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*Bill Analysis*  
Legislative Service Commission

## **H.B. 529**

125th General Assembly  
(As Introduced)

**Rep. Seitz**

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### **BILL SUMMARY**

- Eliminates the Liquor Control Commission's authority to set minimum markups and to fix minimum prices on wholesale wine sales.
- Prohibits volume or quantity discounts to assist the wholesale or retail sale of beer or intoxicating liquor.
- Revises the law governing manufacturers' franchise agreements with wine distributors.
- Creates the Wholesale Wine Distribution Study Committee to study the best means of improving the wholesale distribution of wine in Ohio.

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### **CONTENT AND OPERATION**

#### **Minimum markups and minimum prices on wholesale wine sales**

Current law authorizes the Liquor Control Commission to determine and fix the minimum mark-ups at wholesale or retail, or both, for bottled wine and to fix the minimum prices at which the various classes of bottled wine must be distributed and sold in Ohio at wholesale or retail, or both. The bill eliminates the Commission's authority to determine and fix the minimum mark-ups *at wholesale* for bottled wine and to fix the minimum prices at which the various classes of bottled wine must be distributed and sold in Ohio *at wholesale*. But, it does not affect the Commission's authority to determine and fix the minimum mark-ups at retail for bottled wine and to fix the minimum prices at which the various classes of bottled wine must be distributed and sold in Ohio at retail. (R.C. 4301.13.)

#### **Prohibition against volume or quantity discounts**

Current law prohibits any manufacturer from aiding or assisting the holder of any wholesale permit that authorizes the sale of beer or intoxicating liquor, and

further prohibits any manufacturer or wholesale distributor from aiding or assisting the holder of any retail permit that authorizes the sale of beer or intoxicating liquor, by (1) gift or loan of any money, any property of any description, or any other valuable thing or (2) giving premiums or rebates. Similarly, the wholesale and retail permit holders are prohibited from accepting those gifts, loans, premiums, or rebates. The bill adds to these prohibitions *giving or accepting volume or quantity discounts*. (R.C. 4301.24.)

### **Manufacturers' franchise agreements with wine distributors**

#### **Background law**

The Alcoholic Beverages Franchise Law requires every manufacturer of beer or wine to contract with or offer in good faith to its distributors a written franchise providing for and specifying the rights and duties of both parties in effecting the sale of specified products or brands of the manufacturer (R.C. 1333.83--not in the bill). "Distributor" means a person who sells or distributes beer or wine to retail permit holders in Ohio, but does not include the state or any of its political subdivisions (R.C. 1333.82(C)--not in the bill). During the effective period of the franchise, a distributor must maintain adequate facilities and personnel so that the manufacturer's products or brands are at all times properly represented in the distributor's sales area, the manufacturer's reputation and trade name are protected, and the general public receives adequate servicing of the manufacturer's products or brands. And, the distributor must at all times act in good faith. (R.C. 1333.86--not in the bill.)

If a manufacturer or distributor cancels or fails to renew a franchise, the distributor must sell to the manufacturer, and the manufacturer must purchase from the distributor, all of the distributor's inventory of the manufacturer's products and sales aids at the laid-in cost to the distributor, including freight and cartage, provided that, upon payment, the distributor must transfer to the manufacturer good title to all property free of liens and encumbrances (R.C. 1333.85(C)).

Except as noted under "**Changes proposed by the bill**," below, the provisions of the Alcoholic Beverages Franchise Law described in the two immediately preceding paragraphs, and all other provisions of that Law, will continue to apply to manufacturers and distributors of *both beer and wine*.

#### **Changes proposed by the bill**

**Prohibited practices**. Current law prohibits a manufacturer or distributor of beer or wine, or a subsidiary of any such manufacturer, from performing certain practices. The bill provides that those prohibitions (described below) apply only

to manufacturers (and their subsidiaries) and distributors engaged *in the sale and distribution of beer* and *no longer* to manufacturers (and their subsidiaries) and distributors engaged in the sale and distribution of wine (R.C. 1333.84):

- Failing to act in good faith or without just cause in acting or purporting to act under the terms of a franchise or in cancelling or failing to renew a franchise.
- Awarding an additional franchise for the sale of the same brand within the same sales area or territory.
- Requiring a distributor to submit profit and loss statements, balance sheets, or financial records as a requirement to retain its franchise.
- Withholding a delivery ordered by a distributor, or changing or amending a distributor's quota of a manufacturer's product or brand, without reasonable cause.
- Coercing a distributor by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.
- Refusing to recognize the rights of surviving partners, shareholders, or heirs and failing to act in good faith in accordance with reasonable standards for fair dealing with respect to the distributor's right to sell, assign, transfer, or otherwise dispose of the distributor's business, in whole or in part, except that the distributor has no right to sell, assign, or transfer the franchise without the manufacturer's prior consent, which the manufacturer must not unreasonably withhold.

**Cancellation of or changes in a franchise agreement or sales territory assigned to a distributor.** Existing law generally prohibits a manufacturer or distributor *of beer or wine* from canceling or failing to renew a franchise or from substantially changing a sales area or territory (1) without the prior consent of the other party--unless it is *for just cause* and (2) without at least 60 days' written notice to the other party setting forth the reasons for the cancellation, failure to renew, or substantial change. Exceptions exist (described below) with respect to the "notice" aspect when certain events occur, and existing law specifies certain events that do and do not constitute "just cause" for purposes of the prohibition. (R.C. 1333.85.)

The bill limits the prohibition to manufacturers and distributors of *beer*. And, correspondingly, it provides (a) that neither party, when one is a manufacturer or distributor of beer (*but no longer of wine*), is required to give the

other party the notice described above if any of the following events occurs and (b) that the occurrence of any of the following events *constitutes just cause* for cancelling or failing to renew a beer franchise or for substantially changing a beer sales area or territory without the prior consent of the other party (R.C. 1333.85(A)):

- The filing of a petition in bankruptcy or an assignment for the benefit of creditors by the other party.
- The filing of an involuntary petition in bankruptcy against either party that is not dismissed within 30 days.
- The cancellation, revocation, or suspension for more than 30 days of any permit required to be held by either party to authorize the handling of beer.

As noted above, existing law explicitly provides that the occurrence of certain other events does *not constitute just cause* for the cancellation or failure to renew a franchise or for substantially changing a sales area or territory without the prior consent of the other party. The bill specifies that the occurrence of any of the events described below does not constitute such just cause if the manufacturers and distributors involved are engaged in the sale or distribution of beer (*but no longer of wine*) (R.C. 1333.85(B)):

- The failure or refusal of either party to engage in any act or practice that would result in a violation of any federal law or regulation or rule of Ohio.
- The restructuring, other than in bankruptcy proceedings, of a manufacturer's business organization.
- A unilateral alteration of the franchise by a manufacturer for a reason unrelated to any breach of the franchise or a violation of the Alcoholic Beverages Franchise Law.
- A manufacturer's sale, assignment, or other transfer of the manufacturer's product or brand to another manufacturer over which it exercises control.

**Successors.** Existing law allows a successor manufacturer *of beer or wine* that acquires all or substantially all of the stock or assets of another manufacturer through merger or acquisition, or that acquires or is the assignee of a particular product or brand from another manufacturer, to give written notice of termination, renewal, or nonrenewal of the franchise to a distributor of the acquired product or

brand of beer or wine within 90 days of the date of the merger, acquisition, purchase, or assignment. The bill limits this provision to successor manufacturers and distributors of *beer*. (R.C. 1333.85(D).)

### **Wholesale Wine Distribution Study Committee**

#### **Composition**

The bill creates the Wholesale Wine Distribution Study Committee to consist of the following 13 members (Section 4(A)):

- Two House of Representatives members, appointed by the House Speaker.
- Two Senate members, appointed by the Senate President.
- One representative of the Division of Liquor Control in the Department of Commerce, appointed by the Division's Superintendent.
- One representative of the Department of Taxation, appointed by the Tax Commissioner.
- Two representatives of the wine wholesale industry, one appointed by the House Speaker and the other by the Senate President.
- Two representatives of the wine retail industry, one appointed by the House Speaker and the other by the Senate President.
- Two representatives of the wine supplier industry, one appointed by the House Speaker and the other by the Senate President.
- One representative of wine consumer interests, appointed by the Governor.

#### **Duties**

The bill requires the Committee to study the best means of improving the wholesale distribution of wine in Ohio, including studying how other states regulate the wholesale distribution of wine. The Committee must take into consideration the perspectives of manufacturers, wholesalers, retailers, and consumers of wine in Ohio. And, it must submit its findings and recommendations to the House Speaker and Senate President not later than 210 days after the bill's effective date. Upon submission of the report, the Committee must cease to exist. (Section 4(B).)

**Appointments, officers, and compensation**

Committee members must be appointed not later than 30 days after the bill's effective date, and vacancies in the membership of the Committee must be filled in the same manner as provided for original appointments. Committee members must select a chairperson and serve without compensation or reimbursement. (Section 4(A).)

**Operative date**

The bill's provisions, except for the provisions creating and governing the operation of the Wholesale Wine Distribution Study Committee, become operative one year after the bill's effective date (Section 3).

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	07-15-04	p. 2138

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