

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held May 19, 2016

George D. Bedwick, Chairman
John F. Mizner, Esq., Vice Chairman
W. Russell Faber
Murray Ufberg, Esq.
Dennis A. Watson, Esq., Dissenting

Order Issued: June 6, 2016
Regulation No. 54-85 (#3117)
Pennsylvania Liquor Control Board
Limited Wineries

On September 2, 2015, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Liquor Control Board (Board). This rulemaking amends 40 Pa. Code Sections 3.62, 3.63, 3.64, 5.103, and 11.111. The proposed regulation was published in the September 26, 2015 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on April 8, 2016.

According to the Board, the purpose of the rulemaking is to make the Board's regulations consistent with the Pennsylvania Liquor Code (Code) as it is currently written and interpreted.

Section 505.2(a)(6.3) of the Code states that holders of a limited winery license may:

[s]ell alcoholic cider, wine and wine coolers **only between the hours of nine o'clock antemeridian and eleven o'clock postmeridian**. A limited winery also may request approval from the board to extend sales hours **in individual locations** at other times during the year or beyond the limits set forth in this clause. The request shall be made **in writing** . . . and shall detail the exact locations where sales hours are proposed to be extended, the proposed hours and dates of extended operations and the reason for the proposed extended hours.

47 P.S. § 5-505.2(a)(6.3). (Emphasis added.)

In § 11.111(a)(3) of the final-form regulation, the Board is proposing to expand the hours that a limited winery may sell wine, wine coolers and alcoholic ciders from 7 a.m. until 2 a.m. of the following morning, Mondays through Saturdays, and from 9 a.m. until 2 a.m. of the following morning on Sundays. The Board is also deleting existing § 11.111(a)(4) which identifies the days and times during which sales may be made and sets forth the process for a limited winery to request approval from the Board for an extension of sales hours in individual locations.

As the basis for the amendment, the Board explains that some previous requests for extensions could not be approved because licensees were not timely with their requests. The Board conferred with the trade organization that represents limited wineries and subsequently approved a blanket request from the organization's executive director to extend the sales hours for all limited wineries.

Since the Code explicitly provides that the sales hours may be extended only upon the Board's consideration and approval of a detailed request from a limited winery, we find that the Board's proposal to provide for the automatic expansion of the sales hours for all limited wineries by regulation is not authorized by the Code. Furthermore, we do not believe that it is the intent of the General Assembly to allow blanket requests to the Board, on behalf of all limited winery licensees, to extend hours of operation indefinitely.

We have determined that this regulation is not consistent with the intention of the General Assembly in the enactment of the statute upon which the regulation is based. Section 5.2 (a) of the Regulatory Review Act (71 P.S. § 745.5b(a)). Therefore, we find promulgation of this regulation is not in the public interest.

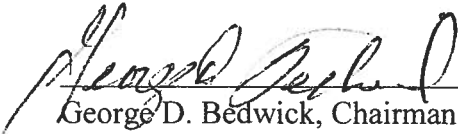
BY ORDER OF THE COMMISSION:

The regulation # 54-85 (IRRC #3117) from the _____

Pennsylvania Liquor Control Board

was disapproved on May 19, 2016.




George D. Bedwick, Chairman