

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

**TESTIMONY OF  
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

**TESTIMONY ON THE FOLLOWING MEASURE:**

H.B. No. 647, H.D.1, Relating to Alcohol

**BEFORE THE:**

Senate Committee on Commerce and Consumer Protection

**DATE:** Wednesday, March 15, 2023

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 229

Chair Keohokalole, Vice-Chair Fukunaga, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 647, H.D. 1, for your consideration.

H.B 647, H.D. 1, amends the definition of "beer" in sections 244D-1 and 281-1, Hawaii Revised Statutes, to include "alcoholic seltzer beverages" and specify that alcoholic beverages must contain no less than 0.5 percent alcohol by volume to qualify as "beer." The measure expands the list of possible beer ingredients to include malt, grain of any kind, bran, glucose, sugar, molasses, and related substitutes. The measure excludes from the definition of beer, products that are the result of a distillation process. The measure has a defective effective on June 30, 3000.

The Department notes that the specific reference to "alcoholic seltzer beverages" within the definition of "beer" may create ambiguity, as the term "alcoholic seltzer beverages" is not defined within the bill and there appears to be different methods by which alcoholic seltzer beverages may be produced. For example, the bill defines "beer" as including "alcoholic seltzer beverages," but as excluding "a product of distillation . . . that contains distilled spirits, alcoholic spirits, or spirits." This may cause ambiguity as to whether an alcoholic seltzer beverage that contains distilled spirits will be taxed as a beer or as a distilled spirit.

Department of Taxation Testimony  
H.B. 647, H.D.1  
March 15, 2023  
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To avoid ambiguity, the Department suggests deleting the term “alcoholic seltzer beverages” from the bill. Alternatively, the term “alcoholic seltzer beverages” should be defined by clearly identifying the process by which alcoholic seltzer beverages are made and whether they include beverages that contain distilled spirits.

The Department further notes that it is able to implement the measure with a July 1, 2023 effective date.

Thank you for the opportunity to provide comments on this measure.

Kauai Beer Company  
Justin Guerber  
Head Brewer  
4265 Rice St  
Lihue, HI 96766  
[justin@kauaibeer.com](mailto:justin@kauaibeer.com)



## COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair

DATE: Wednesday, March 15, 2023  
TIME: 10:00 AM  
PLACE: Conference Room 229 & Videoconference  
State Capitol  
415 South Beretania Street

HB647 HD1

Position: **Support**

My name is Justin Guerber and I am the Head Brewer of Kauai Beer Company. We are an independent craft brewery producing 100% of our beer in Hawaii. We are united with other members of the Hawaiian Craft Brewers Guild in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

Our brewery along with the other member breweries of the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

### Definition of Beer

We feel that this bill would bring the state definition of beer more in line with the federal definition by the TTB. The new definition would allow us to pursue more product variations and utilize more Hawaii-grown agriculture in our products. There are a number of new types of beer being produced around the world that do not fit with the current definition, and we believe Hawaii producers should be at the forefront of this innovation. This bill would allow us to produce new beer products and tax them properly to generate more revenue for the state.

Mahalo for considering our testimony in support of HB647 HD1



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Thomas Kerns  
President / Brewmaster  
Big Island Brewhaus

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 15, 2023  
TIME: 10:00 AM  
PLACE: Conference Room 229 & Videoconference  
State Capitol  
415 South Beretania Street

Aloha Senator Jarrett Keohokalole, Chair & Senator Carol Fukunaga, Vice Chair & members of the Committee,

HB 647 HD1

Position: **Support with suggested changes**

My name is Thomas Kerns and I am the owner and brewmaster of Big Island Brewhaus. We are an independent craft brewery producing 100% of our beer in Hawaii. We are united with other members of the Hawaii Craft Brewery Community in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

Our brewery along with the other member breweries of the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

Definition of Beer:

The current definition of beer is archaic and does not represent the nature of what beer is in the current marketplace.

The current HRS 281-1 definition of beer is a historic definition that includes traditional basic ingredients used in earlier years of beer manufacturing throughout the US. The definition

does not reflect the expansion of the craft beer manufacturing sector. Hawaii's definition is not the same as the federal definition which also includes a broader range of substitutes or additions to malted barley and fermentable sugar sources. Craft beer brewers across the USA have created a wider range of beer styles with a variety of additional ingredients in their recipes including other types of grains as base ingredients, other fermentable sugar sources, and brewed hard seltzers.

This legislation better aligns the terminology used to define "beer" to more closely follow the definition used for "beer" under the Internal Revenue Code of 1986 (IRC) and federal TTB regulations. The majority of hard seltzer is produced from either a brewed malt base or a brewed sugar base, which is then fermented. Under federal Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, both malt-based and sugar-based hard seltzers are considered "beer". Both malt and sugar based hard seltzers are federally taxed as "beer".

Under Hawaii statute HRS 281-1 "Beer" is obtained by the alcoholic fermentation of barley or other grain, malt, and hops. The current HRS 281-1 definition is limited in scope when compared with the federal TTB definition and Internal Revenue Code.

Modifying the definition of beer to better reflect the expansion of craft brewing ingredients and styles promotes opportunities for us to increase craft beer production in Hawaii. Fermented hard seltzers are an additional popular beverage that breweries can include as a new product to add another source of revenue and local manufacturing.

Additional beer excise tax revenue and gallonage taxes may result over time for the State of Hawaii from increased craft beer and hard seltzer production and sales by Hawaii's manufacturers. Updating the definition of beer presents opportunities for our brewery to manufacture additional products and increase sales to meet the demand for new beer styles. This will potentially add to alcohol tax revenue for the State of Hawaii.

#### **Suggested changes:**

I do support the bill as is with changes to the following lines: On page 1 in lines 7 & 8 and on page 2 in lines 4 & 5 & 6 of the bill it reads: "*wholly or in part, or any substitute therefore, including grain of any kind, bran, glucose, sugar, or molasses.*" **I suggest an edit to the wording to include "or other fermentable sugar source"**. This would allow brewers to use a sugar source that could be sourced locally or elsewhere and derived from an unspecified sugar source as long as it is a fermentable sugar – thus not limiting sources to a contemporary list but opening possibilities for future creativity. There exists the historic and contemporary practice in brewing beer of using various fermentable sugar sources to create unique beers which take on a unique character from using a given fermentable sugar source in brewing beer. This will also allow Hawaii agricultural development of various local sugar sources to be used in manufacturing in Hawaii.

I request the House Committee on Consumer Protection and Commerce to pass this bill with my suggested changes. Mahalo for considering my testimony in support of HB 647 HD1. Sincerely,

Thomas Kerns  
President / Brewmaster  
Big Island Brewhaus

**HB-647-HD-1**

Submitted on: 3/13/2023 8:06:55 PM

Testimony for CPN on 3/15/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Geoffrey Seideman	Testifying for Honolulu BeerWorks	Support	Written Testimony Only

Comments:

SUPPORT

# CRAFT *Ohana*

March 14, 2023

Senate Committee on Commerce and Consumer Protection  
HB647 HD1 Relating to Liquor Licenses

Re: **IN SUPPORT OF HB647 HD1**

Aloha Chair Senator Keohokalole, Vice Chair Senator Fukunaga, and members of the Committee,

My name is Garrett W. Marrero, I live in Kihei, HI. Maui Brewing Co. has locations on Maui in Lahaina and Kihei, and on Oahu in Waikiki and Kailua. We distribute across Hawaii, 19 other States, and 10 countries. We are a fairly large employer within the State and contribute immensely to Hawaii and its people.

I am writing on behalf of myself and our local family-operated business in support of **HB647 HD1** which amends the definition of beer to align with the Federal definitions under Tax & Trade Bureau and the Internal Revenue Code. I would like to point out that there are 2 identical House bills on this topic.

This is NOT A TAX REDUCTION BILL AND WILL NOT CHANGE TAX RATES IN ANY WAY. Last session, erroneous testimony was given by DOTAX that stated a decrease in tax revenue would be seen due to "Seltzer being made from spirits". This is not accurate, seltzer can be made from a fermented base of malt or sugar, or from distilled spirits. "How it is made" and "what it is made from" would dictate how it is taxed. The fermented malt/sugar seltzers are classified as beer per Federal laws and in States that maintain laws current to the beverages being produced today. The distilled spirits based seltzers should be taxed as distilled spirits. This is consistent with HRS 244D.

Why is this important? The current definition of beer does not properly fit today's needs as new fermented beverages such as gluten-free beer, non-alcoholic beer, seltzers fermented from malt (FMBs) or sugar (FSBs) and more. These beverages are commonly accepted as beer by both the TTB and IRS under Federal rule as well as all other States. We need to bring Hawaii current with the rest of our country in definition of these beverages.

I would suggest an amendment to clarify "Seltzers where alcohol is obtained by the fermentation or any infusion or decoction of malt, wholly or in part, or any substitute therefor, including grain of any kind, bran, glucose, sugar, or molasses."

In the end, the growth of local producers will lead to increased revenues to the State.

Mahalo for your consideration. We urge you to pass this bill with amendments. Thank you for the opportunity to provide testimony in support of **HB647 HD1**.

Mahalo,



Garrett W. Marrero  
CEO/Founder

**MAUI**  
HARD SELTZER

*Modern  
Times*  
BEER

**MAUI**  
BREWING CO

*Modern  
Times*  
COFFEE

**KUPU**  
— SPIRITS —

**HB-647-HD-1**

Submitted on: 3/14/2023 9:06:54 AM

Testimony for CPN on 3/15/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Steve Haumschild	Testifying for Lanikai brewing Company	Support	Written Testimony Only

Comments:

This bill cleans up language and creates consistency with federal standards.



**HB-647-HD-1**

Submitted on: 3/14/2023 9:31:40 AM

Testimony for CPN on 3/15/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Pat Korn	Testifying for Waikiki Brewing	Support	Written Testimony Only

Comments:

Waikiki Brewing supports this bill to help employ Hawaiians and support the local economy. Thank you for your time.

Pat Korn/Brewmaster

Cindy Goldstein  
98-814 C Kaonohi Street  
Aiea, HI 96701

HB 647\_HD1 Definition of Beer  
Senate Committee on Commerce and Consumer Protection  
Senate Committee on Judiciary Senate Committee on Ways and Means  
Weds March 15 Conf Room 229

Chair Senator Keohokalole, Vice Chair Fukunaga, and members of the CPN committee, JDC Committee and WAM Committee,

Position: Support

My name is Cindy Goldstein and my testimony is in support of HB647\_HD1 to amend the definition of beer.

The current definition is not well aligned with the expansion of craft brewing to include other fermentable sugars and other grains such as gluten free grain. The additional flexibility offered by this bill, to substitute fermentable sugars and grains, provides an opportunity for Hawaii brewers to expand the types products they are able to offer customers. New products allow business growth and the sale of new lines of craft beverages.

Passing this bill can contribute to the ability of Hawaii's breweries to increase revenue and grow production. This legislation is proposed at a time when craft breweries are still recovering from the impacts of COVID-19. Updating the definition of beer to better reflect the expansion of craft brewing ingredients and styles offers Hawaii craft breweries an opportunity to expand production and marketing of a wider variety of unique craft beers and alcohol seltzers. A broader definition of beer will foster the creation of new and unique styles that are well suited for incorporating Hawaii grown fruits, herbs, coffee, and other locally sourced agricultural ingredients to create value added products that support Hawaii's farmers and agriculture.

Thank you for the opportunity to provide support for HB647\_HD1 before your Senate committees.

**LATE**

**HB-647-HD-1**

Submitted on: 3/14/2023 10:25:53 AM

Testimony for CPN on 3/15/2023 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Bret Larson	Testifying for Kauai Island Brewing Company	Support	Written Testimony Only

Comments:

Testimony of "Support" as written



Pacific Business Advocates LLC  
P.O. Box 11351  
Honolulu, HI 96828  
Info@Pacificadvocates.com

## COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Wednesday, March 15, 2023, 10:00 AM  
Conference Room 229 & Videoconference  
State Capitol, 415 South Beretania Street

March 14, 2023

Aloha Chair Keohokalole, Vice Chair Fukunaga, and members of the committee:

Pacific Business Advocates LLC **supports, with amendments**, HB647 which expands the definition of "beer" under the State's liquor tax and liquor regulatory laws, to specify that the term includes an alcohol by volume of no less than 0.5 per cent and alcohol seltzer beverages, but excludes certain other forms of distillation.

We would like to offer the following amendments to adjust the tax rate on low-proof alcohol beverages for fairness as it relates to beverages with 5% abv or less.

### **Requested Amendment and Definition**

#### Definition

Low ABV Spirits beverage - A "low ABV spirits beverage" is an alcoholic beverage which does not exceed 5 ABV% and includes distilled spirit(s) mixed with other ingredients, including both nonalcohol and/or alcohol components.

#### Amendment

Low ABV spirits shall be taxed at \$1.98 per wine gallon.

Currently, spirits based low-proof, ready-to-drink beverages are taxed at a rate of \$5.98 a gallon or more than 6 times higher than malt beverages and beer with similar alcohol by volume (please see exhibit A).

The dramatic difference on products with the same amount of alcohol by volume creates an unfair marketplace. Many local distilleries and breweries produce and market low abv distilled spirits. This amendment would support their businesses and produce a more hospitable market for them to grow.

The proposed rate, if amended, is still significantly higher than the beer rate — more than twice as high, but does provide these products with a "fairer opportunity" to compete. It is for these reasons we respectfully ask you to **amend and pass HB647**.



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Please find in exhibit B a short list of States that have addressed this competitive fairness issue. If you have any questions, please contact me at your convenience. Mahalo for your time and consideration.

Respectfully,

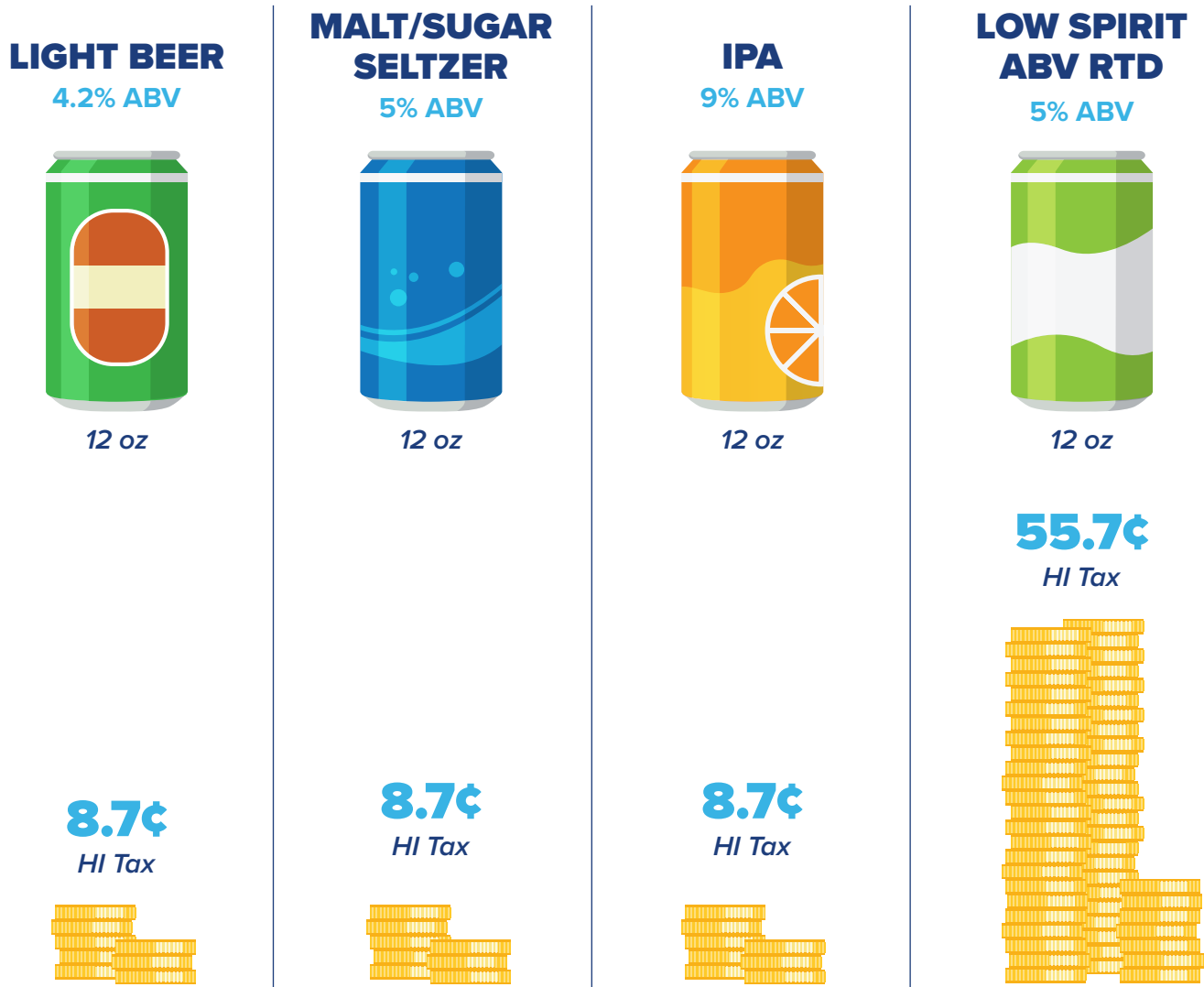
*Emmanuel Zibakalam*

Emmanuel Zibakalam

Principal, Pacific Business Advocates LLC

# Hawaii Low Spirit Alcohol by Volume (ABV) RTD Tax Rate

The Hawaii tax rate of low spirit ABV spirit-based RTDs is more than **6 TIMES** the rate of like ABV malt beverages and seltzers



Such a dramatic difference in alcohol taxes among beverages with similar alcohol by volume creates an **unfair competitive marketplace.**

Source: Hawaii alcohol beverage tax rates - \$5.98 per wine gallon for distilled spirits. .93 per wine gallon for beer, other than draft beer

## Exhibit B

### 25 States Have Low-Spirit Tax Rates

*These Lower Rates Create a Fairer Competitive Landscape for Spirits RTDs*

LICENSE STATE EXCISE TAXES (Dollars Per Gallon)					
	Beer	Wine	Low Spirit	"Full" Spirit	Legal Citation
Alaska	\$1.07	\$2.50	\$2.50 (ABV<=21%)	\$12.80	Alaska Stat.43.60.010
Arkansas	\$0.23	\$0.75	\$1.00 (5%<ABW<21%) \$0.50 (ABW<=5%)	\$2.50	Ark. Code § 3-7-104
Connecticut	\$0.23	\$0.79	\$2.71 (ABV<=7%)	\$5.94	Conn. Gen. Stat. § 12-435
Delaware	\$0.26	\$1.63	\$3.00 (ABV<=25%)	\$4.50	Del. Code tit. 4, § 581
Florida	\$0.48	\$2.25	\$2.25 (ABV<17.259%)	\$6.50	Fla. Stat. §§ 565.12 & 564.06(1)
Illinois	\$0.23	\$1.39	\$1.39 (ABV<20%)	\$8.55	235 ILCS 5/8-1; Department of Revenue Excise Tax Rates
Indiana	\$0.12	\$0.47	\$0.47 (ABV<=15%)	\$2.68	IC §§ 7.1-4-4-1 & 7.1-4-4-2
Kentucky	\$0.08	\$0.50	\$0.25 (ABV<=6%)	\$1.92	Ky. Rev. Stat. § 243.720(a) & (b)
Louisiana	\$0.40	\$0.76	\$0.40 (ABV<=6%)	\$3.03	La. Rev. Stat. §§ 26-341, 26-342, 25-345, 26-354(D), & 26-241(1)
Massachusetts	\$0.11	\$0.55	\$1.10 (ABV<=15%)	\$4.05	Mass. Gen. L. Ch. 138, § 21
Nebraska	\$0.31	\$0.95	\$0.95 (ABV<=12.5%)	\$3.75	Neb. Rev. Stat. 53-160 & L.B. 274 (2021)
Nevada	\$0.16	\$0.70	\$1.30 (14%<ABV<=22%) \$0.70 (ABV<=14%)	\$3.60	NRS 369.330
New York	\$0.14	\$0.30	\$2.54 (ABV<=24%)	\$6.44	N.Y. [Tax] Law § 424
Rhode Island	\$0.11	\$1.40	\$1.10 (ABV<=15%)	\$5.40	R.I. Gen. Laws § 3-10-1
South Dakota	\$0.27	\$0.93	\$0.93 (ABV<12%)	\$3.93	S.D. code § 35-5-3
Tennessee	\$1.29	\$1.21	\$1.10 (ABV<=7%)	\$4.40	Tenn. Code §§ 57-3-302(b) & 57-3-303(l)

CONTROL STATE EXCISE TAXES (Dollars Per Gallon)					
	Beer	Wine	Low Spirit	"Full" Spirit*	Legal Citation
Idaho	\$0.15	\$0.45	\$0.45 (ABV<=14%)	\$10.90	Idaho Code §§ 23-1303(1)(i) & 23-1319); & Idaho Admin. Code 35.01.09.11
Iowa	\$0.19	\$1.75	\$0.19 (ABV<=15%)**	\$13.02	Iowa Code §§ 123.3(7) & (11) & 123.136; & ABD website at Canned Cocktails
Maine	\$0.35	\$0.60	\$1.24 (ABV<=8%)	\$11.96	28-A M.R.S.A. §§ 2(16-A) & (31), 13 & 1652
Michigan	\$0.20	\$0.51	\$1.14 (ABV<=13.5%)***	\$11.94	Mich. Code §§ 436.1109(7) & 436.1301(4)
Mississippi	\$0.43	n.a.	\$0.43 (ABW<=6%)	\$8.10	H.B.1091 (2021) (at Miss. Code §§ 27-71-307, 67-1-5 & 67-3-3)
New Hampshire	\$0.30	n.a.	\$0.30 (ABV<=6%)****	n.a.	N.H. Rev. Stat. §§ 175:1 & 178:26
Ohio	\$0.18	\$0.32	\$1.20 (ABV<=21%)	\$9.83	Ohio Rev. Code §§ 4301.01(B)(4) & (5) & 4301.43(C)
Vermont	\$0.27	\$0.55	\$1.10 (ABV<=12%)*****	\$7.68	Act No. 177 (H.730)
Virginia	\$0.26	\$1.51	\$1.51 (ABV<=7.5%)	\$19.89	Va. Code §§ 4.1-100 & 4.1-234(A)

\*For control states, which do not have traditional spirits excise taxes, the Distilled Spirits Council of the United States approximates "implied excise tax" by comparing a state's revenue from spirits sales to typical revenue for wholesalers and/or retailers in license states.

\*\*In Iowa, to benefit from the low-spirit rate, products over 6.25% ABV must be sold in metal cans.

\*\*\*In Michigan, to benefit from the low-spirit rate, products over 10% ABV must be sold in non-reclosable metal cans no larger than 24 ounces.

\*\*\*\*In New Hampshire, products with ABV between 6% and 8% in containers no larger than 16 ounces may be eligible for a reduced tax rate of 5% of the wholesale price.

\*\*\*\*\*In Vermont, to benefit from the low-spirit rate, products must be sold in containers no larger than 24 ounces.