

**WRITTEN TESTIMONY**  
**IN SUPPORT OF H.B. 127**

To: Ohio House of Representatives

C/O: Chairman Wiggam, State and Local Government Committee

From: Edward W. Hastie, III (Attorney at Law) – Hastie Law Office, LLC

Date: March 17, 2021

Re: Testimony in support of H.B. 127 (Amnesty for Violations of Health Orders)

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**I. Introduction**

a. My Background

Chair Wiggam, Vice Chair John, Ranking Member Kelly and members of the Ohio House State and Local Government Committee - My name is Edward Hastie. I am the Managing Member of Hastie Law Offices – a boutique law firm focused primarily on representing Ohio’s hospitality industry. I also serve as the legal counsel for the Ohio Licensed Beverage Association, representing on premise accounts across Ohio.

I am honored to appear before this committee in support of HB127 and believe the effects of the legislations are necessary to help mend the extensive damage that has been wrought on an industry that directly employs over 10% of Ohio’s workforce – not to mention the other secondary “support” industries that are directly tied to Ohio’s food service providers: namely transportation, vending, agriculture, manufacturing and construction industries.

During my 15 years of practice I have represented a wide swath of the industry including bars, restaurants, wineries/breweries, hotels and everything in between. My clients include all types of owners – ranging from “mom & pop” locations to large national chains.

Besides my law practice, I also own multiple liquor permit businesses and serve as a member of council for City of Grandview Heights. My varied experience allows me extensive insight on all facets of the operations, regulations and practices of the hospitality industry. Humbly, I submit there is no one in the state with more insight on the effects of COVID-19 on Ohio’s bars and restaurants. In my day to day life – I regularly advise hundreds of clients on all facets of operation during these trying times.

These honorable men and women need your help. Please support H.B. 127.

b. Brief summary of why H.B. 127 is necessary

Ohio’s liquor permit holders deserve a second chance – all have paid immensely for the COVID-19 regulations – even those that were found in violation. H.B. 127 is necessary for a multitude of reasons:

- Permit Holders deserve a chance afforded to felons and criminals – the chance to expunge their record

- The Ohio Liquor Control Commission uses cumulative discipline when meting out punishments – leaving a COVID violation on the record of an otherwise lawful business makes future issues exponentially worse (even if not COVID related)
- The use of the Commission as the vehicle for enforcing health or safety orders is not authorized by the rules, past practices or the Legislature – Importantly, the Commission has never used Rule 52 rules to enforce any previous violations (not with the smoking ban, overcrowding or building code violations)
- Allowing the death penalty on a business for this once-in-a-lifetime pandemic is unfair, unnecessary, and overly harsh – the Legislature should send a message that closing businesses permanently is not appropriate in light of a temporary issue. This is a chance to begin what has long been talked about: eventual legislative oversight of Administrative action.
- The industry has suffered plenty –mandated closures and curfews have cost businesses on average 2000 hours of lost time. When they are open, the lost revenue, added expense, and massive lost opportunities are punishment enough.
- The regulations have had their desired effect – compliance was incredibly high, this industry directly helped “flatten the curve”, and the end is in sight. Expunging violations will allow the industry to move on and recover.

c. Background of the effects of COVID-19 on the hospitality industry

I think everyone on this Committee would agree that no industry has been more affected by COVID-19 and the accompanying economic devastation.

I have been a party to hundreds of conversations with desperate and dejected small business owners. Irrespective of background, the message has been universal – owners and their employees are on the cusp of ruin – with many already closed, never to return. The very fabric of the industry, and the neighborhoods they serve, are forever altered because of the ruin perpetrated by COVID-19 and the governmental response.

d. Specific examples

There are dozens of soul-crushing moments that are forever seared into my memory, and I’d like to share a few with you briefly:

March 15, 9:30 pm – I stood before a room of over 50 employees of my businesses and my partner’s businesses. As was already known, we were ordered to indefinitely shutter operations as part of the efforts to combat the spread of COVID-19. With no assistance on the horizon, we were forced to layoff everybody. That night tears were shed and the feeling of hopelessness was palpable. It was the most heartbreaking moment in my years as a businesses owner. We still haven’t fully recovered.

July 2021: A man I had represented years prior showed up at my office with tears in eyes. He had packed up his car to move back to Missouri with his mother after owning his “dream” – a small bar/restaurant in Central Ohio. Even though he was allowed to partially reopen he realized very quickly

that he could not survive. He stopped by my office with a simple request: out of pride, he couldn't bring himself to turn in his keys to his landlord. He asked me to do it for him. After a few more minutes of deeply personal conversation he walked out the door with a few hundred dollars to his name and car with the entirety of his belongings strapped to the top. With him left about 10 jobs and his life savings.

With the regulations in place, curfews and reduced capacity – this scene would play out dozens of times throughout the past year. It included the United State's Marine Corp veteran losing his decade old bar, the mother of 2 college aged kids shuttering her unique "farm to table" concept and filing for bankruptcy, the single mother losing the only job that could pay her a livable wage and still give her time to raise her family.

e. Summary of health orders on the industry

Regardless of how you feel about the effectiveness of the Governors Orders, the economic devastation was to be expected. The litany of regulations/shutdowns/restrictions is important to remember:

- March 15 – May 15: Closure of all in person dining/beverage service via "Rule 13" by the Ohio Liquor Control Commission ("Commission")
- May 16 – May 22: Patios only (many bars did not reopen)
- May 23 – July 29: Liquor permit holders could reopen indoor dining under the DineSafe Ohio directives which resulted in vastly reduced capacity and revenues
- July 29 – November 22: Commission enacts Rule 80 via its 120 day "emergency" powers. This creates a 10:00 pm curfew on the sale of alcohol.
- November 22 – February 2021: Rule 80 expires and the Administration enacts an individual curfew that requires all people to be home by 10:00pm, effectively instituting another curfew on businesses. This curfew was eventually rescinded.

Cumulatively, permit holders lost almost 2,000 hours of sales. The results were as expected: the vast majority of the hospitality industry is down 25% - 75% in revenue and in many cases much more. The ones that did survive, spent tens of thousands of dollars retrofitting their facilities, purchasing PPE, and trying to navigate the uneven and borderline impossible landscape of enforcement.

**II. Regulation and enforcement**

Rest assured, no industry was more targeted than Ohio's bars/restaurants. The State utilized not only their "liquor agents" (Ohio Investigative Unit) but also conscripted agents from the Ohio Casino Control Commission and the Bureau of Workmen's Compensation. The Governor's stated intent was to "surge" law enforcement into this singular industry. To the best of my knowledge, no other industry faced such scrutiny. Not surprisingly, many places were cited for de minimus violations of the COVID regulations.

H.B. 127 is a necessary step to bring this industry back to life. Hundreds of businesses have suffered immensely due to the uneven enforcement of the Dine SafeOhio Orders and extended curfews. The vast majority of cited business were long standing beacons of lawful operation.

a. Violations issued by the Ohio investigative Unit

It's safe to say the vast majority of the industry did everything in its power to follow the regulations and do their part to stem the tide of COVID-19.

Based on published reports, the Ohio Investigative Unit conducted at least 29,000 inspections, citing at least 300-400 locations – many for very minor violations. On my own experience, I have seen bars cited for briefly having 12 people in a booth, a customer getting up to go to the bathroom and forgetting their mask, and my personal least favorite: allowing an otherwise socially distanced person to stand up and consume alcohol.

Very few locations thumbed their noses at the rules.

Even the ones that had more “egregious” violations were generally outliers – one such was from a business that opened in the middle of COVID and their opening night was a little too successful - the crowd was larger than expected. Not surprisingly, they were never a problem again. Other examples include: (a) an owner of a campus bar who took his first night off in months to spend time with his family – and his staff wasn't as diligent as they should have been and (b) a nightclub with years of lawful operation getting a few violations several months into the pandemic after dozens of visits from OIU. These (and the hundreds of case like them) have resulted in expansive fines, suspensions, and even revocations.

H.B. 127 is a chance for the Legislature to recognize that Health Order violations are not a death knell for a business and a show of respect for the Herculean suffering these permit holders have experienced.

**III. Specific rationale why the enforcement of health orders by the Commission was inappropriate.**

The targeting of the hospitality industry had a few different iterations. What began as a total shutdown of all “non-essential” businesses morphed into various curfews (much longer than the 120 days allowed by law) and finally into the unprecedented usage of Rule 52 to enforce health orders/curfews.

a. Rule 52 has never been used to enforce health or safety rules in the history of the Commission

Throughout the COVID pandemic, the Commission used Ohio Administrative Rule 4301:1-1-52 (Rule 52) to enforce the DineSafe Ohio Order and its masking, social distancing and operational restrictions. This was unprecedented and troubling. The Administration elected to not seek specific authority for the Commission to do so – as it has with all other “health and safety” regulations.

For example – there is a specific administrative rule relating to the potability of alcohol and the cleaning of beer taps. The Commission has specifically delegated authority to enforce these restrictions.

In the past, where there was no authority – there was no Commission enforcement. For example, during the implementation of the “smoking ban”, the Commission never once heard a case for allowing a patron to smoke indoors. Further, they have never used it to enforce capacity regulations, punish for fire code/building violations, and the like. Accordingly, they should have never been allowed to directly sanction a businesses' liquor permit.

Rule 52 is used in other novel ways. After the expiration of the Rule 80 curfew – the Administration enacted a general curfew against individuals. This was really just a way to circumvent the 120 day limitation on emergency rules. In reality, the health order curfew was a thinly veiled targeting of liquor permit holders. To the best of my knowledge, not a single person was cited for violating the curfew, only liquor permit holders. Further, I don't believe any other type of business was cited for "breaking curfew" – only bars and restaurants.

HB127 would correct this blatant targeting of otherwise lawful operators.

b. Rule 52 is not an appropriate vehicle for enforcing Health Orders.

For the first time in its history, The Commission decided inappropriately to expand its authority through an existing rule to enforce a health order. Rule 52(B)(1) states:

(B) Prohibited activities; no permit holder, his agent or employee shall knowingly or willfully allow in and upon his licensed permit premises any persons to:

(1) Engage in any disorderly activities;

[remainder of rule irrelevant].

Disorderly activities "are those that harass, threaten or physically harm another person including threats or menacing behavior, fighting, assaults and brawls or... [a violation] of 2917.11 of the Revised Code." See OAC 4301:1-152(A)(1).

ORC 2917.11 is Ohio's disorderly conduct criminal statute. There is no history suggesting it has ever been used or interpreted to criminally cite anyone in Covid-19 or pandemic related scenarios.

Essentially, the Commission (by enforcing the Covid-19 Orders through Rule 52) is saying a patron is committing the crime of Disorderly Conduct when they (for example) stand-up and drink a beverage or walk to the bathroom without a mask on or is at a bar past the purported curfew. Not surprisingly, the Commission does not enforce other laws that are analogous (i.e. "smoking ban").

Tellingly, I am aware of no case where a permit holder has been sanctioned by the Commission for being over-crowded or having a building code violation. The Commission does not do so because they have been granted no authority to take such action. To only enforce selective Health Orders without explicit authority is non-sensical and flies in the face the Commission's prior practice.

As to curfews, ask yourselves this question: If the Commission used a specific rule in the past for authorizing a curfew, why did they not just enact an extension? The answer: because it would have been illegal to do so after 120 days. This is yet another example of unfair enforcement.

H.B. 127 is a chance to repair this inequity.

c. Amnesty is appropriate because the Commission uses progressive discipline.

The effects of a COVID violation by a permit holder extend well after the pandemic will be over. Under O.R.C. Sec. 4301.252(A)(2)(a)-(c) the Commission must increase its penalties depending on the number of violations in the last two (2) years:

Zero violations: \$100-200 per day of suspension  
One violation: \$200-400 per day of suspension  
Two violations: at least \$300 per day of suspension  
Three +: \$500 per day of suspension

To allow COVID violations to stand will result in extreme future punishments for wholly unrelated offenses. H.B. 127 is an appropriate way to limit a business owners exposure in future matters.

#### **IV. Conclusion**

For the above-stated reasons, I respectfully ask this Committee to recommend passage of H.B. 127. The Ohio hospitality industry has suffered enough. The ability to expunge prior violations is one that should be granted to businesses, not just criminals. As we hone in on the return to normalcy, you have a chance to save otherwise lawful businesses from extinction, retain jobs, and preserve valuable tax revenue for the betterment of Ohio.

Please seize the opportunity.

Respectfully submitted,

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