

Comments of the Independent Regulatory Review Commission



Pennsylvania Liquor Control Board Regulation #54-89 (IRRC #3142)

Distributors Accepting Credit Cards from Licensees

June 1, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the April 2, 2016 *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. Statutory authority; Possible conflict with or duplication of statutes or existing regulations; Clarity.

This proposed rulemaking would allow importing distributors and distributors to accept credit cards as payment for malt or brewed beverages from other licensees of the Board. The Board has cited its general rulemaking authority found at Section 207 (i) of the Liquor Code and Section 493(2) of the Liquor Code as its statutory authority for the rulemaking. 47 P.S. §§ 2-207(i) and 4-493(2). The Board specifically cites the following provision of Section 493(2) of the Liquor Code as the statutory basis for this proposed regulatory change, “. . . it shall be permissible for the importing distributor or distributor to accept money orders or cashiers’ checks for payment of any malt or brewed beverages *in addition to any other type of payment authorized by the board from anyone possessing a license under this article.*” (Emphasis added.)

Section 9.95 (b) of the Board’s existing regulations states the following: “Sales of malt or brewed beverages by distributors or importing distributors *shall* be for cash, checks or drafts under section 493 (2) of the Liquor Code (47 P.S. § 4-493(2)).” (Emphasis added.) We have two concerns. First, the acceptance of credit cards by importing distributors and distributors would conflict with this subsection of the Board’s regulations. This would create confusion and uncertainty for the regulated community. Second, § 9.95(b) cites to the same section of the Liquor Code that the Board is relying on to promulgate this rulemaking. We note that a commentator has also questioned the Board’s authority for this rulemaking. In light of these concerns, we ask the Board to provide a more detailed explanation of Section 493(2) of the Liquor Code and why it believes that entire section permits the Board to allow the acceptance of credit cards by importing distributors and distributors.

If the Board decides to amend § 9.95 (b) to align it with Section 493 (2) of the Liquor Code, we ask that it also review § 9.95 (c) of its existing regulations. This subsection allows importing distributors and distributors to accept debit card payments and specifically states that these types of transactions “shall be considered a cash equivalent which complies with the Liquor Code.”

2. Implementation procedures.

This proposal would not require importing distributors and distributors to accept credit cards. As explained by the Board, the acceptance of credit cards would be voluntary and a business decision that each distributor would have to make. A commentator has stated that it will take time for distributors to establish relationships with credit card processors. They suggest that a clear effective date for the new payment option will give all concerned time to comport their business arrangements with the change. The Preamble to the proposal indicates that the rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. We ask the Board to consult with the regulated community to ensure that this potential effective date will allow them the time needed to establish relationships with credit card processors.

3. Compliance with the RRA or the regulations of this Commission.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. The Commission also considers the information a promulgating agency is required to provide in the Regulatory Analysis Form (RAF). Question #12 of the RAF asks how a regulation compares with those of other states and how this will affect Pennsylvania’s ability to compete with other states. The LCB responded that a comparison of this regulation with the laws of other states would not be appropriate because each state has unique regulatory systems. In addition, the LCB states that it has no reason to believe the regulation would negatively impact Pennsylvania’s ability to compete with other states. We agree that other states have different systems for regulating alcohol. However, we find the answer to Question #12 to be incomplete. We ask the LCB to provide a comparison of how other states regulate the use of credit cards between businesses and/or licensees that sell alcohol to each other.