

Interested Party Testimony
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House Bill 33

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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. I am here today to implore you to provide relief to Ohio's small and independent breweries from Ohio's Alcoholic Beverages Franchise Law. Enacted in 1974, franchise law was meant to level the playing field between the small mom-and-pop wholesale distributors and the massive regional and national breweries that supplied them. That law intended to protect small businesses from large, powerful companies is now having the completely opposite effect: the one-sided, unbreakable contracts required by the law are hindering the growth of Ohio's craft breweries, and sometimes actively harming their small businesses.

We heard Mr. Evans from WBWAO testify last week that the 250,000 barrel exemption that we are requesting is outrageous because it includes all but three breweries in Ohio: Anheuser Busch/InBev, Molson Coors North America and Boston Beer/Sam Adams. What he isn't telling you is how little 250,000 barrels of beer is compared to the massive breweries that most of his wholesaler members rely on for the bulk of their revenue.

The 420 Ohio breweries we're advocating on behalf of produced approximately 750,000 barrels of beer last year combined. For comparison, the Anheuser Busch/InBev plant in Worthington can produce 31,000 barrels of beer per day. It would take Ohio's AB brewery - one of 12 AB breweries in the US - just over three weeks to produce those same 750,000 barrels.

In the retail market, even the more successful Ohio craft brands pale in comparison to their huge competitors. Convenience store sales data in Ohio for the last year shows that AB (54.7%), Molson Coors (21.3%) and Boston Beer (5.4%) account for 81.4% of all beer sales by volume. The 6 top selling Ohio craft beer brands account for less than 1% each and a total of 1.6% of sales by volume (Rhinegeist 0.7%, Great Lakes 0.4%, Columbus 0.2%, BrewDog 0.1%, Fat Heads 0.1%, MadTree 0.1%). Grocery store sales data paints a similar picture, with the best-selling Ohio craft beer brands holding on average about 1-2% volume share each.

Comparing the production size and sales volume of large multi-national breweries to craft breweries is like comparing apples to blueberries.

In 2022, all Ohio beer shipments were approximately 7.3 million barrels (source: Beer Institute). So even if a brewer were selling all 250,000 barrels entirely in Ohio (unlikely because most breweries of that size are selling in multiple states), that's only about 3% of the Ohio beer market and only .1% of

total US beer shipments. For comparison, the top six companies in the US all have shipments greater than 6M barrels (24X this proposed exemption) and those six companies collectively account for 82.4% of US beer shipments (source: Beer Marketers Insights). Those breweries wield massive market power and wholesalers should rightly enjoy the protection from them afforded by franchise law.

The 400+ small Ohio breweries in existence today weren't a consideration when the law was created in 1974. They do not hold the power and influence over wholesalers that this law was designed to mitigate. In fact, wholesalers sometimes take advantage of their leverage over small breweries because the brewery has no way out of their mandated evergreen contract.

Please allow me to give you a few examples. In many of these instances, the breweries suffering this mistreatment are not able to speak publicly for fear of retribution by the wholesalers that control how their beer is delivered to market.

Payment for beer pickup: Ohio is a COD state. However, certain wholesalers use the 5 day "determination of saleable condition" period written in Ohio Administrative Code as a loophole to not pay upon pickup, but instead mail a check 5 or more days later. In 99% of cases, beer has never been determined to NOT be in "saleable condition" months/years into a contract. The small brewery suffers from inconsistent cash flow with no recourse: if they report this behavior to the Division of Liquor Control, the wholesaler is likely to retaliate while holding the brewery's distribution rights.

A small brewery has robust self-negotiated major retailer chain sales in their self-distributed home market. The same brewery can't get into major chains in other markets because those chains refuse to work with the brewery's wholesaler due to past customer service issues with that wholesaler. The small brewery has no recourse to find another wholesaler that has maintained good working relationships with major retailers.

Multiple breweries have been in unhappy relationships with their wholesalers, and despite the claims made by the wholesalers' lobbyist that the two sides can talk out their differences, many times the wholesaler will refuse to discuss a separation or buyout. Breweries can be effectively held hostage by their wholesaler with no recourse to find a more suitable distribution partner.

A brewery and a wholesaler sign an agreement for specific counties within the state. That brewery's beer is then mysteriously found in counties far outside the agreed distribution area, while sales in the contracted territory drops drastically (80% documented over 6 months). Under franchise law, once a wholesaler has distributed a beer in a region for 90 days or more without a written contract, a franchise relationship is established and all rules apply. So, a wholesaler can effectively obtain a franchise agreement by "squatting" on that brand outside agreed-upon markets without the knowledge or consent of the brewery.

A wholesaler located in one section of the state holds a brewery's distribution rights for the whole state, but only effectively distributes in the wholesaler's home territory. Retail accounts generated by the brewery's salespeople in other covered territories are idle because the wholesaler is not

adequately servicing retailers in parts of the state they deem too inconvenient. The brewery has no recourse to find another distributor who better serves those territories.

A brewery's sales representatives have been prohibited from talking to their wholesaler's sales representatives, who are the direct link to retailers in the markets. The brewery has missed out on sales based on forced lack of communication with the wholesaler's sales reps. The brewery has no recourse to find a wholesaler who will work with the brewery's team to increase sales.

A brewery was getting customer complaints about out of code beer at a retailer (craft beer has a limited shelf life). Brewery repeatedly informs the wholesaler to pull the beer (as required by contract), nothing is done after multiple complaints and brewery has to pull the beer (contrary to contract). The brewery has no recourse to find a wholesaler who will ensure the product on the market is up to the brewery's specifications.

Some wholesalers have created minimum order volumes for retailers and directly tied the frequency of delivery to order size. Craft breweries have many relationships with small bars and restaurants. Wholesalers are focused on volume and less inclined (or simply refuse) to service smaller accounts. The wholesaler prohibits the brewery from delivering directly to those accounts that they refuse to service, citing exclusive distribution rights guaranteed them by franchise law. The brewery has no recourse to get beer to retail accounts that want it.

The stark reality is that wholesalers desperately don't want this law to change because they view small brewery brands as assets. Wholesalers make a lot of money on the sale and trade of brands, regardless of whether those brand sales have been damaged in the market by the wholesaler's neglect. Some sample math: a brewery that is selling \$10,000 worth of beer per year in self-distribution assigns their rights to a wholesaler (which generally does not pay the brewery to acquire those rights.) Two years later, sales have dropped to \$5,000 worth of beer annually; the wholesaler decides to divest of the brand and can offer it for sale for about \$35,000 based on the multipliers they use. In what other industry can you receive a pure profit payout after actively impairing a brand?

Why does Ohio law give more rights and privileges to the company that is merely providing a service and delivering a product than it does to the people who have passionately invested their livelihoods into creating, nurturing and growing that product and business? Ohio's small breweries need the freedom to negotiate their own contracts for delivery services with wholesale beer vendors without interference from the State of Ohio.