

Interested Party Testimony
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House Bill 33

May 30, 2023
Senate Finance Committee

Chairman Dolan, Vice Chair Cirino, Ranking Member Sykes and committee members, thank you for the opportunity to testify today on House Bill 33. I am Mary MacDonald, Executive Director of the Ohio Craft Brewers Association. Ohio is home to 427 craft breweries, with another 60 or so planning to open in the coming years. Our members are innovative small business owners who invest in their communities and have worked together to build the growing craft brewing industry we have in Ohio today.

That being said, this industry needs public policy that supports that growth and will make it sustainable. I'm here today to request your support for an amendment that would exempt small breweries from the Ohio Alcoholic Beverages Franchise Act of 1974. That outdated law functionally traps a small brewer in its contract with the wholesaler that holds the exclusive rights to deliver their brewery's products to market.

When this law was enacted in 1974, craft breweries did not exist. Ohio wholesalers numbered in the hundreds and served their own small communities. These small businesses faced incredible pressure from the handful of mega-breweries in the market, leading them to seek and obtain laws to protect themselves.

Now there are only a few dozen wholesalers left in Ohio due to consolidation while there are more than 400 small and independent breweries. The landscape has turned 180 degrees but our laws haven't, leading to a situation where large companies are protected by Ohio law to the detriment of small businesses.

We aren't seeking state-mandated contractual relationships like the wholesalers did in 1974. We are humbly seeking the freedom to enter into enforceable contracts with all of our service providers, including our delivery services. An amendment offered by a number of your Senate peers would exempt brewers under 250,000 barrels of annual production from Ohio's alcohol franchise law and leave our contracts to be enforceable under regular contract law.

I'd like to address a few arguments we've been hearing against this common sense proposal:

Argument: There is no problem. Brewers can enforce their contracts in court just like everyone else.

Answer: This IS the problem - if a brewer is not receiving the service agreed to in their contract, it must first sue its delivery service provider; however, the wholesaler retains exclusive delivery rights to that product during the lawsuit. No other manufacturer in Ohio is forced to stay in a hostile relationship with a service provider pending the outcome of a lawsuit, especially when that service provider has the potential to cripple their business. Brewers shouldn't have to either. If a party isn't performing to the contract, the other party should be able to break it and move on. If there is a disagreement with this, fight that out in court afterwards. You all know contract law, we just need normal contracts.

Argument: Wholesalers invest money and effort into these brands who, if allowed out of franchise law, will hop from wholesaler to wholesaler, damaging the industry.

Answer: A craft brewer needs its wholesaler more than the wholesaler needs that brand in nearly every instance. Jumping from one to another will sooner put the brewer out of business before affecting the balance sheet of a wholesaler in any meaningful way. The disruption in sales and cash flow resulting from the brewer's product being moved from one system to another is far more damaging to a small business than it is to these extremely large logistics companies. Furthermore, this risk can be mitigated by bilateral negotiations and contract terms and conditions.

You all know contract law, we just need normal contracts.

Argument: This will destroy Ohio's three tier system.

Answer: This has exactly zero effect on the three tier system. This argument is either intentionally misleading or the party has limited understanding of Ohio's three tier system. Ohio craft breweries are already afforded self distribution rights of up to one million barrels based on the creation of the A1C license in 2013, a process in which the Wholesale Beer and Wine Association was intensely involved.

We are simply asking for normal contracts.

Argument: This is too big of a change for the state budget.

Answer: We're requesting a common sense, reasonable change that will help restore fairness and balance to the relationships between small breweries and their wholesale partners.

Craft brewers do not wield the influence or effect on a wholesaler that large, multinational breweries do. Treating them the same is like treating a homeowner with a solar panel on the roof the same as AEP-Ohio. It no longer makes sense and we are pleading for reform as soon as possible.

Conversations with lawmakers indicate that many understand our predicament and agree that something needs to change. The budget is the most efficient vehicle to make this change.

Argument: Franchise law has been in effect for 50 years with no issues. Why is a change needed now?

Answer: When I started with OCBA in 2013 there were only 58 craft breweries in Ohio. There are now 427, about 100 of which are distributed by a wholesaler. The majority of those have only entered into franchise law contracts in the last 5-10 years. This industry is still evolving and maturing, and we are only now seeing the acute imbalance in the power dynamic between a wholesaler and a craft brewer in stark relief. The law may be 50 years old but the relationship with most of the craft brewers is less than a decade old.

This minor change will allow small businesses located in every legislative district in Ohio the flexibility to truly negotiate an arms-length agreement with a brewery's delivery service.

Thank you for the time today, I'm happy to answer any questions.