

**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

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was disapproved on 10/20/11.

  
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Silvan B. Lutkewitte, III, Chairman

