

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Liquor Control Commission

Regulation/Package Title: Rule 52 – Entertainment – prohibition against improper conduct.

Rule Number(s): 4301:1-1-52

Date: 9-25-12

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 4301:1-1-52 describes prohibited conduct and certain types of entertainment on liquor permit premises, including disorderly conduct, physical assault, nudity, and public

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indecenty, as well as activities relating to controlled substances, theft, receiving stolen property, and food stamp and other electronic benefits.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code 4301.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This question is not applicable to the rule.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

In order to ensure the health and safety of members of the public and to maintain public decency and good order at any liquor permit premise, the Commission has promulgated certain prohibitions for improper conduct, including illegal activities, and certain types of entertainment conducted at each permit premise.

The changes in the rule are designed to prohibit permit holders and their agents and employees from being intoxicated while working at a permit premise and to prohibit permit holders from purchasing products that are bought with Electronic Benefit Transfer (EBT) cards and other electronic benefits. Proposed changes are also meant to ensure that references within the rule to statutory provisions are current.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The provisions in the rule prohibiting improper conduct, including certain types of unlawful activities, are already implemented. The Ohio Department of Public Safety, Investigative Unit, and/or local law enforcement agencies may investigate and enforce the prohibitions against these types of prohibited conduct. The Commission will measure success of the rule by ensuring a common understanding among liquor permit holders, members of the public, and law enforcement concerning the restrictions of prohibited conduct on permit premises and by providing clarity to protect the public, to provide a level-playing field among permit holders, and to provide consistency in enforcement by law enforcement entities.

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Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission requested written comments from stakeholders by May 9, 2012. The Commission solicited comments from the Division of Liquor Control and the Department of Public Safety as the two state agencies directly impacted by the Commission Rules. The Commission allowed public testimony at a public meeting on July 12, 2012.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission received comments from the Ohio Department of Public Safety requesting that the rule be changed to prohibit permit holders and their agents and employees from being intoxicated while working at a permit premise or allowing another person to continue working at a permit premise while intoxicated. Public Safety also requested that citations to statutory provisions are updated to ensure that they are current. Public Safety also recommended that language be added to the rule to specifically prohibit permit holders from purchasing products that are bought with EBT cards and other electronic benefits.

The Commission received comments from the Division of Liquor Control supporting the changes proposed by the Ohio Department of Public Safety.

The Commission received comment from another stakeholder which stated that it had no objection to the proposed changes and urged the Commission to favorably consider them.

No stakeholders objected to the proposed changes.

Copies of the written comments received by the Commission are attached.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

This question does not apply to the proposed rule.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The Commission did not consider alternative regulations as the proposed changes seek to prohibit specific types of conduct such that alternative regulations would not be applicable.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

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Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The Commission did not consider performance-based regulation as the rule is not for performance, but rather to ensure compliance with existing Ohio law and to prohibit certain types of improper conduct on a permit premise.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

This rule does not duplicate any existing state regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The provisions of the rule prohibiting certain types of improper conduct will not be changed, and therefore have already been implemented. The Commission and staff, as well as the Department of Public Safety, Investigative Unit, which may investigate and enforce the rule, have been fully engaged in drafting the rule and will ensure consistency and predictability for the licensed permit holders.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The directly impacted business community includes liquor permit premises authorized to sell alcoholic beverages.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There is no adverse impact from the portion of the regulation prohibiting already illegal conduct. There may be limited adverse impact from portions of the regulation restricting other types of conduct, including staff time for compliance. However, the Commission does not have data to provide a quantified potential impact.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

“representative business.” Please include the source for your information/estimated impact.

Each liquor permit premise must comply with the restriction concerning certain types of prohibited conduct, including illegal activities. Therefore, there is no adverse impact from the regulation.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

There is no adverse impact from the regulations prohibiting already illegal conduct, as the rule simply ensures compliance with specific Ohio laws governing illegal activities. As to prohibitions on other types of improper conduct, the Commission must ensure the health, safety, and welfare of all patrons of liquor permit premises. The rule is designed to ensure that permit holders take appropriate measures to prohibit certain types of improper conduct.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The laws prohibiting certain types of improper conduct, including illegal activities, apply to all permit holders licensed to sell alcoholic beverages.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio Revised Code 119.14 is not applicable to the proposed rule as there is no penalty associated with the paperwork necessary pursuant to the rule.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission website at: <http://lcc.ohio.gov>

The Commission main office at: 77 S. High Street, 18th Floor, Columbus, OH 43215

The Commission phone number at: 614-466-3132

The Commission fax number at: 614-466-4564

Quarterly public hearings.

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