

PROPOSED RULEMAKINGS

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)), proposes to amend § 5.32 (relating to restrictions/exceptions) to read as set forth in Annex A.

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 may not 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 § 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 the specific monetary prize limitations in the current regulation. The current 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 had existed since 1996 has now been severed by Act 2, which has 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.

The proposed amendment to § 5.32(e)(7) would increase the prize limits for self-sponsored events, tournaments and contests that occur on retail licensed premises 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 would be increased from \$500 to \$1,000 and the maximum value of prizes awarded in a given week would be increased from \$5,000 to \$25,000. The proposed rulemaking would re-establish the historical parity and "level the playing field" for retail licensees relative to conducting events, tournaments and contests.

Finally, a sentence is proposed to be 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.

Affected Parties

Those affected by this proposed amendment 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 has preliminarily reached out to two industry groups, the Pennsylvania Tavern Association and the Pennsylvania Restaurant Association, both of which have indicated that they are generally supportive of the proposed rulemaking.

Paperwork Requirements

The Board does not anticipate that this proposed rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

Fiscal Impact

This proposed 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 proposed rulemaking. In fact, this proposed 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 proposed rulemaking cannot be quantified.

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

Effective Date

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

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to Norina Lynn, Assistant Counsel, or Christopher Herrington, Deputy Chief Counsel, Office of Chief Counsel, 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 September 13, 2012, 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 the Senate Law and Justice Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objec-

tions 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 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 of comments, recommendations or objections raised.

JOSEPH E. BRION,
Chairperson

Fiscal Note: 54-72. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 40. LIQUOR****PART I. LIQUOR CONTROL BOARD
CHAPTER 5. DUTIES AND RIGHTS OF
LICENSEES****Subchapter C. AMUSEMENT AND
ENTERTAINMENT****§ 5.32. Restrictions/exceptions.**

* * * * *

(e) For an activity conducted under this subchapter, the following apply:

* * * * *

(7) The total value of all prizes for any given event, tournament or contest may not exceed [\$500] \$1,000. The total value of all prizes awarded in any 7-day period may not exceed [\$5,000] \$25,000. An event, tournament or contest conducted under the authority of the Local Option Small Games of Chance Act (10 P.S. §§ 328.101—328.707) or the Bingo Law (10 P.S. §§ 301—308.1) is subject to the prize limits in these acts.

* * * * *

[Pa.B. Doc. No. 12-1900. Filed for public inspection September 28, 2012, 9:00 a.m.]