

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION
IRRC

2011 SEP - 7 P 3 37

(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: Norina K. Blynn (717)783-9454
Pennsylvania Liquor Control Board
401 Northwest Office Building
Harrisburg, PA 17124
FAX: (717)787-8820
E-mail: ra-lblegal@state.pa.us

Secondary Contact: Christopher L. Herrington (717)783-9454
(same contact information)

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

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 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. 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, even if they are under common ownership.

(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, the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) and the Pennsylvania Liquor Code both contemplate the sale of alcohol by 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.

The regulation is being amended to reflect the fact that certain businesses, licensed by both the Board and Gaming, intend to keep their liquor license and their gaming license in different subsidiaries. While the Board’s regulations [40 Pa. Code § 3.52(c)] allow both businesses to be conducted by the same entity – subject to Board approval – the regulations do not allow the businesses to be conducted by separate legal entities, even if the two separate entities are under common ownership.

There are currently ten (10) casinos licensed by Gaming that would benefit from this regulation, in that they could no longer be cited for a violation of section 3.52(c) of the Board’s Regulations [40 Pa. Code § 3.52(c)].

(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 be brought into compliance with this 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.

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

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

Program	FY -3	FY -2	FY -1	Current FY

(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 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].

On August 23, 2011, the Board's Office of Chief Counsel received a telephone call from Attorney Allen Kohler, who represents one 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 client strongly supports 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.

(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 Liquor Control 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: None - Final-omitted
- B. The date or dates on which public meetings or hearings will be held: None
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: November 2011
- D. The expected effective date of the final-form regulation: November 2011
- E. The date by which compliance with the final-form regulation will be required: November 2011
- F. The date by which required permits, licenses or other approvals must be obtained: _____

(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)

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IRRC

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Liquor Control Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 054-67</p> <p>DATE OF ADOPTION: <u>July 6, 2011</u></p> <p>BY: _____</p> <p>TITLE: <u>Chairman</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies:</p> <p>BY: <u>YSDuhb</u> Chief Counsel</p> <p><u>July 1, 2011</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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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, the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) and the Pennsylvania Liquor Code both contemplate the sale of alcohol by 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.

The regulation is being amended to reflect the fact that certain businesses, licensed by both the Board and Gaming, intend to keep their liquor license and their gaming license in different subsidiaries. While the Board’s regulations [40 Pa. Code § 3.52(c)] allow both businesses to be conducted by the same entity – subject to Board approval – the regulations do not allow the businesses to be conducted by separate legal entities, even if the two separate entities are under common ownership.

Affected Parties

There are currently ten (10) casinos licensed by the Pennsylvania Gaming Control Board that would benefit from this regulation, in that they could no longer be cited for violation of section 3.52 of the Board’s Regulations. The Board has

informed the Pennsylvania Gaming Control Board of the potential change to this Regulation.

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 Norina K. Blynn, Assistant Counsel, or Christopher L. Herrington, Deputy Chief Counsel, Office of Chief Counsel, Pennsylvania Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5a(c) of the Regulatory Review Act, (71 P.S. § 745.5a(c)), the Board submitted a copy of these 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 _____. A copy of this material is available to the public upon request.

Under section 5a(j.2) of the Regulatory Review Act, on _____, these final-form regulations were (deemed) approved by the House and Senate Committees. Under section 5a(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-omitted regulations.

P.J. Stapleton III
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.
- (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.

**Commonwealth of Pennsylvania
Pennsylvania Liquor Control Board**

September 7, 2011

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

TO: FIONA WILMARTH, ACTING EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION

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

By Hand Delivery

Refer to: 3-9454

Submitted herewith are final-omitted amendments to section 3.52 of the regulations of the Pennsylvania Liquor Control Board ("Board"). Enclosed are the regulatory analysis form, signed CDL-1 face sheet, preamble and Annex A. The signed transmittal sheet also is enclosed which indicates delivery of this regulatory change today to the legislative oversight committees and the Office of Attorney General.

An advance notice of this regulatory change has been sent by e-mail or regular U.S. mail to each of the casinos which hold licenses issued by the Board. Only casinos will be affected by this regulatory change. Additionally, an advance notice of this regulatory change was published in the Pennsylvania Bulletin on July 30, 2011. [41 Pa. B. 4104].

On August 23, 2011, the Board's Office of Chief Counsel received a telephone call from Attorney Allen Kohler, who represents one 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 client strongly supports the regulatory change.

On July 19, 2011, the Board requested that the Independent Regulatory Review Commission (“IRRC”) assist the Board by conducting an informal review of this regulatory change. On August 17, 2011, the Board received the following informal comments from IRRC, which are followed by the Board’s responses thereto:

- *The LCB notes that counsel for affected licensees were consulted during the development of this regulation. Has the Board informed the Pennsylvania Gaming Control Board (PGCB) of the potential changes to the regulation?*

Response: Yes, the Board provided the Pennsylvania Gaming Control Board, through its Office of Chief Counsel, advance notice of the proposed rulemaking. This information has been added to the Preamble.

- *The rulemaking package states that the Pennsylvania Race Horse Development and Gaming Act (Act) and the Liquor Code (Code) contemplate the sale of alcohol by locations licensed by both the LCB and the PGCB. We believe it would be useful to include specific citations to the relevant portions of the Act and Code that contemplate these types of sales in the Regulatory Analysis Form and the Preamble.*

Response: The Regulatory Analysis Form and the Preamble have been amended accordingly.

- *The new language being added to § 3.52 begins with the word “however.” We question the need for including this word in the revisions to this section.*

Response: The regulation has been amended to omit the word “however.”

- *Regulatory Analysis Form Question #9, pertaining to schedule of review for the regulation, should be updated to reflect accurate dates.*

Response: The Board has utilized the new Regulatory Analysis Form (“RAF”), and has updated the dates pertaining to the schedule of review for the regulation (Question #26 in the new RAF).

Fiona Wilmarth – Independent Regulatory Review Commission (54-67)

September 7, 2011

Page 3

Any questions and comments regarding this regulatory submission should be directed to Norina K. Blynn or Christopher L. Herrington 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**


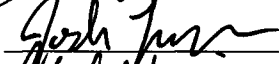
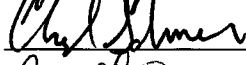
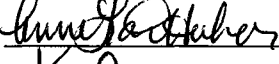
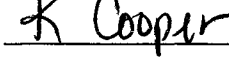
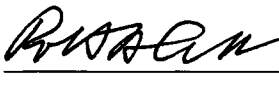
I.D. NUMBER: 54-67
SUBJECT: Casino Exception
AGENCY: Liquor Control Board

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TYPE OF REGULATION

- _____ Proposed Regulation
- _____ Final Regulation
- X 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>
9-7	 (1)	HOUSE COMMITTEE ON LIQUOR CONTROL (<i>Republican</i>)
9-7	 (2)	(<i>Democrat</i>)
9-7	 (3)	SENATE COMMITTEE ON LAW & JUSTICE (<i>Republican</i>)
9-7	 (4)	(<i>Democrat</i>)
9/7/11	 (5)	INDEPENDENT REGULATORY REVIEW COMMISSION
9/7	 (6)	ATTORNEY GENERAL
_____	_____ (7)	LEGISLATIVE REFERENCE BUREAU