

Testimony of Rod Diaz and Tisha Albert before
Republican Policy Committee on
House Bill 2757 (PN 3399)

Good Morning. My name is Rod Diaz and I am the chief counsel for the Pennsylvania Liquor Control Board. With me is Tisha Albert, who is the Board's Director of Regulatory Affairs. We are here to discuss dual licensing and the issues it raises.

Before we begin, we want to emphasize that our comments should not be construed as support for or against this particular bill. Those policy issues are for the Legislature and the Governor's office to decide. While we will provide some technical comments on House Bill 2757, those comments are meant to be technical observations.

Let's start off by explaining what we mean when we say dual licensing. Dual licensing is when two different licenses are in effect at the same location. It is an exception to the general rule under which the Liquor Board will only issue one license for any specific location.

There are good reasons why, generally speaking, the Board will only allow one license to operate at a specific location and further require that the licensee have exclusive control of the location. Licensees are strictly liable for violations of the Liquor Code and Board Regulations. Strict liability means the licensee is held responsible for violations even if the licensee did not participate in the activity personally and did what it could to prevent the activity from happening. A good example of this would be a situation where a minor attending a wedding reception consumes alcohol it acquires from a friend who is 21 years old. The Liquor Code and the Courts will hold the licensee responsible for the minor acquiring the alcohol even if the licensee's employees did not provide the alcohol directly and even if the licensee's employees refused to serve the minor previously.

With such a high (yet appropriate) standard of care imposed upon them, it is important that licensee have exclusive control of the licensed premises. Further, since different licenses have different privileges and prohibitions, it is important for a licensee to know what they can and cannot allow on the premises. Having a single license in effect at a particular location helps the Board (and the BLCE, which is the entity in charge with enforcing the Liquor Code) establish who is accountable for the behavior in question, what behavior is permissible and what behavior is not permissible.

There are some provisions in the Liquor Code which allow dual licensing. Fortunately, these provisions also typically address the issues that we just mentioned, i.e., who is to be held accountable and what can and cannot occur on premises.

For example, one of the permits that the Board issues is a special occasion permit. The permit allows the holder to sell alcohol for on and off premises consumption for up to 19 days. Section 408.4(l) of the Liquor Code states that the Board shall not issue a special occasion permit for premises already licensed by the Board unless the applicant owns the premises and is a volunteer fire company, volunteer rescue company or volunteer ambulance squad. By limiting dual licensing to those situations where the applicant holds both licenses, the Liquor Code eliminates the issue of who should be held accountable if something unfortunate happens. Further, by describing this permit as something that is added to a location already licensed, it also makes clear that the rights and privileges of the special occasion permit are the ones that are in effect.

Another example of permissible dual licensing are the satellite locations available to limited wineries and limited distilleries, under section 505.2 and 505.4 of the Liquor Code. Both limited wineries and limited distilleries can operate up to five additional locations in addition to their primary manufacturing location. Limited wineries can operate their locations with other licensed limited wineries; limited distilleries can operate their locations with other licensed limited distilleries. The Liquor Code specifies that a single manager can supervise the entire operation,

that each licensee can sell anywhere within the commonly licensed areas and that each licensee is responsible for its recordkeeping. Since each of the licenses are identical – they are all either limited winery licenses or limited distillery licenses, the issue of what rights and privileges are in effect is resolved. Further, the Liquor Code tells us who is in charge of the premises (the manager) and who is to be held responsible for what.

Turning to House Bill 2757, it would amend the Liquor Code by allowing a single entity to operate a brewery and limited distillery at the same location. Only a location used in actual manufacturing both liquor and malt or brewed beverages may be so dually licensed. The licensed areas for each would be clearly delineated and may overlap. Each license is limited to its normal hours of operation. Citations may be issued to either or both licenses if violations of the Liquor Code or Board Regulations occur.

Our comments on the bill are as follows:

- Since the same legal entity will operate both licenses, the question of who is responsible is largely answered. That being said, since each individual licensed location typically needs its own manager, you may wish to add language that expressly allows a single person to manage both.
- By regulation, a brewery that allows on-premises consumption of alcohol, must have seating for ten and provide food. By statute, a limited distillery does not have to provide seating or food. To avoid confusion, you may want to consider whether to have a uniform seating and food requirement for the jointly licensed areas.
- It is a bit unclear what the phrase “Only the location used for manufacturing liquor and malt or brewed beverages may be dual-licensed” means. Does it mean that only the portion of the premises that houses the manufacturing equipment may be dual-licensed or does it mean that only

the primary area that is licensed may be dual-licensed? Either way, and to avoid the earlier confusion we mentioned, you may just want to have one licensed footprint that is covered by both licenses.

- Similarly, while the language limits dual licensing to the location used for manufacturing liquor and malt or brewed beverages, since limited distilleries can – but are not required – to manufacture at their additional board approved locations, you may want to make clear that dual-licensing is limited to the primary location used to manufacture.
- While the current language only addresses breweries and limited distilleries, you should anticipate that limited wineries may ask for this authority as well.

We realize that we have given you a lot of information today but are happy to answer any questions you may have.