

Testimony: HB 1617 H-license Conversions

Presented to

**Pennsylvania House of Representatives
Liquor Control Committee**

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By

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**PENNSYLVANIA
LICENSED BEVERAGE
& TAVERN ASSOCIATION**

Chairman Pyle, Chairman Deasy, members of the Committee, good afternoon. I'm Tom Tyler, vice president of the Pennsylvania Licensed Beverage and Tavern Association. As you know from when I testified in April on another topic, I am also the owner of McStew's Irish Pub, an independent family-run establishment in Levittown, just north of Philadelphia.

Let me begin by thanking you all for inviting the Pennsylvania Licensed Beverage and Tavern Association to testify today about HB 1617, a bill that would allow some H liquor licenses to become R liquor licenses. We appreciate being here to share our thoughts.

The Tavern Association represents more than 500 small business taverns, pubs, and restaurants across the state. In a nutshell, our Membership is primarily the small business "R" and "H" licenses which are often family-operated, like mine. We are your hometown bars, taverns, pubs, and restaurants.

Our average Member has 17 employees, serves about 4,300 patrons monthly, and has nearly 98 seats and bar stools within their establishments. Food sales are about 67% of their business, while adult beverages account for 33% of sales.

We are not your chain restaurants that make millions and are accountable to shareholders. Instead, we are your neighbors trying to make a living while contributing to our communities.

Since we have both H and R licenses within our membership, we are very interested in making sure this bill is done right to avoid any unintended consequences.

H licenses currently have certain limitations and requirements that make them slightly different from an R license. Because of these differences, the cost of an H license is often less than an R license. In addition, particularly since Act 39, H license prices have remained stable, while R license values in many locations across the state have risen. As a result of changes made in Act 39, an R license is often now much more valuable.

And, in part, that is the reason why we are here today. There are some that will argue that the price of an R license has made it difficult for new players to get into the business particularly due to R license quotas. To some degree, R licenses are like a stock on the New York Stock Exchange. Value increases with demand and value.

We ask you to take a closer look at the history of these licenses.

With creation of the Pennsylvania Liquor Control Board, Pennsylvania lawmakers created quotas to restrict the number of R licenses that could be issued in any given municipality. The rule was simple – one license per 3,000 citizens of that municipality. Through the last century, R licenses could only be moved within the municipality in which it originated. Not too long ago, changes were made to allow R licenses to be transferred to other municipalities within the same county in which they originated. This change helped address issues related to population shifts within counties, and had an effect upon the market for R-licenses. Municipalities that had grown since the start of the quota system could now increase the number of R licenses, assuming their local government agreed.

Unlike R licenses, there are no quotas on an H license. The Pennsylvania Liquor Control Board will issue an H license to hotels that meet the minimum room requirements, assuming the hotel is located in a

“wet” municipality. H Licensees must have rooms available for public accommodation on the licensed locations.

In 2006 the General Assembly made temporary changes to the hotel provisions of the Liquor Code. Under this change, certain H licensees could apply for a public accommodation room waiver. H license owners who did this were able to become restaurants, but their licenses remained listed as an H license. In 2007 the General Assembly again opened a short-term window of opportunity to H licensees to allow room waivers; however, licensees were not permitted to convert former rooms into restaurant space. While an H license could move to a new location within the county, the room waivers cannot and must remain at the location for which the license was issued. To say this in a different way, if an H license with a room waiver is transferred, the room waiver is not portable.

HB 1617 would fix that by allowing these H licenses to become R licenses with the same rights as an R license.

However, this is also where we need to exercise caution. We urge this committee to move carefully to avoid devaluing the investment that current R-license owners have made in purchasing their licenses.

This is particularly important now that HB 1524 has passed and would allow up to 75 R licenses to be transferred into any county for a tourist development project.

We certainly want to avoid a huge and sudden increase in any county because it would devastate the value of existing R licenses.

In May at a PLBTA Board meeting, we met with representatives of the Pennsylvania Restaurant and Lodging Association regarding this bill. We agreed to work with the PRLA to help certain H-license owners as well as to address concerns related to quotas.

As the PRLA is aware, we cannot support this bill as written unless two areas are addressed.

First, we have a concern over the following language ... “An application to transfer a restaurant license that was converted from a hotel license under this clause in accordance with section 404 within five years after the board received the application for the restaurant license shall be subject to a fee of twenty-five per centum (25%) or twenty-five thousand dollars (\$25,000), whichever is greater, of the transactional cost for the transfer of the restaurant license.”

It would be possible for a former H-license owner to convert to an R, instantly see a huge increase in the value of their license, and then sell quickly to make a significant profit even with such a penalty.

We don’t believe that should be the intent of the bill. We also believe this could cause unintended consequences in the marketplace.

We would prefer a sliding scale that decreases with time after conversion in the event of a license transfer within five years. We suggest that if a sale is made within the first year that the fee is 90% of the transactional cost for the transfer of the restaurant license. That scale would decrease by 20% each year until five years has passed. So, in other words, year two would be 70%, year three would be 50%, year four would be 30%, and year five would be 10%.

The second area the Tavern Association would ask you to address is the initial fee of \$25k. This figure seems arbitrary and was questioned in our discussions with PRLA. We suggest that the initial fee should take into consideration the marketplace value of R licenses compared to H licenses.

With those changes, the Pennsylvania Licensed Beverage and Tavern Association could support HB 1617, pending a review of other possible amendments that we're not aware of at this time.

We raise these concerns because R license owners have experienced too many unintended consequences in recent years as a result of Act 39. Now is not the time to jump into any change affecting licenses and the value of current licenses without fully knowing how it will impact the marketplace and current licenses.

As you heard me say in April, the Tavern Association supports a level playing field. That level playing field has slowly eroded with time. And frankly, it has not existed for the small business taverns, pubs, and bars since Act 39 went into effect and created advantages for several new types of licensees.

Like many tavern owners, I made an investment into a license many years ago because licenses came with certain exclusive ownership rights.

This investment was made for my future, much like a retirement investment. With a little hard work over decades of ownership, my hope was that the value of my license would increase, helping me later in life with my retirement.

I'm no different in these regards when compared to thousands of other "R" license owners. Many of us took out loans to get into the business. That was the price to pay to get into the business. Every one of us, like every business man or woman, hoped that the value of their license would increase over decades of work. And, in fact, like me, many still use their "R" license as part of their retirement investment planning.

You'll recall that earlier this year I testified that an unintended consequence of Act 39 was a drop in six-packs to-go sales. For the 12 months prior to Act 39 in August of 2016 my take-out sales were \$652,500. In two short years my sales fell more than \$125,000 and it only continues to get worse.

Losing the exclusive right to sell six-packs to go that was once promised by the state to "R" license holders, devalued my business and thus my license.

Please leave no doubt that losing that business has caused a huge pothole for me to fill.

So, I ask, please don't do anything more that will further devalue my license. Move cautiously and take a careful look at potential unintended consequences.

With HB 1524 passing and allowing up to 75 R licenses to move into a county for tourism reasons, and with amendments to HB 1617, there will be plenty of opportunities in upcoming years for those wishing to enter the business.

If anything, I ask you to please help us address business-related problems that Act 39 has caused such as delays in beer deliveries and fewer delivery date options. In a January 2019 statewide survey, we conducted, nearly 35 percent say they've run out of certain malt beverages and had to wait for a

delivery, which shouldn't be a surprise considering Act 39 significantly increased retail options for six-packs and singles. The solution that we propose to address this is to allow tavern owners the right to pick up their own malt beverages when they are between delivery dates from a distributor and run out of supplies.

Thank you again for this opportunity to testify today. I'll end by encouraging you all to visit one of our state's many fine taverns, pubs, bars, or restaurants to enjoy a meal and drink with friends and/or family in the upcoming weeks.

If you have any questions, our executive director, Chuck Moran, and I'll be happy to provide my thoughts today or afterwards.