

Proponent Testimony
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SB 23

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Ohio Senate Small Business and Economic Opportunity Committee

Chairman Cutrona, Vice Chairman Romanchuk, Ranking Member Craig, and members of the Senate Small Business and Economic Opportunity Committee,

I am honored to voice support for SB 23 in front of this committee on behalf of Ohio's craft brewing industry. Craft breweries are the very definition of small business: innovative entrepreneurs serving their local communities. However, there remains a significant obstacle to the economic opportunity of our breweries: government interference in the business relationships between small breweries and their massive wholesale beer distributors. SB 23 would make the written contract between a small brewery and wholesaler rule this relationship, rather than defaulting to the one-sided wholesaler protections codified in the Alcoholic Beverages Franchise Act of 1974.

That antiquated law demands that contracts between wholesalers 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, the 200 or so "mom-and-pop" wholesalers in business when the law was enacted have consolidated to become titans of the beer industry. The remaining few dozen now wield their own outsized influence over the small and independent breweries that supply them.

In spite of this restrictive law written before small breweries existed, Ohio's craft brewing industry has developed into a national leader. This is, in large part, due to laws enacted by the General Assembly that remove barriers to business growth while maintaining regulations that promote public safety and responsible alcohol consumption.

Over the 12 years since the A-1c permit was created to ease the burden of starting a small brewery, craft beer has grown from a niche product to a mainstream one. Our industry has gone from booming growth to a steady, mature market. Adapting to these changes makes this a challenging time to be a small brewery owner. More than 100 Ohio breweries have closed their doors in the last five years. Twenty-seven breweries have closed so far this year. I'm unaware of any wholesalers who have been forced to shutter in the last five years. There have, however, been a number of wholesalers whose businesses have been acquired by another, always with a substantial payout ranging from multiple millions to even a billion dollars.

Small brewery owners cannot count on bigger ones to provide them a soft landing or a golden parachute via acquisition. When a small brewery closes, that usually represents the shattering of someone's dreams and loss of their investment, sometimes their life savings or even their home. These closures also leave numerous brewery employees out of work. Communities lose important gathering places. Commercial districts lose anchor businesses that draw customers that then patronize other small businesses.

When a small brewery in a wholesaler's portfolio closes — even the ones they argue are “big” — it's simply a line they cross off in their ledgers. Ohio breweries make up a tiny percentage of a typical wholesaler's book of business compared to the national and international brands that generate the bulk of their revenues. Those are the big breweries that the 1974 franchise law was written for: the kind that could sink a wholesaler's entire business if they pulled their brands.

According to Nielsen scan data, beer produced at A-1c licensed breweries makes up just 4.19% of Ohio beer sales by volume in grocery and convenience stores and 6.42% of dollar share. Almost all of that volume is distributed by wholesalers to those retail locations, meaning that close to 95% of wholesaler revenue is coming from large manufacturers like Anheuser Busch, Molson Coors, Constellation Brands and others. Why do these huge wholesalers need special protection from suppliers that make up such infinitesimal percentages of their revenues?

Of the more than 400 small breweries currently operating in Ohio, about a quarter have engaged with a wholesale beer distributor to help them grow their businesses. A great number of those have reported to us that their wholesaler is not performing under the terms of their contract. Attempts to work out a solution with the wholesaler are often rebuffed or ignored. Small breweries do not have the means to litigate their way out against such well-funded opponents. In some cases, a brewery is forced to close because of the damage a wholesaler causes to their brand in the market.

In its current form, this bill would remove breweries who produce fewer than 250,000 barrels of beer per year from the definition of those subject to Franchise Law. The Wholesale Beer and Wine Association of Ohio contends this is an “enormous” amount of beer, and on that basis alone their carve-out from contract law needs to be upheld. They also contend that 50,000 barrels or 25,000 barrels or 10,000 barrels is an “enormous” amount of beer that necessitates their legally protected status. Let's put those numbers in perspective against the other players in the Ohio beer industry, including the wholesalers themselves:

- All of Ohio's 428 small and independent breweries produced a combined 1.15 million barrels of beer in 2024. A significant percentage of that production comes from the Boston Beer/Sam Adams brewery in Cincinnati, which would not be affected by the proposed changes in SB 23.
- The Anheuser Busch plant in Worthington and the Molson Coors plant in Trenton each produce on order of 10 million barrels annually. A-B owns 12 such facilities nationwide, while Molson Coors operates six.

- Superior Beverage announced in 2023 that their acquisition of Brown Distributing brought their annual volume to more than 20 million cases, or approximately 1.45 million barrels, 23% more than all of Ohio's craft beer volume combined.
- Heidelberg Distributing, which was purchased by Redwood Holdings in 2022 for a reported \$1.1 billion, recently acquired Ohio Eagle Distributing to add seven million cases — approximately 500,000 barrels — to their portfolio.

The wholesalers control volumes of beer in the market that dwarf all of Ohio's craft beer production combined. Not only are they immensely larger than the craft breweries in an absolute sense, they are also enormous in the influence they wield in the marketplace. In any given geographic region, the vast majority of beer is distributed by either the "red network" representing AB InBev or the "blue network" representing Molson Coors. Because of the national brands they distribute, wholesalers can sway the purchasing decisions of retail permit holders like grocery and convenience stores. That potential reach is enticing for a small brewery looking to grow in distribution, but the wholesaler ultimately decides what's available for retail outlets to buy. If the wholesaler is incentivized to sell products that compete with a small brewery in their own portfolio, there's nothing stopping the wholesaler from "shelving" the small brewery's brands.

Even though they hold all the cards, wholesalers insist that they need legal protection from small and independent breweries. Why? We've yet to hear them explain on the record in committee testimony or in interested party meetings how adhering to a contract with small and independent breweries rather than leveraging the antiquated franchise law would substantively hurt their businesses.

The wholesalers argue that it's unfair for all breweries under 250,000 barrels of production to be subject to contract law and not franchise law, because that would include every A-1c-licensed brewery in Ohio. They argue it's unfair for all breweries under 100,000 barrels to be exempt from franchise law because that would be *almost* all Ohio breweries. No matter what threshold number is discussed, they claim whatever percentage of breweries would be exempt is too high. Their only goal in pushing this percentage narrative is to persuade you and your fellow lawmakers to lower the number until no breweries under contract with wholesalers would be affected by the change. Meanwhile they get bigger via consolidation and continue to stunt the growth of small breweries they distribute.

In one of the few codified instances where a brewery can terminate a distribution contract—when the wholesaler changes ownership — wholesalers have sued manufacturers who choose to exercise that right. This happened just last year when Columbus Distributing Company reached a deal to acquire House of LaRose and their portfolio of distribution contracts in northeast Ohio. When some of the manufacturers — including Rhinegeist — denied consent to the transfer of their distribution rights, the wholesalers retaliated by filing suit. This is exactly the kind of "lawfare" and intimidation that the Franchise Law allows wholesalers to perpetrate. While Rhinegeist, with backing from larger players that also withheld consent, were able to

contest this suit, most small and independent breweries cannot defend against litigation without jeopardizing their businesses.

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: that's what the wholesalers asked for and were granted five decades ago. Instead, we simply ask that our delivery service contracts with wholesalers be governed by regular contract law, just as contracts with all of our other service providers are.

Eighteen other states have recognized the effects of distributor consolidation and the emergence of craft beer since the 1970s, and they have modernized their franchise laws to ensure that small breweries have a fair path to market. The sky didn't fall in any of them. Wholesalers are still operating successful businesses there. The only difference is that they are now more accountable to their small suppliers.

We are imploring you to help our small businesses. The wholesalers have not given a valid reason why their huge businesses need to be protected from our small ones. The power dynamic in the current beer market is well established, and it looks significantly different than it did in 1974. Our breweries deserve the right to negotiate fair, equitable and enforceable contracts with wholesalers, without the government interference of franchise law tipping the scales.