

Comments of the Independent Regulatory Review Commission



Pennsylvania Liquor Control Board Regulation #54-83 (IRRC #3095)

Posting Requirements for Extension

December 23, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the October 24, 2015 *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. Clarity.

The proposed regulation requires an applicant requesting an extension of a liquor license to include additional premises to post public notice for a period of at least 30 days. Current regulations require the notice to be posted for at least 15 days. The Board, in the Preamble and in response to Regulatory Analysis Form (RAF) questions #7, #10 and #14, describes the purpose of the rulemaking is to amend the Board's regulations to conform with changes to the law effectuated by Act 212 of 2002.

Section 403(g) of the Liquor Code (Code) (47 P.S. 4-403(g)) requires every applicant for a new license or for the transfer of an existing license to post, for a period of at least 30 days, a notice of such application. Act 212 of 2002 amended Section 403(g) of the Code by increasing the number of days that an applicant for a new license or for the transfer of an existing license must post notice from fifteen days to thirty days.

Section 404 of the Liquor Code (47 P.S. 4-404) distinguishes three separate categories of applications: a new license, a license transfer to a new location and an extension of an existing license to cover an additional area. The references in Section 404 to “. . . the extension of an existing license to cover an additional area” were added by Act 1 of 2006.

Based on our review of these two sections, it appears an application for the extension of an existing license to include additional premises does not fall under either category of a new license application or an application for transfer of an existing license. The Board has provided additional information explaining that license transfers are considered to include extensions. Specifically, the Board cites the case of Uiana, Ltd. v. PLCB as its legal authority in determining that Section 403(g) applies to extensions of license. The Board should reference the case in the

Preamble and RAF to the final-form regulation as the statute alone does not make clear that Section 403(g) applies to license extensions.