

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p style="text-align: center;"><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <p style="text-align: center;"><b>RECEIVED</b></p> <p style="text-align: center;">MAY 23 2023</p> <p style="text-align: center;">Independent Regulatory Review Commission</p> <p>IRRC Number: 3376</p>		
<p>(1) Agency Pennsylvania Liquor Control Board</p>				
<p>(2) Agency Number: 54 Identification Number: 99</p>				
<p>(3) PA Code Cite: 40 Pa. Code Sections 5.11, 5.14, 5.17, 5.18, and 5.23</p>				
<p>(4) Short Title: Chapter 5, Subchapter B Update</p>				
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Norina Foster, Assistant Counsel (717) 783-9454 Pennsylvania Liquor Control Board 401 Northwest Office Building Harrisburg, Pennsylvania 17124 FAX: (717) 787-8820 Email: <a href="mailto:ra-lblegal@pa.gov">ra-lblegal@pa.gov</a></p> <p>Secondary Contact: Rodrigo Diaz, Chief Counsel Jason M. Worley, Deputy Chief Counsel (Same Contact Information)</p>				
<p>(6) Type of Rulemaking (check applicable box):</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation                 </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General                 </td> </tr> </table>			<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
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<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking updates several sections in Chapter 5, Subchapter B, which pertain to employees of licensees. Many of the 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 In addition, some references are outdated.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.</p>				
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Pennsylvania Liquor Code, section 207(i) (47 P.S. § 2-207(i)).</p>				

(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.

The regulation is not mandated by any federal or state law, court order or federal regulation.

(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.

This proposed rulemaking deletes section 5.11 (relating to general requirement). Section 5.11 notes that the Board provides for the appointment of managers and references sections 5.16—5.18. However, section 5.16 has been deleted/reserved; the subject of section 5.17 (relating to distributor licensees; appointment of manager) is addressed in subsection (b) of section 5.22 (relating to employment of licensees); and the subject of section 5.18 (relating to licensees not exempt from penalties) is addressed in subsection (e) of section 5.23. In short, section 5.11 provides no additional regulatory content and therefore warrants deletion.

The proposed rulemaking amends section 5.14 (relating to employment of minors 17 years of age as 18 years of age). This section cites the Child Labor Law, 43 P.S. § 41 et seq., and reiterates provisions of the statute. However, Act 151 of 2012 repealed the Child Labor Law and replaced it with the Child Labor Act, 43 P.S. §§ 40.1 et seq. Therefore, the current text is deleted and replaced with a reference to the Child Labor Act.

Because sections 5.15 and 5.16 are already reserved, the next section addressed by the proposed rulemaking is section 5.17 (relating to distributor or importing distributor licensees; appointment of manager). The heading for sections 5.11 through 5.18 is “Employment of Minors,” but the subject of section 5.17 pertains to distributor or importing distributor licensees having other employment. This subject is also addressed, almost verbatim, in subsection (b) of section 5.22 (relating to employment of licensees). Therefore, the proposed rulemaking deletes section 5.17 because it does not correspond to the heading and it is duplicative.

Similarly, the subject of section 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 and the Board’s regulations. This subject is also addressed in subsection (e) of section 5.23 (relating to appointment of managers). Therefore, the proposed rulemaking deletes section 5.18 because it does not correspond to the heading and it is duplicative.

The proposed rulemaking amends section 5.21 by updating the reference to section 5.14.

The proposed rulemaking makes no changes to section 5.22 (employment of licensees).

The proposed rulemaking amends section 5.23 (relating to appointment of managers) in subsection (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, the proposed rulemaking adds to subsection (a) the additional language of subsection (d), and deletes that language in subsection (d).

The proposed rulemaking amends subsection (c) of section 5.23 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.

The proposed rulemaking adds subsection (c.1), which references section 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.

The proposed rulemaking deletes the first and last sentences of subsection (d), having relocated this text to create two new paragraphs in subsection (c). In addition, the proposed rulemaking deletes the third sentence of subsection (d), since this information is now provided in subsection (a).

The proposed rulemaking amends subsection (e) of section 5.23 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.

The proposed rulemaking amends subsection (g) of section 5.23, 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, the proposed rulemaking adds subparagraph (1) to explain the procedure to follow in the event of the death of a licensee who was also serving as the manager.

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.

(11) 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.

The proposed rulemaking is not known to be more stringent than federal regulations.

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

Regulations pertaining to alcoholic beverage control are governed by neighboring states in accordance with their unique and individual systems of alcoholic beverage control. Because of this, the proposed rulemaking does not play a role in Pennsylvania’s ability to compete with other states.

(13) 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.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the

Regulatory Review Act, Act 76 of 2012.)

The Board developed and drafted this regulation internally, without input from outside groups.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Federal regulation (relating to small business size standards) provides the following measurements for determining whether a business may be considered to be a "small" business:

<b>Industry</b>	<b>Maximum Number of Employees or Annual Receipts (in millions of dollars)</b>
Breweries	1250
Wineries	1000
Distilleries	1000
Beer wholesalers	200
Local delivery	\$30
Warehouse/storage	\$32
Casinos	\$30
Golf courses/country clubs	\$16.5
Skiing facilities	\$31
Bowling centers	\$11
Hotels	\$35
Casino hotels	\$35
Drinking places	\$8
Full service restaurants	\$10

13 C.F.R. § 121.201.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

<b>Industry</b>	<b>Number of PLCB-Licensed Entities as of 7/29/22</b>
Breweries	574
Wineries	486
Distilleries	177
Beer wholesalers	1174
Local delivery	572
Warehouse/storage	93
Casinos	*
Golf courses/country clubs	310
Skiing facilities	*
Bowling centers	*
Hotels	1074
Casino hotels	*
Drinking places	3138

\*The PLCB does not issue licenses that are restricted to entities in this category. These entities typically obtain licenses that fall under the “drinking places” or “full service restaurant” categories.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This proposed regulation is not expected to have a significant impact on any group, since the purpose of the proposed regulation is to eliminate unnecessary references to statutes, delete outdated references, and reorganize the contents of the subchapter in a more logical fashion. To the extent that there is any impact, it is expected that it will be positive, because of the improved clarity of the subchapter.

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

This proposed regulation includes no costs or adverse effects for the regulated community. Therefore the benefits obtained through the improved clarity of the subchapter outweigh the nonexistent cost and adverse effects.

(19) 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 proposed rulemaking does not result in costs or savings for the regulated community. No legal, accounting or consulting procedures are required.

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

The proposed rulemaking does not result in costs or savings for local governments. No legal, accounting or consulting procedures are required.

(21) Provide a specific estimate of the costs and/or savings to the **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 proposed rulemaking does not result in costs or savings for state government. No legal, accounting or consulting procedures are required.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

The proposed rulemaking is not expected to affect legal, accounting or consulting procedures and should not require any additional reporting, recordkeeping or other paperwork. Similarly, the regulation is not expected to require any additional governmental measures in order to implement the regulation.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) 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.

There is no data available regarding how the regulated community, local government and state government will recoup any savings or incur any costs.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<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>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
<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>	\$0	\$0	\$0	\$0	\$0	\$0
<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>	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

There are no programs affected by the regulation.

<b>Program</b>	<b>FY -3 2019-2020</b>	<b>FY -2 2020-2021</b>	<b>FY -1 2021-2022</b>	<b>Current FY 2022-2023</b>
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Federal regulation (relating to small business size standards) provides measurements for determining whether a business may be considered to be a “small” business. See the responses to questions 15 and 16 for an identification and estimate of the number of small businesses subject to the regulation. It is anticipated that most of the PLCB’s licensees can be considered small businesses under the federal regulatory definition, but the PLCB has no data to clarify this response.

(b) The proposed regulation reduces the reporting, recordkeeping or other administrative activities, which do not require any professional skills for preparation.

(c) The proposed regulation is expected to have a positive effect on impacted small businesses, in that it eliminates unnecessary references to statutes, deletes outdated references, and re-organizes the contents of the subchapter in a more logical fashion. To the extent that there is any impact, it is expected that it will be positive, because of the improved clarity of the subchapter.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, because the proposed rulemaking eliminates unnecessary references to statutes, deletes outdated references, and re-organizes the contents of the subchapter in a more logical fashion.

(25) List any special provisions which 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.

No special provisions were developed with regard to the particular needs of affected groups or persons.

(26) 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.

No alternative regulatory provisions were considered and rejected, since this proposed regulation involves the clarification of existing regulations. The least burdensome acceptable alternative has been selected.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;

The proposed rulemaking does not involve new compliance or reporting requirements.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The proposed rulemaking does not involve new schedules or deadlines for compliance or reporting requirements.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

The proposed rulemaking does not involve new compliance or reporting requirements.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The proposed rulemaking does not establish any performing, design, or operational standards.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Exempting small businesses from all or any part of the requirements contained in the proposed rulemaking would be untenable to maintain.

(28) 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 PLCB has not relied on data to justify this regulation.

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

A. The length of the public comment period: 30 days

B. The date or dates on which any public meetings or hearings will be held: August 2023

- |   |                       |
|---|-----------------------|
| C. The expected date of delivery of the final-form regulation:                                | <u>July 2023</u>      |
| D. The expected effective date of the final-form regulation:                                  | <u>September 2023</u> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>September 2023</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u>            |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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

RECEIVED

CDL-1

MAY 23 2023

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

Independent Regulatory  
Review Commission

(Pursuant to Commonwealth Documents Law)

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Attorney General:

Amy M. Elliott

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DN: cn=Amy M. Elliott, o=Pennsylvania Office of  
Attorney General, email=AmyM.Elliott@pa.gov, c=US  
Date: 2023.05.12 15:00:16 -0400

BY:

(DEPUTY ATTORNEY GENERAL)

5/12/2023

DATE OF APPROVAL

Pennsylvania Liquor Control Board  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 54-99

DATE OF ADOPTION: 1/11/2023

BY: Tina Holder

TITLE: Chairman  
(Executive Officer, Chairman or  
Secretary)

BY:

Chief Counsel

1/11/2023  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

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

TITLE 40—LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

SUBCHAPTER B. EMPLOYEES OF LICENSEES

**PROPOSED RULEMAKING**

**LIQUOR CONTROL BOARD**

**40 PA. CODE CHAPTER 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, which pertain to employees of licensees. Many of the 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 deletes section 5.11 (relating to general requirement). Section 5.11 notes that the Board provides for the appointment of managers and references sections 5.16—5.18. However, section 5.16 has been deleted/reserved; the subject of section 5.17 (relating to distributor licensees; appointment of manager) is addressed in subsection (b) of section 5.22 (relating to employment of licensees); and the subject of section 5.18 (relating to licensees not exempt from penalties) is addressed in subsection (e) of section 5.23. In short, section 5.11 provides no additional regulatory content and therefore warrants deletion.

The proposed rulemaking amends section 5.14 (relating to employment of minors 17 years of age as 18 years of age). This section cites the Child Labor Law, 43 P.S. § 41 et seq., and reiterates provisions of the statute. However, Act 151 of 2012 repealed the Child Labor Law and replaced it with the Child Labor Act, 43 P.S. §§ 40.1 et seq. Therefore, the current text is deleted and replaced with a reference to the Child Labor Act.

Because sections 5.15 and 5.16 are already reserved, the next section addressed by the proposed rulemaking is section 5.17 (relating to distributor or importing distributor licensees; appointment of manager). The heading for sections 5.11 through 5.18 is "Employment of Minors," but the subject of section 5.17 pertains to distributor or importing distributor licensees having other employment. This subject is also addressed, almost verbatim, in subsection (b) of section 5.22 (relating to employment of licensees). Therefore, the proposed rulemaking deletes section 5.17 because it does not correspond to the heading and it is duplicative.

Similarly, the subject of section 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 and the Board's regulations. This subject is also addressed in subsection (e) of section 5.23 (relating to appointment of managers). Therefore, the proposed rulemaking deletes section 5.18 because it does not correspond to the heading and it is duplicative.

The proposed rulemaking amends section 5.21 by updating the reference to section 5.14.

The proposed rulemaking makes no changes to section 5.22 (employment of licensees).

The proposed rulemaking amends section 5.23 (relating to appointment of managers) in subsection (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, the proposed rulemaking adds to subsection (a) the additional language of subsection (d), and deletes that language in subsection (d).

The proposed rulemaking amends subsection (c) of section 5.23 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.

The proposed rulemaking adds subsection (c.1), which references section 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.

The proposed rulemaking deletes the first and last sentences of subsection (d), having relocated this text to create two new paragraphs in subsection (c). In addition, the proposed rulemaking deletes the third sentence of subsection (d), since this information is now provided in subsection (a).

The proposed rulemaking amends subsection (e) of section 5.23 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.

The proposed rulemaking amends subsection (g) of section 5.23, 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, the proposed rulemaking adds subparagraph (1) to 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*

The proposed rulemaking would not require any additional paperwork to be filed.

*Fiscal Impact*

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

*Effective Date*

These regulations will become effective upon publication in final form 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](mailto: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.

Please note that all public comments will be posted on the Independent Regulatory Review Commission's website. No personal information will 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 \_\_\_\_, 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 any 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 of comments, recommendations or objections raised.

TIM HOLDEN  
CHAIRMAN

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

Sec.

- 5.11. **[General requirement] Reserved.**
- 5.12. Employment of minors by retail licensees
- 5.13. Employment of minors 18 to 21 years of age by licensees other than retail.
- 5.14. **[Employment of minors 17 years of age as 18 years of age] Child Labor Act.**
- 5.15. [Reserved].
- 5.16. [Reserved].
- 5.17. **[Distributor or importing distributor licensees; appointment of manager] Reserved.**
- 5.18. **[Licensees not exempt from penalties] Reserved.**

EMPLOYMENT OF OTHERS

- 5.21. Prohibited employment.
- 5.22. Employment of licensees.
- 5.23. Appointment of managers.

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 licensees; appointment of manager; and licensees not exempt from penalties.)**

**§ 5.12. Employment of minors by retail licensees**

Reference is directed to section 493(13) of the Liquor Code (47 P.S. § 4-493(13)), which details the requirements for the employment of minors by retail licensees.

**§ 5.13. Employment of minors 18 to 21 years of age by licensees other than retail**

Reference is directed to section 493(27) of the Liquor Code (47 P.S. § 4-493(27)), which details the employment of minors by certain licensees other than retail.

**§ 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 graduation 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 et seq., which establishes general limitations on the employment of minors and specifically addresses the employment of minors where alcoholic beverages are produced, sold or dispensed.**

**§ 5.15. [Reserved].**

**§ 5.16. [Reserved].**

**§ 5.17. [Distributor or importing distributor licensees; 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).

**§ 5.22. Employment of licensees.**

(a) A license to manufacture, transport or sell liquor, malt or brewed beverages and alcohol, is a personal privilege to be exercised only by the individual to whom the license is issued. The operation of a licensed business generally requires the full-time attention of the licensee.

(b) An individual holding a Distributor or Importing Distributor License may not be employed in other work, or, as provided in section 492(12) of the Liquor Code (47 P.S. § 4-492(12)), engage in another business, on or off the licensed premises, without Board approval. If the license is issued in the name of a partnership, the Board may permit the partners, except one, to have outside employment. The partnership shall first secure written permission from the Board before its members may be employed in an occupation or enterprise other than the licensed business.

**§ 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.

**(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, pursuant to section 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.]

(c) [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 the 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.

(1) If the death of the licensee 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 the 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.

**Commonwealth of Pennsylvania**  
**Pennsylvania Liquor Control Board**  
May 23, 2023

**SUBJECT: Proposed Regulation Package 54-99**  
**Chapter 5, Subchapter B Update**

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

**FROM: RODRIGO J. DIAZ**   
**CHIEF COUNSEL**  
**PENNSYLVANIA LIQUOR CONTROL BOARD**

**By E-Mail**

The Pennsylvania Liquor Control Board is submitting proposed amendments to Chapter 5, Subchapter B of its regulations. Attached please find a courtesy copy of the Regulatory Analysis Form, signed CDL-1 face sheet, Preamble and Annex A (regulatory text). The Office of Attorney General has approved these proposed amendments for form and legality.

These amendments have been delivered today to the legislative oversight committees and to the Legislative Reference Bureau. The Transmittal Sheet is attached.

If you have any questions and comments about this regulatory submission, feel free to contact the Office of Chief Counsel, Pennsylvania Liquor Control Board, at [RALegal@pa.gov](mailto:RALegal@pa.gov).

Attachments

cc with attachments:

Honorable Mike Regan, Majority Chairman, Senate Law and Justice Committee  
Honorable James Brewster, Minority Chairman, Senate Law and Justice Committee  
Honorable Daniel Deasy, Majority Chairman, House Liquor Control Committee  
Honorable Mindy Fee, Minority Chairman, House Liquor Control Committee  
Taylor Wamsher, Executive Director, Senate Law and Justice Committee  
Stephen Bruder, Executive Director, Senate Law and Justice Committee  
Lynn Benka-Davies, Executive Director, House Liquor Control Committee  
Michael Biacchi, Executive Director, House Liquor Control Committee

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

**RECEIVED**

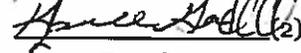
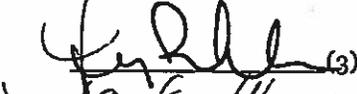
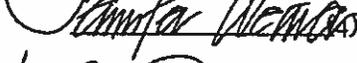
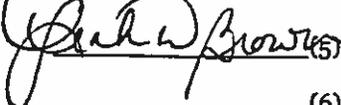
**I.D. NUMBER:** 54-99  
**SUBJECT:** Chapter 5, Subchapter B Update  
**AGENCY:** Pennsylvania Liquor Control Board

MAY 23 2023  
Independent Regulatory  
Review Commission

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- 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>
5/23/23	 (1)	SENATE LAW & JUSTICE COMMITTEE (Majority)
5/23/23	 (2)	SENATE LAW & JUSTICE COMMITTEE (Minority)
5/23/23	 (3)	HOUSE LIQUOR CONTROL COMMITTEE (Majority)
5/23/23	 (4)	HOUSE LIQUOR CONTROL COMMITTEE (Minority)
5.23.23	 (5)	LEGISLATIVE REFERENCE BUREAU
—	_____ (6)	INDEPENDENT REGULATORY REVIEW COMMISSION