

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 3]

Economic Development Licenses

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends § 3.105 (relating to quarterly filing of applications and application hearings) to read as set forth in Annex A.

Summary

Generally speaking, the Liquor Code limits the number of restaurant liquor and eating place retail dispenser licenses the Board may issue in a county. See section 461 of the Liquor Code (47 P. S. § 4-461). This is known as the quota law. There are several exceptions to the quota law, one of which allows the Board to issue an economic development restaurant (EDR) liquor license or an economic development eating (EDE) place retail dispenser license, even if the quota for the county is full. However, the applicant must satisfy certain conditions to receive an EDR or EDE license, including proof that the applicant has “exhausted reasonable means for obtaining a suitable license within the county” under section 461(b.1)(1) of the Liquor Code. This information must be presented at an administrative hearing under the regulation in § 3.105. The regulations formerly did not provide guidelines as to what was meant by “exhausted reasonable means.” As a result, applicants were unsure as to what evidence they are expected to produce. This final-form rulemaking amends § 3.105 to provide specific criteria for an applicant to show that it has met that condition.

To apply for an EDR or EDE license, the proposed licensed premises must be located in a Keystone Opportunity Zone, an area designated as an enterprise zone by the Department of Community and Economic Development, or a municipality in which, after a public hearing, the governing body of the municipality has approved the issuance of the license by ordinance or resolution. See section 461(b.1)(2) of the Liquor Code. Because of these restrictions, it is unknown how many potential future applicants may benefit from this final-form rulemaking. As of April 2, 2015, the Board has approved the issuance of 26 EDR licenses and 1 EDE license since it was first authorized to do so in 2002.

Affected Parties

The affected parties include future applicants for EDR and EDE licenses. The final-form rulemaking will provide clarity as to what is expected of the applicant before it applies for an EDR or EDE license.

Paperwork Requirements

The final-form rulemaking seeks to clarify what is expected of an applicant for an EDR or EDE license. The applicant typically testifies at an administrative hearing as to what efforts it made to obtain an already existing license. The applicant may wish to take notes as to its efforts to help establish that it has “exhausted reasonable means.” However, the final-form rulemaking would not require additional paperwork to be filed.

Fiscal Impact

There is no anticipated fiscal impact with the final-form rulemaking. The final-form rulemaking is offered to provide clarity to applicants for an EDR or EDE license.

Effective Date

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

Contact Person

Comments should be addressed to Rodrigo J. 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.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 5, 2014, the Board submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 7559 (December 6, 2014), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public. The Board received comments from IRRC, the response to which is in a separate comment and response document. IRRC received a comment from the Pennsylvania State Association of Township Supervisors. The Board’s response to this comment is in a separate comment and response document.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 27, 2015, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 28, 2015, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the Board’s regulations in the manner provided in this order are necessary and appropriate for the administration of the Liquor Code.

(3) The revisions that were made to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 44 Pa.B. 7559.

Order

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 3, are amended by amending § 3.105 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*.

TIM HOLDEN,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2961 (June 13, 2015).)

Fiscal Note: Fiscal Note 54-81 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter K. ECONOMIC DEVELOPMENT LICENSES

§ 3.105. Quarterly filing of applications and application hearings.

(a) Issuance of economic development licenses is limited to two licenses per calendar year in counties of the first through fourth class and one license per calendar year in counties of the fifth through eighth class.

(b) Quarterly filing periods are established for all counties as follows:

1st Quarter—January 1 through March 31

2nd Quarter—April 1 through June 30

3rd Quarter—July 1 through September 30

4th Quarter—October 1 through December 31

(c) At the end of the first quarter, every properly filed license application in a county will be subject to an administrative hearing before a Board hearing examiner in accordance with section 464 of the Liquor Code (47 P. S. § 4-464). Second quarter applications will be held in abeyance until after hearings are held for first quarter applications and a determination is made by the Board as to the availability of a license within the county.

(d) If a vacancy continues to exist in a county after hearings are held and a determination has been made by the Board, properly filed applications for the next quarter will be scheduled for hearings.

(e) In addition to any objections to, or support of, an application for the issuance of a license, an applicant shall provide evidence at the administrative hearing that it has exhausted reasonable means to find a suitable license within the existing county quota law. Evidence includes the following:

(1) Evidence that the applicant, or the applicant's agent, made contact with existing restaurant liquor licensees, if a restaurant liquor economic development license is sought, or existing eating place retail dispenser licensees, if an eating place retail dispenser economic development license is sought, in the county.

(i) The purpose of the contact is to inquire as to the availability of the licensee's license for purchase.

(ii) In counties of the first through fourth class, the number of licensees contacted by the applicant, or the applicant's agent, must be equal to or greater than 50% of the existing restaurant liquor or eating place retail dispenser licensees in the county.

(iii) In counties of the fifth through eighth class, the number of licensees contacted by the applicant, or the applicant's agent, must be equal to or greater than 75% of the existing restaurant liquor or eating place retail dispenser licensees in the county.

(2) Evidence that the applicant, or the applicant's agent, has offered to purchase a restaurant liquor or eating place retail dispenser licenses in the county that are in safekeeping at the time the application is filed with the Board, including the offered and requested amounts.

(3) An explanation as to why it is not economically feasible for the applicant business to pay the amount requested for an existing restaurant liquor or eating place retail dispenser license. The applicant shall provide evidence of the following factors:

(i) The applicant's capital and financial resources.

(ii) The applicant's projected revenue and expenses for its business, as well as actual revenue and expenses if the business is currently in operation.

(iii) Other factors the applicant considered when deciding that obtaining a liquor license in the marketplace was not economically feasible.

(4) A written estimation, with supporting documentation, of the expected economic benefits to the municipality if the application is granted.

(f) If the applicant, or any of the applicant's stockholders, directors, officers or members, owns, in whole or in part, a restaurant liquor or eating place retail dispenser license which is in safekeeping with the Board, the Board will refuse the application. This only applies if the license in safekeeping is in the same county as the license applied for.

(g) Upon approval of an application, the applicant will receive a provisional license for 120 days, exclusive of periods of safekeeping.

(h) In the event of an appeal from the Board's decision regarding the issuance or renewal of an economic development license, the appeal will act as a supersedeas and will preclude the processing of additional applications for vacancies in that county.

[Pa.B. Doc. No. 15-1684. Filed for public inspection September 18, 2015, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Prosthetists, Orthotists, Pedorthists and Orthotic Fitters; Advance Notice of Final Rulemaking

The State Board of Medicine (Board) is publishing an advance notice of final rulemaking (ANFR) regarding the licensure and regulation of prosthetists, orthotists, pedorthists and orthotic fitters. The proposed rulemaking was published at 44 Pa.B. 4364 (July 12, 2014).

Statutory Authority

The act of July 5, 2012 (P. L. 873, No. 90) (Act 90) amended the Medical Practice Act of 1985 (act) (63 P. S.

§§ 422.1—422.51a). Act 90 authorized the Board to promulgate regulations as necessary to regulate the practice of these professionals.

Background and Summary

The Board published the proposed rulemaking at 44 Pa.B. 4364, with a 30-day public comment period. The Board received comments from the Pennsylvania Orthotic and Prosthetic Society, Sofia Tamarkin, Senator Mike Stack, Ashley Nicoletti, Irina Rabovetiky, the Board of Certification, the American Board of Certification, R.J. Hedges & Associates, the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

Following delivery of the proposed rulemaking, the act was amended by the act of July 2, 2014 (P.L. 941, No. 104) (Act 104), which altered the qualifications for initial licensure without examination. At a meeting with industry representatives and representatives from the HPLC and the SCP/PLC, it was agreed that the Board could conform its rulemaking to Act 104 without republishing the proposed rulemaking. It was further agreed that the Board would give commenters and the public an opportunity to comment on the amendments made to conform the rulemaking to Act 104.

This ANFR assures that the public has a full opportunity to comment on the amendments to the rulemaking.

Contact Person, Availability of Draft Final Regulations and Submission of Comments

The Board will accept written comments as well as comments transmitted by means of e-mail on the draft final rulemaking for the licensure and regulation of prosthetists, orthotists, pedorthists and orthotic fitters. Comments must be limited to the amendments to conform the rulemaking to Act 104. Comments will not be accepted by facsimile, telephone or voice mail. Comments sent by means of e-mail must include “16A-4943—Pedorthists, Orthotists, Pedorthists and Orthotic Fitters” in the subject heading. E-mail and written comments must include the commentator’s name and address. Written comments must be received by the Board on or before October 19, 2015. To request a copy of the draft final rulemaking or to provide a comment, contact Teresa Lazo, Esq., Board Counsel, State Board of Medicine, P. O. Box 69523, Harrisburg, PA 17106-9523, tlazo@pa.gov.

ANDREW J. BEHNKE, MD,
Chairperson

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