

Comments of the Independent Regulatory Review Commission



Pennsylvania Liquor Control Board Regulation #54-69 (IRRC #3094)

Discount Pricing Practices

July 22, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the May 23, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (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.

Section 13.102. Discount pricing practices. – Consistency with statute; Need; Clarity.

Consecutive or nonconsecutive hours

The *Summary* in the Preamble states “the proposed amendments are necessary so that the regulations pertaining to happy hour limitations are consistent with the Liquor Code (47 P. S. §§ 1-101 - 10-1001)” and, in particular, Act 11 of 2011 (Act 11) and Act 113 of 2011 (Act 113). As amended, the Liquor Code, at 47 P.S. §§ 4-406(g) and 4-442(g), states that the holder of a certain license “may hold happy hours up to four **consecutive or nonconsecutive** hours per day and up to fourteen hours per week” (Emphasis added.) Subsection (a) does not include the phrase “consecutive or nonconsecutive.” We recommend adding this phrase to make the regulation consistent with the statute.

Events not counted against the four-hours or fourteen-hours per week

As amended by Act 113, 47 P.S. §§ 4-406(g) and 4-442(g) state:

. . . Events conducted under the authority of 40 Pa. Code § 13.102(b) shall not be counted against the four-hours or fourteen-hours per week.

For consistency with the statute, we recommend adding this language to Subsection (b).

Retail Licensee

Subsection (a) sets forth happy hour requirements for “retail licensees.” Happy hours are addressed for two categories of license in the statute. Act 113 amended Subsection 406(g) of the Liquor Code which is under the title “Sales by Liquor Licensees; Restrictions” and uses the phrase “the holder of a retail license.” 47 P.S. § 4-406(g). Act 113 also amended Subsection

442(g) of the Liquor Code which is under the title of “Retail Dispensers’ Restrictions on Purchases and Sales” and applies to a different category of “the holder of a retail dispenser license.” 47 P.S. § 4-442(g). The term used in the regulation, “retail licensee,” is not defined in existing 40 Pa. Code Section 13.1. *Definitions*. Therefore, the regulation is not clear regarding which specific licensees the Board considers to be “retail licensees.” We recommend adding a definition of this term to Section 13.1 to clarify which specific licensees the regulation addresses and to specify that the regulation addresses both of the licensees the statute addresses: “the holder of a retail license” and “the holder of a retail dispenser license.”

Board Advisory Notice 16

Subparagraphs (b)(2)(i), (ii) and (iii) would replace a reference to Board Advisory Notice 16 with the specific language of a portion of that notice that provides examples. A regulation carries the full force and effect of law, whereas an advisory notice is a lesser standard that does not. We have two concerns.

First, it is not clear why these examples are needed in the regulation and how they would be enforced. We recommend the Board delete the examples, or support them by explaining the need for the examples, what protections they provide and what provisions of the statute would be used to enforce them.

Second, if the examples are retained, the examples need to be clarified. Existing Paragraph (b)(2) begins by allowing “one specific type of alcoholic beverage or drink per day.” The examples then allow a broad discount for “all brandy drinks.” Why must a licensee be prohibited from discounting “all Blue Hound products,” “all Kendall’s wines,” and “all Jackson’s products”? Why is it permissible to discount wine by the types “Chardonnay” and “Merlot,” regardless of the manufacturer, but beer can only be discounted by a specific brand? Why couldn’t all light beer or all stout beer be discounted? If these examples are retained, we recommend making them clearer and consistent.