

# RULES AND REGULATIONS

## Title 40—LIQUOR

### LIQUOR CONTROL BOARD

[ 40 PA. CODE CH. 7 ]

#### Conversion of Suspension to Fine

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends § 7.10 (relating to conversion of suspension to fine).

#### Summary

Section 7.10 is amended by increasing the minimum amount of fines acceptable to the Board when the Board converts an unserved suspension to a fine.

Section 468(a)(4) of the Liquor Code (47 P. S. § 4-468(a)(4)) authorizes the Board to convert pending unserved suspensions in citation cases into monetary fines at the request of a transferee if the current licensee is unable to serve the suspension. Section 7.10 contains a methodology whereby the Board would base the fine on 1/2 of the average daily gross receipts of the transferor in its last year of operation. Formerly, a minimum fine of \$100 per each day of unserved suspension was imposed unless the citation was one in which the minimum fine would have been \$1,000; in those situations, the minimum fine provided was \$1,000 per each day of unserved suspension. If the Board accepts a request for a conversion, it will notify the transferee of the amount of the fine, and the transferee may either accept or reject the proposed fine. If accepted, the fine must be paid as a condition to approval of the transfer; if rejected, the conversion is rendered a nullity, and the unserved suspension remains in effect.

The minimum fine is imposed when a licensee did not possess or failed to provide tax returns to demonstrate the gross revenue for the last calendar year of operation or when the formula results in an amount that is lower than the previously-referenced minimum. The Board believes the regulation is needed because converting a license suspension into a fine of \$100 diminishes the deterrent and punitive effects that were intended by the initial suspension order. For example, a license suspension deprives a licensee of the revenue it would have collected had it been licensed to sell alcoholic beverages during the period of suspension, and it requires that notice of the suspension be posted in a conspicuous location outside the licensed premises. With the minimum fines increased to \$1,000 per day for nonenhanced penalty citations and \$3,000 per day for enhanced penalty citations, the impact of the fine would be more in line with the impact of the original suspension.

#### Affected Parties

The final-form rulemaking will impact those retail and other licensees with unserved suspensions who wish to transfer the license. Of those, only transferors which would have incurred a lesser fine amount under the regulation will be affected by the increased minimum fines in conversion of suspension to fine actions. In 2014, the Board received 14 requests to convert a suspension to a fine. Eleven were converted, nine of which would have been affected by this final-form rulemaking.

#### Paperwork Requirements

The Board does not anticipate that this final-form rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

#### Fiscal Impact

This final-form rulemaking is not expected to have a substantial adverse fiscal impact on the regulated community, since the change only affects licensees that would have been subject to the lower fine amount in § 7.10. In 2014, the Board received 14 requests to convert a suspension to a fine. Eleven were converted, nine of which would have been affected by this final-form rulemaking. The Board expects a similarly small proportion of the regulated community to be impacted by this final-form rulemaking. It must further be emphasized that conversions are optional. The transferee has the right to reject the fine amount set by the Board and to instead serve the original suspension upon becoming licensed.

This final-form rulemaking is not expected to have adverse fiscal impact on State and local governments. In fact, this final-form rulemaking will have a small positive fiscal impact on Board revenues, nominally increasing the amount the Board remits to the Commonwealth.

#### Effective Date

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

#### Contact Person

Comments should be addressed to Justin Blake, Assistant Counsel, or Rodrigo J. Diaz, Executive Deputy Chief 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 September 24, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 5825 (October 5, 2013), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee 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 three comments from IRRC, the responses to which are in a separate comment and response document. The Board did not receive comments from the House and Senate Committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 17, 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 June 18, 2015, and approved the final-form rulemaking.

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. 3640 (July 4, 2015).)*

**Fiscal Note:** Fiscal Note 54-74 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 40. LIQUOR**

**PART I. LIQUOR CONTROL BOARD**

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

**Subchapter A. TRANSFER OF LICENSES**

**§ 7.10. Conversion of suspension to fine.**

(a) When a license application for transfer is pending and the transferor has an outstanding license suspension imposed by the Office of Administrative Law Judge that has not yet been served and cannot be served because the premises is not in operation, the transferee shall either serve the suspension upon the approval of the transfer, or request that the suspension be converted to a fine to be paid by the transferee upon the approval of the transfer.

(b) If the transferee prefers to pay a fine instead of serving a suspension, it shall make a request to the Office of Chief Counsel that a fine be set by the Board.

(c) For purposes of making a determination as to the amount of the fine, the transferee's request to the Office of Chief Counsel shall include the following:

(1) A letter requesting that a fine be set instead of the suspension.

(2) A statement that the transferor cannot serve the suspension because the premises is not in operation.

(3) The transferor's Federal tax return for its last year of operation, showing the licensed business's profit or loss.

(4) The number of days the transferor was open in its last year of operation.

(5) A copy of the administrative law judge's adjudication and order that resulted in the suspension. This document is obtainable from the Office of Administrative Law Judge.

(d) The fine will be calculated by application of the following formula: Gross earnings of the transferor divided by 365 (or the number of days in operation in the transferor's last year of operation) multiplied by 0.50. The resulting figure is the amount of the fine per day of suspension, subject to the following exceptions:

(1) If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is \$50, a minimum fine of \$1,000 per day will be set.

(2) If the suspension was issued for a citation for which the minimum fine, if a fine had been imposed, is \$1,000, a minimum fine of \$3,000 per day will be set.

(e) The Board may set a fine in the absence of one or more of the documents described in subsection (c)(1)—(5). The Office of Chief Counsel may request additional financial documents.

(f) The Board will act on the request by accepting the request and setting the amount of the fine, or rejecting the request, or making a counteroffer and informing the transferee of its decision in writing.

(g) If the transferee rejects the Board's decision, the original suspension will remain in effect, to be served by the transferee if the transfer is approved.

(h) If after the Board approves a conversion to a fine, the transfer application is denied, the Board's decision regarding the suspension conversion to a fine is rendered a nullity and the unserved suspension remains in effect for the transferor.

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