



John Haggerty
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RE: Proponent Testimony, SB 138

Chairman Schaffer, Vice Chairman Landis and Ranking Member Hicks-Hudson, my name is John Haggerty and I am a co-founder of Warped Wing Brewing Co. in Dayton, OH where I have served as Brewmaster since the founding of our business. We are a small, local brewery who produces and sells beer, seltzer and soda pop in our tap rooms, wholesales independently in the Dayton metro area, and through various wholesale distributors into the Cincinnati, Toledo, and Columbus metro areas. I have over 30 years of experience working in craft beer with the last 10 coming with Warped Wing Brewing Co.

I am submitting this testimony on behalf of my company and my fellow brewers in the State of Ohio as we have felt the adverse effects of being subject to the Ohio Beverages Franchise Acts of 1974. Here are some examples of how this adversely affects my business as well as those of my colleagues:

1. Lack of effort or caring: Due to franchise laws, wholesalers behave with impunity. If the manufacturer (i.e. brewer) comes to the wholesaler with complaint about the wholesalers effort all we can expect to receive is a shrug of the shoulders. Sorry we will try harder next time. Meanwhile the brewers sales are cratering. Example: Warped Wing Brewing Co. sold its beer independently in the Columbus/Franklin County market. One sales person, one driver, one truck. We signed with a wholesaler who has dozens of sales people, dozens of drivers and dozens of trucks and sales have declined by 65%. When confronted with this statistic the wholesaler simply says they could have done better. I cannot leave the relationship. In any other contracted service, this type of performance failure would result in termination of the agreement. Imagine if your internet service didn't work 65% of the time, or, your phone carrier wouldn't allow you to make calls or dropped your calls 65% of the time. It is untenable.
2. Financial drain: when entering into an agreement with a wholesaler forecasting is typically part of the conversation. In the above example, we made financial investments in our brewery to ensure that our quality and our ability to supply beer to the wholesaler would be ensured. Loans were taken and I

don't get to go to the bank and ask to be allowed to not pay because my wholesaler didn't do their job and fell short of their targets. Ideally, I would take this back and restore my sales volume or I would assign it to another wholesaler who could do the job the current one has failed to do. However, due to franchise laws I cannot make the necessary changes with my wholesale partners in order to ensure the financial stability of my brewery.

3. Lack of competition in the market: During a point in time when breweries have been expanding in number, 420+ in Ohio alone and nearly 10,000 across the country. Wholesalers have been in consolidation and their numbers are dwindling. This exacerbates the service issue as there are fewer choices and paths in terms of getting our beer delivered to market. Additionally, this consolidation is being driven by the franchise law's existence. Since brands can't leave their current wholesale partner there is no room for an alternative operator to enter into the wholesale market and offer a better service, a better price or a fairer deal to the brewer because brewers cannot make a change even if a new alternative shows up. Additionally, even if a new wholesaler shows up the brewer is indentured to them in perpetuity under the new law. How can I take a chance on a business that has no track record when I am going to be committed to them in perpetuity by the state? It's a catch 22. This lack of competition erodes service, drives up price and results not only in poor service to the brewer but also to the retailer. Ultimately, it is the consumer who pays an increased price on the shelf because there is no competition at the wholesaler level to ensure that service is not only performed at a high quality but in an efficient manner as well.
4. Fear: The franchise laws existence breeds fear at the brewer's level. The wholesalers have so much power over our brands that many of my colleagues are afraid to come and testify here today. In fact, they are afraid to speak up at all and will not do interviews or write letters to the editor for fear that their wholesalers will intentionally start to sideline their brands and not sell them. Since there is no recourse for the brewer there is no reason for a wholesaler to fear taking this action against their brewer partners. Brewers can't leave their distribution agreements so the wholesaler is free to act with impunity. In fact, I have to wonder if the decline in sales that I have experienced in our Columbus market is not retribution from the wholesaler for speaking out on this topic. Given how the brand performed when managed independently with fewer resources than the much larger wholesaler with multiple sales people, multiple drivers and multiple trucks it makes one wonder why they wouldn't have at least been able to maintain a status quo.
5. Special status: The wholesalers like to paint this issue as if we, the craft brewers are asking for some special dispensation from the rules. The fact of the matter is we are simply asking to return to the same rules that govern most every other business and the contracts that they sign with their various service vendors and suppliers. *It is the wholesalers who actually possess the special status* and they were given that by the state in 1974. This special status has given them the ability to behave in a manner that is counter to free market principles. They can treat their suppliers with impunity – not performing to agreed upon metrics? No repercussion. Ruining a brands reputation and sales? Brewer can't leave. This is all due to the fact that the state granted the wholesalers special status via the franchise law. We are asking the state to remove this special status for the wholesalers. Please allow craft brewers to not be subject to the wholesalers special status and return us to the normal rules of doing business in Ohio.

In closing, it is Warped Wing Brewing Co. intent, as it is of all my fellow brewers, to continue to use the wholesale distributor system that exists within the State of Ohio. My business is not one that is about trucks and drivers and logistics. It is one that is about the manufacture of beer, seltzer and soda. The wholesale

distributors can run the logistics of delivery better than I can. However, I need to be able to ensure that my service concerns are heard and acted upon in a timely manner. I have the same expectations of my malt supplier or of my trash hauler or of my internet provider. If their service is not sufficient to the needs of my business I will find a competitor who can do it better. In none of these areas am I committed in perpetuity for a service I have contracted for.

We are not asking the State of Ohio to do anything for us, instead, we are asking the State of Ohio to stand aside and allow us to negotiate our own, legally binding agreements with our wholesale distribution partners. Remove the special status granted to wholesalers in regard to their agreements with Ohio Craft Brewers and let us negotiate agreements that would be held to the same standard the State of Ohio holds all contractual agreements to. Please support this change to Ohio law and allow us to negotiate our own agreements.

Thank you for your time and consideration.

Most sincerely,
John Haggerty
Warped Wing Brewing Co.