



**Testimony of Edwin J. Shanahan, Executive Director  
Dunkin' Donuts Independent Franchise Owners, Inc.**

**House Bill # 1620  
The Fair Franchise Act**

**Pennsylvania House Committee on Consumer Affairs**

**October 21, 2015**

Honorable Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony on *House Bill #1620, The Fair Franchise Act*. For the record, my name is Ed Shanahan and I am the Executive Director of the Dunkin' Donuts Independent Franchise Owners (DDIFO).

Franchising is a great business model, when used properly. As we know, it creates abundant opportunities – it creates the opportunity for an entrepreneur to open that business that he/she always dreamed of, but it allows them to do so with an established brand, a known quantity, if you will. It allows that entrepreneur to open without having to “re-invent the wheel” - to recreate a product that he/she already believes to be superior to others. It allows that entrepreneur to focus on hiring the employees who will work to help make that business successful – and that dream, a reality.

There can be an unfortunate flipside to that promise of opportunity, however. In the case of a bad concept, or bad franchisor, it can create a fertile ground for that dream to become a nightmare. In the case of a bad concept, or a bad franchisor, it can unleash a torrent of devastation on that entrepreneur, on his/her family, on his/her life, from which he/she may never recover – it can cost franchisees everything!

When you invest a \$10,000 in a security, your risk is that you could lose your \$10,000 investment. However, when you invest in a franchise you risk much more. You risk your initial investment, business losses, and because you are most often bound by a personal guarantee, you also have all your personal assets, including your house, at risk. With this much on the line, is it really unreasonable to pass a law that ensures that predatory franchisors are not allowed to engage in deceptive practices?

Franchising is an industry that is growing - and growing up – in economic strength, financial prowess and corporate presence. Unfortunately, it has grown noticeably in corporate abuse and excess as well. We note that historically, as a new industry gets its footing and a larger share of American business, there is often a corresponding increase in corporate greed, excess and abuse. Franchising is no exception – and a few short years ago under the ownership of a host of private equity firms, Dunkin' Donuts was the poster boy for that excess and abuse.

With the current executive team at Dunkin' Donuts, the franchisor/franchisee relationship is significantly improved - in fact, most would consider it a good, strong and mutually respectful relationship, but not so for many other franchisees. It is time that the abuses perpetrated on hardworking franchisees - small businessmen and women - be identified and addressed. House Bill #1620 is a thoughtful bill that helps to resolve those inequities and prevent those abuses. It is neither extreme nor radical, but rather a balanced and sensible approach to addressing problems that continue to threaten jobs, investments and economic prosperity across Pennsylvania.

Let's consider what this legislation will do.

HB 1620 will require that when terminating a franchise agreement – firing the franchise owner, if you will – there be good cause to do so. It requires that a franchisor give a franchisee a specified period of time to correct a problem and cure a default.

As relates a franchisor's right to non-renew a franchise agreement, it keeps that ability intact, but it provides that non-renewal should be for good cause as well. HB 1620 requires that a determination by the franchisor that they will not be renewing the franchise agreement be conveyed to the franchisee 90 days in advance.

HB 1620 prohibits the interference with the right of association. It specifies that a franchisor cannot punish or retaliate against a franchisee because he/she joins an association of their peers – those with similar interests

and similar concerns. It also provides that a franchisor cannot discriminate between franchisees as relates costs, goods, services, etc., unless a valid business reason exists to do so.

HB1620 affirms the franchisor's right to approve or deny a transfer of the franchise, but it also mandates that said approval/denial be decided within a reasonable timeframe and that the franchisee be advised of the decision. Further, it provides that when a franchisee is terminated, he/she is properly and fairly compensated for the inventory, equipment, supplies and furnishings that the franchisor will confiscate.

And, HB 1620 provides that transactions between the franchisor and the franchisee be done in the spirit of good faith and fair dealing!

In the aggregate, the provisions of HB 1620 are a sequence of small steps that begin the process of balancing a business relationship that has long been out of balance. Opponents will likely paint this legislation as unnecessary and overly burdensome on franchisors. But, requiring good cause to terminate a franchisee isn't burdensome to a franchisor – it's a cornerstone of common decency; allowing a franchisee to join a community of his/her peers is not a burden to a franchisor – it's a freedom of association, a right implicit in the First Amendment to the US Constitution, the Bill of Rights; requiring that a company deal in good faith is not an overly burdensome expectation – it's a principle on which American business has stood for centuries; providing that a terminated franchisee is fairly compensated for his/her inventory, equipment and supplies is not a franchisor's burden, it is the proper disposition of that property; and, mandating a notice period before terminating a franchise that represents an individual's life's work is not an excessive requirement – it is common decency and a fairness we all should expect.

In terms of economic growth and job creation, you will likely hear that significant damage to the entire franchising industry in Pennsylvania will result from passage of HB 1620 – the same was alleged in Iowa when it enacted its Fair Franchise law in 1992; likewise, devastation was going to follow in Rhode Island in 2008 when their fair franchise law took effect; and in California last year, the world as we know it was sure to end if their Franchise Relations Act became law. This year, a refined version of that bill (AB525) was passed unanimously by both branches of the California legislature and signed into law this month by Governor Brown. The common thread – and the critical point – being that the sky was going to fall – until it wasn't!

Before I close, I would like to take a moment to answer a question that is oftentimes asked, "Why don't I hear from franchisees directly about this problem?" The answer is simple: there is significant exposure to them by publically supporting a bill like this. Franchisees put themselves at risk by speaking out against what their franchisor would want. In this industry, franchisee leaders tend to have a short lifespan if they're too vocal about their concerns. The intimidation factor is palpable and the pressure to remain quiet is intense.

Members of the committee, the bottom line is that by supporting HB 1620 you are acknowledging the realities of any and every industry – that there must be a certain balance in order for that industry, and all involved in it, to grow, to thrive, to succeed. I respectfully implore you to act favorably on HB 1620 and give the franchise industry the direction and the balance it needs to continue to grow and thrive.

I thank you for your time and consideration this afternoon.



October 21, 2015

The Honorable Robert W. Godshall  
Majority Chairman, House Committee on Consumer Affairs  
150 Main Capitol Building  
Harrisburg, PA 17120-2053

**Opposition: HB 1620**

Dear Chairman Godshall and Members of the Consumer Affairs Committee:

We are writing to express concerns with HB 1620, which has been referred to the House Committee on Consumer Affairs. The bill's stated purpose is to establish 'responsible franchise practices' and "protect franchisees from unfair practices in the sale and operation of franchised businesses". However, the bill before you would accomplish the exact opposite of its intended effect. The bill would further complicate and undermine the regulatory system already in place that governs franchise relationship with vague language and unreasonable new regulations. If the measure were to pass, it would result in significant harm to the 30,000 franchise small businesses in Pennsylvania, which generate over \$28 billion in economic output and employ over 318,000 workers.

HB 1620 takes unnecessary aim at an already heavily regulated business model that has proven to be extremely successful for all parties involved. It seems like a solution in search of problem that fundamentally does not exist in Pennsylvania or elsewhere. While the proposals in this bill may appear favorable to franchisees on the surface, their enactment will lead to a host of unintended consequences for small businesses across the state.

The Pennsylvania Retailers' Association respects Chairman Daley's intent, but would ask that you consider our concerns.

Thank you for your continued support of the retail industry in Pennsylvania.

Sincerely,

Brian A. Rider  
President & CEO

BAR:klg

Cc: Amanda Rumsey, Esq.  
Stephen Baldwin



EXECUTIVE SUMMARY  
FROM ARTIE TAFOYA,  
PRESIDENT/OWNER OF APPALACHIAN BREWING COMPANY  
SUBMITTED ON BEHALF OF THE BREWERS OF PENNSYLVANIA  
FOR THE PUBLIC HEARING CONDUCTED BY THE  
HOUSE CONSUMER AFFAIRS COMMITTEE  
OF THE COMMONWEALTH OF PENNSYLVANIA, AT HARRISBURG, PA,  
ROOM B31, MAIN CAPITOL, OCTOBER 21, 2015

Greetings, Chairman Godshall, Chairman Daley, and Members of the Committee, and thank you for the opportunity to offer testimony on behalf of the Brewers of Pennsylvania (BOP) at this public hearing. My name is Artie Tafoya and I am President and an owner of Appalachian Brewing Company which has several facilities in the State, including locally on Cameron Street in Harrisburg. I write you on behalf of the Brewers of Pennsylvania trade association representing the Pennsylvania brewing industry. Like the franchisees HB1620 is designed to protect, our members are small, independent businesses and range from our nation's largest American-owned brewery to a new wave of job-creating smaller breweries located throughout Pennsylvania. My brewery, Appalachian Brewing Company, is on the smaller scale; however, we suffer from the same sort of inequities of franchise relationships that our larger and medium size members endure. Nevertheless, we are growing, and expect to continue to grow so long as my partners and I believe investing in the Pennsylvania brewing industry is a sound strategy.

The beer industry has embraced protections of franchise laws for decades and we do applaud Honorable Chairman Daley in his introduction of HB1620 which seeks to redress inequities in the franchise relationship. Because of our familiarity with franchise laws, the BOP is offering this testimony to illuminate potential issues associated with franchise legislation and to request a responsible amendment that may have positive impacts in our own brewing industry which serves a vitally important role in restaurant hospitality. The landscape of our brewing industry has changed radically over the last 30 years as evidenced by the massive consolidation of InBev and Anheuser-Busch and the merger of Miller and Coors. National consolidation of brewers has reached a point at which nearly 90% of America's beer is produced by three companies, none of them with a single brewery in Pennsylvania. One brewer controls more than half of the national market. Even our largest members, D.G. Yuengling & Sons and Sam Adams are considered, at best, mid-sized breweries on a national scale. The maker of Budweiser sells more beer in a week than Yuengling brews in a year. It takes the Miller-Coors merger two weeks to top Sam Adams' annual production. Two mega breweries produce more than 75% of the beer consumed in this great country. Now, there is even talk of a merger between these two mega breweries which, whatever the result, stands to negatively impact our independent Pennsylvania brewing industry.

Our beer franchise laws are unique but have application and relevancy to your hearing. Because of Pennsylvania's beer franchise laws, Appalachian Brewing Company must appoint an exclusive wholesaler to a defined territory and that distributor relationship is in perpetuity unless the brewery has "good cause" to terminate the wholesaler. Similar "good cause" provisions are contained within HB1620; however, fundamental changes in our industry have caused significant inequities which impact your decision making on the

Executive  
Committee

appropriate manner to protect franchisees in Pennsylvania. Attached to this testimony are two graphs which show the number of breweries versus beer wholesalers in 1990 to 2015, and the projected number of breweries and beer wholesalers until the year 2030. Prior to 1990 there were less than a couple hundred breweries, many of them large powerful breweries serviced by over 3,000 wholesalers nationwide. These larger breweries had significant bargaining power over wholesalers who competed with one another over brand rights and their portfolios in the brewing marketplace. It is the exact fact pattern which created a profound imbalance of contractual power in favor of the manufacturer. This allowed the manufacturer to reserve pervasive contractual rights over the franchise relationships. This certainly lead to disparity of bargaining power which, similarly, HB1620 seeks to address and it is appropriate to protect smaller independent businesses which rely upon another's service, products and intellectual property to succeed. The BOP commends the House Consumer Affairs Committee for conducting this hearing to consider HB1620.

Now, in today's brewing industry, there are over 4,000 breweries in the United States and the Brewers of Pennsylvania is proudly represented by 93 of those breweries. The 3,000 wholesalers have been cut in half to less than 1,500. By year 2030, it is projected that there will be nearly 7,000 breweries in the United States and hopefully more investment in the brewing industry and less than 1,000 wholesalers in the United States. Because of these simple, raw facts, there exists a profound imbalance of contractual power in favor of the wholesaler who is larger than the breweries for which they control their distribution and proprietary marks. In our brewing industry, established beer franchise laws are no longer a shield but a sword which limits a brewer's freedom to change wholesale partners in the event it believes that their wholesale partner is no longer adequately representing their interests in the market. Keep in mind that no Pennsylvania brewery is one of the mega breweries that are dominating the marketplace and the Commonwealth's smaller brewers have suffered significantly from a lack of focus by my wholesaler in the marketplace. Though most brewers may have good wholesaler partners for the most part and have had limited issues with certain wholesalers; however, those limited issues have cost many breweries significant amounts of dollars and has been the main reason for brewery failures. The inequities that are in the beer franchise laws and the Pennsylvania Liquor Code, likewise, need to be redressed and are having collateral impacts on the franchisees contemplated in HB1620.

Because of the significant consolidation of the wholesale industry caused by mega breweries, many of the new small brewers have less wholesalers to choose from when opening up a new market. Many times the answer from the available wholesalers is, "We are not taking on any new brands at this time." Typically, they end up with either an ABI wholesaler or a Miller-Coors wholesaler. Then, the wholesalers' distributor contracts with the mega breweries may even mandate that the wholesaler must focus on their brands over smaller Pennsylvania brewery brands. If they have chosen a wholesaler and it is not appropriately focusing on their brands in the marketplace, any attempt to terminate that wholesaler to go with another wholesaler would be met with the threat of litigation which could put them out of business. Under our Pennsylvania Liquor Code, a wholesaler has the right to file a lawsuit and request an injunction against me demanding that I must continue to supply them with beer or pay them an exorbitant amount just to buy back the right to distribute my own products. The costs of the lawsuit alone could put me out of business and the wholesalers capitalize on their unequal bargaining position because of the significant wealth being realized by the remaining wholesalers by reason of consolidation.

The consolidation of the beer industry will also affect restaurant franchisees under HB1620. Small breweries like mine continue to face access to market obstacles created by the beer franchise laws. Since wholesalers can act with impunity in representing a small brewer,

consumer choice will be limited since you will see many small breweries go out of business because of the consolidation of the wholesale system. The wholesale system has become a closed system with no new market entrants and, when coupled with consolidation factors discussed above, there is less competition which leads to less service of a large portfolio of brands. Beer is an integral part of any restaurant revenue and there is certainly a significant amount of franchise relationships in the restaurant industry. Qualities of the franchise arrangements in the beer industry will have negative affect on restaurant franchisees by limitation of service and consumer choice which will also affect restaurant franchisee revenues.

Returning to HB1620, I found it quite remarkable the sophistication of the drafted Bill and that it understood relative inequalities must be material in order to seek redress under the law. Specifically, fractional franchise interest is a franchise relationship which the sales arising from the relationship will not exceed 20% of the franchisee's total dollar value in sales during the first year of operation. This percentage is consistent with many other states that have franchise law protections; however, it is not consistent with established PA beer franchise law. Under HB1620, if, as a franchisee, you sell less than 20% of a franchiser's goods or services, you do not receive the protections of the law. This is a logical conclusion as it is based upon reality that that franchisee's business is not wholly reliant upon a certain franchisor's products. Under beer franchise laws, any attempt to terminate that franchise relationship would be met with expensive lawsuits and possible injunctions mentioned above no matter what the percentage of sales. Keep in mind that in today's beer market, wholesalers have hundreds of brands from which to choose to represent and they are no longer relying upon a limited number of breweries. The BOP would respectfully request that HB1620 be amended to provide that any fractional franchise in the malt beverage distribution industry be exempt from any remedy available under the Pennsylvania Liquor Code, Sections 431 and 492.

We still believe wholesaler protections are necessary to protect our Pennsylvania wholesale partners from large mega brewers or any brewer which is more than 20% of a wholesaler's business. We would also respectfully recommend that the Committee discuss setting forth standards as to when a franchisee may obtain injunctive relief against a franchisor so there is certainty under the law. Under beer franchise laws, breweries have been sued for injunctive relief even when their sales are less than 1% of a wholesaler's house. Although the inequities are flipped in the beer industry when comparing it to the franchise relationship which HB1620 seeks to redress, it is submitted that both sides would benefit from clarity under the law with regard to injunction standards for franchise relationships.

Again, the Brewers of Pennsylvania and Appalachian Brewery applaud the Committee for addressing inequities in franchise relationships and respectfully request that the beer industry be made a part of such legislation. Thank you, again, for the opportunity to discuss this important piece of legislation.



---

Brewers of Pennsylvania • [BrewersofPA.org](http://BrewersofPA.org)

50 N. Cameron Street Harrisburg, PA 17101

**For Immediate Release**  
Brewers of Pennsylvania  
Harrisburg, PA

**Contact: Dan LaBert**  
804-876-2337  
[dlabert@brewersofpa.org](mailto:dlabert@brewersofpa.org)

**For Immediate Release: October 20, 2015**

**Brewers Support Common Sense Approaches To Franchise Reforms**  
*Brewing Industry Experience Adds Credibility To Reforms Sought In HB1620*

HARRISBURG, PA - Brewers of Pennsylvania (BOP), the trade organization representing Pennsylvania's growing legion of beer manufacturers, has submitted written testimony to the public hearing being conducted by the House Consumer Affairs Committee of the Commonwealth of Pennsylvania on October 21, 2015. BOP cited language within the proposed Bill which would ensure greater consumer access to a diverse range of beer products as a common sense approach to needed industry reforms.

Aimed at resolving franchise relationship inequities that exist within the restaurant industry, Chairman Daley's Bill addresses fractional franchise interest in which the sales arising from the franchise relationship does not exceed 20% of the franchisee's total dollar value in sales. This percentage is consistent with many other states that have franchise law protections; however, it is not consistent with established PA beer franchise law. This is a logical conclusion as it is based upon the reality that that franchisee's business is not wholly reliant upon a certain franchisor's products. In this testimony, BOP respectfully requests that HB 1620 be amended to provide that any fractional franchise in the malt beverage distribution industry be exempt from any remedy available under the Pennsylvania Liquor Code, Sections 431 and 492.

"The three tier beer distribution regulations mandated by Pennsylvania Liquor Code act as an artificial barrier between beer manufacturers and consumers, constraining selections," notes BOP Executive Director Dan LaBert. "The rapid rise of new breweries cannot be adequately served by the middle tier wholesalers whose ranks continue to decline due to consolidation. Restaurants and their patrons suffer in this situation as well."

Within their testimony, Brewers supplied two graphs which showed the number of breweries versus beer wholesalers in 1990 to 2015, and the projected number of breweries and beer wholesalers until the year 2030. One graph demonstrated that prior to 1990 there were approximately 300 breweries, many of them large powerful breweries serviced by over 3,000 wholesalers nationwide. These larger breweries had significant bargaining power over wholesalers who competed with one another over brand rights and their portfolios in the brewing marketplace. In today's brewing industry, there are over 4,000 breweries in the United States while the 3,000 wholesalers have been cut in half to less than 1,500. By year 2030, it is projected that there will be nearly 7,000 breweries in the United States and hopefully more investment in the brewing industry and less than 1,000 wholesalers in the United States.

Brewers of Pennsylvania applauded the Committee for addressing inequities in franchise relationships noting that HB 1620 seeks to address and it is appropriate to protect smaller independent businesses which rely upon another's service, products and intellectual property to succeed.

**#supportPAbeer#**

**Executive  
Committee**

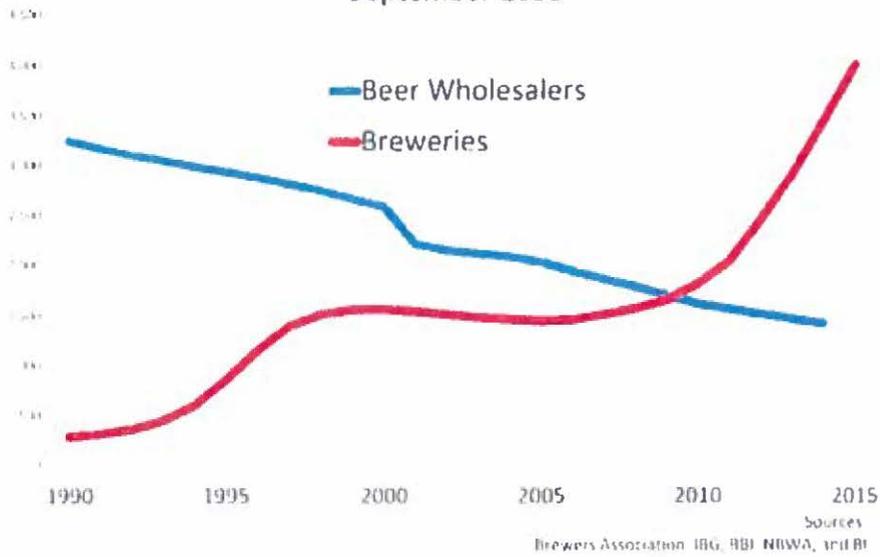
---

Arnie Talaya, Appalachian Brewing Co / Scott Smith, East End Brewing Co / Bob McAlherty, North Country Brewing Co / Domen Malfara, Old Forge Brewing Co  
Katho Reitsman, Samuel Adams Brewery / Chris Ingolet, Truogs Brewing Co / Bill Costaleski, Victors Brewing Co / Tom Kehoe, Yards Brewing Co / Dave Casnell, D.D. Alvington & Son, Inc

### About the Brewers of Pennsylvania

The Brewers of Pennsylvania is a 501c6 trade association that brings together leaders of Pennsylvania based breweries in order to promote and protect the brewing industry in the state. Established in 2011, the Brewers of Pennsylvania serves the consuming public of Pennsylvania by encouraging brand diversity in the market.

Number of Breweries vs. Beer Wholesalers, 1990 - September 2015



Projected # of Breweries and Beer Wholesalers, 2015-2030

