

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 13] Discount Pricing Practices

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend § 13.102 (relating to discount pricing practices).

Summary

Section 13.102 currently limits a licensee to a “happy hour” period of no more than 2 consecutive hours per business day. The proposed amendments are necessary so that the regulations pertaining to happy hour limitations are consistent with the Liquor Code (47 P. S. §§ 1-101—10-1001). In particular, the act of June 28, 2011 (P. L. 55, No. 11) (Act 11) and the act of December 22, 2011 (P. L. 530, No. 113) (Act 113) amended the Liquor Code to allow a licensee to have up to 4 hours of discounted drinks in 1 day, but no more than 14 hours per week. In addition, these amendments to the Liquor Code place a burden on the licensees to post a notice of happy hours at least 7 days prior to the happy hour.

To improve the clarity of § 13.102 and for the convenience of the regulated community, examples of permissible “daily drink specials” are copied from Board Advisory Notice No. 16 into proposed subsection (b)(2)(i)—(iii). The Board plans to withdraw Advisory Notice No. 16 upon the final-form adoption of this proposed rulemaking.

Affected Parties

There are currently almost 11,400 actively licensed retail licensees who are affected by Acts 11 and 113.

Paperwork Requirements

This proposed rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork. Act 11 requires the posting of a notice of the licensee’s happy hours. This proposed rulemaking does not place additional reporting or paperwork requirements on licensees.

Fiscal Impact

This proposed rulemaking is not expected to have fiscal impact on the regulated community, the Commonwealth or local governments.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission’s (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and the Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

TIM HOLDEN,
Chairperson

Fiscal Note: 54-69. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 13. PROMOTION

Subchapter C. SOLICITATION FOR THE PURCHASE OF ALCOHOLIC BEVERAGES

§ 13.102. Discount pricing practices.

(a) *General.* Retail licensees may discount the price of alcoholic beverages for [**a consecutive period of time not to exceed 2 hours in a business day, but**] **not more than 4 hours in a day and not more than 14 hours in a week.** Retail licensees may not engage in discount pricing practices between 12 midnight and the legal closing hour. **Retail licensees shall post on the licensed premises notice of happy hours. The notice shall be posted so that it is readily visible to the public. The notice shall be posted no less than 7 days prior to the happy hour.** Retail licensees may not engage in the following discount pricing practices unless specifically excepted in subsection (b):

(1) The sale or serving, or both, of more than one drink of liquor, wine, or malt or brewed beverages at any one time to any one person, for the price of one drink.

(2) The sale or serving, or both, of an increased volume of one drink of liquor, wine, or malt or brewed beverages without a corresponding and proportionate increase in the price for the drink.

(3) The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine, or malt or brewed beverages for a set price.

(4) The pricing of alcoholic beverages in a manner which permits the price to change within [**the 2-hour**] **a happy hour period.**

(b) *Exceptions.* Nothing in subsection (a) prohibits:

(1) The sale or serving, or both, of an unlimited or indefinite amount of liquor, wine, or malt or brewed

beverages for a fixed price for catered events which have been arranged at least 24 hours in advance.

(2) The offering for sale of one specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price, if the offering does not violate subsection (a) **and if the price of the drink does not change during the day.** For purposes of this section, a specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. Examples of permissible drink discounts are [**found in Board Advisory Notice 16.**] as follows:

(i) **A specific brand of beer such as “Blue Hound Pilsner,” “Brendan’s Cream Stout” or “Oil City Light,” but not “all draft,” “all bottled beer” or “all Blue Hound products.”**

(ii) **Daily wine specials could be “Chardonnay” or “Merlot,” but not “all white wine,” “all red wine” or “all Kendall’s wines.”**

(iii) **Permissible spirits specials would be “Rum and Cola” or “all brandy drinks,” but not “all well drinks” or “all Jackson’s products.”**

[Pa.B. Doc. No. 15-951. Filed for public inspection May 22, 2015, 9:00 a.m.]

[40 PA. CODE CH. 7]

Posting Requirements for Extension

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend § 7.22 (relating to application).

Summary

Section 7.22 currently requires that applicants for an extension of the licensed premises post a notice that the application has been filed for a period of 15 days. The reference to a posting period of 15 days is consistent with the former language of section 403(g) of the Liquor Code (47 P. S. § 4-403(g)).

The act of December 9, 2002 (P. L. 1653, No. 212) amended section 403(g) of the Liquor Code by increasing the time period for the posting of a notice from 15 days to 30 days. Therefore, section 403(g) of the Liquor Code requires a longer posting period than § 7.22 requires. The disparity between the statute and the regulation sometimes results in frustration and confusion for applicants.

This proposed amendment would address this issue by requiring that a notice of an extension of the licensed premises must be posted for at least 30 days.

Affected Parties

There are currently almost 16,340 licensees who could potentially be affected by this proposed rulemaking. Since the proposed rulemaking simply aligns the posting period with that which is required by statute, licensees will not be adversely affected.

Paperwork Requirements

This proposed rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork. Posting of the application until the Board renders a decision is already required under § 3.14(c) (relating to applicant responsibility).

Fiscal Impact

This proposed rulemaking is not expected to have fiscal impact on the regulated community, the Commonwealth or local governments.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments about the proposed rulemaking to Rodrigo Diaz, Executive Deputy Chief Counsel, or Norina Blynn, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission’s (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and the Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

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TIM HOLDEN,
Chairperson

Fiscal Note: 54-83. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER, EXCHANGE AND SUSPENSION OF LICENSES

Subchapter B. EXTENSION OF LICENSES

§ 7.22. Application.

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(c) An applicant for extension of premises shall post, for a period of at least [15] 30 days beginning with the day the application is filed with the Board, in a conspicuous place on the outside of the licensed premises, a notice of application in a form, and size and containing provisions the Board requires concerning the requested extension. Proof of the posting of the notice shall be filed with the Board.

[Pa.B. Doc. No. 15-952. Filed for public inspection May 22, 2015, 9:00 a.m.]