

Proponent Testimony
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SB 138

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Senate Agriculture and Natural Resources Committee

Chairman Schaffer, Vice Chair Landis, Ranking Member Hicks-Hudson and members of the committee,

I come before you today asking you to end government interference in the business relationships between small craft breweries and their massive wholesale beer distribution partners. In 1974 the wholesale beer distributors requested and received a carve-out from Ohio contract law to protect them from the undue influence of their massive manufacturing partners. That carve-out came in the form of the Ohio Alcoholic Beverages Franchise Law, which stipulates that contracts between distributors and manufacturers must automatically renew in perpetuity unless the manufacturer can prove “just cause” to terminate the relationship. Mind you, “just cause” was deliberately left undefined in the statute: proving it requires litigation in a court of law while the wholesaler maintains exclusive distribution rights to the manufacturer’s products. Thanks to this legislative protection, distributors that were once mom and pop shops have consolidated to become titans of the beer industry. Wholesalers numbered in the hundreds in Ohio in 1974 when the Franchise Law was enacted: there are now effectively a few dozen.

Meanwhile, more than 400 small and independent breweries have opened in all corners of Ohio over the last decade. About a quarter of those breweries engaged with a wholesale beer distributor to help them grow their businesses. As the beer industry continues to evolve and mature, it has become apparent that the 1974 Franchise Law now protects big businesses to the detriment of our small businesses. We aren’t asking you for special treatment under the law, we just want to be eliminated from the carve-out created for the wholesalers five decades ago. Instead, our delivery service contracts with wholesalers should be governed by regular contract law, just as contracts with all of our other service providers are.

I’m sure some you have been told that 250,000 barrels is an “enormous” amount of beer, and on that basis alone, wholesale distributors need their carve-out from contract law to be upheld. Let’s put that number in perspective against the other players in the Ohio beer industry, including the wholesalers themselves.

Ohio law defines a craft brewery eligible for an A-1c license as anyone producing fewer than one million barrels of beer a year. That definition was written into law in by SB 48 in 2013. At that time, the [WBWAO explicitly supported this change in the law](#), in no small part because it also

prohibited large manufacturers from owning or buying any other distributorships, another legal protection designed to benefit their businesses exclusively. Their points of reference for beer production at the time were the two big breweries in Ohio, who each brew millions of barrels of beer annually, much of which is delivered to market on Ohio distributors' trucks. The AB-InBev brewery in [Worthington alone produces up to 10 million barrels of beer per year](#) and is one of 12 similar production facilities in the U.S. The Trenton brewery [produces 10 million barrels of beer a year](#) and is one of six similar facilities in the U.S. All of Ohio's independent craft breweries – including Boston Beer/Sam Adams, which will not be impacted by this proposed change to the franchise law – produced about 1.3 million barrels of beer combined in 2022. It would take either the AB or MC plant less than two months to produce the same amount of beer our breweries made last year, and only one month if you remove the Boston Beer production.

What about on the wholesaler side? When [Superior Beverage acquired Brown Distributing earlier this year they became a 20 million case wholesaler](#). That's 1.45 million barrels. A single wholesaler is moving more beer to market than the entirety of Ohio's 429 craft breweries combined, still including Boston Beer. [Heidelberg Distributing was acquired by Redwood Capital a couple years ago for a reported \\$1.1 billion](#) and distributes [18,068 different beverage products](#). Many Ohio wholesalers operate businesses that dwarf even the largest craft breweries that fall under the 250,000 barrel production threshold in this bill. Yet the wholesalers insist that they need to be legally protected from these small businesses in the form of their 50-year-old carve out from contract law.

On the retail side, [independent craft beer by volume accounts for approximately 9% of the total beer market share in grocery stores and less than 2% of convenience store sales](#). Multiple wholesalers deliver numerous brands to any given retail account, so the percentage of sales by volume for any single brand under the 250,000 barrel threshold in any one wholesaler delivery is even more fractional. When viewed in terms of the total beer market in Ohio, we believe that 250,000 barrels is a reasonable number for consideration of the manufacturers who should be subject to normal contract law vs. Ohio Franchise Law.

As the director of the Ohio Craft Brewers Association, I'm an advocate for the small businesses that make up our industry. I'm here testifying before you today because, frankly, a majority of our breweries who are bound by franchise law are concerned about retribution from their wholesalers if they speak publicly about their issues with this broken system. One of our members was told to "put a muzzle" on his business partner. Some of our smaller members are getting "friendly" calls from the CEO of their wholesaler "just to check in," a not-so-subtle reminder that the wholesaler controls the fate of the small brewery's products in the market. Since a single craft brewery's products make up such a small fraction of most wholesalers' revenue, there's very little to dissuade a wholesaler from punishing anyone who speaks up. Under normal contract law, retaliatory behavior would be grounds for terminating a relationship, but the carve out that the wholesalers enjoy precludes any contract terms that supersede franchise law.

Ohio wineries in distribution agreements are under the same franchise law constraints as our breweries. We heard from a number of individual wineries that wanted to join our legislative efforts. When I reached out to an Ohio wine organization, they relayed their experience trying to update this law in 2005: their wholesalers retaliated by “shelving” all of their brands and decimating their sales, so they are sitting this one out. Rep. Bill Seitz was the sponsor of that legislation, and asked for the Federal Trade Commission to weigh in. [Here’s their conclusion on the likely effect of his bill:](#)

“The Proposed Legislation likely would increase wholesalers’ incentives to lower wholesale prices and to undertake efforts to increase the demand for wine suppliers’ brands, and therefore is likely to decrease the costs of wine distribution and to increase competition among wholesalers. Further, the Proposed Legislation is likely to increase competition among suppliers of wine. Consequently, we believe that, if enacted, the Proposed Legislation is likely to lead to lower wine prices for Ohio consumers, and may increase the variety of wines from which Ohio consumers can choose.”

We believe that the FTC’s conclusion for the impact of similar legislation 18 years ago holds true today. Allowing small and independent breweries to negotiate under normal contract law vs. the wholesaler’s carve-out protection in franchise law would increase consumer choice, increase demand for craft beer, decrease the cost of distribution and increase competition among wholesalers. This would let the free market decide what beer and brands should be on shelves, rather than have wholesalers picking the winners and losers in our industry.