

## Comments of the Independent Regulatory Review Commission



### State Board of Auctioneer Examiners Regulation #16A-6412 (IRRC #3344)

#### Licensure by Endorsement

July 20, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the May 21, 2022 *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 Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Auctioneer Examiners (Board) to respond to all comments received from us or any other source.

#### **1. Whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.**

The Majority and Minority Chairs of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee submitted a joint letter on this rulemaking. This letter relates to the delayed implementation of Act 41 of 2019 (Act 41) (63 Pa.C.S. § 3111) by this Board and other boards and commissions that fall under the jurisdiction of the Department of State's Bureau of Professional and Occupation Affairs. The letter describes Act 41 as a "bipartisan effort" and states the "lack of regulatory activity to implement Act 41 has continued to cause a barrier to employment for applicants of other states" which exacerbates the severe workforce shortage in Pennsylvania. The letter points out that all licensing boards and commissions subject to Act 41 should have published final regulations by February 28, 2021. Finally, the letter asks the Board to prioritize the promulgation of this rulemaking.

As suggested by the four Chairs, we urge the Board to fulfill the intent of Act 41 and the General Assembly by returning a final-form version of this rulemaking to this Commission and the designated standing committees noted above as quickly as possible for review, consideration and final publication as a regulation.

#### **2. Comments, objections, or recommendations of a committee.**

The House Professional Licensure Committee (Committee) submitted the following comments on the proposed regulation:

1. *Section 1.27 (a)(1)(i)* — This section requires an applicant to submit a copy of the current law and regulations along with scope of practice requirements in the jurisdiction that issued a license, certificate, registration, or permit. Act 41 of 2019 does not explicitly state this requirement and the committee recommends changes that remove this responsibility from the applicants and applies it to Board Counsel.

2. *Section 1.27 (a)(4)* — This section states that an applicant must not have any discipline by the jurisdiction that issued the license, certificate, registration, or permit. The committee recommends clarifying this section to specify the types of discipline (i.e., formal discipline or complaint) and the timeframe when such discipline occurred.
3. *Section 1.28 (b)(1)* — This section would give the Board authority to issue a provisional license for less than a year. It is unclear under what circumstances the Board would need to exercise this authority. The Committee asks for clarification.
4. *Section 1.28 (d)* — This section states that the Board will not issue subsequent provisional licenses after the provisional license expires. We believe this section is unintentionally vague. Further, Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. The Committee believes this section should be amended to correct the unintended harm of limiting provisional licenses and would further suggest incorporating a time frame to re-apply.

Under the RRA, the comments, objections, or recommendations of a Committee is one of the criteria the Commission must consider when determining if a regulation is in the public interest. When this proposed regulation is delivered as a final-form regulation to this Commission and the Committees for review, the issues raised by the Committee, and the Board’s response to those issues, will be one of the criteria used by this Commission to determine if the regulation is in the public interest.

**3. Section 1.27. Licensure by endorsement. – Need; Economic impact; Protection of the public health safety and welfare; Clarity.**

Paragraph (a)(2) of this section requires demonstration of competency by practice in two of the past five years in a “substantially equivalent jurisdiction or jurisdictions.” What standard determines whether a jurisdiction is substantially equivalent? This provision, too, seems to place an additional burden on the applicant and/or the Board to prove equivalency since the experience does not have to be in the jurisdiction that the applicant is using for endorsement and also can be in multiple jurisdictions. Has the Board considered, at least for the jurisdictions in the United States, creating and publishing an annual determination of those jurisdictions which have laws and regulations substantially equivalent to Pennsylvania? We ask the Board to explain how these provisions in the final regulation balance protection of the public health, safety, and welfare with the burden and cost to applicants and the Board.

**4. Compliance with provisions of the RRA or the regulations of the commission in promulgating the regulation.**

Regulatory Analysis Form (RAF) Question 14 requires the promulgating agency to describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups in the development and drafting of the regulation. It also requires the agency to list the specific persons and/or groups that were involved. The Board’s response states that it solicited comments from “stakeholders and interested parties” in July of 2020. We ask the Board to provide an updated RAF with the final regulation that includes a list of specific persons and/or groups involved in the development and drafting of the proposal.

As noted by the Committee in its comment on Section 1.27(a)(1)(i), an applicant seeking licensure by endorsement shall provide, among other things, a copy of the current applicable law, regulation, or other rule governing licensure, certification, registration, or permit requirements

and scope of practice in the jurisdiction that issued the applicant's license, certificate, registration, or permit. Under Section 1.27 (a)(1)(ii), if the applicable law, regulation, or rule is in a language other than English, the document must be translated, at the applicant's expense, by a professional translation service and verified to be complete and accurate. The Board's response to RAF Question 19 does not provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule. Also, in response to RAF Questions 17, 19, and 23 regarding the financial impact on or cost to the applicant, the Board does not address the cost of a Criminal History Records Check. We ask the Board, when it submits the final version of this rulemaking, to provide an updated RAF that estimates the costs associated with translation and a Criminal History Records Check.