

Proponent Testimony of Adam C. Armstrong, Esq.  
Bruns, Connell, Vollmar & Armstrong, LLC  
Re: House Bill 194  
Before the Ohio House Judiciary Committee  
Apr 9, 2025

Chairman Thomas, Vice Chair Mathews, Ranking Member Isaacsohn, and members of the House Judiciary Committee, I thank you for the opportunity to testify before you today in support of House Bill 194 on behalf of Ohio's craft breweries. My name is Adam Armstrong. I am a lawyer based in Dayton, Ohio, a partner at the law firm of Bruns, Connell, Vollmar & Armstrong and co-chair of Ohio Beer Counsel - our Firm's Alcohol Beverage Practice Group.

I have had the privilege to represent many Ohio craft breweries for the past 11 years on a myriad of legal issues that affect their unique and wonderful businesses. From choosing the right legal entity that best suits their needs, navigating the complex State and Federal regulations surrounding the manufacturing and sale of beverage alcohol, planning for and executing growth plans, reacting to pandemics, and navigating business divorces among owners, there is one area of my practice that clients express more questions, confusion and concerns – franchise law.

Ohio's Alcohol Franchise Act, enacted by the Ohio General Assembly in 1974 is by law, an adhesion contract, is anti-competitive and is a permanent restraint on Ohio craft breweries. House Bill 194 will give Ohio craft breweries the freedom to contract, on negotiated terms and conditions, in arm's length transactions with wholesale distributors.

Ohio law defines a contract of adhesion as “a standardized form contract prepared by one party, and offered to the weaker party, usually a consumer, who has no realistic choice as to the contract terms.” *Taylor Bldg. Corp. of Am. v. Benfield*, 2008-Ohio-938, ¶ 49; accord *Black's Law Dictionary* (8th Ed. 2004). The Franchise Act functions as an adhesion contract. First, the standardized form of the contract is the Franchise Act itself. For example, if a brewery allows a distributor to distribute its beer for 90 days or more without a written agreement, the brewery is bound by the terms of the Franchise Act. Second, while the Franchise Act says the written franchise shall provide for, and specify the rights and duties of both parties, any attempt to waive the prohibitions of, or fail to comply with the Franchise Act in the written agreement itself is void and unenforceable. In essence, take it or leave it.

According to the U.S. Treasury Department's February 2020 Report titled “ Competition in the Market for Beer, Wine, and Spirits,” “[i]n a competitive market, distributors would vie with each other to secure and maintain producers' business, competing on price, the range of services they offer, and the quality and consistency of their services. If a distributor's bid or performance was unsatisfactory, a producer could choose a competing offer. But state franchise laws often restrict this competition.” *Competition in the Market for Beer, Wine, and Spirits* (Feb. 2020). Ohio's Franchise Act is no different.

Aside from the statutory duty to act in “good faith” (a duty already inherent in contract law and therefore redundant to include in the Franchise Act itself), a distributor's obligations to a brewery under the Franchise Act are to maintain adequate physical facilities and personnel so that 1) the

brewery's products are properly represented in the relevant sales area, 2) the reputation and trade name of the brewery are protected, and 3) the general public receives adequate servicing of the brewery's products. In a typical contract negotiation, I would advise a client to negotiate the potential exit from a contract for certain breaches of the contract, but at the very least, upon advanced written notice because sometimes you realize a contractual business relationship just isn't going to work. While the other side might negotiate a "cost" for termination upon advanced written notice, the parties arguably have equal bargaining power and can make decisions on contract terms each are willing and not willing to negotiate.

The Franchise Act provides none of that for Ohio craft breweries. Contract terms that permit the termination upon advanced written notice are void and unenforceable. Rather, a brewery's sole remedy to leave a franchise relationship, which once established is in perpetuity, is to litigate and prove by a preponderance of the evidence that it has "just cause" to do so. However, the Franchise Act fails to provide a definition of just cause. Courts have confirmed a brewery's rationale business decision, not tied to acts and/or omissions on the part of the distributor, does not constitute just cause. A brewery, unhappy with the performance of its distributor, must shoulder the evidentiary and financial burdens of proof simply to gain back control over the products it makes. All the while, the distributor retains the rights to the brewery's brands during the pendency of litigation, which can last years. The distributors know the law, and often the deeper pockets, are on their side. They know litigation costs alone are likely to dissuade a brewery from filing suit seeking to terminate the franchise. Therefore, and because of the Franchise Act, a distributor has the freedom to decimate a brewery's brand if it were so inclined. Functionally, the Franchise Act is a permanent restraint on craft breweries in Ohio.

Placing Ohio craft breweries on equal footing with wholesale distributors in the freedom to contract, on negotiated terms and conditions, in arm's length's transactions, is only going to happen by your action. As noted by Judge Walter H. Rice of the U.S. District Court for the Southern District of Ohio in 1991, the "interpretation of the [Franchise] Act means that a manufacturer could be locked into an unprofitable situation if changing market conditions render its current distribution network inadequate. This may well be. However, the Ohio legislature has determined that this is a business risk which must be assumed by all manufacturers of alcoholic beverages which avail themselves of the rights and privileges of marketing their wares in Ohio. This Court can only interpret the will of the legislature; it cannot pass judgment on the wisdom of its pronouncements." *Dayton Heidelberg Distrib. Co. v. Vintners Int's Co.*, 1991 U.S. Dist. LEXIS 21775, at \*23. According to the Brewers Association, there were 312 craft breweries operating in the United States in 1991. Today, there are close to 450 breweries operating in our State, with another 50 or so in planning.

The landscape that existed in 1974 to protect distributors from vagaries in the marketplace has been flipped on its head. Give Ohio craft breweries the freedom to contract that other small businesses in Ohio currently enjoy.

Thank you and I am happy to answer any questions.