



John Haggerty
Co-Founder/Brewmaster
Warped Wing Brewing Co.
26 Wyandot St.
Dayton, OH 45402

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Members of the Senate Finance Committee
House Bill 33

Chairman Dolan, Vice Chair Cirino, Ranking Member Sykes and committee members, thank you for the opportunity to testify today on House Bill 33. 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 and soda pop in our tap rooms, distributes independently in the Dayton metro area, and through various wholesalers 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 Alcoholic Beverages Franchise Act of 1974. Here are some examples of how this adversely affects my business as well as those of my colleagues:

1. All wholesale distributors promise to help develop a forecast of sales. In my experience, almost none do and, when they do, they are rarely followed. Wholesale distributors do not feel obligated to make sales commitments to breweries because they know we cannot terminate our agreement. This makes it hard for us to make financial decisions regarding how or when to invest in our plant capacities and staffing. If and when a sales forecast is made there is no obligation to follow it thus putting any investment made into a manufacturing plant or staff a significant risk. If sales forecasts are missed a shrug of the shoulders and a "we will try better next year" is offered. Without the consequence of a brewery being able to switch wholesale distributors there is no incentive for the distributor to change their behavior.

We are simply asking to be able to negotiate this in our normal contractual agreements with wholesalers, and have those contracts be enforceable.

2. No one enters into a distribution agreement expecting it to fail. However, when performance lacks and complaints are filed with the wholesale distributor, no action is taken as there is no risk to the

wholesale distributor if they don't amend their behavior toward the brewery filing the complaint. In no other industry is this allowed. If my logistics service provider is failing to meet my expectations I should be able to find an alternative. As an example, Warped Wing Brewing Co. entered into an agreement with a wholesale distributor to deliver our beers to the Columbus market. When we entered this agreement we had independently developed the Columbus market on our own and had it growing at a 20% year over year growth rate. 12 months into the agreement our sales are eroding at a rate of 35% annually. I currently have no recourse in this relationship and when confronted the wholesale distributor has simply responded, "yes, we haven't handled that very well" with no further action taken.

We are simply asking to be able to negotiate performance metrics into our contractual agreements, and have those contracts be enforceable.

3. The previous point illustrates how hard craft brewers work to provide choice in the market. Since the mid-1980's craft beer has worked tirelessly to spread the word of full-flavored beer and provide a multitude of choice in the market. This effort continues today. The wholesale distributors are trying to claim that this effort should be credited to them when we can clearly see that they do not represent choice they represent the "path of least resistance". If a retailer is not aware of my brand and the wholesale distributor is not talking about it then how will they be aware of it? If my sales are in decline by 35% at the wholesale distributor after a period of proven growth then how much are they representing my brand? How much can they claim that they are responsible for consumer choice? They aren't.

We are simply stating that brand representation metrics should be negotiated as part of our contractual agreements, and have those contracts be enforceable.

In closing, it is Warped Wing Brewing Co.'s 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. 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. 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.

