

**Testimony of Rodrigo Diaz, PLCB Chief Counsel
and
Bobbi Peifer, PLCB Director of Licensing**

Chairman Pyle and Chairman Deasy,

Good morning. My name is Rod Diaz. I am the Chief Counsel for the Pennsylvania Liquor Control Board. With me is Bobbi Peifer. She is the Director of the Board's Bureau of Licensing. We are here to provide this committee with some background information on how the Liquor Code treats restaurant liquor licenses and hotel liquor licenses. We will also raise some points you may want to consider when considering House Bill 1617.

When Prohibition ended in 1933, the Legislature created licenses in order to regulate the sale of alcohol in Pennsylvania. It decided that only certain types of businesses would be allowed to sell alcohol for on-premises consumption. Two of the main types of businesses were restaurants and hotels.

The Legislature created definitions for restaurants and hotels. Basically, a restaurant was defined as a business that is capable of selling and serving food to 30 people at one time. A hotel was defined as a business which could sell and serve food to 30 people at one time and had at least 10 (in a city) or 6 (in all other municipalities) bedrooms available for rent. Since certain municipalities only allowed for the sale of beer rather than beer, wine and liquor, a beer-only license, or retail dispenser license, was also created. It is similar to a restaurant liquor

license except that the premises can be a little smaller and the holder can only sell beer.

There was no limit to the number of restaurant, retail dispenser and hotel licenses that could be issued by the Board, so the licenses did not have any additional value to the owner beyond the fact that they allowed the owner to sell alcohol.

This changed when the Legislature passed Act 358 of 1939, which is referred to as the quota law. The quota law prevented the Board from issuing any additional restaurant or retail dispenser licenses in a municipality if the number of such existing licenses exceed one per 1000 inhabitants. The quota law did not prevent the Board from issuing additional hotel licenses but the requirements for qualifying as a hotel were tightened. The minimum number of bedrooms necessary in order to qualify as a hotel were increased based on the population of the municipality, so for example, 15 bedrooms were needed in municipalities with a population of 100,000 or more.

In order to protect existing businesses, existing licenses were “grandfathered” Therefore, if a municipality already had more than one restaurant license per one thousand inhabitants, those licenses could be renewed. Similarly, if a building had been granted a hotel license under the 1939 requirements, the license would be renewed by the Board even if the premises did not meet the new requirements. If a hotel license holder attempted to transfer the hotel license, however, the new location must meet the new bedroom requirement.

Over the years, the quota on restaurant and retail dispenser licenses has been tightened – to one in 3,000 inhabitants – and transformed from a municipality-based quota to a county-based quota. The definition of hotels has also become tighter over the years so that, currently, a hotel in a municipality of 100,000 or more needs at least 50 bedrooms. Again, however, existing licensees have been grandfathered.

A consequence of having a quota on restaurant and retail dispenser licenses has been that the licenses themselves now have value, since a person who wants to sell alcohol at his or her restaurant must buy an existing license, since the Board cannot typically provide them with one. Depending on the county, retail licenses can sell for six figures.

Grandfathered hotel licenses also have value because they allow the sale of alcohol by someone who has less bedrooms than what the Liquor Code currently requires. The value of these grandfathered licenses increased when the Legislature allowed some of them to continue to operate without having to make any bedrooms available. Their value, however, is limited by the fact that these licenses cannot be transferred to a new location.

We would estimate that we have approximately 561 grandfathered hotel licenses of which 261 no longer need to make bedrooms available.

House Bill 1617 would allow the holder of some grandfathered hotel licenses to apply to convert the hotel license to a restaurant license. It is not our place to

say whether that is a good or bad idea. As an agency, however, we would simply ask that the Legislature provide clear guidance as to what the Board is to do. That being said, here are some things you may wish to consider:

- The language of the bill imposes an upfront fee of \$25,000 to convert a license and a further fee if the license is transferred within five years of the conversion. The second fee is based on the “transactional cost” of the transfer. It is unclear to us what is meant by transactional cost. For example, are we to consider the cost of the building, if a building is involved? Business goodwill? Inventory? Because of this, and because cost attribution can be manipulated by savvy licensees, you might want to consider a flat fee in case of a subsequent transfer.
- There are two groups of grandfathered hotels that are or were eligible to ask the Board to be exempt from the bedroom requirement. It appears that only hotel licenses that were issued prior to 1949 and were granted room exemptions by the Board will be eligible to convert their hotel licenses into restaurant liquor licenses. Those that were granted room exemptions but whose licenses were issued after 1949 and those whose licenses were granted prior to 1949 but did not receive a room exemption prior to January 1, 2019 will not be eligible. We mention this now because we anticipate receiving calls later.
- Typically, when a restaurant liquor license transfers into a municipality or when a new restaurant liquor license is applied for within a municipality,

the applicant must first ask the municipality for permission, if the number of existing restaurant and retail dispenser licenses equals or exceeds one license per 3,000 inhabitants. This bill is silent on the issue, so it is unclear to us whether municipal approval is contemplated. The Legislature should clearly state what it decides on this issue.

We appreciate this opportunity to speak with you and are happy to answer any questions you may have.