



Craft Brewers, Wholesalers Strike Distribution Deal  
*Headed for Senate Sets 250,000 Barrel Threshold*  
Matt Murphy 7/18/20 6:00 PM

JULY 18, 2020.....Craft brewers and the state's beer wholesalers have reached a deal that would resolve a decade-long dispute over distribution rights centered around when a brewer can sever ties with their distributor, paving the way for the state's smaller beer brands to free themselves from relationships that they feel are inhibiting their growth.

The deal, if accepted by legislators on Beacon Hill, would apply to almost all of the more than 200 craft brewers in Massachusetts. The one notable exception would be Boston Beer Company, the brewer of Samuel Adams beer and the second largest craft brewer in the country. Sam Hendler, one of the three founding brothers of Jack's Abby Brewing in Framingham, helped negotiate the deal on behalf of the Brewers Guild.

"I'm really excited. There's still some anxiety because we don't have a signature from the governor on the bill just yet. We are anxiously hopeful for everything to play out over the next two weeks," Hendler said on Saturday.

The compromise would allow any qualified brewer that produces under 250,000 barrels of beer a year to terminate their relationship with their current distributor without having to show cause. In exchange, the brewer would have to pay fair market value for the brand and buy back the wholesaler's inventory and promotional materials.

The bill would also allow for an expedited arbitration process if the two sides cannot agree on a fair-market price for the brand.

The barrel threshold has long been the sticking point in negotiations between the two sides, and Hendler credited the decision by Jim Koch of Boston Beer to step back and take his company out of the mix with facilitating the compromise.

"It's going to cover the vast majority of craft brewers and really ensure that the brewers that need that flexibility that they have control of their own future," Hendler said.

Under current law, a brewer is locked into their relationship with a distributor indefinitely after six months of doing business together, unless they can prove to state regulators that the distribution company violated one in a set of very specific conditions. Small brewers have said that this can inhibit their ability to grow sales, especially if a distributor serves larger, more established clients and doesn't prioritize their craft brand.

Over the years, brewers have pushed for the right to sever those relationships without cause, but the sticking point has always been how small a brewery must be to qualify as a craft brewer. Boston Beer's Decision

With Boston Beer helping to lead the effort, the brewers have sought a threshold as high as 6 million barrels - which would align with the federal definition and cover the 4.5 million barrels of Samuel Adams produced annually. Distributors have suggested as low as 30,000 barrels, and last summer made the brewers an offer of 100,000 barrels.

Koch, however, agreed in this latest round of talks to support a compromise that would exclude his company.

"That was a big point in breaking the iceberg. Clearly this was much more difficult to resolve if Jim Koch and Sam Adams was still in the mix. Again, good faith in an effort to help the smaller craft brewers," Senate President Karen Spilka said.

In a statement, Koch said that the COVID-19 pandemic has made some brewers particularly vulnerable to wholesalers who might prioritize other products, and predicted that without reform some might not survive. He said that despite some concessions by wholesalers to include larger brewers, it was clear that the distributors would not support a bill that included Boston Beer. "From Lawrence to the Berkshires, craft brewers serve as economic engines, employers and draw tourism to their communities. If brewers have to wait another two years for a bill to be considered, some will not survive," Koch said in a statement provided to the News Service by the company. "Boston Beer had to make a decision. At the end of the day, that decision was to sacrifice ourselves by being excluded from Franchise Law reform in order to protect the hundreds of our fellow craft brewers in the state."

Spilka, an Ashland Democrat, has several craft breweries in her district, including Jack's Abby and Exhibit 'A' Brewing Company.

"Massachusetts has a thriving craft brewery scene. It's really exploding," she said. "Their growth was being jeopardized by their tenuous relationship with their distributors."

Spilka said she's been encouraging the Massachusetts Brewers Guild and the Beer Distributors of Massachusetts to find common ground for years, even before she became Senate president. "Persistence does pay off," she said.

The Senate Committee on Ways and Means plans to open a poll of its members on Saturday evening on the compromise legislation. The poll will close Sunday night at 6 p.m., in anticipation of bringing the bill to the floor for a vote on Thursday, Spilka said. Formal sessions for the Legislature are scheduled to end on July 31.

"If we do it Thursday and get it to the House, we'll have more than a week and since both sides are in agreement nobody will object, I hope," Spilka said.

Sen. Joseph Boncore, a Winthrop Democrat, filed legislation this session that proposed a three-tiered system, with different payments and notice periods required to terminate a distributor based on the size of the brewery, up to 6 million barrels. He credited Sen. Paul Feeney, the chair of the Consumer Protection and Professional Licensure Committee, with keeping the two sides at the table.

"Now that Massachusetts is becoming an epicenter for craft beers with strong local and national presences, it's good that we're going to be able to ensure in these tough economic times that's they'll continue to thrive," said Boncore, who credited breweries like Cambridge, Night Shift and Democracy in his district with becoming "pinnacles of renewal in the community," hiring locally and drawing tourists and other development.

Feeney said it was Spilka who asked him to make the issue a priority when she appointed him chair of the Consumer Protection Committee in 2019. He and Creem began convening face to face-to-face meetings with the two sides that continued off and on for the past year and a half.

"My goal was to just create an environment where both sides of the industry recognized there was a sense of urgency," Feeney said. "This legislation and this recognition of two entities in the same space, this is indicative of the importance, I think, of having a growing beer industry here in Massachusetts."

"Run Room to Innovate"

Joe Salois, the owner and president of Atlas Distributing in Auburn, said he's spent about a quarter of his career in the beer industry fighting this battle over distribution rights.

"To get to this point feels so so very good," said Salois, who sits on the board of the Beer Distributors of Massachusetts.

"We can go on and continue to build our businesses. There's a lot going on in the world and we're talking about beer. Both associations have been able to grow over the past few years because of the craft brewers' innovations and we get and respect that," Salois said.

Still, Salois said if the brewers were still insisting on a 6 million barrel threshold there likely would be no agreement today.

"I am extremely comfortable with this. As distributors our job is to represent our brewing partners in the best and highest way possible to build their brands. This protects us and gives them run room to innovate and align their business with their distributor," Salois said. "It's good for craft beer and it's good for consumers. The last thing we need to continue to do in this world we're in is to bring our disagreements to the public."

Salois said he employs about 225 people and distributes beer in central Massachusetts for over 50 brewers, including Sam Adams, Harpoon and Wachusett. He does not anticipate losing any brands because of the law.

Jack's Abby brews about 50,000 barrels of beer a year, and distributes into nine states. Hendler said his brewery would not necessarily be looking to terminate any of its relationships with distributors, but will still benefit if this legislation becomes law.

"Even if you're not looking to move wholesalers tomorrow this still benefits you tomorrow because you have a little more leverage and standing in working with your wholesaler," Hendler said.

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07/18/2020