December 12, 2023

Chairman Schaffer, Vice Chair Landis, Ranking Member Hicks-Hudson, and members of the Ohio Senate Agriculture & Natural Resources Committee:

We write today on behalf of the Brewers Association, the national trade association representing America's small and independent brewers to express our support for Senate Bill 138, a bill that would reform archaic franchise law and help Ohio's locally owned and operated brewers continue to grow and thrive.

Our friends in the middle tier of alcohol beverage industry will surely insinuate that franchise protections grew directly out of the post-Prohibition era. In truth, Ohio's successful post-Prohibition regulatory system did not feature a franchise law until 1974, when the threat of one of the few big beer makers pulling out of your distribution house was real and the threat was existential. Today, wholesalers have consolidated while small brewers have proliferated, resulting in the *inverse* size imbalance to the one that prompted the legislature to first pass the franchise law.

Existing franchise law makes exiting or not renewing a contract nearly impossible. When a brewery agrees to work with a wholesaler to sell their product it is a forever partnership with the legal advantages falling on the wholesaler's side. There is little recourse for a brewery that wants to work with a different distributor, even if the language of the contract should allow a change. Small brewers must either beg a wholesaler to voluntarily sell the brewer's distribution rights to another wholesaler or proceed with time- and capital-consuming litigation that almost no small brewer can afford, at the end of which they may still end up buying the right to their own product back at a price determined solely by the wholesaler. S.B. 138 would level the playing field by giving some negotiating power to small and independent craft brewers.

Things have changed significantly over the course of nearly five decades. There are now more than 9,500 small and independent craft brewers in the United States, with 420 of those making beer in Ohio. Conversely, over the past 10 years the industry has seen massive consolidation in the wholesaler tier, with giant regional and national corporations buying out small houses, leaving small brewers with fewer choices and little bargaining power. Giving the size and diversity of today's wholesalers, a small brewer moving distribution from one wholesaler to to another would not threaten to the wholesaler losing the brand, as they have dozens of other brands, including those of the big multinationals, to continue selling.

Right here in Ohio, the wholesalers trumpet these acquisitions and consolidations, as encapsulated perfectly in February of this year when Superior Beverage Group purchased Newark (OH)-based Brown Distributing, creating a 20 million case wholesaler in the Buckeye State. "Superior Beverage Group turned 100 [in] September [2022], and has *made 50 acquisitions in that time*." Fewer wholesalers means fewer trucks, fewer sales reps, fewer opportunities for small and independent craft breweries, locked into their contracts even when a sale like this is made.

Simply put, S.B. 138 exempts small brewers (under 250,000 barrels of total production annually) from the Ohio beer franchise law. To put this in perspective, Superior Beverage distributes 20 million cases a year in the state, which is about 3 million more than all of the craft beer produced in Ohio combined. Even the largest craft brewers in Superior's portfolio make up a small fraction of their overall sales and revenue. S.B. 138 is the single most equitable solution to the issue of outsized wholesaler-tier power in these relationships. Should this important legislation pass, brewers can negotiate enforceable contract provisions that give them some control over the distribution of their products.

Ohio wouldn't be the first to make these needed reforms. Fourteen other states have already passed franchise laws to give relief to small brewers without jeopardizing the wholesale or retail tiers. New York enacted a law in 2012 that gave relief to brewers making less than 300,000 barrels per year.

The market has changed, flipping the power dynamic that first motivated franchise laws and leading to a fundamentally unfair system for small independent craft brewers. We don't fault the wholesalers for wanting to keep things exactly as they are, but the time has come to let craft brewers have a fair say in the distribution of the product they create.

Support small businesses by voting for HB 306, and level the playing field for Ohio's small and independent breweries.

CONTACT:

Sam DeWitt
State Government Affairs Manager
Sam@BrewersAssociation.org
720.837.6935

Katie Marisic
Senior Director – Federal Affairs
kmarisic@brewersassociation.org
571.262.9248

BREWERS ASSOCIATION