

DENNIS M. O'BRIEN, MEMBER
ROOM 100 MAIN CAPITOL
HOUSE BOX 202020
HARRISBURG, PA 17120-2020
PHONE: (717) 787-5689
FAX: (717) 787-1339

PHILADELPHIA OFFICE:
9811 ACADEMY ROAD, LOWER LEVEL
PHILADELPHIA, PA 19114-1715
PHONE: (215) 632-5150
FAX: (215) 281-2094



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES
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AUGUST GAUCUS CHAIRMAN
REVIEW COMMISSION

Original: 2372

January 27, 2004

Syndi Guido, Policy Director
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

Re: Proposed Rulemaking, Identification Number 17-64
Title 37. Law, Part 1. State Police
Chapter 23. Administration of the Bureau of Liquor Control
Enforcement Age Compliance Check Program

Dear Ms. Guido:


We write as the Chairmen of the House Judiciary Committee to provide you with comments of the House Judiciary Committee concerning the above-referenced proposed Pennsylvania State Police regulations. The comments received to date are as follows:

1. Subsection 23.21(b) should include a curriculum on the prevention of alcohol misuse and abuse. The Committee believes every precaution should be taken to ensure that minors acting as underage buyers do not develop issues with alcohol before or after reaching the age of majority.
2. Subsection 23.22 (a) should clearly state that no less than one bureau officer is required to be present for each underage buyer. The Committee suggests this be made clearer to ensure not only compliance with the statute, but the safety of the underage buyer as well. As this subsection reads in the proposed regulations it appears that one bureau officer could supervise multiple underage buyers. One Bureau officer and ten underage buyers would appear to satisfy this subsection's requirement that an "age compliance check shall be conducted with no less than one bureau officer and one underage buyer." The Committee suggests that the proposed language read "no less than one bureau officer for each underage buyer."
3. Subsection 23.22(e) states that the bureau officer "will endeavor to maintain visual contact with the underage buyer." The standard "will endeavor" is not sufficiently clear. The committee suggests that the proposed language state "the bureau officer shall maintain visual contact with the underage buyer." This change is necessary in order to ensure compliance with the law and the safety of the underage buyer.

4. Subsection 23.22(j) provides for notifying the licensed premises of the results of the age compliance check. The subsection provides that "A bureau officer shall be responsible for insuring notification... to the licensed premises." The Committee suggests that the proposed regulation clearly identify the person who is to provide the notification and that the notification is made to the actual licensee, not to the generic "licensed premises." The Committee notes that Title 18 section 6310(c)(3) requires that notification be made to a licensed person. The Committee can foresee situations where management employees may be responsible for selling or furnishing alcohol to minors, receive the immediate oral notification and receive the subsequent written notification and never inform the actual licensee or delay notice to the actual licensee. In order to ensure that immediate action is taken by the actual licensee to prevent future violations of the law, the Committee believes it is necessary that all notifications be made to the actual licensee. Further, to ensure notification is made, the bureau officer supervising the underage buyer who made the sale should be charged with the responsibility of making the notifications required by the proposed regulations. Additionally, paragraph (1) provides that if a licensed premises is not compliant "immediate verbal notification will be provided followed by written notification within ten working days." Paragraph (2) addresses notification to a compliant licensed premises, but it does not include a time frame for making a notification of compliance. The Committee believes that the written notification of compliance should also be made within 10 working days to the actual licensee.

On behalf of the House Judiciary Committee, thank you in advance for reviewing these comments. We look forward to our reviewing your changes to address our concerns.

Respectfully,



Dennis M. O'Brien
Republican Chairman
House Judiciary Committee



Kevin M. Blaum
Democratic Chairman
House Judiciary Committee

DMO'B:MSS:js

cc: The Honorable Robert E. Nyce
Exec. Dir., Independent Regulatory Review Commission

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PSP LEGIS OFFICE
STEPHEN MONEJJ
FAX: (610) 481-1111

FAX NO. 1111811024

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P. 02

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REVIEW COMMISSION

**Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
January 6, 2004**

**SUBJECT: Proposed Rulemaking, Identification Number 17-64
Title 37, Law, Part I. State Police
Chapter 23. Administration of the Bureau of Liquor Control
Enforcement Age Compliance Check Program**

**TO: HONORABLE JOE CONTI
CHAIRMAN
SENATE LAW & JUSTICE COMMITTEE**

**FROM: FAITH S. DIEHL *YSDuill*
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD**

Refer to: 3-9454

We have received a copy of your December 23, 2003 memorandum in this matter. Attached to your memorandum was a copy of the proposed rulemaking received from the Pennsylvania State Police.

This office has reviewed the proposed rulemaking.¹ Act 141 of 2002 had amended the Crimes Code as it relates to the prohibition on minors purchasing, consuming, possessing or transporting liquor or malt or brewed beverages as well as the prohibition on inducing minors to buy liquor or malt or brewed beverages. The amendment to these provisions authorize the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") to use individuals between the ages of 18 and 20 for the purpose of attempting to purchase alcoholic beverages to ensure that licensees are complying with Pennsylvania law. The statute required the Bureau to promulgate regulations pertaining to these compliance checks. The regulations require at a minimum, that the minor and officer in question undergo training approved by the Bureau. Licensees are to be notified of the result of the compliance check. A licensee who did not provide alcohol to minors would be notified of its compliance with the law in writing; a licensee who did provide alcoholic beverages to the minor in question would be immediately verbally advised by the supervising

¹ Also attached was proposed rulemaking pertaining to designation of emergency vehicles which is not applicable to this agency.

RECEIVED TIME JAN. 7. 3:42PM

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Office Chief Counsel Fax: 717-787-8820

The Honorable Joe Conti
January 6, 2004
Page 2

Bureau officer and would be notified in writing within ten (10) days of the date of the compliance check.

Generally speaking, the regulations require Bureau officers to complete training before participating in a compliance check. The underage buyers would also undergo training which at a minimum shall include the study of applicable provisions of the Liquor Code and the Crimes Code, safety protocols, undercover investigations and testifying in court. Each compliance check will be conducted by no less than one (1) Bureau officer and one (1) underage buyer. The Bureau officer shall enter and remain inside the premises during the compliance check. The compliance check will be conducted during regular business hours and the Bureau officer will endeavor to maintain visual contact with the underage buyer. Once the Bureau officer determines it is safe and appropriate to conduct the compliance check, the underage buyer may purchase or attempt to purchase alcoholic beverages. The underage buyer may not consume the liquor or malt or brewed beverages.

Upon the purchase of liquor or malt or brewed beverages, the underage buyer shall deliver the liquor or malt or brewed beverages to the Bureau officer as soon as possible. If the licensed premises is not in compliance, immediate verbal notification will be provided followed by written notification within ten (10) working days; if the licensed premises is found in compliance, written notification will be provided.

As to specific provisions of the proposed regulations, this office notes that proposed regulation 23.1 defines "purchase" as "obtaining food, non-alcoholic beverages, liquor, alcohol or malt or brewed beverages for consideration." However, throughout the rest of the proposed regulations, the word "purchase" is used in a manner consistent with the common dictionary definition of "purchase," i.e., to acquire. Thus, for example, section 23.22(g) states "underage buyers may purchase or attempt to purchase liquor or malt or brewed beverages." Section 23.22(i) states "upon purchase of liquor or malt or brewed beverages." Thus it is clear that the word "purchase" is not used in the manner it is defined in Section 23.1.

Section 23.21(a) indicates that Bureau officers must complete training approved by the Bureau. However, it is unclear what, if anything, that training shall consist of, particularly when that language is compared to section 23.21(b) in which the regulations require underage buyers to also undergo training but sets forth four (4) areas of study - applicable provisions of the Liquor Code and Crimes Code, safety

Office Chief Counsel Fax: 717-787-8520

Jan 6 2004 9:43 P.04

The Honorable Joe Conti
January 6, 2004
Page 3

protocols, undercover investigations and testifying in court - which must be included in the training.

Finally and generally, it is unclear what transpires if a compliance check is not conducted consistent with the regulations. Specifically, Act 141 made an exception to the Crimes Code to protect both the State Police and the underage buyer from being criminally prosecuted for conducting a compliance check. That means that a compliance check that is run inconsistent with the proposed regulations could expose the officer or minor to criminal charges. However, it is not clear whether a compliance check which is not conducted in accordance with the statute and the regulations would prevent the Bureau from nonetheless charging the licensee in question with providing alcohol in violation of 493(1) of the Liquor Code. Put another way, while it is clear that a licensee who provides alcohol to a properly trained undercover underage buyer who purchased the alcohol while in view of a properly trained Bureau officer could be charged for providing the alcohol in question, it appears that nothing would prevent the Bureau from citing a licensee who provided alcohol to an untrained underage buyer who was not operating under the appropriate supervision of a Bureau officer.

It should be noted that earlier versions of House Bill 850 which ultimately became Act 141 of 2000, had imposed some additional requirements such as the minor not orally misrepresent the individual's age and had strongly suggested that a compliance check in which the officer and employee did not undergo appropriate training would not be valid. See House Bill 850, Printer No. 2341.

If this office can provide any additional information, please feel free to contact us again.

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PENNSYLVANIA STATE POLICE

**POLICY OFFICE
SYNDI L. GUIDO, DIRECTOR
1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110
(717) 772-0905**



Fax: (717) 705-1750

FAX TRANSMISSION COVER SHEET

Date: January 7, 2003
To: *Mary Wyatta, Esquire*
FAX: 783-2664
From: Syndi L. Guido

Attached are comments that the Chief Counsel to the LCB sent to the Senate Law & Justice Committee regarding PSP's proposed regulation 17-64.

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Senate of Pennsylvania



Kelly Brown Phenicie, Esquire
Senate Majority Legal Staff
Rm. 350 Main Capitol
Harrisburg, PA 17120
Phone: 717-787-2409
Fax: 717-787-7024



Stephen F. Tuckey, Esquire
Senate Majority Legal Staff
Rm. 350 Main Capitol
Harrisburg, PA 17120
Phone: 717-787-2409
Fax: 717-787-7024

TO: Synda Guido

FAX: 705-1750

FROM: _____

DATE: 1/7/04

TOTAL NUMBER OF PAGES: 4

Comments: _____