

October 2021 Legal & Legislative Update

FEDERAL/NATIONAL/INTERNATIONAL

For the latest information on federal issues of importance to brewers, please link to the BA's [Federal Affairs Updates](#).

BA Submits Second Set of Comments on Competitive Challenges Facing Small Brewers

The Brewers Association (BA) filed a [second set of comments](#) with the Department of the Treasury in response to the President's July 2021 Executive Order on Promoting Competition in the American Economy. The Brewers Association also filed a [letter](#) signed by 48 guilds representing 46 states and the District of Columbia in support of the BA's two submissions. Key points in the latest filing highlight the many competitive challenges facing small brewers:

- In spite of large numbers of small brewers, brewing remains a highly concentrated industry. Wholesaler consolidation has resulted in a situation where most markets are effectively duopolies, with only two wholesalers capable of meaningfully serving a single geographic territory. What's more, today wholesaler consolidation into new territories is giving expanding large wholesalers unprecedented leverage over small suppliers and retailers, and if left unchecked will eventually give a few companies virtually total control of beer distribution.
- State laws, including unfair franchise laws, bans or restrictions on small brewer self-distribution, restrictions on direct-to-consumer options, and mandatory exclusive territory requirements, foreclose many competitive market responses to wholesaler consolidation.
- The competitive constraints outlined above make big beer supplier acquisitions of even small brands more competitively relevant because the distribution choke point allows big suppliers to starve competing brands of wholesaler attention.

THE STATES

Sales, Distribution and Franchise:

California

Signed by the Governor, [A.B. 1267](#) authorizes alcohol producers, including beer manufacturers, to donate a portion of the proceeds from the sale purchase price of an alcoholic beverage to a nonprofit charitable organization in connection with the sale or distribution of an alcohol beverage, subject to certain limitations.

Trade Practice & Other:

Delaware

Signed into law, [H.B. 81](#) allows two or more microbreweries to share brewing equipment if the microbreweries maintain separate premises to sell their product to consumers and wholesalers.

New Jersey

Signed into law, [A.B. 1091](#) requires the Division of Travel and Tourism to advertise and promote tours of breweries in the state.