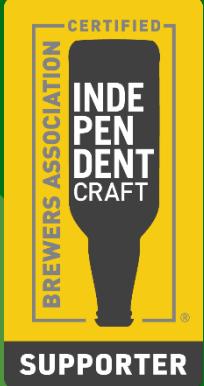




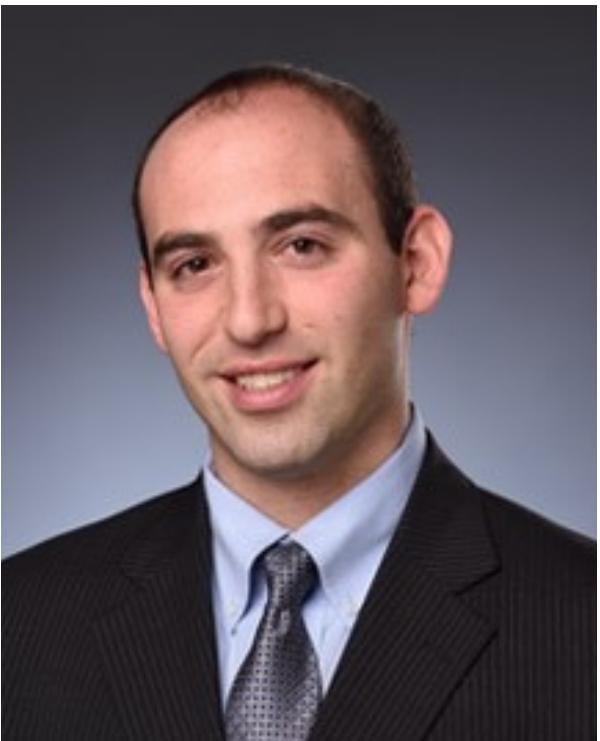
# Brewery Law for Beginners

By Aaron H. Weiss, Esq.



# Aaron H. Weiss, Esq.

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## Attorney at Law

Zimmer Kunz, PLLC

### Aaron H. Weiss

#### DIRECTOR

Aaron's practice primarily focuses on insurance defense and litigation, liquor liability litigation, construction litigation, tort litigation, and a variety of issues in federal court. He has assisted with representation of both Plaintiffs and Defendants.

Aaron joined Zimmer Kunz as a law clerk in May of 2014 and worked through his third year of law school. He has handled a variety of litigation matters including: insurance defense, trucking and transportation, liquor liability, nuisance, construction, products liability, workers' compensation, and business and commercial litigation.

Prior to joining Zimmer Kunz, Aaron gained valuable experience as an intern at the United States Department of Justice, Prince George's County Office of the Public Defender, and District of Columbia Office of the Attorney General.

Outside of work, Aaron is an avid homebrewer and enjoys playing sports and traveling with his family.

#### EDUCATION

- **Undergraduate:** George Washington University, B.A. 2012
- **Law School:** Duquesne University School of Law, J.D. 2015, Cum Laude
  - Law Review
  - Moot Court
    - ABA National Appellate Advocacy Competition, 2014
    - Top Oral Advocate
    - Best Brief
  - Dean Jerome Price Evidence Competition, 2015
  - Finalist
- Teaching Assistant for Legal Research and Writing

#### ADMISSIONS

- Pennsylvania
- West Virginia
- The United States Court of Appeals for the Third Circuit
- The United States District Court for the Eastern District of Pennsylvania
- The United States District Court for the Middle District of Pennsylvania
- The United States District Court for the Western District of Pennsylvania
- The United States District Court for the Northern District of West Virginia
- The United States District Court for the Southern District of West Virginia



Wigle Whiskey Barrelhouse  
Homebrewers' Competition  
2014



National Homebrew  
Competition 2021



Barrel & Flow Collaboration  
Crafted Culture 2021

# Goal of this Presentation:

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- Many of you may (hopefully *will*) want to take the next steps to open a professional brewery
- This presentation will explain the (1) **What**, (2) **Why**, and (3) **How** for opening a brewery
- This should be an exciting and stress-free process, that can be made much easier / more comfortable with the assistance of knowledgeable and experienced legal counsel



# What

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- Almost all aspects of alcohol are regulated by the government (both federal and state)
  - Did you know there are laws about homebrewing?
    - Not federally legal until 1978 (also legal in all 50 states since 2013: Mississippi & Alabama)
    - Max of 100 gallons per year for 1 adult 21+, or 200 gallons if multiple adults
- There are different types of licenses for different types of alcohols/businesses
  - Manufacturing v. Distribution / Brewery v. Distillery v. Winery
- Each has its own rules, requirements, and benefits

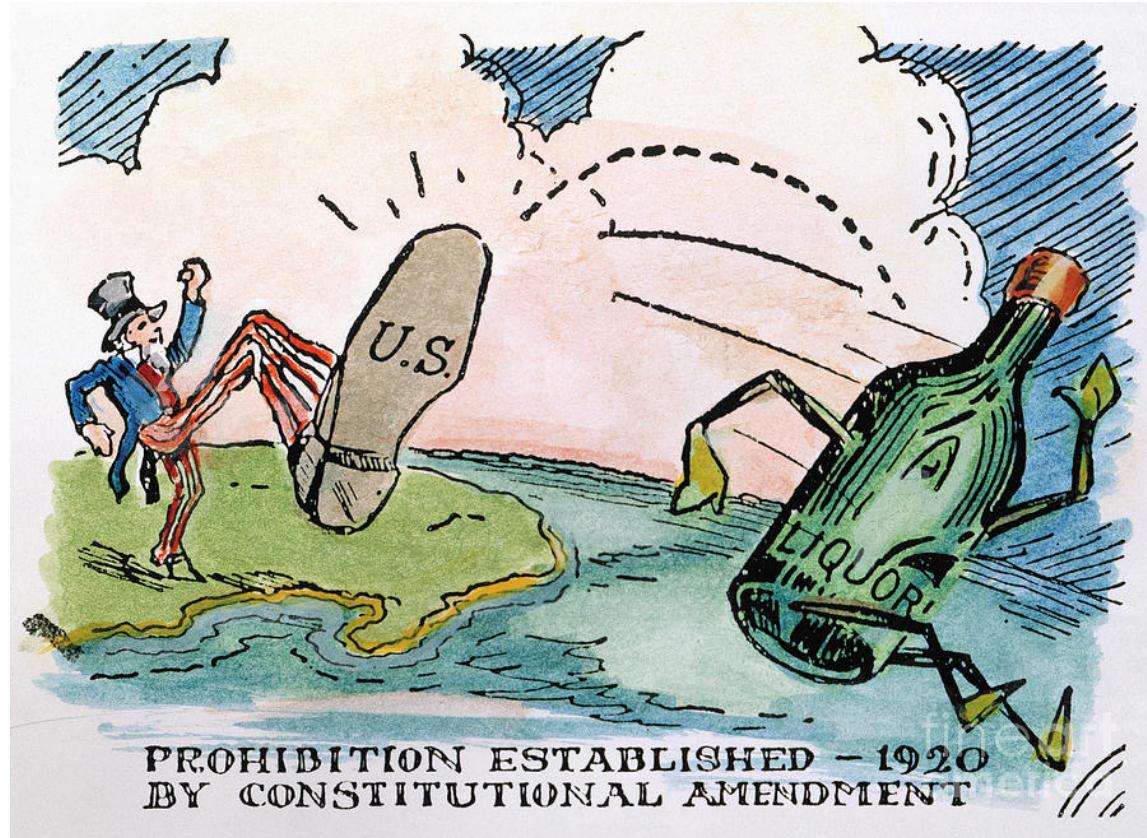




## What (contd.)

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- Brewery = Business that produces malt beverages and operates a brewpub or microbrewery.
- Beer = Anything > 0.5% ABV, including “ale, porter, stout, and other similar fermented beverages . . . brewed or produced from malt, wholly or in part, or from any substitute therefor.”  
27 C.F.R. § 25.11.



# Why

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- Originally, the United States had a 3-Tier System
  - Tier 1: Producers (Manufacturer: Brewery, Winery, etc.)
  - Tier 2: Distributors (Middleman: Beer Distributor)
  - Tier 3: Retailers (Sells to consumer: Bar, Restaurant, etc.)
- Post-prohibition (Repealed by 21<sup>st</sup> Amendment in 1933) SCOTUS held states could regulate as they saw fit. Indianapolis Brewing Co. v. Liquor Control Commn., 305 U.S. 391 (1939).
  - This is why you have to go to the state's Wine & Spirit Store in PA

# Why (contd.)

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- Many states have had a recent boom in microbreweries based on changing legislation / benefits
- For example, here in PA:
  - No finite number of licenses available
    - Contra Restaurant (R) licenses
    - No need to buy an existing license
  - In addition to the brewery itself, the business can have 2 storage facilities
  - Can self-distribute + ship direct to consumer
  - Can sell other PA made beer, cider, wine, and spirits
    - So long as your own beer is 50%+ of sales



# Speaking of Shipping

- Did you know it is currently illegal to ship alcohol via USPS?
  - Each state can also regulate
- Good news: You can use UPS, FedEx, etc.
  - Pending Legislation: United States Postal Service Shipping Equity Act of 2021 (H.R.3287)
  - Want to help? Contact your Representative!



# How

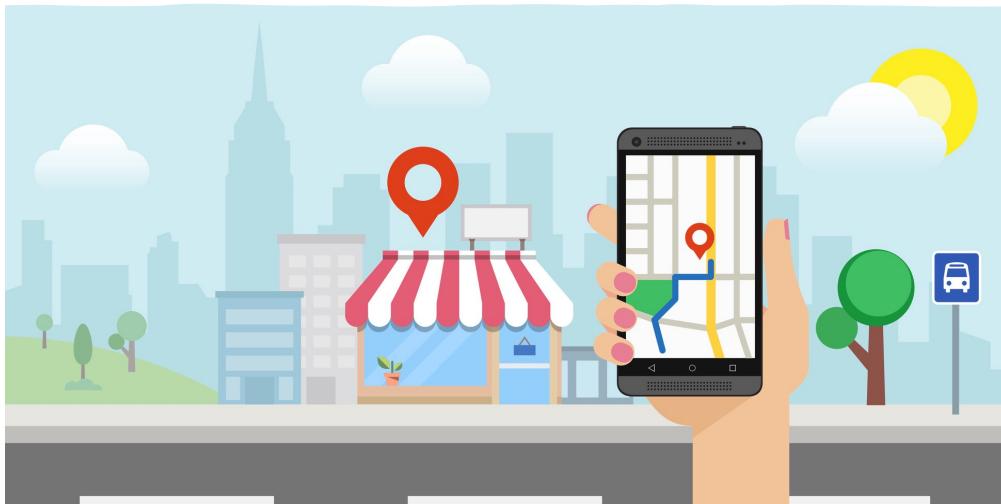
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- Forming a Business
  - Why: required for license, but also legal protection
  - Options: LLC, Partnership, S Corp, Corporation, etc.



# Choosing a Location

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- Could do contract brewing, BUT
- Brick & Mortar comes with
  - Freedom (creative, equipment, hours, space)
  - Customer Loyalty
- Things to consider
  - Not in a dry area
  - Residential v. Commercial area
  - Permitting / Zoning issues
- Need help finding a location?
  - Our team works personally with a Commercial Realtor and Architects familiar with Breweries
  - We draft, review, and negotiate leases
    - Examples: Licensing Contingency, Business Name Only!

# Insurance

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- Types of Insurance to Consider:
  - Commercial General Liability
  - Liquor Liability
  - Automobile
  - Advertising
  - Umbrella



**"The bad news is that the deer had no insurance."**



# Good News!

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- Your insurance may cover the costs of legal defense and any ultimate award
  - Duty to Defend v. Indemnify
    - Based on the language of your contract
    - We can review, interpret, and help to obtain coverage
  - First Step: Adding your preferred attorney to your insurer's list of approved counsel

# Licensing (can take up to 6 months)

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- Federal (Average 30-40 days, but can be longer (75+))
  - Alcohol and Tobacco Tax and Trade Bureau (TTB)
  - No Fee
  - General Areas of Inquiry
    - Business documents (articles, operating agreement)
    - Lease or property ownership / Deed (for property description)
    - Signing Authority Form 5100.1
    - Power of Attorney Form 5000.8
    - Brewery Diagram (dimensions, entrances, equipment size, security)
    - Source of Funds (gifts, loans, bank accounts)
    - Personnel questionnaire for owners (10%+), officers, and managers
  - Completed by submitting documents / forms
  - Generally hands-off



# Licensing (contd.)

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- Federal (contd.)
  - Considerations:
    - Brewery v. Brewpub
      - Key difference: are you acting as a restaurant as well
    - How beer will be measured
      - Kegs, meters, etc.
    - Security Measures



# Licensing (contd.)

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- State (Each is different / state specific)
  - Pennsylvania Liquor Control Board (PLCB)
  - Fee: Approx. \$1,400 annually (min.)
  - Areas of Inquiry (In addition to Federal):
    - Personal employment and living history
    - Driver's License
    - Headshot
    - Individual Financial Disclosure Affidavit (PLCB-1842)
    - Bank statements for 6 months



# Licensing (contd.)

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- State (Contd.)
  - Other options to add to license
    - Sunday Sales, Amusement Permit, Off Premises Catering Permit
  - Upon submitting application, 30 days for inspector to review, then submits to Harrisburg for another approx. 60 days
  - Interview of owners, members, and managers
  - Inspection of Premises from PLCB Inspector



# Licensing (contd.)

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- Post-approval
  - Taxes
  - RAMP Certification (within 180 days) [PA]
  - Submit monthly report of barrels sold [PA]
- Changes that must be reported:
  - Changes to Name, Ownership, or Management
  - Moving Locations
  - Adding Locations [PA]
  - Safekeeping (closed for 15+ days) [PA]

# Labeling

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- Certificate of Label Approval (COLA)
  - Only required if selling across state lines
    - States usually have a similar option / requirements for those not needing a COLA
- Generally must include:
  - Beer name
  - Name and address of the bottler
  - Ingredients for any added flavors
  - Alcohol Content
    - Must be within 0.3%. 27 C.F.R. § 7.71.
  - Alcohol Warning Label
- Sample label must be attached to the application
- Approval or denial will usually be within 90 days



# Trademarking (optional)

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- Name, Logo, Slogan
  - Brewery as a whole, flagship beers
  - Must apply with US Patent & Trademark Office (USPTO)
  - Generally first in time, first in right
  - Otherwise, only common law right to your geographic area
- Remedy: Trademark Infringement
  - Cease & Desist
  - Recent Example: Stone Brewing v. Molson (\$56 million verdict)
  - Alternative Option: Avery Brewing & Russian River's "Collaboration not Litigation Ale"
    - BUT you want to be the one with the control

# After Getting Up and Running

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- Litigation
  - Dram Shop
  - Nuisance
  - Premises Liability
  - Contracts
  - Products Liability
    - Exploding bottles
    - “Design defect” because beer made a motorcyclist drunk (True Story! Did not work) *Cook v. Millercoors, LLC*, 872 F. Supp. 2d 1346 (M.D. Fla. 2012).
- ADA Website
- False Advertising
  - Super Bowl corn syrup ad. *Millercoors LLC v. Anheuser-Busch Cos. LLC*, No. 3:19-cv-00218, (W.D. Wisc. Mar. 2019).
  - Blue Moon “Craft” Beer. *Parent v. Millercoors LLC*, No. 3:15-cv-1204 (S.D. Cal. Oct. 2015).
- Auto Accidents (if you deliver)

# After Getting Up and Running

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- Zoning Hearings
- Tax Reassessments
- Employment Law
  - Hiring & Termination Decisions, ADA Compliance, Contracts, Employee Handbook
- The law can be a shield, but also a sword
  - Non-Disclosure / Non-Compete Agreements
    - Trade Secrets, Recipes, etc.
    - Must be reasonable in business interest, geography, and duration



## Questions / Comments / Feedback / Areas of Interest:

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# THANK YOU!



Link to Bio



Brewery Law Booklet