

PENNSYLVANIA TAVERN ASSOCIATION
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December 23, 2003

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RECEIVED
PENNSYLVANIA COMMISSION

Honorable Dennis M. O'Brien, Chairman
Pennsylvania House Judiciary Committee
Original:2372 100 Main Capitol Building
Harrisburg, PA 17120-2020

RE: Act 141 Regulations - Age Compliance Check Program

Dear Chairman O'Brien:

The Pennsylvania Tavern Association has received a copy of the Pennsylvania State Police, Bureau of Liquor Control Enforcement, proposed regulations on the "Age-Compliance Check Program." For the information of the Judiciary Committee, the Pennsylvania Tavern Association offers the following comments:

Definitions:

The Association believes that the definition of an "underage buyer" should track closer to the legislative intent. As proposed, the regulations define an "underage buyer" as an individual "between the ages of 18 and 20" who works for the PSP and participates in the compliance check.

There are many 18 to 20 year olds that could easily pass for 30 or even older. Act 141 was not enacted so that the PSP to play "gotcha" with bartenders by utilizing a 19-year-old underage buyer whose outward appearance would lead a reasonable person to believe that they are in their late 20's or early 30's. However, the regulation as proposed would allow the BLCE to do just that.

To remedy this problem, we request that the regulations be amended to provide that the "underage buyer" is also an individual who a reasonable person standing in the shoes of the server would believe to be underage at the time of purchase or attempt to purchase and would require the underage buyer to produce valid proof of age.

Compliance Checks:

The Association believes that the section on Age Compliance Checks (§ 23.22) should be amended to ensure that the checks be done by one compliance officer and one underage buyer.

The regulations as proposed provide that there be "no less than one bureau officer and one underage buyer" involved in a compliance check. That leaves

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open the possibility of having a single bureau officer and multiple underage buyers. And, the Association would be concerned about the lack of proper supervision of these minors on licensed premises.

In the same vein, § 23.22(e) of the proposed regulations provide that the bureau officer "**will endeavor to** maintain visual contact with the underage buyer." We question the burden that this subsection requires of the BLCE. What exactly does "will endeavor to" mean? The Association is concerned that a failure to maintain visual contact between the bureau officer and the underage buyer will create evidentiary problems.

The Association asks that the BLCE be held to a standard where they "shall" maintain visual contact with the minor. We believe that the bureau officer should be close enough to the minor to keep an eye on him/her. But, at the same time, they should not be so close as to create situations where it is unclear who is actually purchasing the alcohol - the bureau officer or the minor.

Notice of Compliance/Non-compliance:

The Association is dissatisfied with the written notification provisions of the proposed regulations. If the tavern is found in compliance, they seem to get an "attaboy" on the spot (though it's not explicit). However, if the tavern is accused of violating the underage drinking laws, they will get written notice "within ten working days." These regulations make no mention of when or if a tavern would receive a citation for violating the law.

The purpose of these limited checks is to halt the illegal sale of alcohol to minors. And, we all can agree that immediate notice of the compliance check (with the results of the check) is vitally important to the success of the program. The Association believes that notice of compliance or non-compliance should come immediately after the check.

Such notice should be specific to include date, time and location of compliance check, as well as the name of the server who refused or granted the sale.

If a server has exposed the licensed establishment to liability by serving an individual who is clearly underage, the licensee should know immediately so that he/she can protect against the liability that follows with additional illegal sales. Waiting 10 days to let a tavern owner know that he has a server who sells alcohol to kids defeats the purpose of the compliance check - that server can continue to sell alcohol to minors unabated for at least 10 days (maybe longer if the notice doesn't include the name of the server).


On the other hand, if a server refuses to serve an underage buyer, the tavern owner should be able to reward the server for doing his/her job properly.

In either case, a detailed notice given closer to the time of the compliance check will provide better results.

On behalf of the Pennsylvania Tavern Association, I thank you for your kind consideration of this correspondence. It is our hope that, through this process, we can establish an effective, reasonable, program to weed out the bad actors within the hospitality industry.

If you have any questions about this letter, or would like to discuss this matter in greater detail, please do not hesitate to contact me.

Respectfully yours,


Amy Christie, Executive Director

cc: Honorable Kevin Blaum, Chairman

MILLIRON ASSOCIATES

ATTORNEYS AT LAW

FACSIMILE TRANSMITTAL SHEET

To: Robert Nyce, Exec. Dir.	From: Jim Mann
FAX NUMBER: 783-2664	Date: January 20, 2004
COMPANY: IRRC	TOTAL NO. OF PAGES INCLUDING COVER: 4
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
Re: Comments - Proposed Rulemaking	YOUR REFERENCE NUMBER: Age Compliance Check # 17-64

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please find comments from the Pennsylvania Tavern Association relating to the Pennsylvania State Police proposed rulemaking 17-64, on the Age Compliance Check Program. The comments were originally forwarded to the State House Judiciary Committee.

If there are any questions at all, please do not hesitate to contact me.

Sincerely,



Jim

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 REVIEW COMMISSION