

## **Comments of the Independent Regulatory Review Commission**



### **Pennsylvania Liquor Control Board Regulation #54-74 (IRRC #3026)**

#### **Conversion of Suspension to Fine**

**December 4, 2013**

We submit for your consideration the following comments on the proposed rulemaking published in the October 5, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Liquor Control Board (Board) to respond to all comments received from us or any other source.

#### **1. Economic or fiscal impacts; Need for the regulation; Reasonableness of requirements.**

In response to Question #10 of the Regulatory Analysis Form (RAF) regarding why the regulation is needed, the Board gives two reasons, one of which is that fines received in lieu of suspensions **may** not cover the cost, in work hours, of processing the conversion. If the fines are needed to cover the cost of processing the conversion, the Board has not provided information related to this need. In fact, in response to Questions #23 and 23a related to fiscal costs and past three-year expenditure history, the Board responded “minimal” and “N/A,” respectively. If the cost of processing the conversion is a reason for needing this regulation, the Board should provide additional information. For example, what are the fiscal costs associated with implementation and compliance for state government? Specifically, what is the cost to process a conversion? What is the expenditure history for the program? In the Preamble and RAF submitted with the final-form regulation, we ask the Board to provide more detailed information that supports the need for the regulation on this cost basis and to demonstrate that the fiscal impact is reasonable as relates to the cost.

#### **2. § 7.10. Conversion of suspension to fine. – Conforms to intent of General Assembly in enactment of the statute; Clarity; Reasonableness of requirements.**

Currently, Subsection (d) contains a formula for converting a suspension to a fine. The formula is used to calculate the dollar amount of the fine per day of suspension, with two exceptions. The first exception in Paragraph (d)(1) addresses the possibility that the calculated amount could be less than \$100, in which case the fine is set at \$100. The second exception in Paragraph (d)(2) states that if the suspension was issued for a citation that required a minimum fine amount of \$1,000 per day, a minimum fine of \$1,000 per day will be set. We note that the minimum fine amount for citations is provided for in Section 4-471(b) (relating to revocation and suspension of licenses; fines) of the Pennsylvania Liquor Code (Liquor Code). 47 P.S. § 4-471(b).

The Board proposes to delete the formula from Subsection (d) and create two tiers of fines based upon the possible minimum fine amount that could have been imposed in lieu of a suspension. The first proposed tier states that if the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is \$100, then a minimum fine of \$1,000 per day will be set. However, Section 4-471(b) of the Liquor Code states that if an administrative law judge imposes a fine for a citation, the minimum fine amount shall be either \$50 or \$1,000 depending upon the violation. Because the statute does not reference a \$100 minimum fine amount, the regulation is not clear as to which suspensions for citations this would apply. The Board needs to explain the derivation and relevance of the \$100 fine reference. Furthermore, the final-form regulation should clarify to which suspensions the \$100 minimum fine amount would apply and how the fines are consistent with the Liquor Code and intent of the Legislature.

Additionally, by deleting the formula and providing for only a minimum fine, the Board has essentially removed the standard for how fines will be set. With no upper limit in place, the Board could find itself setting fines in an arbitrary and capricious manner which could lead to an unfair result for licensees. For example, one licensee could be fined \$1,000 per day while another licensee with a similar violation could be charged \$1,000,000. The Board should reconsider the manner in which it makes its calculations and explain how it intends to avoid an unfair and potentially unconstitutional imposition of its fines.

Finally, since the Board is removing the formula from Subsection (d), the words “calculated” and “formula” are no longer applicable and should not be used.

### **3. Compliance with the RRA.**

The information contained in response to Question #15 of the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest. Specifically, the Board has not included a citation to the relevant provisions of the federal definition of small business that were reviewed in the development of the rulemaking and an analysis of their applicability or inapplicability to the regulation. Without this information, we cannot determine if this proposed regulation is in the public interest. In the RAF submitted with the final-form regulation, the Board should provide the federal citation, as well as the number of persons, business, small business (as defined in Section 3 of the RRA, Act 76 of 2012) and organizations which will be affected by the regulation.