

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Prize Limits for Events, Tournaments and Contests

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends § 5.32 (relating to restrictions/exceptions).

Summary

Under the Board's regulations, hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brewery pub and eating place retail dispenser licensees (collectively referred to as retail licensees) may not conduct events, tournaments or contests, nor award or permit the award of trophies, prizes or premiums on the licensed premises. Section 5.30 (relating to definitions) defines an "event/tournament/contest" as "[a] competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants."

There are exceptions to the prohibitions, one of which allows a retail licensee to have a self-sponsored event, tournament or contest and to award prizes in conjunction with an event, tournament or contest. However, a retail licensee was not able to award more than \$500 worth of prizes for a given event, tournament or contest, nor more than \$5,000 worth of prizes per week under former § 5.32(e)(7).

Section 5.32(d)(4) also creates an exception for those events conducted under the authority of the Local Option Small Games of Chance Act (act) (10 P. S. §§ 328.101—328.707) and the Bingo Law (law) (10 P. S. §§ 301—308.1). Events conducted under the act and the law are subject to the prize limits found in those acts, not the limits in § 5.32(e)(7).

Section 5.32(e)(7), which sets forth the prize limits for self-sponsored events, tournaments and contests conducted by retail licensees, was promulgated by the Board in 1996. Between 1988, when the current small games of chance (SGOC) prize limits were set, and 1996, the Board's regulations did not permit retail licensees to have a financial interest in an event, tournament or contest. In 1996, the Board amended § 5.32 to remove the financial interest prohibition and to extend the then-existing SGOC prize limitations, applicable only to licensed clubs holding an SGOC license, to retail licensees, thereby creating a more level playing field between private clubs which could acquire SGOC licenses and retail licensees which could not acquire SGOC licenses.

In the rulemaking process, the Board intended to tie the prize limits afforded under § 5.32(e)(7) with the prize limits afforded under the act. This intent was made evident in the proposed rulemaking published at 26 Pa.B. 31 (January 6, 1996) in which the Board did not include specific individual or weekly prize limits, but rather incorporated the SGOC prize limitations by reference: "The total value of the prizes for a given event, tournament or contest may not exceed the limits as established by the Local Option Small Games of Chance Act (10 P. S. §§ 311—327)."

In addressing concerns raised by the Independent Regulatory Review Commission (IRRC) regarding clarity, the Board amended the final-form rulemaking published at 26 Pa.B. 2209 (May 11, 1996) to include specific monetary prize limitations. The prize limitations for events, tournaments and contests by retail licensees were established based upon the principal prize limits for clubs conducting small games of chance under the authority of their SGOC licenses.

The act of February 2, 2012 (P. L. 7, No. 2) (Act 2) significantly amended the act. Among other changes involving SGOC, Act 2 renumbered and amended section 5 of the act (10 P. S. § 328.302) to increase the maximum prize for a single game of chance from \$500 to \$1,000 and increased the maximum weekly prize limit for games of chance from \$5,000 to \$25,000. Thus, the correlation that existed since 1996 was severed by Act 2, which created a significant disparity in the amounts of prizes that may be awarded by private clubs which may acquire an SGOC license and other retail licensees which cannot acquire SGOC licenses.

In final-form § 5.32(e)(7), the prize limits for self-sponsored events, tournaments and contests that occur on retail licensed premises have been increased to approximate the increased prize limits afforded to club licensees which also hold an SGOC license. Accordingly, the maximum value of prizes that may be awarded for a given event, tournament or contest is increased from \$500 to \$1,000 and the maximum value of prizes awarded in a given week is increased from \$5,000 to \$25,000. The final-form rulemaking re-establishes the historical parity and "level the playing field" for retail licensees relative to conducting events, tournaments and contests.

Finally, a sentence is added to § 5.32(e)(7) to clarify that events, tournaments and contests conducted under the authority of the act or the law are subject to the prize limits in the act and the law rather than the prize limits in § 5.32(e)(7). This is consistent with how the Board has been interpreting the regulation.

Response to Comments

On November 28, 2012, IRRC notified the Board, the House Liquor Control Committee and the Senate Law and Justice Committee that it did not have objections, comments or recommendations to offer on the proposed rulemaking.

Affected Parties

Those affected by this final-form rulemaking include holders of restaurant, hotel, club, privately-owned public golf courses, privately-owned private golf courses, municipal golf courses, brewery pubs and eating place retail dispenser licenses issued by the Board that conduct self-sponsored events, tournaments and contests at their licensed premises. An increase in the current prize limits may be viewed as a boon to many retail licensees wishing to increase attendance and participation at various events, tournaments and contests (for example, games, costume contests, and the like) with the prospect of higher prizes which may be awarded to participants at the licensed premises.

The Board preliminarily reached out to two industry groups, the Pennsylvania Tavern Association and the Pennsylvania Restaurant Association, both of which indicated that they are generally supportive of the 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 adverse fiscal impact on the regulated community. Since it is discretionary for a retail licensee to take advantage of the increased prize limits, additional costs are not associated with compliance with the final-form rulemaking. In fact, this final-form rulemaking is expected to have a positive fiscal impact for certain retail licensees who may be able to increase the draw to their establishments by offering prizes of higher monetary value at various events, tournaments and contests. However, the potential positive fiscal impact upon those retail licensees which choose to take advantage of the final-form rulemaking cannot be quantified.

This final-form rulemaking is not expected to have adverse fiscal impact on State or local governments.

Effective Date

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

Contact Person

Questions regarding this final-form rulemaking should be addressed to Alan Kennedy-Shaffer, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, (717) 783-9454, ra-lblegal@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 13, 2012, the Board submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 6138 (September 29, 2012), to IRRC and the Chairpersons of the House and Senate Committees 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 re-

quested. In preparing the final-form rulemaking, the Board considered all comments from IRRC, the Chairpersons of the House and the Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 15, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective May 15, 2013.

Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the Board's regulations in the manner provided in this order are necessary and appropriate for the administration of the Liquor Code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.32 to read as set forth at 42 Pa.B. 6138.

(b) The Board shall certify this order and 42 Pa.B. 6138 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

JOSEPH E. BRION,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3067 (June 1, 2013).)

Fiscal Note: Fiscal Note 54-72 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-1246. Filed for public inspection July 12, 2013, 9:00 a.m.]