House Liquor Control Committee
May 1, 2012
Hearing Regarding House Bill 1231

Testimony of Joseph E. "Skip" Brion
Chairman, Pennsylvania Liquor Control Board

Chairman Taylor, Chairman Santoni, Honorable Members of the House Liquor Control Committee, good morning.

On behalf of our Board members, thank you for giving us this opportunity to discuss the concepts contained in House Bill 1231. Before taking any questions you may have on matters related to the measure, I would like to provide you with a framework for some of the key issues addressed in the bill, including the increase in fines and a change in the standard of review from Board decisions. I understand that amendments may be made to the measure after the hearing, and we are willing to provide your staff with technical comments and suggestions when appropriate.

With respect to fines, it is important to note that the current fine structure in the Liquor Code has not changed since 1987. The Board fully supports the concept of increasing the monetary penalties contained in the Liquor Code, but defers to the General Assembly as to the extent of such increases. The Board recently conducted a survey of penalties imposed by the various fifty (50) states for selling or furnishing alcohol to a minor, one of the most serious offenses that can be committed by any licensee. When those penalties are compared with the current penalties imposed under the current monetary penalties of the Liquor Code, it appears that licensees in Pennsylvania face relatively lighter monetary penalties and minimal suspensions, especially in the case of repeat offenders.

The Board recognizes that, in these difficult economic times, any increase in fines will be met with resistance by licensees. It should be noted, however, that section 471(b) currently affords a licensee the opportunity to significantly mitigate monetary penalties for more serious violations of the Liquor Code (i.e., sales to minors or visibly intoxicated persons), if at the time of the offense, the licensee was compliant with the Board's RAMP program and the licensee had not, within the preceding four (4) years, been found to have sold or furnished alcohol to a minor or a visibly intoxicated person. As drafted, while the bill would double the maximum fine levels, it would also correspondingly double the incentive afforded

to those licensees who have not recently committed such serious infractions and who take advantage of the beneficial RAMP program.

Turning now to the proposed change in the standard of review applied by the Courts of Common Pleas on appeals from the Board's decisions, we recognize that this is a complex issue, and that there are a number of entities that have a stake in the outcome. Currently, sections 464 and 471 provide that a decision of the Board that is appealed to the Court of Common Pleas is subject to a *de novo* standard of review, which wastes judicial, agency and licensee resources, and fails to give any deference to the Board's decisions. The Board supports the proposed change, in which the Courts of Common Pleas would be required to affirm the Board unless its decision is considered an error of law or an abuse of discretion, or unless its decision is not supported by substantial evidence. It should be noted that this is the same standard utilized on appeal from other Commonwealth agency decisions, and would give the Board's decisions the same deference afforded to other agencies.

The exercise of the *de novo* standard of review by Courts of Common Pleas in the sixty-seven (67) counties of the Commonwealth has resulted in widely disparate outcomes, due to the lack of any consensus among Common Pleas Courts as to the degree of deference which should be given to the Board's determination following an evidentiary hearing. Instead of one (1) administrative agency with specific expertise applying one (1) standard, resulting in consistent outcomes, the numerous individual trial court judges within each county apply their own standards. This is particularly true with respect to "nuisance bars." Even when the Board has decided, after a careful evaluation of the evidence presented in an administrative hearing (at which the licensee is afforded a full opportunity to present its own evidence), not to renew a nuisance bar establishment, a licensee may appeal the decision of the Board to its county's court of common pleas, which may – and frequently does – require the Board to renew the license.[1]

In 2011, there were twenty-nine (29) orders stemming from appeals taken from Board decisions relative to Licensing matters. Twenty-six (26) of these orders were issued by the courts of common pleas; three (3) were issued by the Commonwealth Court. The Commonwealth Court affirmed the Board on all three

[1] While the Board can cite to a plethora of cases which demonstrate this utter lack of deference to the Board, one particularly egregious example involves the non-renewal of a restaurant liquor license in which the Court of Common Pleas reversed the Board and renewed the liquor license in question, despite undisputed evidence of at least fifteen (15) separate drug buys occurring at the licensed premises.

(3) of the appeals filed with the Court. In the courts of common pleas, however, a very different picture emerges. Of the twenty-six (26) orders issued by the courts of common pleas, seventeen (17) of the cases involved nuisance bars. The courts reversed the Board's decisions in nine (9) cases, all of which involved nuisance bars. In other words, the courts of common pleas reversed the Board in fifty-three percent (53%) of all nuisance bar cases – more than half.

These statistics are consistent with prior years[2], and the trend continues. As an example, thus far in 2012, the Allegheny Court of Common Pleas has reversed the Board in eight (8) out of nine (9) cases, including eight (8) nuisance bar matters.[3] This frustrates the very purpose of the Board in regulating such nuisance bar establishments.

Thank you, and I would be happy to answer any questions you may have related to these matters.

[2] In 2010, for example, the Courts of Common Pleas reversed the Board in seventeen (17) out of twenty-eight (28) nuisance bar decisions, or roughly sixty-one percent (61%) of the time.

[3] In the ninth case, while the judge entered an initial order affirming the Board, the judge subsequently vacated its order, which ultimately led the Board to enter into a conditional licensing agreement with the licensee. Therefore, while it was not technically a reversal, the court did not ultimately affirm the Board's decision in the nuisance bar matter.