

Capitolwire: Beer bill could hurt state brewers, they tell Senate panel.

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HARRISBURG (Jan. 26) – Several Pennsylvania brewers told a Senate committee on Tuesday that a proposal to make the state’s beer distribution laws more fair to out-of-state brewers could hurt their businesses.

The Senate Law and Justice Committee heard testimony on [House Bill 291](#), which would require all brewed beverages sold in Pennsylvania to be distributed using the current “three-tier system.” Under that system, breweries sell their product to licensed wholesalers, who in turn sell to retailers.

Current law requires out-of-state brewers to use an importing distributor to dispense their products, while in-state companies can either use a wholesaler or distribute directly to a retailer.

A 2005 U.S. Supreme Court decision said states cannot have different regulations for in-state and out-of-state wineries. While the case did not apply to brewed beverages, but some states have re-examined liquor laws generally to remove any unequal treatment of producers.

The House bill, which passed that chamber in July on a vote of 154-41, would require all brewers to go through a beer distributor, except for those who produce 75,000 barrels or less annually.

That change, said Michael Madigan, a Minnesota-based lawyer who has represented beer wholesalers in several states, would balance the state’s concern for having a tightly regulated distribution system for alcohol while guaranteeing access to the market for small brewers.

“It would equally burden out-of-state and in-state small brewers, and it would equally burden out-of-state and in-state large brewers,” Madigan said.

But brewers from Yuengling and Son, Inc., of Schuylkill County, and the Pennsylvania Brewers Guild said they are concerned by the 75,000-barrel limit to qualify as a small manufacturer and be allowed to self-distribute. That figure is arbitrary, and would “dissuade growth among smaller breweries,” said Ted Zeller, counsel representing Yuengling at the Senate hearing.

For Yuengling, which produces beer in the millions of barrels annually, that change would mean it could no longer self-distribute to its county-based retailers, Zeller said. For smaller companies, it could mean being forced to “sign up with a wholesaler system that might not even focus on their product,” he said.

One option, said Zeller and Artie Tafoya, of Harrisburg’s Appalachian Brewing Company, would be to allow self-distribution of a certain percentage of a brewer’s sales in Pennsylvania, instead of its total barrels.

Madigan cautioned that any production limits or other exceptions must be crafted so they don’t unfairly favor Pennsylvania brewers. He pointed to Massachusetts law that recently was struck down because the production limit was selected to ensure that all state wineries would be exempt.

Committee Chairman John Pippy, R-Allegheny, said he will be taking another look at that production cap to see if there’s a way to address the self-distribution concerns from local brewers while still clearing up potential constitutional concerns in regard to out-of-state companies.