

# RULES AND REGULATIONS

## 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 §§ 5.30 and 5.32 (relating to definitions; and restrictions/exceptions) to read as set forth in Annex A.

#### Summary

This final-form rulemaking amends §§ 5.30 and 5.32 of the Board's regulations and is undertaken as part of an ongoing effort to review and update the Board's regulations. This final-form rulemaking adds definitions, updates citations and provides clarity for the regulated community. It also increases the prize limits for activity on licensed premises to be consistent with the Local Option Small Games of Chance Act (10 P.S. §§ 328.101—328.3101).

This final-form rulemaking amends § 5.30 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 under section 211.1 of the Liquor Code (47 P.S. § 2-211.1).

This final-form rulemaking amends § 5.32 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 years of age to act as an entertainer and does not identify any exceptions. The regulation is updated because the legislature did not grant the Board the authority to determine when a minor under 18 years of age may be employed or engaged as an entertainer. Therefore, this final-form rulemaking deletes subsection (c) and adds subsection (c.1). 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 Child Labor Act (43 P.S. §§ 40.1—40.14).

This final-form rulemaking amends subsection (d)(1) and (4) for the purpose of legal accuracy. In paragraph (1), instead of referencing "Parts" and "Subparts" of statutes, this final-form rulemaking now references the corresponding acts (the Boxing Act and the Wrestling Act) with their corresponding statutory citations. The statutory citations were inadvertently omitted from the proposed rulemaking but have been incorporated into this final-form rulemaking. In paragraph (4)(i), the definition of "charitable organizations" is no longer available in 49 Pa. Code Part I, Subpart B, because that regulation was deleted at 27 Pa.B. 2934 (June 21, 1997). Therefore, this final-form rulemaking now cites, in paragraph (4)(ii), to the Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1—162.23). In addition, the legal citation in paragraph (4)(ii) to the Local Option Small Games of Chance Act is updated.

In the proposed rulemaking, the Board deleted the language in § 5.32(e)(1), including the phrase "lewd, immoral or improper," based on the decision by the Third Circuit Court of Appeals, in *Conchatta, Inc. v. Miller*, 458 F.3d 258 (3d Cir. 2006), *cert. denied*, *Miller v.*

*Conchatta*, 127 S.Ct. 1330 (2007). The Third Circuit held that the word "lewd," found in section 493(10) of the Liquor Code (47 P.S. § 4-493(10)) and § 5.32(b), is unconstitutionally overbroad. The district court found the words "immoral and improper" to be void for vagueness and that issue was not raised before the Third Circuit.

The Board received comments from the Honorable Representative John Lawrence, the Independence Law Center and the Independent Regulatory Review Commission (IRRC) regarding the proposed deletion of § 5.32(e)(1). The Board's response to those comments is set forth in a separate document. In the interest of compromise, the Board amends subsection (e)(1), instead of deleting it, so that in this final-form rulemaking, the paragraph now reads, "[t]he licensee, its servants, agents, employees, patrons or event, contest or tournament participants may not engage in conduct otherwise prohibited by law." By deleting the phrase "lewd, immoral or improper," this amendment eliminates the question of unconstitutionality addressed in *Conchatta*. The Board anticipates that this language will provide clearer guidance to licensees while avoiding constitutional issues. Assuming that the law prohibits conduct for the purpose of promoting public health, safety and welfare, the language in amended subsection (e)(1) now accomplishes this goal.

This final-form rulemaking adds a sentence to subsection (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 subsection (e)(5), this final-form rulemaking replaces the word "charity" with "charitable organization," to be consistent with the language used in subsection (d)(4).

This final-form rulemaking amends subsection (e)(7) to increase the total value of prizes for any event, tournament or contest from \$1,000 to \$2,000, and to increase the total value of prizes awarded in a 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. This final-form rulemaking also corrects the citation to the Local Option Small Games of Chance Act.

Lastly, this final-form rulemaking deletes subsection (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 (47 P.S. § 4-493.1(b))." (Emphasis added.) Reserved 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) and the act of July 5, 2012 (P.L. 1007, No. 116) amended the Liquor Code (47 P.S. §§ 1-101—10-1001) to render subsection (a) obsolete, and thereafter, the Board submitted a final-omitted rulemaking to delete subsection (a) at 43 Pa.B. 7082 (December 7, 2013). That final-omitted rulemaking overlooked subsection (g), but the Board deletes it with this final-form rulemaking.

*Affected Parties*

As of May 1, 2024, there were approximately 15,500 licensees who may be affected by this final-form rulemaking.

*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, 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 April 25, 2023, the Board submitted a copy of the notice of proposed rulemaking, published at 53 Pa.B. 2735 (May 20, 2023) to IRRC and to the chairperson of the Law and Justice Committee of the Senate and to the chairperson of 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 copies of comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC and the public. The Board responded to these comments in a separate document.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 14, 2024, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 15, 2024, and approved the final-form rulemaking.

*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 §§ 5.30 and 5.32 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 54 Pa.B. 5591 (August 31, 2024) for IRRC's approval order.)

**Fiscal Note:** Fiscal Note 54-104 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 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, 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, 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 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) [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 Child Labor Act (43 P.S. §§ 40.1—40.14).

(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, Subpart B (relating to Boxing Act) or under 5 Pa.C.S. Part I, Subpart C (relating to Wrestling Act). 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. The following apply:

(i) A charitable organization for the purposes of this section is defined as in the Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1—162.23).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds for Charitable Purposes Act and, if applicable, the Local Option Small Games of Chance Act (10 P.S. §§ 328.101—328.3101), 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) The licensee, its servants, agents, employees, patrons or event, contest or tournament participants may not engage in conduct otherwise prohibited by law.

(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 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 \$2,000. The total value of all prizes awarded in any 7-day period may not exceed \$35,000. An event, tournament or contest conducted under the authority of the Local Option Small Games of Chance Act or the Bingo Law 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 or 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) [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.

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