

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 3]

Casino Exception

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (code) (47 P. S. § 2-207(i)), amends Chapter 3 (relating to license applications).

Summary

While there is currently not a liquor license specifically designed for casinos or racetrack entities, 4 Pa.C.S. Part II (relating to Pennsylvania Race Horse Development and Gaming Act) (Gaming Act) and the code both contemplate the sale of alcohol at locations licensed by both the Board and the Pennsylvania Gaming Control Board (Gaming). For example, section 493(24)(ii) of the code (47 P. S. § 4-493(24)(ii)) allows the holder of both a license issued by the Board and a license issued by Gaming to provide free alcohol to individuals actively engaged in playing a slot machine. Similarly, 4 Pa.C.S. § 1521(b.1) (relating to liquor licenses at licensed facilities) modifies the code's penalty provisions for entities that hold both casino and liquor licenses.

Certain businesses which are licensed by both the Board and Gaming intend to maintain their liquor license and their gaming license in different subsidiaries of a parent company for various business reasons. Currently, § 3.52(c) (relating to connection with other business) allows both businesses to be conducted by the same entity, subject to the Board's review and approval. Section 3.52(b) also allows a licensed business to have an interior connection to another business, even if the other business is conducted by an unrelated party. However, § 3.52 does not allow separate businesses to be conducted on the licensed premises by separate legal entities, even if the two separate entities are under the common ownership of a parent company. Section 3.52 is being amended to reflect this business practice among entities that hold licenses issued by both the Board and Gaming.

Resubmission

The Board submitted an amendment to § 3.52. The regulation was disapproved at the October 20, 2011, meeting of the Independent Regulatory Review Commission (IRRC). In disapproving the final-omitted rulemaking, IRRC found that certain terms used in § 3.52(a) were ambiguous and lacked clarity. Specifically, IRRC was concerned regarding the use of the term "person," which is defined differently in the code and 4 Pa.C.S. § 1103 (relating to definitions), and the use of the phrase "under common control," which is not defined in the code or the Board's existing regulations.

Under 1 Pa. Code § 311.2(a)(2) (relating to response by an agency to Commission disapproval), the Board revised the regulation to respond to IRRC's objections. Specifically, the Board deleted the originally submitted new language in its entirety, which included the ambiguous terms. In its place, the Board added a sentence which provides that, if a premises is, in whole or in part, licensed by Gaming, a Board licensee may allow the holder of a slot machine license to operate on its licensed premises.

Affected Parties

There are currently ten casinos licensed by Gaming that would benefit from this final-omitted rulemaking. The Board has informed Gaming of the final-omitted rulemaking.

Paperwork Requirements

This final-omitted rulemaking is not expected to affect legal, accounting or consulting procedures and should not require additional reporting, recordkeeping or other paperwork.

Fiscal Impact

This final-omitted rulemaking is not expected to have fiscal impact on the regulated community or State and local governments.

Effective Date

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

Contact Person

Further information is available by contacting Rodrigo Diaz, Executive Deputy Chief Counsel, or Christopher L. Herrington, Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124.

Regulatory Review

Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), on November 28, 2011, the Board submitted a copy of this revised final-omitted rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House and Senate Liquor Control Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). A copy of this material is available to the public upon request.

Under section 7(d) of the Regulatory Review Act, on December 14, 2011, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 7(c.1) of the Regulatory Review Act, IRRC met on December 15, 2011, and approved the final-omitted rulemaking.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 3, are amended by amending § 3.52 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*.

JOSEPH E. BRION,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 7045 (December 31, 2011).)

Fiscal Note: 54-67. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 3. LICENSE APPLICATIONS

Subchapter F. PREMISES

§ 3.52. Connection with other business.

(a) A licensee may not permit other persons to operate another business on the licensed premises. If the premises are, in whole or in part, licensed by the Pennsylvania Gaming Control Board, a licensee may allow the holder of a slot machine license, issued by the Pennsylvania Gaming Control Board, to operate on its licensed premises.

(b) Licensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board.

(c) A licensee may not conduct another business on the licensed premises without Board approval.

[Pa.B. Doc. No. 12-84. Filed for public inspection January 20, 2012, 9:00 a.m.]
