

RULES AND REGULATIONS

Title 4—ADMINISTRATION

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CH. 247]

Corrective Amendment to 4 Pa. Code § 247.7

The State Employees' Retirement Board has discovered a discrepancy between the agency text of 4 Pa. Code § 247.7 (relating to death benefits), as deposited with the Legislative Reference Bureau and published at 38 Pa.B. 4396 (August 9, 2008), and the official text published at 40 Pa.B. 973, 974 (February 20, 2010) and as currently appearing in the *Pennsylvania Code*. A reference to subparagraph (v) was inadvertently omitted from subsection (a)(2).

Therefore, under 45 Pa.C.S. § 901: The State Employees' Retirement Board has deposited with the Legislative Reference Bureau a corrective amendment to 4 Pa. Code § 247.7. The corrective amendment to 4 Pa. Code § 247.7 is effective as of February 20, 2010, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 4 Pa. Code § 247.7 appears in Annex A.

Annex A

TITLE 4. ADMINISTRATION

PART X. STATE EMPLOYEES' RETIREMENT BOARD

CHAPTER 247. BENEFITS

§ 247.7. Death benefits.

(a) *Manner of payments.* In the event the member does not designate a beneficiary before death or the designation is not valid for any reason or no validly designated beneficiary survives the member by 30 days under 71 Pa.C.S. § 5709(c) (relating to the payment of benefits) to receive any of the death benefits provided in the code, the benefits shall be payable to the estate of the member.

(1) If the estate of the member is entitled to receive the member's death benefits but does not file a claim for the benefits within 60 days of the date the System mails notice of the benefits to the estate of the member, the entire amount of the death benefit shall be payable in the following sequential priority:

- (i) To the appointed executor or administrator of the deceased member.
- (ii) To the surviving spouse of the member.
- (iii) To any child of the member.
- (iv) To the father or mother of the member.
- (v) To any sister or brother of the member.

(2) Payments made under paragraph (1)(iii), (iv) or (v) shall be made to only one person and not divided among members of the classes identified in those subparagraphs. Upon payment of a death benefit pursuant to this section, the System shall be discharged from any further liability for the payment of the death benefits to any other person. Any person to whom payment is made under this paragraph shall be answerable therefore to anyone prejudiced by the payment.

(b) *Single life annuity.* If a single life annuitant dies before receiving in monthly annuity payments the total

amount of accumulated deductions, the balance of the total accumulated deductions shall be paid to the designated beneficiary without regard to the actual proportion the State share represents to the total monthly annuity payments actually received before death.

[Pa.B. Doc. No. 11-1990. Filed for public inspection November 18, 2011, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 3]

Brewery Pub Location

The Liquor Control Board (Board), under the authority of sections 207(i) and 446 of the Liquor Code (47 P. S. §§ 2-207(i) and 4-446), amends Chapter 3 (relating to license applications).

Summary

This final-omitted rulemaking recognizes the growth and evolution of "craft" brewing of beer in this Commonwealth. As a result of this growth, certain breweries have reached the point where demand for their beer at their brewery pubs has outstripped their capacity to produce beer at the adjacent brewery. While the logical solution would be for the brewery to open another brewery to address the demand for beer at the brewery pub, the Board's regulations preclude the sale of beer produced at the second brewery by the original brewery pub because the second brewery would not be deemed adjacent to the original brewery pub. This final-omitted rulemaking resolves this issue.

Affected Parties

The final-omitted rulemaking will affect licensed breweries. There are 90 active licensed breweries in this Commonwealth. Of these licensed breweries, 21 also have brewery pubs with active licenses. The potentially affected parties have been given notice of this final-omitted rulemaking either by e-mail or postal mail.

Paperwork Requirements

This final-omitted rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork.

Fiscal Impact

This final-omitted rulemaking is not expected to have fiscal impact on the regulated community or State and local governments. Sales revenues for licensed breweries may be increased as a result of this final-omitted rulemaking.

Effective Date

This final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

Further information is available by contacting James F. Maher, Assistant Counsel or Christopher L. Herrington,

Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 7, 2011, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Liquor Control Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on October 19, 2011, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 20, 2011, and approved the final-omitted rulemaking.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 3, are amended by amending § 3.92 to read as set forth in Annex A.

(b) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

PATRICK J. STAPLETON, III,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 6057 (November 5, 2011).)

Fiscal Note: 54-66. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter J. MALT OR BREWED BEVERAGE MANUFACTURERS

§ 3.92. Brewery pubs.

(a) The Board will be authorized to issue a brewery pub license to the holder of a brewery license. A brewery pub license may only be issued in those municipalities in which the Board may issue or transfer a malt and brewed beverage retail dispenser license.

(b) The holder of a brewery pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of a malt and brewed beverage retail dispenser license except as set forth in this section.

(c) The brewery pub license will be issued to premises immediately adjacent to but separate and distinct from the brewery premises.

(d) Sales of alcoholic beverages at the brewery pub premises shall be limited to sales of malt or brewed beverages produced at and owned by the brewery adja-

cent to it or a brewery which is under common control with the brewery pub. A brewery pub licensee may sell, for on-premises consumption, wine manufactured by the holder of a Pennsylvania limited winery license.

(e) A brewery pub license may not be issued to a brewery that has already acquired a restaurant, hotel or malt and brewed beverage retail dispenser license. If a brewery, which has a brewery pub license, applies for and acquires a restaurant, hotel or malt and brewed beverage retail dispenser license, the brewery pub license will be cancelled upon approval of the restaurant, hotel or malt and brewed beverage retail dispenser license.

(f) Any citations which may be issued under section 471 of the Liquor Code (47 P. S. § 4-471) for activity relating to the brewery pub will be issued against the brewery license.

[Pa.B. Doc. No. 11-1991. Filed for public inspection November 18, 2011, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Limited Winery Reporting

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (code) (47 P. S. § 2-207(i)), amends Chapter 5 (relating to duties and rights of licensees).

Summary

This final-omitted rulemaking simplifies the production reporting procedure for licensed limited wineries. Section 102 of the code (47 P. S. § 1-102) defines a "limited winery" as a winery which has an annual production of less than 200,000 gallons. Under the current regulations, which were last amended in 1984, monthly reports shall be submitted. This final-omitted rulemaking will convert the reporting system to an annual basis and coordinate production reporting with the license renewal and validation cycles. Further, amending § 5.103 (relating to limited wineries) to expand the manner by which reports are submitted to the Board will allow limited wineries to electronically submit their reports with their renewal and validation applications rather than transmit paper reports to the Board. The information in these reports also is used by the Department of Agriculture.

Affected Parties

The final-omitted rulemaking will affect licensed limited wineries. There are 176 active limited wineries licensed by the Board. The potentially affected parties have been or will be given notice of this final-omitted rulemaking either by e-mail or postal mail.

Paperwork Requirements

The Board anticipates that this final-omitted rulemaking will reduce the amount of paperwork and, therefore, reduce the administrative costs of the regulated community.

Fiscal Impact

This final-omitted rulemaking is not expected to have adverse fiscal impact on the regulated community or State and local governments. Administrative costs of the limited wineries may be reduced by converting to an annual reporting cycle.

Effective Date

This final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

Further information is available by contacting James F. Maher, Assistant Counsel or Christopher Herrington, Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 7, 2011, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Liquor Control Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on October 19, 2011, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 20, 2011, and approved the final-omitted rulemaking.

Order

The Board, acting under authorizing statute, orders that:

- (a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.103 to read as set forth in Annex A.
- (b) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

PATRICK J. STAPLETON, III,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 6057 (November 5, 2011).)

Fiscal Note: 54-68. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter H. RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES, LIMITED WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE

§ 5.103. Limited wineries.

(a) *Records.* A holder of a Limited Winery License obtained under § 3.62 (relating to creation) shall maintain and keep on the licensed premises daily permanent records which shall conform to the requirements of section 512 of the Liquor Code (47 P. S. § 5-512). The records shall include complete details concerning the source of fruits used in the production of wines. Electronic

media recordkeeping, maintained and based upon generally accepted accounting principles, shall be permitted in lieu of hard copy records. The recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents. The records shall include complete details concerning the source of fruits used in the production of wines.

(b) *Sales invoice.* In addition to the records prescribed in subsection (a), except as otherwise provided in this part, a sales invoice shall be prepared at the licensed premises for each sale. The sales invoice shall be prepared in accordance with the following:

- (1) The sales invoice shall be imprinted or affixed with the name and address of the limited winery.
- (2) The sales invoice shall show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the wine and the net cost to the customer. The name and address of private individuals is not required on sales invoices covering quantities of 16 liters or less; in lieu of preparing sales invoices for the sales, the transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices, other than name and address of the purchaser. The counter sheet shall be totaled daily and the totals entered into the sales register noted in section 512 of the Liquor Code (47 P. S. § 5-512).
- (3) The sales invoice shall show the Commonwealth sales tax, where applicable, as a separate entry.
- (4) The sales invoice may include other items permitted for sale by limited wineries if the sale of wines is listed separately from other permitted items sold by the licensee.

(5) An invoice shall be prepared for any amount of wine shipped to customers via Transporter-for-Hire, Class C carriers. The invoice shall be prepared only for persons 21 years of age or older, and limited winery licensees shall request the signature of a recipient, 21 years of age or older, from the transporter making the deliveries and a return acknowledgement of delivery to the recipient. Copies of acknowledgments of delivery shall be maintained on the licensed premises for 2 years.

(6) When a sale requires the preparation of an invoice, one copy shall be given to the recipient of the merchandise and a copy retained on the licensed premises for 2 years.

(c) *Reports.* A licensed limited winery shall file reports in the manner set forth by the Board covering operations of their licensed business during the preceding calendar year. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board at the time of the renewal or validation of the license. A copy of each report shall be retained on the licensed premises for at least 2 years from the date of filing. Failure to file the reports will preclude the Board from renewing or validating the license in question. These reports are in addition to information or reports the licensed limited winery may be required to provide to the Department of Agriculture under 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing Act) and regulations promulgated thereunder, including 7 Pa. Code § 104.75 (relating to accounting and payment).

[Pa.B. Doc. No. 11-1992. Filed for public inspection November 18, 2011, 9:00 a.m.]