

Proponent Testimony
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OCBA amendment to Sub HB 96

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Ohio Senate Government Oversight and Reform Committee

Chairman Manchester, Vice Chairman Brenner, Ranking Member Weinstein, and members of the Senate Government Oversight and Reform Committee,

I come before you today asking you to end government interference in the business relationships between small craft breweries and their massive wholesale beer distribution partners. In 1974 the wholesale beer distributors requested and received a carve-out from Ohio contract law to protect them from the undue influence of the large national and international breweries that supplied them. That carve-out came in the form of the Ohio Alcoholic Beverages Franchise Law, which stipulates that contracts between distributors and manufacturers must automatically renew in perpetuity unless the manufacturer can prove “just cause” to terminate the relationship. “Just cause” was deliberately left undefined in the statute: the burden of proof rests on the manufacturer, requiring costly litigation while the wholesaler maintains exclusive distribution rights to the manufacturer’s products. Thanks to this legislative protection, distributors that were once mom and pop shops have consolidated to become titans of the beer industry. Wholesalers numbered in the hundreds in Ohio in 1974 when the Franchise Law was enacted: there are now effectively fewer than a couple dozen.

Meanwhile, more than 400 small and independent breweries have opened in all corners of Ohio over the last decade. About a quarter of those breweries have engaged with a wholesale beer distributor to help them grow their businesses. As the beer industry continues to evolve and mature, it has become apparent that the 1974 Franchise Law now protects big businesses to the detriment of our small businesses, the opposite of its intent. We aren’t asking you for special treatment under the law, we just want to be eliminated from the carve-out created for the wholesalers five decades ago. Instead, our delivery service contracts with wholesalers should be governed by regular contract law, just as contracts with all of our other service providers are.

I’m sure some of you have been told that 250,000 barrels is an “enormous” amount of beer, and on that basis alone, wholesale distributors need their carve-out from contract law to be upheld. Let’s put that number in perspective against the other players in the Ohio beer industry, including the wholesalers themselves.

Ohio law defines a craft brewery eligible for an A-1c license as anyone producing fewer than one million barrels of beer a year. That definition was written into law by SB 48 in 2013. At that

time, the [WBWAO explicitly supported this change in the law](#), in no small part because it also prohibited large manufacturers from owning or buying any other distributorships, another legal protection designed to benefit their businesses exclusively. Their points of reference for beer production at the time were the two big breweries in Ohio, who each brew millions of barrels of beer annually, much of which is delivered to market on Ohio distributors' trucks. The AB-InBev brewery in [Worthington alone produces up to 10 million barrels of beer per year](#) and is one of 12 similar production facilities in the U.S. The [Molson Coors plant in Trenton produces 10 million barrels of beer a year](#) and is one of six similar facilities in the U.S. All of Ohio's independent craft breweries – including Boston Beer/Sam Adams, which will not be impacted by this proposed change to the franchise law – produced about 1.1 million barrels of beer combined in 2024. It would take either the AB or MC plant less than two months to produce the same amount of beer our breweries made last year, and under one month if you remove the Boston Beer production.

What about on the wholesaler side? At the time this law was enacted in 1974, each wholesale beer distributor represented one or two beer brands and the handful of their products that existed then. Today's consolidated wholesale businesses represent hundreds of brands and thousands of products each, and craft beer is often a miniscule fraction of their portfolios. When [Superior Beverage acquired Brown Distributing in 2023 they became a 20 million case wholesaler](#). That's 1.45 million barrels. A single wholesaler is moving more beer to market than the entirety of Ohio's 430 craft breweries combined, still including Boston Beer. [Heidelberg Distributing was acquired by Redwood Capital a few years ago for a reported \\$1.1 billion](#) and distributes in excess of [18,000 different beverage products](#). Many Ohio wholesalers operate businesses that dwarf even the largest craft breweries that are covered under the 100,000 barrel production threshold in this bill. Yet the wholesalers insist that they need to be legally protected from these small businesses in the form of their 50-year-old carve out from contract law.

Speaking of Heidelberg, in February they announced to many of their small retail accounts that they were [moving them from weekly or bi-weekly deliveries to a single monthly delivery](#). Craft beer brands in the Heidelberg portfolio will now likely lose sales when those smaller retailers look for alternative distributors that better serve their business models. The breweries cannot make their own deliveries to those small retailers because Heidelberg controls their distribution rights in perpetuity. The retailers are negatively impacted, the craft breweries are negatively impacted; while it might make great sense for Heidelberg's business model, the breweries are held hostage to their distributor's decision by Ohio Franchise Law.

On the retail side, [independent craft beer by volume accounts for approximately 9% of the total beer market share in grocery stores and less than 2% of convenience store sales](#). Multiple wholesalers deliver numerous brands to any given retail account, so the percentage of sales by volume for any single brand under the 250,000 barrel threshold in any one wholesaler delivery is even more fractional. When viewed in terms of the total beer market in Ohio, we believe that 250,000 barrels is a reasonable number to determine which manufacturers should be subject to normal contract law vs. Ohio Franchise Law.

As the director of the Ohio Craft Brewers Association, I'm an advocate for the small businesses that make up our industry. I'm here testifying before you today because, frankly, a majority of our breweries who are bound by franchise law are concerned about retribution from their wholesalers if they speak publicly about their issues with this broken system. One of our members was told by their wholesaler to "put a muzzle" on his business partner. Some of our smaller members are getting "friendly" calls from the CEO of their wholesaler "just to check in," a not-so-subtle reminder that the wholesaler controls the fate of the small brewery's products in the market. Since a single craft brewery's products make up such a small fraction of most wholesalers' revenue, there's very little to dissuade a wholesaler from punishing anyone who speaks up. Under normal contract law, retaliatory behavior would be grounds for terminating a relationship, but the carve out that the wholesalers enjoy precludes any contract terms that supersede franchise law.

We have introduced legislation in both chambers that would exempt breweries producing under 250,000 barrels annually from franchise law. While this amendment sets the threshold at 100,000 barrels lower than our original proposal, at 150,000 barrels. This change is not a reflection of diminished belief in the fairness of the 250,000-barrel benchmark. Rather, it represents a compromise in recognition of the critical importance of the passage of this legislation.

We continue to believe that the 250,000-barrel threshold is appropriate. However, in light of the significant impact this law has had on small breweries throughout Ohio, we are committed to protecting as many of our members as possible. By presenting this compromise, we aim to underscore to this committee and the General Assembly the urgency and significance of this issue. Enacting this legislation will meaningfully impact hundreds of small businesses across the state.

We believe that the FTC's conclusion on the impact of similar legislation 18 years ago holds true for beer today. Allowing small and independent breweries to negotiate under normal contract law vs. the wholesaler's carve-out protection in franchise law would increase consumer choice, increase demand for craft beer, decrease the cost of distribution and increase competition among wholesalers. This would let the free market decide what beer and brands should be on shelves, rather than having wholesalers pick the winners and losers in our industry.