Proponent Testimony
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HB 194

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House Commerce and Labor Committee

Chairman Thomas, Vice Chair Mathews, Ranking Member Isaacsohn, and members of the Judiciary Committee,

When the Ohio Alcoholic Beverages Franchise Act was written in 1974, it was done to protect the interests of small businesses in our state. Forty years after the repeal of prohibition, the three-tier system of alcohol sales and distribution that had emerged in Ohio needed some "tweaking." At that time, there were a little more than 100 breweries in the entire nation, while around 200 wholesale distributors operated in Ohio alone. These distributors were mostly small, family-owned businesses and those 100 or so breweries had grown into primarily large companies, selling beer nationwide or in multiple regions. It was deemed necessary at that time to build safeguards for these small businesses in their dealings with these large organizations that accounted for an overwhelming percentage of their income. This system worked reasonably well for many years.

Fast forward nearly 50 years from that point and we find a similar landscape in many ways, but not all. There are now more than 9,000 breweries in the U.S. (more than 400 of which are in Ohio) but fewer than 50 beer distribution companies in Ohio. Many of these breweries are small, family-owned businesses and are generally much smaller organizations than the vast majority of the beer distributors. The consolidation of the 1960s and 1970s that led to fewer, larger breweries has now mirrored itself to a large extent in the beer distribution business. The numerous small breweries that have been born in Ohio in the last 10+ years now need the same help that all those small beer distributors needed back in the 1970s. The franchise law is now having the opposite effect that was intended when it was written. Small brewing businesses are beholden to very one-sided contracts that are designed to protect the distributor's interests almost exclusively.

Given the over-arching umbrella of protection afforded to distributors under the current franchise law, it is nearly impossible for brewers to build measurable, actionable goals and conditions into a distribution contract. Often the inclusion of simple things like sales goals and marketing expenditures into a draft of an agreement are met with guffaws and a response along the lines of "you can't put that in the contract, franchise law will just overrule it." Most distribution agreements therefore generally include a lot of vague terminology such as "good faith effort" and "just cause" with very little specifically actionable language beyond the standard legal statutes that apply in these types of contracts. It goes without saying that small brewers want these contracts to work well for both parties, but when they don't it can be a much greater burden to the business of the small brewery than the distributor to sever them. The distributor sells many other brands and any given small brewery is probably only a few percent or less of their overall sales, whereas the vast majority of the breweries' income is dependent on that distributor for that territory. If a distributor only wants to sell enough of your product to barely stay above the vague level of "just cause" for termination because they are more heavily invested in a competing brand

in the same market, they can effectively “sideline” you and there is essentially nothing you can do about it without a protracted and expensive legal fight. If, several years after signing an agreement, you or the distributor’s business model no longer works for the needs of your business (or theirs), tough luck: you are “married” for life. Not even marriage itself works like that these days! It is this readily available ability for distributors to pick winners and losers (if they choose to) due to their protection under the franchise law that is just one of the many reasons we feel reform is needed.

It will be argued from the other side of this debate that these contracts can indeed be severed for “just cause.” While this is technically true, there are many additional hurdles installed into the process for a brewery to overcome due to the franchise law that are not required in non-franchise contract negotiations. These burdens can require a great deal of expense for a small brewery to overcome. It would be disingenuous to say that breweries want to repeal the franchise law so that we can “just do whatever we want, whenever we want.” All we want is to be able to negotiate the conditions of these contracts equitably with our potential distribution partners in the same way that any other business would want to conduct similar negotiations. The proposed legislation is not a 100% reversal of the existing rules. By creating an annual production cap so that the exclusion to franchise law only applies to smaller breweries, any concerns regarding the influence of large breweries that created the need for the franchise law originally in 1974 will still be averted. Instead, this new statute will restore the balance of protection that has been afforded to Ohio small businesses for many years.

Specifically, we signed our home market agreement with a distributor in June of 2019 to cover eight counties in Southwestern Ohio including our home county of Hamilton. The agreement covers all malt beverages including our malt-based hard seltzer product. While we have had reasonably good results with them in specific counties with our hard seltzer there have been very disappointing outcomes in many of the contracted counties and virtually zero sales in beer anywhere. Over the years we have asked them to release the beer franchise so that we may concentrate on it at least in our home county but they have refused. In response to multiple requests, we have made numerous good faith efforts to run highly coordinated discounts, promotions and incentives on award-winning beer products to spark sales always ending in the same outcome. In these efforts the distributor “tiptoes” around contract provisions that require the good faith effort on their part by only agreeing to the lowest possible goals for volume achievement in any given program. Once the modest goals are met and the inventory risk is alleviated the effort to drive additional sales ceases and the program ends, in failure. We as a team have proven over and again that there is no future in our beer franchise under the current arrangement and yet they still refuse to return the franchise. They aren’t selling it, they never plan to sell it. There is no other explanation for that move except as an anti-competitive block to a brand that could be a potential threat to sales if released back to us. We don’t blame them, we blame the regulations protecting and even encouraging this behavior.

This limited rollback of beer distribution franchise laws has been similarly installed in several other states in recent years with successful outcomes. It is time to add Ohio to that list.