

*Nuisance Bar Program  
In  
Pennsylvania*

In January 1990, the Pennsylvania Liquor Control Board (PLCB) established a program under the provisions of Section 470 of the Liquor Code [47 P.S. §4-470] to review at the time of license renewal, the operational history of any licensed establishment who, by its actions, may have abused the license privilege. This program seeks response from the community and various enforcement and government jurisdictions to report any adverse activity occurring via the licensed establishment.

Act 155 of 1998 expanded the provisions of Section 470 to allow the Board to consider activity occurring on or about the premises or areas under the licensee's control, if the activity occurs when the licensed premises is open for operation, and there is a relationship between the activity outside the premises and the operation of the establishment.

The PLCB does not enforce the Liquor Code. Enforcement powers are vested with the Pennsylvania State Police, Bureau of Liquor Enforcement. (PSP, BLCE). Adjudication of any violation is decided after a waiver of admission or an administrative hearing conducted by a judge from the Office of Administrative Law Judge (ALJ), an autonomous arm of the PLCB.

The PLCB is charged by statute with the authority to issue licenses, to make regulations, and to protect the safety, peace, health and welfare of the Commonwealth [47 P.S. §1-104(a)]. The Nuisance Bar Program was established within this scope of the Board's authority.

In determining whether a licensed establishment is a "nuisance bar", the PLCB will use the licensee's citation history and other facts to object to the renewal of the license. An objection to renewal will be entered if the licensee has had three or more adjudicated citations in the two-year period prior to the renewal for any combinations of violations involving sales to minors, sales to visibly intoxicated persons, noise emanating from amplified music (loudspeakers), after hours sales, lewd and immoral conduct, and the like. The Board will also consider an objection to the application if the licensee, its shareholders, directors, officers, association members, servants, agents or employees have one or more adjudicated citations under the license.

In cases where any of those mentioned earlier have been charged with violating any law of the Commonwealth or have one or more unadjudicated citations pending at the time of license renewal, the Board may renew the license; however, the renewed license may be revoked if the

licensee or any of his servants, agents or employees are convicted of the pending criminal charges or when the citation is adjudicated by the ALJ's office.

A distributor or importing distributor license is subject to non-renewal if, in the preceding renewal period, the licensee was found guilty of selling to minors under two or more citations.

The Director of the Bureau of Licensing may schedule a non-renewal hearing if a licensee's operating history involves allegations of egregious activity which may or may not have resulted in a citation. The provisions of Section 470 of the Liquor Code now allow the Board to consider activity occurring on or about the licensed premises or in areas under the licensee's control, if the activity occurs when the premises is open for operation and there is a relationship between the activity outside the premises and the manner in which the premises is operated. The local police department or District Attorney's Office will provide incident reports and witnesses who can testify to violations outside the scope of the Liquor Code. In these cases, it is necessary to prove that the licensee knew or should have known about the illegal activity, but failed to take substantial steps to prevent the activity.

The citation history criteria that the Board uses to object to renewal of a license are as follows:

- Licensee has received a combination of three or more citations for sales to minors, frequenting by minors, sales to visibly intoxicated person(s), noise from amplified speakers, noisy/disorderly operations, after-hours sales and lewd and immoral conduct/entertainment.
- Licensee has received one citation for drug transactions on the licensed premises involving the licensee or its employees on one or more occasions or drug transactions on three or more occasions involving patrons and it determined the licensee knew or should have known of the illegal activity.
- Licensee has received one citation involving prostitution.
- A distributor or importing distributor has received two citations involving sales to minors.
- A licensee has received a citation involving a felony conviction of the licensee, its officers, directors, shareholders, or partners in which there are no innocent parties.

- The licensee has received a citation for breach of the Conditional Licensing Agreement.

Under the statute governing Amusement/Entertainment permits [47 P.S. §4-478], this permit might be in jeopardy of non-renewal if they have received citations for the following violations within two years prior to the **annual** renewal of the amusement permit:

- Any licensee has received two or more citations for lewd and immoral conduct [47 P.S. §4-493(10)]
- Complaints from the community regarding loud music or entertainment (seven (7) or more violation dates)
- Lewd, immoral or improper entertainment on the licensed premises (two (2) or more violation dates)

Once potential candidates for non-renewal are identified, letter of warning will be sent to licensees advising them that they are under review and that they may be subject to non-renewal action.

Objection to renewal under the statute requires that the Board gives written notice of objection to renewal 10 days prior to the expiration date of the license term. The letter will state all potential reasons for non-renewal. The Board at this point will request a hearing before a Board hearing examiner. Testimony regarding all facts will be presented by the Board and also the licensee at this hearing. The hearing examiner will submit a report establishing the finding of fact on the evidence presented and make a recommendation to the three member Board. The Board will then determine whether to grant or refuse license renewal based on the record and evidence presented at the hearing and the recommendation of the hearing examiner.

If a license is not renewed, operations must cease as noted in the published order. The licensee has the right to appeal the Board's order. This appeal must be filed within twenty (20) days from the date of the Board's order with the Court of Common Pleas of the county in which the premises is located. The filing of an appeal with the Court of Common Pleas stays, puts on hold, the cessation of operations until the Court hears all evidence and makes a determination as to whether to uphold the Board's decision or rule in favor of the licensee.

At any point during the hearing or court process, the licensee may propose an offer in compromise to the non-renewal of its license to the Board. This will usually involve the sale of

the license to an independent third party. During the process of the sale the license will be placed into safe-keeping (inactive) with the Board.

Your liquor license is one of the most important assets you own. If you would like more information about how to protect this valuable asset please do not hesitate to contact me at 1-877-LAW-2555 for a free initial consultation.

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