

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

Notice of Implementation—Industrialized Buildings and Building Components

The Department of Community and Economic Development (Department) is providing an update regarding the notice for the implementation of the regulations published at 53 Pa.B. 830 (February 11, 2023) found at <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-6/181.html>.

Under section 5 of the Industrialized Housing Act (act) (35 P.S. § 1651.5), the amendments of Chapter 145 (relating to industrial housing and components) expanded the Department's role to include monitoring the production of industrialized buildings and building components.

The implementation of these regulations is final.

Under the act's certification program, the Department oversees the production, installation and inspection of new industrialized buildings. Industrialized buildings and building components produced under the certification program, by evidence of the notice of approval, are deemed to comply with the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101—7210.1103). This type of certification program mirrors the current program established for industrialized housing.

As noted at 53 Pa.B. 830, the phase-in period concluded on December 31, 2023. Industrialized buildings and building components must now be certified under the act to be approved for placement in this Commonwealth.

This program establishes uniform standards and methods of construction for industrialized housing, buildings and housing and building components intended for sale, lease or installation for use in this Commonwealth.

Program inquiries should be directed to Michael Moglia, Director, Housing and Buildings Standards Division, Department of Community and Economic Development, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225, (717) 720-7416, mmoglia@pa.gov.

RICK SIGER,
Secretary

[Pa.B. Doc. No. 24-39. Filed for public inspection January 12, 2024, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Duties and Rights of Licensees

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)),

amends §§ 5.14, 5.21 and 5.23 and deletes §§ 5.11, 5.17 and 5.18, to read as set forth in Annex A.

Summary

This final-form rulemaking updates several sections in Chapter 5, Subchapter B (relating to employees of licensees), which pertain to employees of licensees. Many of these sections are duplicative and improperly located. In addition, some references are outdated. This final-form rulemaking is part of the Board's ongoing process to update its regulations and has not been prompted by any recent legislative changes.

This final-form rulemaking deletes § 5.11 (relating to general requirement). Section 5.11 notes that the Board provides for the appointment of managers and references §§ 5.16—5.18. However, § 5.16 has previously been deleted/reserved; the subject of § 5.17 (relating to distributor or importing distributor licensees; appointment of manager) is addressed in § 5.22(b) (relating to employment of licensees); and the subject of § 5.18 (relating to licensees not exempt from penalties) is addressed in § 5.23(e) (relating to appointment of managers). In short, § 5.11 provides no additional regulatory content and therefore warrants deletion.

This final-form rulemaking amends § 5.14 (relating to employment of minors 17 years of age as 18 years of age). This section cites the Child Labor Law (previously found at 43 P.S. §§ 41—66) and reiterates provisions of the statute. However, the act of October 24, 2012 (P.L. 1209, No. 151) repealed the Child Labor Law and replaced it with the Child Labor Act (43 P.S. §§ 40.1—40.14). Therefore, the current text is deleted and replaced with a reference to the Child Labor Act.

Because §§ 5.15 and 5.16 are already reserved, the next section addressed by this final-form rulemaking is § 5.17. The undesignated heading for §§ 5.11—5.18 is "Employment of Minors," but the subject of § 5.17 pertains to distributor or importing distributor licensees having other employment. This subject is also addressed, almost verbatim, in § 5.22(b). Therefore, this final-form rulemaking deletes § 5.17 because it does not correspond to the heading and it is duplicative.

Similarly, the subject of § 5.18 has nothing to do with minors but provides that the appointment of a manager does not exempt a licensee from penalties for violations of the Liquor Code (47 P.S. §§ 1-101—10-1001) and the Board's regulations. This subject is also addressed in § 5.23(e). Therefore, this final-form rulemaking deletes § 5.18 because it does not correspond to the heading and it is duplicative.

This final-form rulemaking amends § 5.21 by updating the reference to § 5.14.

This final-form rulemaking makes no changes to § 5.22.

This final-form rulemaking amends § 5.23(a). The last sentence of subsection (a) currently provides that "The manager shall devote full time and attention to the licensed business." However, subsection (d) reiterates the same information and goes on to explain that the manager "...may not be employed or engaged in another business unless prior written approval is obtained from the Board." To reduce confusion, this final-form rulemaking adds the additional language of subsection (d) to subsection (a) and deletes that language in subsection (d).

This final-form rulemaking amends § 5.23(c) by creating paragraphs (1) and (2) from text in subsection (d). The last sentence in subsection (c) is “Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by the appropriate fee.” The fee information is currently found in the first and last sentences of section (d). The Board believes that moving the fee information to the end of subsection (c) will improve understanding.

This final-form rulemaking adds subsection (c.1), which references § 3.35 (relating to persons from whom criminal history record information checks are required). This information is included to provide additional guidance to the regulated community.

This final-form rulemaking deletes the first and last sentences of subsection (d), having relocated this text to create two new paragraphs in subsection (c). In addition, this final-form rulemaking deletes the third sentence of subsection (d), since this information has been moved to subsection (a).

This final-form rulemaking amends subsection (e) to clarify that the Board is only involved with the approval or disapproval of a manager. Currently, subsection (e) begins “Appointment or approval, or both, by the Board of a manager. . .” The Board does not appoint a manager; the licensee appoints a manager. The Board either approves or disapproves the appointment.

This final-form rulemaking amends subsection (g), which pertains to what must be done when the manager is ill or on vacation, by fixing a typographical error that incorrectly references “licensee” instead of “manager.” In addition, this final-form rulemaking adds paragraphs (1) and (2) to reorganize the text and explain the procedure to follow in the event of the death of a licensee who was also serving as the manager.

Affected Parties

There are approximately 27,000 licensees who may be affected by this final-form rulemaking. It is anticipated that these changes will have a positive impact on the affected parties, in that the regulations will become more streamlined and easier to understand.

Paperwork Requirements

This final-form rulemaking will not require any additional paperwork to be filed.

Fiscal Impact

This final-form rulemaking is not anticipated to have any fiscal impact.

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 Jason Worley, Acting Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 23, 2023, the Board submitted a copy of the notice of proposed rulemaking, published at 53 Pa.B. 3577 (July 8, 2023) to the Independent Regulatory Review Commission (IRRC) and to the chairpersons of the Law and

Justice Committee of the Senate and the Liquor Control Committee of the House of Representatives (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as well as other documents when requested. The Board did not receive any comments from IRRC, the Committees or the public, except for a letter from the Pennsylvania Beer Alliance that was filed with IRRC, expressing support for the proposed regulatory amendments.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 15, 2023, the final-form rulemaking was deemed approved by the Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective November 15, 2023.

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) referred to as the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 §§ 5.14, 5.21 and 5.23 and deleting §§ 5.11, 5.17 and 5.18 to read as set forth in Annex A.

(b) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

TIM HOLDEN,
Chairperson

(Editor’s Note: See 53 Pa.B. 7475 (December 2, 2023) for IRRC’s approval.)

Fiscal Note: Fiscal Note 54-99 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. EMPLOYEES OF LICENSEES

EMPLOYMENT OF MINORS

§ 5.11. [Reserved].

§ 5.14. **Child Labor Act.**

Reference is directed to the Child Labor Act (43 P.S. §§ 40.1—40.14), which establishes general limitations on

the employment of minors and specifically addresses the employment of minors where alcoholic beverages are produced, sold or dispensed.

§ 5.17. [Reserved].

§ 5.18. [Reserved].

EMPLOYMENT OF OTHERS

§ 5.21. Prohibited employment.

A retail licensee may not employ in his licensed establishment a person who is precluded by section 493(14) of the Liquor Code (47 P.S. § 4-493(14)) from frequenting the establishment, except minors employed in accordance with §§ 5.12—5.14 (relating to employment of minors by retail licensees; employment of minors 18 to 21 years of age by licensees other than retail; and Child Labor Act).

§ 5.23. Appointment of managers.

(a) The operation of a licensed business requires a manager. A licensee shall appoint an individual as manager for each licensed establishment. The manager shall devote full time and attention to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board.

(b) An individual licensee holding multiple licenses may designate himself as manager of only one licensed establishment. If a license is held by more than one individual, the manager may be one of the individuals or another person the licensee may designate.

(c) The manager appointed by a licensee shall be a reputable person. The licensee shall notify the Board in writing of the name and home address of the manager and the date and place of birth. If there is a change of manager, the licensee shall give the Board written notice within 15 days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by the appropriate fee as follows:

(1) When a background investigation is conducted to obtain or verify information regarding an individual appointed as manager, a total fee of \$135 will be assessed by the Board.

(2) If the designated manager is currently a Board-approved officer, member, partner or shareholder of that licensee, a fee of \$60 will be assessed by the Board.

(c.1) The appointed manager shall submit a criminal history record information check to the Board, under § 3.35 (relating to persons from whom criminal history record information checks are required).

(d) An individual may not act in the capacity of manager after the licensee has been notified that the individual has been disapproved by the Board.

(e) Approval by the Board of a manager will not exempt the licensee from the penalties provided by law and this title for violations committed in the licensed establishment or in the course of the operation of the licensed business.

(f) The Board may rescind the approval of an appointment of a manager at any time for any cause which it deems sufficient.

(g) In the event of:

(1) Illness or extended vacation of a manager, the Board may approve the appointment of a manager for a period not to exceed 30 days. In case of emergency, the approval may be extended upon written request of the licensee.

(2) Death of the licensee that leaves the licensed business without a manager, the surviving spouse or the decedent's personal representative shall, within 15 days of the death of the licensee, either appoint an individual as manager in accordance with this section or return the license to the Board to be held in safekeeping in accordance with § 7.31 (relating to surrender of licenses in certain cases).

(h) The licensee, without Board approval, may designate one of its employees as the person in charge of the business for a period of time not to exceed 15 calendar days, when the manager is absent from the licensed premises.

(i) A club manager or steward may engage in employment outside his duties as manager or steward except as provided in section 4-493(11) of the Liquor Code (47 P.S. § 4-493(11)).

(j) If approved by the Board, management contracts may permit the manager for the licensed premises to be employed by the management company; however, the licensee shall have unfettered discretion in all aspects of management of the licensed business, including the employment of the manager and sales of food, alcoholic and nonalcoholic beverages. The licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager is an agent of the licensee.

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