

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>APR 25 2023</p> <p>Independent Regulatory Review Commission</p> <p>IRRC Number: 3372</p>
<p>(1) Agency Pennsylvania Liquor Control Board</p>		
<p>(2) Agency Number: 54 Identification Number: 104</p>		
<p>(3) PA Code Cite: 40 Pa. Code §§ 5.30, 5.32</p>		
<p>(4) Short Title: Duties and Rights of Licensees</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Norina Foster, Assistant Counsel (717) 783-9454 Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, Pennsylvania 17124 FAX: (717) 787-8820 Email: ra-lblegal@pa.gov</p> <p>Secondary Contact: Rodrigo Diaz, Chief Counsel Jason M. Worley, Deputy Chief Counsel (Same Contact Information)</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking updates sections 5.30 and 5.32 of the Board's Regulations. This proposed rulemaking is undertaken as part of an ongoing effort to review and update the Board's Regulations. The proposed rulemaking also increases the prize limits for activity on licensed premises to be more consistent with the Local Option Small Games of Chance Act.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, section 207(i) (47 P.S. § 2-207(i)).</p>		
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.</p>		

The regulation is not mandated by any federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed rulemaking amends section 5.30 (relating to definitions) to expand some existing definitions and add new definitions to provide clarity to the regulated community. These amendments stem from questions posed by the regulated community to the Board's Office of Chief Counsel, which provided answers through advisory opinions issued pursuant to section 211.1 of the Liquor Code, 47 P.S. § 2-211.1.

The proposed rulemaking amends section 5.32 (relating to restrictions/exceptions) for the purpose of clarity and improved readability. The first two subsections are reserved; therefore, the amendments begin at subsection (c), which states that a licensee may not directly or indirectly hire or permit a minor under 18 to act as an "entertainer" and does not identify any exceptions. Because the entire text of subsection (c) is being replaced, the proposed rulemaking deletes subsection (c) and creates subsection (c.1).

The proposed subsection (c.1) provides that any employment or engagement of a minor under 18 years of age as an entertainer must be in accordance with the Pennsylvania Child Labor Act (43 P.S. § 40.1 et seq.).

The proposed rulemaking amends subsection (d) in paragraphs (1) and (4) for the purpose of legal accuracy. In paragraph (1), instead of referencing "Parts and Subparts" of statutes, the proposed rulemaking now references the corresponding acts (the Boxing Act and the Wrestling Act) with their corresponding statutory citations. In subparagraph (4)(i), the definition of "charitable organizations" is no longer available in 49 Pa. Code Part I, Subpart B, because that regulation was deleted in 1997. See 27 Pa.B. 2934. The proposed rulemaking now cites to the Solicitation of Funds for Charitable Purposes Act, 10 P.S. § § 162.1—162.24, which is cited in subparagraph (4)(ii). In subparagraph (4)(ii), the legal citation to the Local Option Small Games of Chance Act is updated.

The proposed rulemaking deletes paragraph 5.32(e)(1), which prohibits "lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants." The case of Conchatta, Inc. v. Miller, 458 F.3d 258 (3d Cir. 2006), held that the prohibition on "lewd, immoral or improper conduct" was unconstitutional on the basis that it is substantially overbroad. Conchatta was not based on this paragraph of the Board's regulation, but a different paragraph—5.32(b)—that has since been reserved. See 43 Pa.B. 7082. Since the phrase "lewd, immoral or improper conduct" is legally unenforceable, the proposed rulemaking deletes it from the regulation.

The proposed rulemaking adds a sentence to paragraph 5.32(e)(3), providing that no amount of liquor, alcohol, or malt or brewed beverages may be offered as a prize for participating in an event, contest or tournament, whether for on-premises or off-premises consumption. Similar language exists in subsection (h), for sweepstakes prizes.

In paragraph 5.32(e)(5), the proposed rulemaking replaces the word "charity" with "charitable organization," to be consistent with the language used in paragraph 5.32(d)(4).

The proposed rulemaking amends paragraph 5.32(e)(7) to increase the total value of all prizes for any event, tournament or contest from \$1,000 to \$2,000, and to increase the total value of all prizes awarded in any 7-day period from \$25,000 to \$35,000. These amendments are consistent with the limits provided in the Local Option Small Games of Chance Act (10 P.S. §§ 328.301—328.308); the proposed rulemaking updates the legal citation to this act.

The final subsection addressed by this proposed rulemaking is subsection 5.32(g), which provides that “municipalities may petition the Board for exemption from the Board’s regulations regarding the **enforcement of subsection (a)** for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code.” (Emphasis added). Subsection (a) prohibited a licensee from using or permitting to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard on the outside of the licensed premises. The act of December 22, 2011 (P. L. 530, No. 113) (Act 113) and the act of July 5, 2012 (P. L. 1007, No. 116) amended the Liquor Code to render subsection (a) obsolete, and thereafter, the Board submitted a final-omitted rulemaking to rescind subsection (a). See 43 Pa.B. 7082. The final-omitted rulemaking overlooked subsection 5.32(g), but the Board rescinds it with this proposed rulemaking.

As of January 13, 2023, there were approximately 18,500 licensees who may be affected by this proposed rulemaking.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The rulemaking is not known to be more stringent than federal regulations.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

Regulations pertaining to alcoholic beverage control are governed by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the rulemaking does not play a role in Pennsylvania’s ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect any other existing or proposed regulations of the Liquor Control Board or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board developed and drafted this regulation internally, without input from outside groups. That being said, the Board has received at least one recent request to increase the prize amounts.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Section 3 of the Regulatory Review Act (71 P.S. § 745.3) defines “Small business” as “size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation.” 71 P.S. § 745.3. Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a “small” business:

- a full-service restaurant with annual receipts of less than \$7.5 million;
- a drinking place (alcoholic beverages) with annual receipts of less than \$7.5 million;
- hotels with annual receipts of less than \$32.5 million;
- breweries with less than 1,250 employees;
- wineries with less than 1,000 employees;
- distilleries with less than 1,000 employees; and
- all other amusement and recreation industries with annual receipts of less than \$7.5 million.

(13 C.F.R. § 121.201).

As of January 13, 2023, there were approximately 18,500 licensees who may be affected by this rulemaking. Although some of the PLCB's licensees may not fall within the definition of small business, the majority of businesses licensed by the PLCB would likely be considered small businesses.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

It is anticipated that approximately 18,500 licensees will be required to comply with the regulation. This includes restaurants, hotels, eating place retail dispensers, clubs, and brew pubs.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

It is anticipated that the regulated community will not sustain a financial, economic or social impact because of the regulation. The proposed regulation benefits the regulated community by providing additional guidance regarding permissible activities in the area of amusement and entertainment. In addition, the regulated community benefits because the regulation updates legal citations and eliminates provisions that are obsolete or unenforceable. Finally, the proposed rulemaking also increases the prize limits for activity on licensed premises to be more consistent with the Local Option Small Games of Chance Act; this may benefit licensees who are trying to attract additional customers.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no costs or adverse effects anticipated with this proposed rulemaking.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The rulemaking does not result in costs or savings for the regulated community. No legal, accounting or consulting procedures are required.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The rulemaking does not result in costs or savings for local governments. No legal, accounting or consulting procedures are required.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The rulemaking is not expected to result in costs or savings for state government. No legal, accounting or consulting procedures are required.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The rulemaking is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork. Similarly, the regulation is not expected to require any additional governmental measures in order to implement the regulation.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

It is anticipated that neither the regulated community, local government or state government will recoup any savings or incur any costs.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2019-2020	FY -2 2020-2021	FY -1 2021-2022	Current FY 2022-2023
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a “small” business:

- a full-service restaurant with annual receipts of less than \$7.5 million;
- a drinking place (alcoholic beverages) with annual receipts of less than \$7.5 million;
- hotels with annual receipts of less than \$32.5 million;
- breweries with less than 1,250 employees;
- wineries with less than 1,000 employees;

- distilleries with less than 1,000 employees; and
- all other amusement and recreation industries with annual receipts of less than \$7.5 million.

(13 C.F.R. § 121.201).

As of January 13, 2023, there were approximately 18,500 licensees who may be affected by this rulemaking. Although some of the PLCB's licensees may not fall within the definition of small business, the majority of businesses licensed by the PLCB would likely be considered small businesses.

(b) The regulation does not require any additional reporting, recordkeeping or other administrative activities.

(c) The regulation is anticipated to have a minimal but positive impact on small businesses. The regulation provides updated and clear guidance with regard to permissible amusement and entertainment activities. Finally, since the proposed rulemaking also increases the prize limits for activity on licensed premises to be more consistent with the Local Option Small Games of Chance Act, this may benefit licensees who are trying to attract additional customers.

(d) Only an update of the existing regulations would achieve the purpose of providing accurate regulations for the regulated community.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The PLCB has not identified, within the regulated community, a subgroup that may need any special provisions or accommodations. As stated in response to question 24, it is estimated that almost all of the regulated community falls within the category of small business. There is no subgroup that has an identifiable need that is different from the entire group.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered and rejected. The least burdensome acceptable alternative has been selected.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses;
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- (e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The proposed rulemaking is not expected to have any adverse impact on small businesses. Nonetheless, in the interest of submitting a completed form, the PLCB submits the following answers:

- (a) The proposed rulemaking does not establish less stringent compliance or reporting requirements.
- (b) The proposed rulemaking does not establish any schedules or deadlines for compliance or reporting requirements.
- (c) The proposed rulemaking does not contain any compliance or reporting requirements that would need to be consolidated or simplified for small businesses.
- (d) The proposed rulemaking does not establish any performing standards for small businesses to replace design or operations standards.
- (e) The proposed rulemaking does not establish any new requirements; therefore, there is nothing from which small businesses could be given an exemption.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The PLCB has not relied on data to justify this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>May 2023</u> |
| C. The expected date of delivery of the final-form regulation: | <u>July 2023</u> |
| D. The expected effective date of the final-form regulation: | <u>August 2023</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>August 2023</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Review of the regulations is ongoing, and any changes will be through the rulemaking process.

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APR 25 2023

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

Independent Regulatory
Review Commission

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
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Copy below is hereby certified to be a
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Agencies:

Attorney General:

Pennsylvania Liquor Control Board
(AGENCY)

Digitally signed by Amy M. Elliott
DN: cn=Amy M. Elliott, o=Pennsylvania
Office of Attorney General, ou=Chief Deputy
Attorney General,
email=ae Elliott@attorneygeneral.gov, c=US
Date: 2023.02.13 11:25:00P

BY: Amy M. Elliott
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 54-104

BY: [Signature]
Chief Counsel

3/7/2023

DATE OF APPROVAL

DATE OF ADOPTION: 2/8/2023

BY: [Signature]

2/8/2023
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

TITLE: Chairman
(Executive Officer, Chairman or
Secretary)

Check if applicable. No Attorney
General approval or objection within
30 days after submission.

TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

SUBCHAPTER C. AMUSEMENT AND ENTERTAINMENT

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

40 PA. CODE CHAPTER 5

DUTIES AND RIGHTS OF LICENSEES

The Liquor Control Board (“Board”), under the authority of sections 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend sections 5.30 and 5.32 of Chapter 5 (relating to duties and rights of licensees) as set forth below.

Summary

This proposed rulemaking updates sections 5.30 and 5.32 of the Board’s Regulations. This proposed rulemaking is undertaken as part of an ongoing effort to review and update the Board’s Regulations.

The proposed rulemaking amends section 5.30 (relating to definitions) to expand some existing definitions and add new definitions to provide clarity to the regulated community. These amendments stem from questions posed by the regulated community to the Board’s Office of Chief Counsel, which provided answers through advisory opinions issued pursuant to section 211.1 of the Liquor Code, 47 P.S. § 2-211.1.

The proposed rulemaking amends section 5.32 (relating to restrictions/exceptions) for the purpose of clarity and improved readability. The first two subsections are reserved; therefore, the amendments begin at subsection (c), which states that a licensee may not directly or indirectly hire or permit a minor under 18 to act as an “entertainer” and does not identify any exceptions. Because the entire text of subsection (c) is being replaced, the proposed rulemaking deletes subsection (c) and creates subsection (c.1).

The proposed subsection (c.1) provides that any employment or engagement of a minor under 18 years of age as an entertainer must be in accordance with the Pennsylvania Child Labor Act (43 P.S. § 40.1 et seq.).

The proposed rulemaking amends subsection (d) in paragraphs (1) and (4) for the purpose of legal accuracy. In paragraph (1), instead of referencing “Parts and Subparts” of statutes, the proposed rulemaking now references the corresponding acts (the Boxing Act and the Wrestling Act) with their corresponding statutory citations. In subparagraph (4)(i), the definition of “charitable organizations” is no longer available in 49 Pa. Code Part I, Subpart B, because that regulation was deleted in 1997. See 27 Pa.B. 2934. The proposed rulemaking now cites to the Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1—162.24, which is cited in subparagraph (4)(ii). In subparagraph (4)(ii), the legal citation to the Local Option Small Games of Chance Act is updated.

The proposed rulemaking deletes paragraph 5.32(e)(1), which prohibits “lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants.” The case of Conchatta, Inc. v. Miller, 458 F.3d 258 (3d Cir. 2006), held that the prohibition on “lewd, immoral or improper conduct” was unconstitutional on the basis that it is substantially overbroad. Conchatta was not based on this paragraph of the Board’s regulation, but a different paragraph—5.32(b)—that has since been reserved. See 43 Pa.B. 7082. Since the phrase “lewd, immoral or improper conduct” is legally unenforceable, the proposed rulemaking deletes it from the regulation.

The proposed rulemaking adds a sentence to paragraph 5.32(e)(3), providing that no amount of liquor, alcohol, or malt or brewed beverages may be offered as a prize for participating in an event, contest or tournament, whether for on-premises or off-premises consumption. Similar language exists in subsection (h), for sweepstakes prizes.

In paragraph 5.32(e)(5), the proposed rulemaking replaces the word “charity” with “charitable organization,” to be consistent with the language used in paragraph 5.32(d)(4).

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The final subsection addressed by this proposed rulemaking is subsection 5.32(g), which provides that “municipalities may petition the Board for exemption from the Board’s regulations regarding **the enforcement of subsection (a)** for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code.” (Emphasis added). Subsection (a) prohibited a licensee from using or permitting to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard on the outside of the licensed premises. The act of December 22, 2011 (P. L. 530, No. 113) (Act 113) and the act of July 5, 2012 (P. L. 1007, No. 116) amended the Liquor Code to render subsection (a) obsolete, and thereafter, the Board submitted a final-omitted rulemaking to rescind subsection (a). See 43 Pa.B. 7082. The final-omitted rulemaking overlooked subsection 5.32(g), but the Board rescinds it with this proposed rulemaking.

Affected Parties

As of January 13, 2023, there were approximately 18,500 licensees who may be affected by this proposed rulemaking.

Paperwork Requirements

The proposed rulemaking would not require any additional paperwork to be filed.

Fiscal Impact

This proposed rulemaking is not anticipated to have any fiscal impact.

Effective Date

These regulations will become effective upon publication in final form in the Pennsylvania Bulletin.

Public Comments

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, or RA-lblegal@pa.gov, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. ***E-mail is preferred.*** When commenting, individuals should indicate if they wish to be apprised of future developments regarding this proposed rulemaking, and include a name, address and e-mail address. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission's (IRRC) website. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on ____, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

TIM HOLDEN,
Chairperson

ANNEX A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter C. AMUSEMENT AND ENTERTAINMENT

§ 5.30. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Audio/video playback device—A device which emits a musical recording, or in the case of a video jukebox, emits a musical recording accompanied by recorded video images on a screen that does not exceed 24 inches by 30 inches.

Dancing—**Moving one's body in rhythm, usually accompanied by tonal music or percussion. Dancing may be performed by a scheduled entertainer or by customers on the licensed premises.**

Event/tournament/contest—A competitive endeavor involving skill, **chance**, speed, strength, [or] endurance, **or knowledge**. The term includes a competitive endeavor involving physical attributes of contestants. **The term also includes trivia contests.**

Floor shows—**Live entertainment involving musical, dance, or comedy acts. To constitute a musical act, there must be a vocalist or singer, more than two instrumentalists, or a disc jockey.**

Game—A device, such as a pinball, shuffleboard, bowling [or], video machine **or electronic tablet** which provides the player with amusement and no other form of award excepting free plays.

Instrumental music—Music generated by instruments played by [musicians] **no more than two instrumentalists** without vocal accompaniment.

Sweepstakes—A chance promotion in which tickets or game pieces are distributed and the winner or winners are selected in a random drawing.

Theatricals—**The performance of a play, musical, or drama. The term includes poetry readings.**

* * *

§ 5.32. Restrictions/exceptions.

(a) (Reserved).

(b) (Reserved).

[(c) A licensee may not directly or indirectly employ a minor person under 18 years of age as an entertainer in the licensed establishment, or in a room or place connected therewith, nor may a licensee permit in the establishment, room or place, a minor person under 18 years of age to act as an entertainer.] [Reserved.]

(c.1) A licensee may only employ or engage a minor under 18 years of age as an entertainer if it does so in accordance with the Pennsylvania Child Labor Act (43 P.S. § 40.1 et seq.).

(d) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may not hold or permit to be held, on the licensed premises an event, tournament or contest; nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums, for any purpose except as follows:

(1) A hotel, restaurant, club or malt beverage eating place licensee may permit to be held within the licensed premises an event sanctioned by the State Athletic Commission **[under 5 Pa.C.S. Part I, Subparts A and B (relating to general provisions; and boxing) or under 5 Pa.C.S. Part I, Subpart C (relating to the Wrestling Act)] under the Boxing Act (5 Pa.C.S. §§ 301-1701) or the Wrestling Act (5 Pa.C.S. §§ 1901-2110).** Only malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered on that portion of the licensed premises where the event is held, and not sooner than 1 hour before, and not later than 1 hour after the event. Service of malt or brewed beverages at these events will be conducted only with the prior written approval of the State Athletic Commission filed with the Board. Drinks shall be dispensed in that portion of the licensed premises where the event is conducted only in paper or plastic cups.

(2) A hotel, restaurant, club or malt beverage eating place licensee may hold or permit to be held within the licensed premises or in a bowling alley immediately adjacent thereto as provided in sections 406(a)(1) and 442(b) of the Liquor Code (47 P.S. § § 4-406(a)(1) and 4-442(b)), a bowling tournament or bowling contest. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be served, sold or delivered at the bowling tournament or bowling contest by the licensee.

(3) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may permit the conduct of events on the licensed premises by groups constituting a league. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered at the events on the licensed premises.

(4) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the

conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined **[as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).]** **as in the Solicitation of Funds for Charitable Purposes Act (10 P.S. § § 162.1—162.24).**

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds **[For ~~for~~ Charitable Purposes Act (10 P.S. § § 162.1—162.24) and, if applicable, the Local Option Small Games of Chance Act [(10 P.S. § § 311—327)] (10 P.S. §§ 328.301—328.308), and the Bingo Law (10 P.S. § § 301—308.1).**

(5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.

(e) For an activity conducted under this subchapter, the following apply:

(1) **[There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants.] [Reserved.]**

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant. **In addition, no amount of liquor, alcohol, or malt or brewed beverages may be offered as a prize for participating in an event, contest or tournament, whether for on-premises or off-premises consumption.**

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring **[charity] charitable organization** may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed ~~[\$1,000]~~ \$2,000. The total value of all prizes awarded in any 7-day period may not exceed ~~[\$25,000]~~ \$35,000. An event, tournament or contest conducted under the authority of the Local Option Small Games of Chance Act [(10 P.S. § § 328.101—328.707)] ~~(10 P.S. §§ 328.301—328.308)~~ or the Bingo Law (10 P.S. § § 301—308.1) is subject to the prize limits in these acts.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

(f) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employees of a licensee.

(g) **[Municipalities may petition the Board for exemption from the Board’s regulations regarding the enforcement of subsection (a) for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code (47 P.S. § 4-493.1(b)).] [Reserved.]**

(h) A manufacturer, manufacturer’s representative or licensee may sponsor sweepstakes promotions. Permissible sweepstakes shall provide that the following conditions apply:

(i) No purchase is necessary to enter.

(ii) Entrants shall be 21 years of age or older.


(iii) Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.

(iv) Alcoholic beverages may not be part of the prize.

Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board
April 25, 2023

**SUBJECT: Proposed Regulation Package 54-104
Duties and Rights of Licensees**

**TO: DAVID SUMNER, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION**

**FROM: RODRIGO J. DIAZ 
CHIEF COUNSEL
PENNSYLVANIA LIQUOR CONTROL BOARD**

By E-Mail

The Pennsylvania Liquor Control Board is submitting proposed amendments to sections 5.30 and 5.32 of its regulations. Attached please find a copy of the Regulatory Analysis Form, signed CDL-1 face sheet, Preamble and Annex A (regulatory text). The Office of Attorney General has approved these proposed amendments for form and legality.

These amendments have been delivered today to the legislative oversight committees and to the Legislative Reference Bureau. The Transmittal Sheet is attached.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, at RALBLegal@pa.gov.

Attachments

cc with attachments:

Honorable Mike Regan, Majority Chairman, Senate Law and Justice Committee
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee
Honorable Daniel Deasy, Majority Chairman, House Liquor Control Committee
Honorable Mindy Fee, Minority Chairman, House Liquor Control Committee
Taylor Wamsher, Executive Director, Senate Law and Justice Committee
Stephen Bruder, Executive Director, Senate Law and Justice Committee
Lynn Benka-Davies, Executive Director, House Liquor Control Committee
Michael Biacchi, Executive Director, House Liquor Control Committee

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE
REGULATORY REVIEW ACT**

RECEIVED

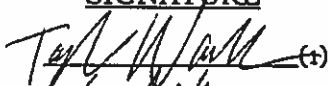



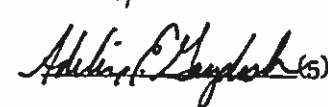
I.D. NUMBER: 54-104
SUBJECT: Duties and Rights of Licensees
AGENCY: Pennsylvania Liquor Control Board

APR 25 2023
Independent Regulatory
Review Commission

TYPE OF REGULATION

- X Proposed Regulation
___ Final Regulation
___ Final Regulation with Notice of Proposed Rulemaking Omitted
___ 120-day Emergency Certification of the Attorney General
___ 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
4/25/23	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
4/26/23	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
4/25/23	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
4/26/23	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
4.25.23	 (5)	LEGISLATIVE REFERENCE BUREAU
___	___ (6)	INDEPENDENT REGULATORY REVIEW COMMISSION