

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION  
IRRC

2011 NOV 29 P 4: 13

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:  
Pennsylvania Liquor Control Board

(2) Agency Number: 54  
Identification Number: 67

IRRC Number: 2912

(3) PA Code Cite: 40 Pa. Code, Chapter 3

(4) Short Title: Casino Exception

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Christopher L. Herrington, Esq. (717) 783-9454  
Deputy Chief Counsel  
Pennsylvania Liquor Control Board  
Northwest Office Building, Room 401  
Harrisburg, PA 17124  
FAX: (717)787-8820  
E-mail: [ra-lblegal@state.pa.us](mailto:ra-lblegal@state.pa.us)

Secondary Contact: Rodrigo Diaz, Esq. (717) 783-9454  
Executive Deputy Chief Counsel  
(same contact information)

(6) Type of Rulemaking (check applicable box):

- |  |  |
|--|--|
| <input type="checkbox"/> Proposed Regulation                 | <input type="checkbox"/> Emergency Certification Regulation;   |
| <input type="checkbox"/> Final Regulation                    | <input type="checkbox"/> Certification by the Governor         |
| <input checked="" type="checkbox"/> Final Omitted Regulation | <input type="checkbox"/> Certification by the Attorney General |

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

While there is currently no liquor license specifically designed for casinos, the Gaming Act and the Liquor Code both contemplate the sale of alcohol by locations licensed by both the Board and the Pennsylvania Gaming Control Board ("Gaming"). The regulation is amended to reflect that certain businesses intend to keep their liquor license and their gaming license in different subsidiaries of the same parent company. While the current regulations allow both businesses to be conducted by the same entity - with Board approval - the regulations do not allow the businesses to be conducted by separate legal entities.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 207(i) of the Pennsylvania Liquor Code [47 P.S. § 2-207(i)].

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Section 207(i) of the Liquor Code [47 P.S. § 2-207(i)] directs the Board to “make such regulations not inconsistent with this act as it may deem necessary for the efficient administration of this act.” The current regulation is not consistent with the Liquor Code, therefore it is incumbent upon the Board to make the regulations “not inconsistent” with the Liquor Code.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

While there is currently no liquor license specifically designed for casinos or racetrack entities, the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) and the Pennsylvania Liquor Code both contemplate the sale of alcohol at locations licensed by both the Pennsylvania Liquor Control Board (“Board”) and the Pennsylvania Gaming Control Board (“Gaming”). For example, section 493(24)(ii) of the Liquor 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 anyone actively engaged in playing a slot machine. Similarly, section 1521(b.1) of the Gaming Act [4 Pa. C.S. § 1521(b.1)] modifies the Liquor Code’s penalty provisions for entities that hold both casino licenses 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, the Board’s regulations allow both businesses to be conducted by the same entity, subject to the Board’s review and approval. [40 Pa. Code § 3.52(c)]. The Board’s regulations also allow a licensed business to have an interior connection to another business, even if the other business is conducted by an unrelated party. [40 Pa. Code § 3.52(b)]. However, the regulations do not allow separate businesses to be conducted on the licensed premises by separate legal entities, even if the two (2) separate entities are under the common ownership of a parent company. The regulation is being amended to reflect this business practice among entities that hold licenses issued by both the Board and Gaming.

The Board submitted an amendment to section 3.52 of the Board’s regulations [40 Pa. Code § 3.52] on September 7, 2011. The regulation was disapproved at the October 20, 2011 meeting of the Independent Regulatory Review Commission (“IRRC”). In disapproving the regulation, IRRC found that certain terms used in amended section 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 Liquor Code and the Gaming Act, and the use of the phrase “under common control,” which is not defined in the Liquor Code or the Board’s existing regulations.

Pursuant to 1 Pa. Code § 311.2(a)(2), the Board has revised the regulation in order 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.

There are currently ten (10) casinos licensed by the Pennsylvania Gaming Control Board that would benefit from this regulation. The Board has informed Gaming of the proposed amendment.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Board has not relied on data to justify this regulation.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

There will be no adverse effects as a result of this regulation.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

No persons, groups or entities will be required to comply with these regulations, because they represent a relaxation of the current regulations. To the contrary, there will be ten (10) licensees that will benefit from the change.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board does not anticipate that this regulatory change will affect the costs or savings of the regulated

community.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to have a cost or savings benefit to local governments.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The implementation of the regulation is not expected to affect the costs or savings of state government.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>


(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation is intended to promote consistency and clarity between the Liquor Code and the Board's Regulations. It is not expected to have any costs or adverse effects.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

During the development of this regulation, counsel for various affected licensees were consulted, and the proposed text of the revised regulation was suggested to the Board.

Notice of this final rulemaking has been given to all affected licensees by U. S. Mail or e-mail and by publication in the *Pennsylvania Bulletin* on July 30, 2011 [41 Pa.B 4104].

The Board's Office of Chief Counsel received feedback from Attorney Alan Kohler, who represents two (2) of the casinos in Pennsylvania, with regard to the proposed regulation. Attorney Kohler advised that this regulatory change is greatly needed by the casino industry in Pennsylvania and that his clients strongly support the regulatory change.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Non-regulatory alternatives were not considered because the benefit for licensed businesses requires a modification to the current regulations.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Federal regulations are not applicable.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will ensure that Pennsylvania's casinos can effectively compete against other states' casinos without concerns about violating this Board regulation, and without the need to restructure the various business entities which currently hold their liquor and gaming licenses.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect any other existing or proposed regulations of the Board or any other state agency. The Board provided the Pennsylvania Gaming Control Board with advance notice of the proposed rulemaking.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

(26) Include a schedule for review of the regulation including:

- |   |                             |
|---|-----------------------------|
| A. The date by which the agency must receive public comments:                               | <u>None - Final-omitted</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>                  |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>November 28, 2011</u>    |
| D. The expected effective date of the final-form regulation:                                | <u>December 2011</u>        |
| E. The date by which compliance with the final-form regulation will be required:            | <u>December 2011</u>        |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>                  |

(27) Provide the schedule for continual review of the regulation.

Review of the regulations is ongoing and any changes to the regulation will be through the rulemaking process.



CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

RECEIVED  
IRRC

DO NOT WRITE IN THIS SPACE  
2011 NOV 29 PM 4:13

Copy below is hereby approved  
as to form and legality. Attorney General

BY /s/ Amy M. Elliott  
(DEPUTY ATTORNEY GENERAL)

October 7, 2011  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to  
be a true and correct copy of a  
document issued, prescribed or  
promulgated by:

Pennsylvania Liquor Control Board  
(AGENCY)

DOCUMENT/FISCAL NOTE  
NO. 054-67

DATE OF ADOPTION: July 6, 2011

BY: /s/ Patrick J. Stapleton, III

TITLE: Chairman  
(Executive Officer, Chairman or  
Secretary)

Copy below is hereby approved  
as to form and legality. Executive  
or Independent Agencies:

BY: Ys Diehl  
Chief Counsel

November 28, 2011  
DATE OF APPROVAL

Check if applicable. No  
Attorney General approval or  
objection within 30 days after  
submission.

TITLE 40—LIQUOR

CHAPTER 3. LICENSE APPLICATIONS

*The following section is amended:*

3.52. Connection with other business.

# **FINAL-OMITTED RULEMAKING**

## **LIQUOR CONTROL BOARD**

### **40 PA. CODE CHAPTER 3**

#### **Casino Exception**

The Liquor Control Board (“Board”), under the authority of section 207(i) of the Liquor Code [47 P.S. § 2-207(i)], amends Chapter 3.

#### *Summary*

While there is currently no liquor license specifically designed for casinos or racetrack entities, the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) and the Pennsylvania Liquor Code both contemplate the sale of alcohol at locations licensed by both the Pennsylvania Liquor Control Board (“Board”) and the Pennsylvania Gaming Control Board (“Gaming”). For example, section 493(24)(ii) of the Liquor 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 anyone actively engaged in playing a slot machine. Similarly, section 1521(b.1) of the Gaming Act [4 Pa. C.S. § 1521(b.1)] modifies the Liquor Code’s penalty provisions for entities that hold both casino licenses 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, the Board’s regulations allow both businesses to be conducted by the same entity, subject to the Board’s review and approval. [40 Pa. Code § 3.52(c)]. The Board’s regulations also allow a licensed business to have an interior connection to another business, even if the other business is conducted by an unrelated party. [40 Pa. Code § 3.52(b)]. However, the regulations do not allow separate businesses to be conducted on the licensed premises by separate legal entities, even if the two (2) separate entities are under the common ownership of a parent company. The regulation is being amended to reflect this business practice among entities that hold licenses issued by both the Board and Gaming.

### *Resubmission Explanation*

The Board submitted an amendment to section 3.52 of the Board's regulations [40 Pa. Code § 3.52] on September 7, 2011. The regulation was disapproved at the October 20, 2011 meeting of the Independent Regulatory Review Commission ("IRRC"). In disapproving the regulation, IRRC found that certain terms used in amended section 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 Liquor Code and the Gaming Act, and the use of the phrase "under common control," which is not defined in the Liquor Code or the Board's existing regulations.

Pursuant to 1 Pa. Code § 311.2(a)(2), the Board has revised the regulation in order 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 (10) casinos licensed by the Pennsylvania Gaming Control Board that would benefit from this regulation. The Board has informed Gaming of the proposed amendment.

### *Paperwork Requirements*

This regulatory change is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork.

### *Fiscal Impact*

This regulatory change is not expected to have any fiscal impact on the regulated community or state and local governments.

*Effective Date*

These regulations will become effective upon publication in final form 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, Pennsylvania 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)), the Board submitted a copy of these revised final-omitted regulations and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House and Senate Committees, and the Office of Attorney General on November 28, 201. A copy of this material is available to the public upon request.

Under section 7(c.1) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-omitted regulations. Under section 7(d) of the Regulatory Review Act, on \_\_\_\_\_, these final-form regulations were (deemed) approved by the House and Senate Committees.

Joseph E. Brion  
Chairman

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. [This provision shall not preclude a corporate affiliate of a licensee under common control to operate other businesses on the licensed premises, if the premises are, in whole or in part, licensed by the Pennsylvania Gaming Control Board. For purposes of this section, a corporate affiliate is a corporation or association, as defined in section 1-102 of the Liquor Code, which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another specified corporation or association.] 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.

SILVAN B. LUTKEWITTE, III, CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
ARTHUR COCCODRILLI  
JOHN F. MIZNER, ESQ.  
LAWRENCE J. TABAS, ESQ.  
FIONA WILMARTH, ACTING EXECUTIVE DIRECTOR  
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
http://www.irrc.state.pa.us

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 28, 2011

Patrick J. Stapleton, III, Chairman  
Pennsylvania Liquor Control Board  
502 Northwest Office Building  
Harrisburg, PA 17124

Re: Regulation #54-67 (IRRC #2912)  
Pennsylvania Liquor Control Board  
Connection With Other Business

Dear Chairman Stapleton:

The Independent Regulatory Review Commission disapproved your regulation on October 20, 2011. Our order is enclosed and will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact Fiona Wilmarth, our Acting Executive Director, at 783-5506.

Sincerely,

Silvan B. Lutkewitte, III  
Chairman  
sfh  
Enclosure

cc: Honorable John R. Pippy, Majority Chairman, Senate Law and Justice Committee  
Honorable Jim Ferlo, Minority Chairman, Senate Law and Justice Committee  
Honorable John Taylor, Majority Chairman, House Liquor Control Committee  
Honorable Dante Santoni, Jr., Minority Chairman, House Liquor Control Committee

OFFICE OF CHIEF COUNSEL

11 OCT 28 AM 11:28

RECEIVED  
P.L.C.B.

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 20, 2011

Silvan B. Lutkewitte, III, Chairman  
George D. Bedwick, Vice Chairman  
John F. Mizner, Esq.  
Lawrence J. Tabas, Esq.

Regulation No. 54-67 (#2912)  
Pennsylvania Liquor Control Board  
Connection With Other Business

On September 7, 2011, the Independent Regulatory Review Commission (Commission) received this regulation from the Pennsylvania Liquor Control Board (Board). This rulemaking amends 40 Pa. Code § 3.52. Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

The purpose of this final-omitted rulemaking is to amend the Board's existing regulations to allow certain businesses, namely casinos, licensed by both the Board and the Pennsylvania Gaming Control Board (PGCB), to keep their liquor licenses and their gaming licenses in separate legal entities under common ownership, particularly, wholly-owned subsidiaries.

Upon review, we find that § 3.52(a) is ambiguous and lacks clarity and therefore does not satisfy the criterion set forth in Section 5.2(b)(3)(ii) of the the Regulatory Review Act (71 P.S. § 745.5b(b)(3)(ii)). As drafted, this provision does not limit the licensing arrangement to wholly-owned subsidiaries of the licensee. Of particular concern is the use of the word "person" and the phrase "under common control." The regulated community that must comply with the rulemaking is subject to two statutes: the Liquor Code (47 P.S. §§ 1-101 – 8-803) and the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. §§ 1101—1904). These statutes have different definitions of the term "person." In addition, the phrase "under common control" is not defined by either statute or the Board's existing regulations. Differing standards for the term "person" and a lack of specificity for the phrase "under common control" could cause difficulty in administering this provision and lead to costly litigation.

We have determined this regulation is consistent with the statutory authority of the Board (47 P.S. § 2-207(i)) and the intention of the General Assembly. However, after considering the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.




**BY ORDER OF THE COMMISSION:**

The regulation # 54-67 (IRRC # 2912 ) from the Pennsylvania  
Liquor Control Board

---

was disapproved on 10/20/11.

  
\_\_\_\_\_  
Silvan B. Lutkewitte, III, Chairman



**Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board**

November 29, 2011

**SUBJECT: Reformatted, Revised Final-Omitted Regulations 54-67  
(Amendments to Title 40, Pennsylvania Code, Section 3.52)**

**TO: DAVID SUMNER, EXECUTIVE DIRECTOR  
INDEPENDENT REGULATORY REVIEW COMMISSION**

**FROM: FAITH S. DIEHL** *FSDiehl*  
CHIEF COUNSEL  
PENNSYLVANIA LIQUOR CONTROL BOARD

**By Hand Delivery**

Refer to: 3-9454

In order to comply with the content and formatting requirements of section 311.4 [1 Pa. Code § 311.4] of the regulations of the Independent Regulatory Review Commission ("IRRC"), the Pennsylvania Liquor Control Board ("Board") hereby withdraws the version of its resubmitted final-omitted amendments to section 3.52 of the Board's regulations delivered to the legislative oversight committees, the Attorney General and IRRC on November 28, 2011.

Submitted herewith are the reformatted, revised final-omitted amendments to section 3.52 of the regulations of the Board. This package now includes the following:

- The regulatory analysis form
- The signed CDL-1 face sheet
- The preamble and reformatted Annex A
- A copy of IRRC's Disapproval Order of October 20, 2011
- The Board's explanation has been included in its Preamble detailing how the revisions to the regulatory language address the reasons for IRRC's Disapproval Order

**David Sumner – Independent Regulatory Review Commission (54-67)**

November 29, 2011

Page 2

The signed transmittal sheet also is enclosed which indicates delivery of this reformatted, revised regulatory change today to the legislative oversight committees and the Office of Attorney General.

The Board had submitted an amendment to section 3.52 of the Board's regulations [40 Pa. Code § 3.52] on September 7, 2011. The regulation was disapproved at IRRC's October 20, 2011 meeting. In disapproving the regulation, IRRC found that certain terms used in amended section 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 Liquor Code and the Gaming Act, and the use of the phrase "under common control," which is not defined in the Liquor Code or the Board's existing regulations.

Pursuant to 1 Pa. Code § 311.2(a)(2), the Board has revised the regulation in order 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.

Any questions and comments regarding this regulatory submission should be directed to Rodrigo Diaz, Executive Deputy Chief Counsel, or Christopher L. Herrington, Deputy Chief Counsel, at (717) 783-9454.

cc: (w/encl.)

Honorable John Pippy, Chairman, Senate Law and Justice Committee

Honorable Jim Ferlo, Democratic Chairman, Senate Law and Justice  
Committee

Honorable John Taylor, Chairman, House Liquor Control Committee

Honorable Dante Santoni, Jr., Democratic Chairman, House Liquor Control  
Committee

Ms. Cheryl Schriener, Executive Director, Senate Law and Justice Committee

Mr. Stephen Bruder, Executive Director, Senate Law and Justice Committee

Ms. Marcia Lampman, Executive Director, House Liquor Control  
Committee

Ms. Lynn Benka-Davies, Executive Director, House Liquor Control  
Committee

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE  
REGULATORY REVIEW ACT**

RECEIVED  
IRRC

2011 NOV 29 P 4:13

**I.D. NUMBER:** 54-67  
**SUBJECT:** Casino Exception  
**AGENCY:** Liquor Control Board



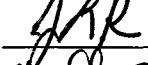
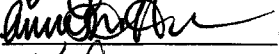
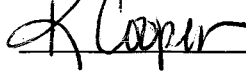

---

**TYPE OF REGULATION**

- \_\_\_\_\_ Proposed Regulation
- X  Final Regulation – *Reformatted and Resubmitted*
- \_\_\_\_\_ Final Regulation with Notice of Proposed Rulemaking Omitted
- \_\_\_\_\_ 120-day Emergency Certification of the Attorney General
- \_\_\_\_\_ 120-day Emergency Certification of the Governor

---

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
11/29	 (1)	HOUSE COMMITTEE ON LIQUOR CONTROL ( <i>Republican</i> )
11/29/11	 (2)	( <i>Democrat</i> )
11/29/11	 (3)	SENATE COMMITTEE ON LAW & JUSTICE ( <i>Republican</i> )
11/29/11	 (4)	( <i>Democrat</i> )
11/29/11	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
11/29/11	 (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU