & FIN. COMM. 26–27, 36–40 (PA 2013), <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/456.pdf> (for a more in-depth explanation of the impact of the craft beer industry on Pennsylvania’s economy and tourism industry).

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.⁸ 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.⁹

A. The Federal Excise Tax

The Code imposes federal excise taxes on the production, importation, and sale of distilled spirits, beer, and wine.¹⁰ “The Federal Alcohol Administration Act works in conjunction with the Code to provide the

⁸ McLaughlin, *supra* note 2.

⁹ Washington National Tax KPMG LLP, *An Analysis of the Structure and Administration of State and Local Taxes Imposed on the Distribution and Sale of Beer*, NBWA: NAT'L BEER WHOLESALERS ASS'N 6 (Mar. 2009), https://www.nbwa.org/sites/default/files/NBWA_Report_2009.pdf (last visited Feb. 18, 2017) [hereinafter 2009 Report].

¹⁰ I.R.C. §§ 5001, 5041, 5051.

necessary licensing and recordkeeping requirements for operating in those industries.”¹¹ There are a number of federal agencies that also oversee the federal alcohol laws, such as the Alcohol and Tobacco Tax and Trade Bureau (TTB), and the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).¹²

There are numerous reporting, payment, and compliance statutes, regulations, and rules related to the import, export, production, distribution, and sale of alcohol.¹³ 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.¹⁴ The federal excise tax rate differs depending on the type of alcohol.¹⁵ For beer, the tax rate is based on the number of barrels produced.¹⁶ 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

¹¹ Mudd, *supra* note 7. See Federal Alcohol Administration Act, 27 U.S.C. §§ 201–219a (2012).

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.S. §§ 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.

¹⁴ See I.R.C. §§ 5001, 5005, 5351, 5551, 5173; 27 U.S.C. §§ 203, 204, 213–19a; 27 C.F.R. §§ 1.20, 18.223(a), 25.61–62 (2017); see also Mudd, *supra* note 7.

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

¹⁶ I.R.C. § 5051.

production.¹⁷ The current federal excise tax rate was enacted as part of the Omnibus Budget Reconciliation Act of 1990.¹⁸

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.¹⁹ Brewers and importers are therefore responsible for remittance of the federal beer excise tax.²⁰ There are numerous exceptions available to the federal excise tax, including for the personal or family use of beer.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.²²

¹⁷ I.R.C. § 5051(a)(1)–(2)(A). To get the reduced rate under § 5051(a)(2)(A) a brewer must brew fewer than 2,000,000 barrels of beer per calendar year. I.R.C. § 5051(a)(2)(A). *See also* Mudd, *supra* note 7. A craft brewer is by definition “small, independent, and traditional.” *Craft Brewer Defined*, *supra* note 1. When examining the various craft beer industry market segments, “large” breweries are those with an annual beer production of over 6,000,000 barrels. In contrast, the “smaller” craft breweries are microbreweries (breweries producing fewer than 15,000 barrels of beer per year) and regional breweries (breweries with annual productions of between 15,000 and 6,000,000 barrels). *Craft Beer Industry Market Segments*, BREWERS ASS’N, <https://www.brewersassociation.org/statistics/market-segments/> (last visited Feb. 28, 2017). Microbreweries and some regional craft breweries could therefore qualify for the reduced rate under § 5051(a)(2)(A).

¹⁸ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508, § 11201(c), 104 Stat. 1388 (1990). The current federal excise tax rate became effective on January 1, 1991. The Omnibus Budget Reconciliation Act doubled the federal excise tax rate on beer, increased the federal excise tax rate on other beverages, and instituted “luxury taxes” on certain high-priced automobiles, boats, airplanes, and furs. The federal beer excise tax was at \$9 per barrel from November 1951 through December 1990. Historically, that rate had been increased primarily to fund U.S. involvement in World Wars I and II, as well as the Korean Conflict. Washington National Tax KPMG LLP, *supra* note 9, at 8.

¹⁹ *See* I.R.C. §§ 5006(a), 5213, 5054; 27 C.F.R. §§ 19.227, 24.270; *see also* Mudd, *supra* note 7.

²⁰ 2009 Report, *supra* note 9, at 8.

²¹ I.R.C. § 5053 (beer exempt for personal or family use is not permitted to exceed 200 gallons per calendar year if there are 2 or more adults in the household, and 100 gallons per calendar year if there is only 1 adult in the household). I.R.C. § 5053(e)(1)–(2). *See also* Mudd, *supra* note 7.

²² I.R.C. § 5061; 27 C.F.R. §§ 19.236, 19.240 (2017); *see also* Mudd, *supra* note 7 (to qualify for quarterly filing and payment, the taxpayer must have paid a federal excise tax of \$50,000 or less the previous calendar year).

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

²³ Mudd, *supra* note 7.

²⁴ 2009 Report, *supra* note 9, at 10. See 72 PA. CONS. STAT. § 9003 (2016).

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.*

²⁹ U.S. CONST. amend. XXI; David Scott, *Don't Forget the Beer: Pennsylvania Must Reform its Beer Distribution Laws to Comply with the Supreme Court's Landmark Decision in Granholm v. Heald*, COMPETITIVE ENTER. INST. 1 (May 28, 2013), <https://cei.org/onpoint/don%E2%80%99t-forget-beer>.

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).

³⁷ Barry Kurtz & Bryan H. Clements, *Beer Distribution Law as Compared to Traditional Franchise Law*, 33 FRANCHISE L.J. 397, 400 (2014).

and sell different licenses to businesses in each tier.³⁸ 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.³⁹ The Pennsylvania Liquor Code enables the Commonwealth to strictly control the sale and distribution of alcohol.⁴⁰ The Commonwealth exercises this control through the three-member Pennsylvania Liquor Control Board (PLCB), which has the exclusive authority to buy alcohol from manufacturers.⁴¹ 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.⁴² Retail establishments such as hotels, restaurants, and clubs must be licensed by the PLCB and are also eligible to purchase alcohol from it.⁴³

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.⁴⁴ Bars, restaurants, and

³⁸ *Id.* at 401. There are 32 license states, including California and Colorado. *Id.*

³⁹ *Id.*

⁴⁰ Emma Snyder, Comment, *Privatization in Pennsylvania: How Reforming the Pennsylvania Liquor Code Would Benefit the Commonwealth and its Citizens*, 119 PENN ST. L. REV. 279, 285 (2014).

⁴¹ *Id.* See also 47 PA. CONS. STAT. ANN. § 2-201. The Pennsylvania Liquor Control Board (PLCB) is responsible for regulating the sale of alcohol, providing education on the responsible use of alcohol, and working to prevent underage alcohol use. *Education*, PA. LIQUOR CONTROL BD., <http://www.lcb.pa.gov/Education/Pages/default.aspx> (last visited Nov. 10, 2016). The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) enforces the liquor laws in Pennsylvania. *Liquor Control Enforcement*, PA. ST. POLICE, <http://www.psp.pa.gov/LCE/Pages/default.aspx#.Vt36sebWHPd> (last visited Nov. 10, 2016).

⁴² Snyder, *supra* note 40, at 287.

⁴³ *Frequently Asked Questions*, PA. LIQUOR LICENSE EXCH., <http://www.pallx.com/faq.html> (last visited Nov. 10, 2016); *Types of Licenses*, PA. LIQUOR LICENSE CO., <http://pennsylvanialiquorlicense.com/typesoflicenses.asp> (last visited Nov. 10, 2016).

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.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.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.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,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.⁴⁹ However, as a result of recent changes to Pennsylvania’s liquor laws,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

⁴⁵ 47 PA. CONS. STAT. § 4-442 (2016). This includes supermarkets and gas station cafes. Bill Toland, *12-Packs, 18-Packs Hit Pennsylvania Beer Distributor Shelves*, PITT. POST-GAZETTE (Mar. 18, 2015, 11:01 PM), <http://www.post-gazette.com/life/food/2015/03/18/12-packs-18-packs-hitting-beer-distributor-shelves/stories/201503180200>.

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, *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>.

⁴⁷ PA. GENERAL ASSEMBLY P.L. 622, No. 160 (Dec. 7, 1990).

⁴⁸ *Distributors’ Roles in Tax Collection*, ASSOCIATED BEER DISTRIB. OF ILL., <http://www.abdi.org/public/regulation.htm> (last visited Nov. 10, 2016).

⁴⁹ *Frequently Asked Questions*, *supra* note 43.

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

⁵¹ Keith S. Wallace, *Pennsylvania Wine Law Primer*, WINE SCHOOL PHILA., <https://www.vinology.com/new-wine-laws-plcb/> (last visited Nov. 10, 2016).

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.⁵⁸ 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.⁵⁹

More recently, the federal Craft Beverage Modernization and Tax Reform Act was introduced.⁶⁰ 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.⁶¹

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.⁶²

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

breweries to invest in the type of equipment necessary to expand their capacity. 161 CONG. REC. S 826 (Feb. 5, 2015) (statement of Sen. Ben Cardin).

⁵⁸ Fair BEER Act, H.R. 767 114th Cong. § 2(a)(1) (2015). The Fair BEER Act was introduced on February 5, 2015. *Id.*

⁵⁹ *Id.* Currently, both bills have been introduced in the House, and referred to the House Committee on Ways and Means. Small BREW Act, *supra* note 57; Fair BEER Act, *supra* note 58.

⁶⁰ Craft Beverage Modernization and Tax Reform Act of 2015, S. 1562, 114th Cong. (2015). The Craft Beverage Modernization and Tax Reform Act was introduced on June 11, 2015, by Sen. Ron Wyden, D-Ore. After being read twice and referred to the Committee on Finance, the Craft Beverage Modernization and Tax Reform Act was reintroduced on January 30, 2017. *Id.*; Craft Beverage Modernization and Tax Reform Act of 2017, S. 236, 115th Cong. (2017).

⁶¹ Craft Beverage Modernization and Tax Act of 2015 at §§ 102, 502 (2015).

⁶² *Id.* at § 201(a)(1)(A)(i) (2015).

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,⁶³ 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.⁶⁴ 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.⁶⁵ Previously, a brewery licensee also had to obtain a separate brewery pub, or “brewpub,”

⁶³ McLaughlin, *supra* note 2.

⁶⁴ 40 PA. CODE § 3.93 (2015); Alva Mather, *Easing Restrictions on Tasting Rooms for Pa. Breweries; Liquor Law*, THE LEGAL INTELLIGENCER Feb. 17, 2015, at 5.

⁶⁵ 40 PA. CODE § 3.93(c) (2015); Kenneth J. McDermott, *LCB Issues Advisory Notice Regarding Consuming Beer on Brewery Premises*, BARRELS & BARRISTERS (June 5, 2015), <http://barrelsandbarristers.co/?p=1207>.

license in order to serve beer for consumption on the premises under § 3.92.⁶⁶ 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.⁶⁷

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.⁶⁸ The brewery must have at least ten seats for use by its patrons and must make snack foods available. Brewers are now also permitted to offer free tastings at their breweries.⁶⁹

These changes have put Pennsylvania more in line with neighboring states that permit similar practices.⁷⁰ With the opportunity to have on-site tasting rooms, brewers will no longer have to invest in significant build-outs

⁶⁶ 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.

⁶⁷ Welch, *supra* note 31, at 176. It is always interesting to see permissible exceptions to the three-tier system of distribution, given the significant role that distributors play in the process. The distribution tier collects taxes and serves as a highly regulated, accountable midpoint in preventing things like adulteration of alcohol and underage drinking. Ken Weaver, *An Inside Look at Craft Beer and the Middle Tier*, 33 ALL ABOUT BEER MAG. 5 (2012), <http://allaboutbeer.com/article/craft-beer-distributors/>. Craft breweries are still required to pay the state excise tax, however; the exception granted to craft breweries merely permits them to serve their product on the same location where it is brewed. Welch, *supra* note 31, at 175.

⁶⁸ 40 PA. CODE § 3.93(c) (2015); Theodore J. Zeller, III, *Breweries Can Add Independent Tasting Rooms in Pennsylvania*, LEHIGH VALLEY LEGAL BLOG (June 1, 2015), <http://www.nmmlaw.com/lv/b/2015/06/01/breweries-can-add-independent-tasting-rooms-in-pennsylvania/>.

⁶⁹ 40 PA. CODE § 3.93(d) (2015); Mather, *supra* note 64.

⁷⁰ For example, New Jersey permits a brewery to sell beer for on-premises consumption in connection with a tour. N.J. STAT. ANN. § 33.1b (2017). Ohio and Virginia also allow for on-premises consumption without the need for an additional license. OHIO REV. CODE ANN. § 4303.02 (LexisNexis 2017); VA. CODE ANN. § 4.1-208(A)(1) (2017). *See also* *Breweries*, 45 PA. BULLETIN 2594 (May 30, 2015) (discussing neighboring states that permit similar practices to what is now permitted under § 3.93).

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.⁷¹ This will likely result in greater production volumes by Pennsylvania breweries,⁷² and thus an overall increase in tax revenue.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.⁷⁴

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, 2016.⁷⁵ Act 39 made changes to 35 sections of Pennsylvania's Liquor Code.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.⁷⁷ Wine & Spirits stores can now be open until 7 P.M. instead of

⁷¹ Mather, *supra* note 64.

⁷² Mather, *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, *supra* note 68.

⁷³ Bryce Pfalzgraf, Note, *Taxing the Keg: An Analysis on the Potential Effects of Changing the Federal Excise Tax on Beer*, 2015 U. ILL. L. REV. 2141, 2169 (2015).

⁷⁴ *Government Affairs: BA Position Statements*, BREWERS ASS'N, <https://www.brewersassociation.org/government-affairs/ba-position-statements/> (last visited Nov. 10, 2016).

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

⁷⁶ Daniel Craig, *Changes at Pennsylvania Liquor Stores Taking Effect*, PHILLYVOICE (Aug. 12, 2016), <http://www.phillyvoice.com/extended-sunday-hours-pennsylvania-liquor-stores-taking-effect/>.

⁷⁷ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. (Pa. 2015) (enacted); Wallace, *supra* note 51, at 9.

5 P.M.,⁷⁸ as well as be open on Sundays and some holidays.⁷⁹ Additionally, casinos will be permitted to sell liquor around-the-clock, rather than their previous restriction of 19 hours per day.⁸⁰

Wine & Spirits stores will be able to offer sales, coupons, and membership programs.⁸¹ The PLCB will also no longer be required to proportionally price all wines, as opposed to the previous standard 30 percent markup.⁸² 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.⁸³ However, it will be up to the individual private stores on how to price their wines.⁸⁴

For the first time since Prohibition, “new” liquor licenses will be available annually.⁸⁵ These licenses, ones that had been revoked or “mothballed” due to various violations, will be auctioned off by the PLCB in every county, with a minimum bid starting at \$25,000.⁸⁶ 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.⁸⁷

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

⁷⁸ *Id.* at § 304; Craig, *supra* note 76, at 13.

⁷⁹ H.B. 1690, § 304, 199th Gen. Assemb., Reg. Sess.; Wallace, *supra* note 51, at 9.

⁸⁰ Act 39, H.B. 1690, § 416, 199th Gen. Assemb., Reg. Sess.; Mark Scolforo, *11 Things to Know about Pennsylvania Liquor Law Changes*, NEWSWORKS (June 12, 2016), <http://www.newsworks.org/index.php/local/business-a-economy/94499-11-things-to-know-about-pennsylvania-liquor-law-changes> (last visited Feb. 20, 2017).

⁸¹ Act 39, H.B. 1690, § 207(M), 199th Gen. Assemb., Reg. Sess.

⁸² *Id.* § 207(B)(2) (Pa. 2015) (enacted).

⁸³ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 415(A) (Pa. 2015) (enacted).

⁸⁴ Wallace, *supra* note 51, at 9.

⁸⁵ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 404 (Pa. 2015) (enacted).

⁸⁶ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 470.3(A)(3)(A.1)(2)(G) (Pa. 2015) (enacted).

⁸⁷ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 488(B) (Pa. 2015) (enacted); 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.⁸⁸ Similarly, Pennsylvania wineries and distilleries will be permitted to sell spirits and beer for consumption on the premises.⁸⁹ 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.⁹⁰ 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.⁹¹

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.⁹² 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.⁹³ 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

⁸⁸ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 446(A)(4) (Pa. 2015) (enacted).

⁸⁹ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 505.4(B)(1) (Pa. 2015) (enacted).

⁹⁰ Act 39, H.B. 1690, 199th Gen. Assemb., Reg. Sess. § 446.1 (Pa. 2015) (enacted); Wallace, *supra* note 51, at 9.

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.*

⁹³ *Id.* The bill introduced in 2013 was House Bill 790. H.B. 790, 197th Gen. Assemb., Reg. Sess. (Pa. 2013–2014).

enhanced permit to sell wine and spirits.⁹⁴ Governor Tom Wolf vetoed the bill only a few days later, citing a need for modernization over privatization.⁹⁵ 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.⁹⁶ 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.⁹⁷

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."⁹⁸ 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.⁹⁹ The proposed Initiative

⁹⁴ H.B. 790, 197th Gen. Assemb., Reg. Sess. § 416(A)(1) (Pa. 2013–2014). In terms of tax implications, H.B. 466 would have ensured that Pennsylvania's 6 percent sales tax would still be applied in the same manner as it is under current law. Matt Fair, *Pennsylvania Legislature Passes Liquor Privatization Measure*, LAW360 (June 30, 2015, 2:34 PM), <http://www.law360.com/articles/674089/pennsylvania-legislature-passes-liquor-privatization-measure>.

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.

⁹⁶ Dan Packel, *Pa. Gov. Vetoes Liquor Privatization Bill*, LAW360 (July 2, 2015, 3:23 PM), <http://www.law360.com/articles/675361/pa-gov-vetoes-liquor-privatization-bill>. H.B. 466 would jeopardize the jobs of roughly 4,700 employees working in state-run liquor stores. *Id.*

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

⁹⁸ Tammy Lam, Note, *Brew Free or Die? A Comparative Analysis of U.S. and E.U Craft Beer Regulations*, 23 CARDOZO J. INT'L & COMP. L. 197, 212–13 (2014).

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.¹⁰⁰ 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.¹⁰¹

Washington's failed initiative can be viewed as examples as to why the beer industry in Pennsylvania should not be privatized.¹⁰² Doing so would likely negatively impact on the industry and impede its growth, resulting in decreased tax revenues.¹⁰³ 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

Distributors no longer would have been able to deliver beer to a retailer's licensed premises. Additionally, price requirements would have been eliminated. Office of Program Research: State of Washington House of Representatives, Summary of Initiative 1100 (Aug. 10, 2010), <http://leg.wa.gov/House/Committees/OPRGeneral/Documents/2010/1100%20summary.pdf>

¹⁰⁰ Lam, *supra* note 98, at 213–14.

¹⁰¹ *Id.* at 214.

¹⁰² See Alex P. Ferraro, Note, *Serving the People: Evaluating Initiative 1183 & Liquor Privatization in Washington State*, 76 U. PITT. L. REV. 427 (2015).

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.¹⁰⁴ 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.¹⁰⁵ In Pennsylvania, a brewery can self-distribute its beer to other licensed entities, including restaurants and distributors, by virtue of its brewery license.¹⁰⁶ Out-of-state breweries, however, are still required to utilize the three-tier system.¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹ Craft breweries tend to push for increased latitude to self-distribute, because small and unknown brewers often find it difficult to access distribution networks.¹¹⁰ As a result, it may be more efficient and economical for some brewers to distribute in their local markets.¹¹¹ A distributor often will not want to sign on with a brewer unless the brand has some value.¹¹² By self-distributing their product, brewers can grow their brand and increase its value to ultimately convince a distributor that the brand

¹⁰⁴ Welch, *supra* note 31, at 175–76.

¹⁰⁵ Scott, *Don't Forget the Beer*, *supra* note 29, at 2; McLaughlin, *supra* note 2.

¹⁰⁶ Kenneth J. McDermott, *A Brewery Pub License's Impact on Self-Distribution*, BARRELS & BARRISTERS (Feb. 14, 2014), <http://barrelsandbarristers.co/?p=83>; 47 PA. CONS. STAT. § 4.431.1 (2016).

¹⁰⁷ Scott, *Don't Forget the Beer*, *supra* note 29, at 2.

¹⁰⁸ *Government Affairs: BA Position Statements*, *supra* note 74.

¹⁰⁹ Andrew Tomayo, Comment, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198, 2232 (2010). See generally *Self-Distribution Laws*, BREWERS ASS'N, <https://www.brewersassociation.org/government-affairs/laws/self-distribution-laws/> (last visited Feb. 28, 2017) (discussing each state's laws relating to self-distribution).

¹¹⁰ Tomayo, *supra* note 109, at 2228, 2232.

¹¹¹ Marc Sorini, *Franchise Laws, Self-Distribution Restrictions, and the Three-Tier System*, MCDERMOTT WILL & EMERY LLP 23 (Apr. 9, 2014), http://www.craftbrewersconference.com/wp-content/uploads/2014_presentations/R1440_Marc_Sorini.pdf.

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.¹¹³ Craft brewers usually will choose to abandon self-distribution after a period of growth, but not all choose to do so.¹¹⁴

Craft brewers often maintain that a higher barrel limit is necessary for expansion.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.¹¹⁶ Arguably, a craft brewer would be its best salesperson, as the brewer would be the most invested in getting the product to retail.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.¹¹⁸

Currently, craft brewers in Pennsylvania are permitted to self-distribute their own beer in unlimited amounts.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.¹²⁰ Additionally, the ability to sell beer directly to consumers will enhance customer loyalty and help increase sales within the three-tier distribution system.¹²¹ However, there are

¹¹³ Sorini, *supra* note 111, at 23; Tomayo, *supra* note 109, at 2233.

¹¹⁴ Sorini, *Franchise Laws*, *supra* note 111, at 23.

¹¹⁵ Tomayo, *supra* note 109, at 2236.

¹¹⁶ *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.

¹¹⁷ Tomayo, *supra* note 109, at 2235.

¹¹⁸ *Id.* at 2234.

¹¹⁹ Kenneth J. McDermott, *Could the Battle over Beer Laws in Florida Happen in Pennsylvania?* BARRELS & BARRISTERS (May 8, 2014), <http://barrelsandbarristers.co/?p=135>.

¹²⁰ Tomayo, *supra* note 109, at 2233, 2237.

¹²¹ *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

potential issues with having an unlimited barrelage amount that might arise.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.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.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* 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.¹²⁵ Scott proposes

the business to create a connection with consumers. BLACK CAP BREWING CO., <http://www.blackcapbrew.com/> (last visited Nov. 10, 2016).

¹²² See McDermott, *supra* note 119.

¹²³ *Id.* When looking at the production levels of Pennsylvania breweries, the permitted 75,000 barrels would probably be a generous amount. For comparison, Tröegs 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.*

¹²⁴ H.B. 1666, 197th Gen. Assemb., Reg. Sess. § 431(a.1) (Pa. 2013); Michelle Minton, *Refresh Pa. Beer Laws: Pennsylvania's Outdated Regulations Hamstring Brewers*, PITT. POST-GAZETTE (Dec. 10, 2013, 12:00 AM), <http://www.post-gazette.com/opinion/2013/12/10/Refresh-Pa-beer-laws/stories/201312100009>.

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. Lynnore 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. & CIV. 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).

¹²⁷ Shirley Chen, *Craft Beer Drinkers Reignite the Wine Wars*, 26 LOY. CONSUMER L. REV. 526 (2014).

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 wines 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.

¹³¹ Chen, *supra* note 127, at 541.

¹³² Kurtz & Clements, *supra* note 37, at 408–09. Pennsylvania does permit Transporter-for-Hire (Class A and Class B) licenses, which allow retail licensees (those possessing a “Restaurant,” “Eating Place Malt Beverage,” or “Hotel” license) to deliver malt or brewed beverages directly to customers. Melissa Nardo, *Home Beer Delivery Catching on in Pennsylvania*, FOX43 (Mar. 12, 2015, 4:29 PM), <http://fox43.com/2015/03/12/word-catching-on-about-beer-delivery-to-your-doorstep-in-pa/#>.

¹³³ Lisa Rathke, *Vt. Bill Would OK Direct Shipment of Craft Brews*, RUTLAND HERALD, Apr. 25, 2013, <http://www.rutlandherald.com/article/20130425/NEWS03/704259879/0/INFO03>.

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.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ Distributors are becoming more eager to take on craft breweries as craft beer grows in popularity.¹⁴⁵

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.¹⁴⁶ As a result, most states have an array of statutes, rules, and regulations aimed at balancing power in favor of distributors.

¹⁴¹ See Theodore J. Zeller, III, *New Pennsylvania Liquor Code Changes (HB 1690) About Choices*, NMM LIQUOR LAW BLOG (June 9, 2016), <https://www.nmmlaw.com/nmmliquorlawblog/2016/06/09/new-pennsylvania-liquor-code-changes-hb-1690-about-choices/> (discussion of the provisions of Act 39 with the potential to significantly benefit beer wholesalers and have a drastic effect on Pennsylvania's franchise laws that could lead to the demise of many small breweries).

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.

of communication between the two tiers, ensuring that breweries are well-represented and that retailers get the brands that best fit. Weaver, *supra* note 67.

¹⁴⁷ Kurtz & Clements, *supra* note 37, at 402.

¹⁴⁸ Marc Sorini, *Beer Franchise Law Summary*, MCDERMOTT WILL & EMERY LLP 23 (2014), <https://www.brewersassociation.org/wp-content/uploads/2015/06/Beer-Franchise-Law-Summary.pdf>. Distribution licenses, whether a "distributor" or an "importing distributor," are wholesale licenses. *Id.*

¹⁴⁹ See, e.g., N.C. GEN. STAT. § 18B-1307 (2016).

¹⁵⁰ Barry Kurtz & Bryan H. Clements, *Yin & Yang of Beer Distribution and Franchise Laws*, VALLEY LAWYER 28–29 (June 2014), <http://static1.l.sqspcdn.com/static/f/823089/25042447/1402678627293/beer-distribution-law.yinyangBKBHCsfvba.pdf?token=ycPmSEv6wPvVaZva0M%2BN3BzRtEo%3D>.

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.¹⁵³ As beer styles evolve, the demand for fruits, vegetables, and other raw ingredients used in beer rises.¹⁵⁴ For example, over 72 million pounds of hops were produced in 2014, which is an increase of 26 percent over the last decade.¹⁵⁵ 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.¹⁵⁶ Although almost all of the hops in the United States are grown in Washington, Oregon, and Idaho,¹⁵⁷ a farm brewery license would allow Pennsylvania to take advantage of Central Pennsylvania's rich farming area to produce those ingredients.¹⁵⁸

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.¹⁵⁹ Specifically, the farm brewery license allows the licensee to operate a brewery for the manufacture of "New York State labeled beer."¹⁶⁰ "New York State labeled beer" must be brewed with at least 20 percent New York-grown hops and barley,¹⁶¹ so this will lead to an increased demand for locally

¹⁵³ Welch, *supra* note 31, at 227.

¹⁵⁴ Scott, *supra* note 3. There are four main ingredients used in beer: water, barley, hops, and yeast. Billy Broas, *What's in Your Beer? Know Your Beer Ingredients*, HOMEBREW ACADEMY (Sept. 22, 2009), <http://homebrewacademy.com/beer-ingredients/>.

¹⁵⁵ Jennifer Steinhauer, *Budget Problems? Kentucky and Elsewhere Find Answer in Bottle*, N.Y. TIMES, Nov. 28, 2014, http://www.nytimes.com/2014/11/29/us/budget-problems-kentucky-and-elsewhere-find-answer-in-bottle.html?_r=2.

¹⁵⁶ Eric Hawkins, *Great Beer, Good Intentions, Bad Law: The Unconstitutionality of New York's Farm Brewery License*, 56 B.C. L. REV. 313, 330–32 (2015).

¹⁵⁷ Nick Cibula, Note, *It's Always a Good Time for Beer, But What About the Hops?*, 18 DRAKE J. AGRI. L. 157, 163 (2013).

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.¹⁶² 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.¹⁶³ Massachusetts, Maryland, and Michigan also have similar schemes extending additional benefits to license holders.¹⁶⁴

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.¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ However, introducing such a license would be a good way to incentivize Pennsylvania’s

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.

¹⁶⁵ H.B. 5275, 97th Leg., 2014 Reg. Sess. § 613(1)(A) (Mich. 2014); John Wiegand, *Brewery Tax Credit Aims to Give Michigan Farmers a Boost*, MiBIZ (Aug. 3, 2014, 10:00 PM), <http://mibiz.com/item/21735-brewery-tax-credit-aims-to-give-michigan-farmers-a-boost>. Like New York’s legislation, the Michigan bill would also increase the threshold percentages over a period of years. In 2020, the percentages would rise to at least 40 percent of hops, and 50 percent of other ingredients. 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.

¹⁶⁹ S.B. 7728, 235th Ann. Assemb. (N.Y. 2011); Ted Phillips, *Tax Credit Eyed for Craft Beer Breweries*, NEWSDAY (June 14, 2012, 9:05 PM), <http://www.newsday.com/long-island/politics/tax-credit-eyed-for-craft-beer-breweries-1.3783432>.

¹⁷⁰ Press Release, Office of Governor Andrew M. Cuomo, N.Y., Governor Cuomo Signs Legislation to Strengthen and Support New York's Craft Breweries (July 18, 2012), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-strengthen-and-support-new-yorks-craft-breweries>.

¹⁷¹ 2014 N.Y. Sess. Laws Ch. 431; Daniel G. Mudd, *Pouring it Strong: Rise in Alcohol Taxes and Incentives for Booming Industries*, 2015 LEXIS FED. TAX J. Q. § 2.04 (2015).

on property taxes to entice breweries to remain in the area.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.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.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.¹⁷⁵

¹⁷² Kelsey Snell, *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. *Id.* The tax cuts were awarded under California’s California Competes Tax Credit, which is part of the Governor’s Economic Development Initiative. 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. N.C. GEN. STAT. ANN. § 143B-437.71.

¹⁷³ Mudd, *supra* note 171. *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, *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>.

¹⁷⁴ Wallace, *supra* note 51.

¹⁷⁵ Danya Henninger, *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. *See, e.g.*, Robert

The state could also look for new alcohol products to regulate and include in the existing laws taxing alcohol.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸ Craft brewers have been credited with keeping the beer industry alive and thriving,¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹ 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 2016.¹⁸² 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.

