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135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Hillyer and Barhorst

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SUMMARY

- Exempts certain brewers from the Alcohol Franchise Law, specifically those that annually manufacture 250,000 or less barrels of beer in the preceding calendar year.
- Eliminates the authority of a large brewer (A-1 liquor permit holder) to sell beer products in bottles or containers for home use, but retains the authority for the brewer to sell their products to wholesale distributors.
- Eliminates the authority of a small brewer (A-1c permit holder) whose total production of beer exceeded 250,000 barrels of beer in the preceding calendar year to sell beer products in bottles or containers for home use and to retail liquor permit holders, but retains the authority for the brewer to sell their products to wholesale distributors.

DETAILED ANALYSIS

Alcohol Franchise Law

Background

Current law establishes requirements and procedures that govern the relationship between a manufacturer of beer or wine (manufacturer) and its distributors. A manufacturer must enter into a franchise agreement with its distributors providing for the sale of the manufacturer's brands or products. The agreement must stipulate the rights and duties of both parties. When a distributor for a manufacturer distributes beer or wine for at least 90 days without a written agreement, a franchise relationship is established between the parties, and the beer and wine franchise laws apply to both parties.¹

¹ R.C. 1333.83, not in the bill.

Generally, existing law prohibits a manufacturer or distributor from failing to act in good faith or without just cause under the terms of a franchise agreement. A manufacturer or distributor who violates the beer and wine franchise laws is liable to the party injured by the violation for all reasonable damages sustained by the party that are the proximate result of the manufacturer's or distributor's unlawful act.²

Current law also generally prohibits a manufacturer or distributor from canceling or failing to renew a franchise agreement or substantially changing a sales area or territory (substantial change) without:

1. Just cause;
2. The prior consent of the other party; and
3. Providing at least 60 days' written notice to the other party setting forth the reasons for the cancellation, failure to renew, or substantial change.

Thus, unless there is just cause, a manufacturer and distributor may not withdraw from a franchise agreement.

Existing law states that neither the manufacturer nor the distributor is required to give to the other party the cancellation notice when specified circumstances exist, including bankruptcy or revocation and suspension of either party's liquor permit. It also states that the occurrence of certain events does not constitute just cause, including:

1. The failure or refusal of either party to act in a manner that violates the law;
2. The restructuring of a manufacturer's business organization (other than through bankruptcy); and
3. A manufacturer's sale, assignment, or other transfer of the manufacturer's brand to another manufacturer over which it exercises control.

If a manufacturer or distributor cancels or fails to renew a franchise, the manufacturer must purchase its products from the distributor at a certain cost.³

Exclusion of small breweries

The bill exempts certain brewers from the Alcohol Franchise Law. Specifically, it exempts brewers that manufacture 250,000 or less barrels of beer in the preceding calendar year.⁴ A barrel of beer contains 31 gallons.⁵ Thus, these brewers can enter franchise agreements that are not subject to the general requirements of the Alcohol Franchise Law.

² R.C. 1333.84(A) to (F), not in the bill.

³ R.C. 1333.85(A) to (C), not in the bill.

⁴ R.C. 1333.82.

⁵ 250,000 barrels of beer equals 7,750,000 gallons of beer.

Brewers liquor permits

The bill makes the following changes to the liquor permits issued to large and small brewers (A-1 and A-1c liquor permits respectively):

1. Eliminates the authority of a large brewer to sell beer products in bottles or containers for home use. Thus, a large brewer only may sell those beer products to wholesale distributors.⁶
2. Eliminates the authority of a small brewer whose total production of beer exceeded 250,000 barrels of beer in the preceding calendar year to sell beer products in bottles or containers for home use and to retail liquor permit holders. However, small brewers whose total production of beer did not exceed 250,000 barrels of beer in the preceding calendar year may continue to sell those beer products for home use and to retail and wholesale distributors as under current.⁷

The bill converts the unit used to measure annual beer production from gallons to barrels for large and small brewers. Current law allows small brewers to annually produce up to 31 million gallons of beer (which equals 1 million barrels) and large brewers to produce beer in amounts that exceed 31 million gallons. Although the bill changes the unit of measurement, it does not change the total amount of beer that small brewers may produce.⁸

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 10-18-23 |

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⁶ R.C. 4303.02.

⁷ R.C. 4303.022(B).

⁸ R.C. 4303.02 and 4303.022(A) and (B).