

PROPOSED RULEMAKING

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)), proposes to amend §§ 5.11, 5.14, 5.17, 5.18, 5.21 and 5.23, to read as set forth in Annex A.

Summary

This proposed 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 In addition, some references are outdated.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 proposed rulemaking is part of the Board's ongoing process to update its regulations and has not been prompted by any recent legislative changes.

This proposed rulemaking would delete § 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 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 proposed rulemaking would amend § 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 However, the act of October 24, 2012 (P.L. 1209, No. 151) repealed the Child Labor Law and replaced it with the Child Labor Act (43 P.S. §§ 40.1—40.14).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 proposed to be 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 proposed 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 proposed rulemaking would delete § 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 proposed rulemaking would delete § 5.18 because it does not correspond to the heading and it is duplicative.

This proposed rulemaking would amend § 5.21 by updating the reference to § 5.14.

This proposed rulemaking makes no changes to § 5.22.

This proposed rulemaking would amend § 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 proposed rulemaking would add the additional language of subsection (d) to subsection (a) and deletes that language in subsection (d).

This proposed rulemaking would amend § 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 proposed rulemaking would add 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 proposed rulemaking would delete the first and last sentences of subsection (d), having relocated this text to create two new paragraphs in subsection (c). In addition, this proposed rulemaking deletes the third sentence of subsection (d), since this information is proposed to be moved to subsection (a).

This proposed rulemaking would amend 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 proposed rulemaking would amend 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 proposed rulemaking would add 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 proposed 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 proposed rulemaking will not require any additional paperwork to be filed.

Fiscal Impact

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

Effective Date

This proposed rulemaking will become effective upon final-form publication 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) web site. 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 May 23, 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 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

Fiscal Note: 54-99. No fiscal impact; recommends adoption.

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. [**General requirement**] [Reserved].

[Under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), the Board provides for the appointment of managers in the operation of licensed premises, subject to §§ 5.16—5.18 (relating to appointment of managers; distributor or importing distributor licenses; appointment of manager; and licensees not exempt from penalties.)]

§ 5.14. [**Employment of minors 17 years of age as 18 years of age**] Child Labor Act.

[Under the Child Labor Law (43 P.S. § 41), a minor who is 17 years of age who is a high school graduate or who is declared to have attained his academic potential by the chief administrator of the school district within which he resides shall be deemed to be a minor of 18 years of age for the purposes of this subchapter. It shall be the duty of the employer to have in his possession on the licensed premises, and to produce on demand, a certified copy of a diploma or certificate of gradua-

tion of the 17-year-old minor, or a letter on the official stationery of the school district and over the signature of the chief administrator of the school district in which the minor resides, declaring that the 17 year old minor has attained his academic potential.] 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. [**Distributor or importing distributor licenses; appointment of manager**] [Reserved].

[In accordance with section 492(12) of the Liquor Code (47 P.S. § 4-492(12)), no individual holding a distributor or importing distributor license is permitted to be employed or engaged in another business on or off the licensed premises without Board approval. If the license is issued in the name of a partnership, one of the partners shall be designated as manager and the Board may permit the other partner to have outside employment. However, the partnership shall first secure written permission from the Board before any of its members may be employed in an occupation or enterprise other than the licensed business.]

§ 5.18. [**Licensees not exempt from penalties**] [Reserved].

[Appointment of a manager may not exempt the licensee from the penalties provided by law and Board regulations for violations committed in the licensed establishment or in the course of the licensed business.]

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 [**employment of minors 17 years of age as 18 years of age**] 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) [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.] 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. [The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board. If the designated manager is currently a Board-approved officer, member, partner or shareholder of that licensee, a fee of \$60 will be assessed.]

(e) [Appointment or approval, or both,] 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:

[illness] (1) Illness or extended vacation of a **[licensee] 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.

[Pa.B. Doc. No. 23-888. Filed for public inspection July 7, 2023, 9:00 a.m.]