

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

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Authority

The provisions of this Chapter 5 issued under sections 102, 207(i), 492(12), 493(9), (13) and (14), 505.2 and 512 of the Liquor Code (47 P. S. §§ 1-102, 2-207(i), 4-492(12), 4-493(9), (13) and (14), 5-505.2 and 5-512), unless otherwise noted.

Subchapter A. CASH DEPOSITS ON RETURNABLE ORIGINAL CONTAINERS OF MALT OR BREWED BEVERAGES

Sec.	
5.1.	Original container.
5.2.	Minimum cash deposits.
5.3.	Refund of deposits.
5.4.	Other sizes.

Source

The provisions of this Subchapter A adopted June 26, 1952, amended January 20, 1978, effective February 1, 1978, 8 Pa.B. 201, unless otherwise noted.

§ 5.1. Original container.

(a) *Definition.* Original container means bottles, casks, kegs, barrels or other suitable containers containing malt or brewed beverages that have been securely capped, sealed or corked by the manufacturer of malt or brewed beverages at the place of manufacture with the name and address of the manufacturer of the malt or brewed beverages contained thereon and permanently affixed thereto and includes the reusable original container as to which title was retained by the manufacturer, licensee or vendor who bottled, sold or resold malt or brewed beverages in one or more of the following:

- (1) In the container.
- (2) In the container and which the manufacturer, licensee or vendor or a direct or indirect associate, agent, representative, employe, agency, distributor,

affiliate or subsidiary of the manufacturer, licensee or vendor will repurchase or agree to repurchase from a vendee or person who has acquired title to the reusable container.

(b) *Deposits required.* A licensee authorized to sell, purchase and resell malt or brewed beverages shall, under section 493(2) of the Liquor Code (47 P. S. § 493(2)), require payment of, pay and collect the minimum cash deposits on the original returnable containers as prescribed in this subchapter or as required of and paid by the licensees. Whenever a returnable original container for which a licensee has received a deposit is not returned, the manufacturing licensee, importing distributor or distributor, as the case may be, may not be entitled to an amount in excess of the deposit monies paid on the returnable original containers.

Source

The provisions of this § 5.1 adopted June 26, 1952; amended January 20, 1978, effective February 1, 1978, 8 Pa.B. 201.

§ 5.2. Minimum cash deposits.

(a) Subject to the limitations imposed by the Liquor Code on sales by licensees, minimum cash deposits are imposed on original returnable containers as follows:

<i>Size</i>	<i>Deposit</i>
All barrels regardless of size	\$ 10.00
8 oz. or less per bottle	\$ 00.03
16 oz. or more than 8 oz. per bottle	\$ 00.05
32 oz. or more than 16 oz. per bottle	\$ 00.10

(b) Whenever the bottled malt or brewed beverages are sold by the case, the minimum cash deposits on the cases, including the minimum cash deposit on the bottles therein, shall be as follows:

<i>Size</i>	<i>Deposit</i>
8 oz. or less in a case containing 24 bottles to the case	\$ 1.00
16 oz. or more than 8 oz. in a case containing 24 bottles to the case	\$ 1.50
32 oz. or less in a case containing 12 bottles to the case	\$ 1.50

Source

The provisions of this § 5.2 adopted June 26, 1952; amended January 20, 1978, effective February 1, 1978, 8 Pa.B. 201.

§ 5.3. Refund of deposits.

(a) A licensee receiving deposits as provided for in this subchapter shall make refund of the deposits in cash or, at the option of the purchaser, as a credit on a purchase made, upon return of empty original containers.

(b) Manufacturing licensees may only accept empty original containers from licensees or persons to whom the containers were sold and delivered and which are the property of the manufacturer.

(c) Importing distributors and distributors may only accept empty original containers from licensees or persons to whom the containers were sold and delivered by the licensees.

(d) Manufacturing licensees shall accept empty original containers, the property of the manufacturer, from a person who paid a deposit, on a sale and delivery, to an importing distributor or a distributor who has permanently or temporarily ceased doing business as an importing distributor or a distributor. The manufacturing licensee shall make refunds of the deposits received by the importing distributor or distributor. The manufacturing licensee shall make refunds of the deposits received by the importing distributor or distributor to the person returning the original containers.

(e) Successors and transferees to and of importing distributors and distributors shall accept empty original containers from licensees or persons to whom the containers were sold and delivered by predecessor or transferor licensees and shall make refunds of deposits received by the predecessor or transferor licensees to the licensee or person returning the original containers.

Source

The provisions of this § 5.3 adopted June 26, 1952; amended January 20, 1978, effective February 1, 1978, 8 Pa.B. 201.

§ 5.4. Other sizes.

If any other size original container is developed for use and has been approved by the Board, the minimum cash deposit on the container will be determined by the Board prior to marketing.

Source

The provisions of this § 5.4 adopted June 26, 1952; amended January 20, 1978, effective February 1, 1978, 8 Pa.B. 201.

Subchapter B. EMPLOYEES OF LICENSEES**EMPLOYMENT OF MINORS**

- Sec.
5.11. General requirement.
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.
5.15. [Reserved].
5.16. [Reserved].
5.17. Distributor or importing distributor licensees; appointment of manager.
5.18. Licensees not exempt from penalties.

EMPLOYMENT OF OTHERS

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

Source

The provisions of this Subchapter B adopted June 26, 1952, amended through March 17, 1972, 2 Pa.B. 457, unless otherwise noted.

EMPLOYMENT OF MINORS**§ 5.11. General requirement.**

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).

Source

The provisions of this § 5.11 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended January 31, 1975, effective February 1, 1975, 5 Pa.B. 193. Immediately preceding text appears at serial pages (4138) to (4139).

§ 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.

Source

The provisions of this § 5.12 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended July 8, 1977, effective July 9, 1977, 7 Pa.B. 1889. Immediately preceding text appears at serial page (19145).

Cross References

This section cited in 40 Pa. Code § 5.21 (relating to prohibited employment).

§ 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.

Source

The provisions of this § 5.13 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended July 8, 1977, effective July 9, 1977, 7 Pa.B. 1889. Immediately preceding text appears at serial page (19145).

Cross References

This section cited in 40 Pa. Code § 5.21 (relating to prohibited employment).

§ 5.14. Employment of minors 17 years of age as 18 years of age.

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.

Source

The provisions of this § 5.14 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457.

Cross References

This section cited in 40 Pa. Code § 5.21 (relating to prohibited employment).

§ 5.15. [Reserved].**Source**

The provisions of this § 5.15 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; reserved August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial page (205138).

§ 5.16. [Reserved].**Source**

The provisions of this § 5.16 adopted January 31, 1975, effective February 1, 1975, 5 Pa.B. 193; amended June 18, 1982, effective July 1, 1982, 12 Pa.B. 1860; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432; amended January 19, 2001, effective January 20, 2001, 31 Pa.B. 430; reserved May 16, 2008, effective May 17, 2008, 38 Pa.B. 2250. Immediately preceding text appears at serial pages (307788) and (308167).

Notes of Decisions*Full Time*

A designated manager and licensee who returned to his full-time job with a school district, violated this section which requires the designated manager of a Board-Licensed establishment devote full time to the licensed premises and that he cannot have any other employment while managing the licensed premises without the approval of the Board. *Liquor Control Board v. Mignogna*, 548 A.2d 689 (Pa. Cmwlth. 1988).

Cross References

This section cited in 37 Pa. Code § 23.1 (relating to definitions); 40 Pa. Code § 3.64 (relating to additional Board-approved locations); 40 Pa. Code § 5.11 (relating to general requirement); and 40 Pa. Code § 5.23 (relating to appointment of managers).

§ 5.17. Distributor or importing distributor licensees; appointment of manager.

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.

Source

The provisions of this § 5.17 adopted January 31, 1975, effective February 1, 1975, 5 Pa.B. 193.

Cross References

This section cited in 37 Pa. Code § 23.1 (relating to definitions); 40 Pa. Code § 5.11 (relating to general requirement).

§ 5.18. Licensees not exempt from penalties.

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.

Source

The provisions of this § 5.18 adopted January 31, 1975, effective February 1, 1975, 5 Pa.B. 193.

Cross References

This section cited in 40 Pa. Code § 5.11 (relating to general requirement).

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).

Source

The provisions of this § 5.21 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial page (274490).

Notes of Decisions*Employment of Criminal*

It was reasonable to infer that a licensee who left her son in charge of a liquor establishment while she was not present was in violation of the Liquor Code because she was aware of his prior criminal convictions and permitting the control of a liquor establishment by a known criminal supports the revocation of the licensee's permit to serve alcoholic beverages. *Liquor Control Board v. Peacock Hotel, Inc.*, 550 A.2d 258 (Pa. Cmwlth. 1988).

§ 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 employ-

ment. 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.

Source

The provisions of this § 5.22 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432. Immediately preceding text appears at serial page (205140).

§ 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.

(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.

(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.

(e) Appointment or approval, or both, 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, 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.

(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.

Authority

The provisions of this § 5.23 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.23 adopted June 26, 1952; amended through March 17, 1972, 2 Pa.B. 457; amended June 18, 1982, effective July 1, 1982, 12 Pa.B. 1860; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139; amended May 16, 2008, effective May 17, 2008, 38 Pa.B. 2250; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial pages (337274) and (334007).

Notes of Decisions

It is not an abuse of the discretion of the Board to deny an application to appoint a new manager, when the proposed new manager had been arrested nine times for misdemeanors in a six-year period and had been convicted twice. *In re Irene's Cafe, Inc.*, 404 A.2d 707 (Pa. Cmwlth. 1979).

Manager

Where "friends" were given the authority and the responsibility to oversee and direct operations at the licensed premises, they were acting as its "managers." *In re Moeroe Corp.*, 64 Pa. D. & C.2d 499 (1974).

Cross References

This section cited in 37 Pa. Code § 23.1 (relating to definitions); and 40 Pa. Code § 3.35 (relating to persons from whom criminal history record information checks are required).

Subchapter C. AMUSEMENT AND ENTERTAINMENT

Sec.	
5.30.	Definitions.
5.31.	Amusement permit.
5.32.	Restrictions/exceptions.
5.33.	[Reserved].
5.34.	[Reserved].
5.35.	[Reserved].
5.36.	Municipal noise ordinances.

§ 5.30. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Audio/video playback device—A device which emits a musical recording, or in the case of a video jukebox, emits a musical recording accompanied by recorded video images on a screen that does not exceed 24 inches by 30 inches.

Event/tournament/contest—A competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants.

Game—A device, such as a pinball, shuffleboard, bowling or video machine which provides the player with amusement and no other form of award excepting free plays.

Instrumental music—Music generated by instruments played by musicians without vocal accompaniment.

Sweepstakes—A chance promotion in which tickets or game pieces are distributed and the winner or winners are selected in a random drawing.

Source

The provisions of this § 5.30 adopted May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial page (274492).

§ 5.31. Amusement permit.**(a) Requirements.**

(1) Under section 493(10) of the Liquor Code (47 P. S. § 4-493(10)), the Board may issue an amusement permit authorizing dancing, theatricals, floor shows and motion picture exhibitions in licensed premises, or in another place

operated in connection therewith, to the holder of a retail liquor or retail dispenser license, except clubs, upon proper application and payment of the required fee.

(2) An application for an amusement permit may be filed with the Board at any time during the license period. Amusement permits expire with the license. Amusement permits may be extended at license validation unless the permit is revoked or subject to suspension.

(3) An amusement permit may be denied to a licensee against whom revocation or criminal proceedings are pending or to a licensee who, in the Board's opinion, has failed to conduct the licensed premises in accordance with the laws of the Commonwealth. A licensee denied an amusement permit may appeal the decision of the Board by requesting a hearing before the Board within 20 days of notice of denial.

(4) An amusement permit may not be assigned. When the retail liquor or retail dispenser license of the licensee is transferred by the Board from one person to another, or from one place to another, the amusement permit held by the licensee may be transferred in like manner upon the payment of a filing fee of \$10.

(5) An amusement permit is not required for television devices, audio/video playback devices, radio, instrumental music, games or events/tournaments/contests.

(b) *Suspension or revocation of an amusement permit.*

(1) The Office of Administrative Law Judge, upon sufficient cause shown that a licensee holding an amusement permit, or a partner, officer, director, servant, agent or employe of the licensee, has permitted in the licensed premises a violation of the Liquor Code or this title, or upon other sufficient cause shown, may, upon due notice and proper hearing being given to the licensee, suspend or revoke the permit.

(2) The Office of Administrative Law Judge, upon sufficient cause shown that a licensee holding an amusement permit, or a partner, officer, director, servant, agent or employe of the licensee, is guilty of, or pleads guilty to a violation of the laws of the Commonwealth before a court may after hearing suspend or revoke the amusement permit of the licensee upon the receipt of a transcript of the record in that proceeding.

(3) The action of the Office of Administrative Law Judge in suspending or revoking an amusement permit is final. A new amusement permit will not be approved until the expiration of 1 year from the date of revocation.

(c) *Revocation/suspension of a permit.* If the liquor or malt or brewed beverage license is revoked or suspended, for whatever reason, the amusement permit of the licensee will be similarly automatically revoked or suspended. There will be no refund made nor credit given for the unused portion of the fee paid for the permit, upon suspension or revocation.

Source

The provisions of this § 5.31 adopted June 26, 1952; amended May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145; amended August 29, 1997, effective August 30, 1997, 27 Pa.B. 4432; amended January 19, 2001, effective January 20, 2001, 31 Pa.B. 430. Immediately preceding text appears at serial pages (261740) and (234077) to (234078).

Notes of Decisions*Appeals*

The authority of the Liquor Control Board to refuse renewal of an amusement permit was inherently provided by 47 P. S. § 4-470. Therefore, an appeal from the denial of an amusement permit was an appeal pursuant to the Liquor Code and section 933 of the Judicial Code mandated that jurisdiction laid with the court of common pleas. *Teazers, Inc. v. Liquor Control Board*, 661 A.2d 455 (Pa. Cmwlth. 1995).

§ 5.32. Restrictions/exceptions.

(a) (Reserved).

(b) (Reserved).

(c) A licensee may not directly or indirectly employ a minor person under 18 years of age as an entertainer in the licensed establishment, or in a room or place connected therewith, nor may a licensee permit in the establishment, room or place, a minor person under 18 years of age to act as an entertainer.

(d) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may not hold or permit to be held, on the licensed premises an event, tournament or contest; nor advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums, for any purpose except as follows:

(1) A hotel, restaurant, club or malt beverage eating place licensee may permit to be held within the licensed premises an event sanctioned by the State Athletic Commission under 5 Pa.C.S. Part I, Subparts A and B (relating to general provisions; and boxing) or under 5 Pa.C.S. Part I, Subpart C (relating to the Wrestling Act). Only malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered on that portion of the licensed premises where the event is held, and not sooner than 1 hour before, and not later than 1 hour after the event. Service of malt or brewed beverages at these events will be conducted only with the prior written approval of the State Athletic Commission filed with the Board. Drinks shall be dispensed in that portion of the licensed premises where the event is conducted only in paper or plastic cups.

(2) A hotel, restaurant, club or malt beverage eating place licensee may hold or permit to be held within the licensed premises or in a bowling alley immediately adjacent thereto as provided in sections 406(a)(1) and 442(b) of the Liquor Code (47 P. S. §§ 4-406(a)(1) and 4-442(b)), a bowling tournament or bowling contest. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be served, sold or delivered at the bowling tournament or bowling contest by the licensee.

(3) A hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensee may permit the conduct of events on the licensed premises by groups constituting a league. Liquor and malt or brewed beverages, as generally permitted by the class of license involved, may be sold, served or delivered at the events on the licensed premises.

(4) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.

(i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

(ii) Charitable organization functions shall be operated in accordance with the Solicitation of Funds For Charitable Purposes Act (10 P. S. § § 162.1—162.24) and, if applicable, the Local Option Small Games of Chance Act (10 P. S. § § 311—327), and the Bingo Law (10 P. S. §§ 301—308.1).

(5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.

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

(1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants.

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring charity may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

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

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

(f) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employees of a licensee.

(g) Municipalities may petition the Board for exemption from the Board's regulations regarding the enforcement of subsection (a) for all licensees within an identifiable area in accordance with section 493.1(b) of the Liquor Code (47 P. S. § 4-493.1(b)).

(h) A manufacturer, manufacturer's representative or licensee may sponsor sweepstakes promotions. Permissible sweepstakes shall provide that the following conditions apply:

- (i) No purchase is necessary to enter.
- (ii) Entrants shall be 21 years of age or older.
- (iii) Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- (iv) Alcoholic beverages may not be part of the prize.

Authority

The provisions of this § 5.32 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.32 adopted June 26, 1952; amended April 2, 1976, effective April 3, 1976, 6 Pa.B. 832; amended November 1, 1985, effective November 2, 1985, 15 Pa.B. 3935; amended May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450; amended May 10, 1996, effective May 11, 1996, 26 Pa.B. 2209; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139; amended July 12, 2013, effective July 13, 2013, 43 Pa.B. 3946; amended December 6, 2013, effective December 7, 2013, 43 Pa.B. 7082. Immediately preceding text appears at serial pages (307794), (367735) to (367736) and (337275) to (337276).

Notes of Decisions*Appeals*

The authority of the Liquor Control Board to refuse renewal of an amusement permit is inherently provided by 47 P. S. § 4-470. Therefore, an appeal from the denial of an amusement permit was an appeal pursuant to the Liquor Code and section 933 of the Judicial Code mandated that jurisdiction laid with the court of common pleas. *Teazers, Inc. v. Liquor Control Board*, 661 A.2d 455 (Pa. Cmwlth. 1995).

In light of amendments to Liquor Code, the scope of review in enforcement proceedings involving suspensions and fines when liquor licensee was cited for permitting male stripper to come into contact with and/or associate with patrons continued to be de novo which was the same as in appeals from refusals to grant licenses. *State Police v. Cantina Gloria's Lounge, Inc.*, 639 A.2d 14 (Pa. 1994).

Construction with Constitution/Property Rights

Tournament operator failed to state cause of action where complaint challenged constitutionality of prohibition of tournaments in establishments licensed by Liquor Control Board. Operator did not own liquor license; thus loss of opportunity for business income tied to a liquor license was not compensable absent property taken for public use. *Horan v. Commonwealth*, 526 A.2d 458 (Pa. Cmwlth. 1987).

Evidence

The Liquor Control Board need not prove actual knowledge by the licensee that an employe or agent was violating this section and the circumstantial evidence was that licensee organized the dancer's activity who were found to be licensee agents. *Hospitality Investments of Society Hill, Inc. v. Commonwealth*, 551 A.2d 341 (Pa. Cmwlth. 1988).

Evidence/Sufficient

Graphic testimony by an enforcement officer that the officer observed a scantily-clad "go-go" dancer perform in the bar area of a restaurant, where the dancer conversed with various patrons and, after placing her leg onto the bar, allowed said patrons to place money into her "G-string" was sufficient to support the conclusion that the licensee had violated subsection (d). *In re Alray Corp.*, 456 A.2d 1167 (Pa. Cmwlth. 1983).

Evidence/Insufficient

A Liquor Control Board fine for operating a licensed premise in a noisy and disorderly fashion must be based on a showing of noisy and disorderly operation on a routine basis and was not supported by evidence of a single incident of noisy operation coupled with testimony by a liquor control agent describing noisy operation on a second occasion but not indicating whether the noise could be heard outside of the premises in violation of subsection (a). *Matter of Banks*, 429 A.2d 1279 (Pa. Cmwlth. 1981).

Gambling Devices Prohibited

Advertising discount coupons which, in addition to product discounts, contained a rub-off section offering the chance to win cash prizes were a subterfuge for gambling, and therefore, coupons constituted "gambling devices" prohibited in licensed establishments pursuant to Liquor Control Board regulations. *Lindey v. Pennsylvania State Police*, 916 A.2d 703, 706 (Pa. Cmwlth. 2006).

Prohibited Activities

The Liquor Control Board regulation prohibiting use of loudspeaker whereby sound of entertainment could be heard outside premises, subsection (a), was reasonable and consistent with legislative intent of Liquor Code. *Appeal of Two-O-Two Tavern, Inc., Friendly Saloon*, 492 A.2d 502 (Pa. Cmwlth. 1985).

Even though the licensee took affirmative action in the nature of signs and announcements to prohibit dancers from contacting patrons, it nevertheless violated this section, since the licensee was responsible for the acts of its servants and agents. *In re New Look Lounge, Inc.*, 459 A.2d 68 (Pa. Cmwlth. 1983).

The restriction purported to limit the sound of music to the inside of licensed premises thus protecting neighbors, street pedestrians, and others from being subject to unwanted sounds or "noise pollution"; the regulation was reasonable and, thus, a valid exercise of the police power. *Smart, Inc. v. Liquor Control Board*, 70 Pa. D. & C.2d 535 (1974).

Regulation Unconstitutional

Operator of club that features semi-nude dancing challenged a Pennsylvania Liquor Code statute and regulation that prohibit “lewd” entertainment at any establishment holding a liquor license; statute and regulation were facially invalid because they are substantially overbroad, in violation of First Amendment protection of expression in that the prohibition applied not only to adult entertainment venues offering nude or topless dancing for which government interest was applicable, but to artistic, theatrical and other nonadult entertainment venues for which such government interest was not applicable. 47 P. S. § 4-493(10) and 40 Pa. Code § 5.32(b) held unconstitutional. *Conchatta Inc. v Miller*, 458 F.3d 258, 266 (3rd Cir. 2006).

§ 5.33. [Reserved].**Source**

The provisions of this § 5.33 adopted June 26, 1952; amended May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450. Immediately preceding text appears at serial page (149713).

§ 5.34. [Reserved].**Source**

The provisions of this § 5.34 adopted June 26, 1952; amended May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450. Immediately preceding text appears at serial page (149713).

§ 5.35. [Reserved].**Source**

The provisions of this § 5.35 adopted June 26, 1952; amended May 8, 1992, effective May 9, 1992, 22 Pa.B. 2450. Immediately preceding text appears at serial pages (149713) to (149714).

§ 5.36. Municipal noise ordinances.

(a) A municipality that desires exemption from section 493(34) of the Liquor Code (47 P. S. § 4-493(34)), shall, under section 493.1(b) of the Liquor Code (47 P. S. § 4-493.1(b)), file a petition with the Board, requesting approval. With its petition, the municipality shall file the following:

- (1) A copy of the municipality’s noise ordinance currently in effect.
- (2) The municipality’s resolution that:
 - (i) Confirms the municipality’s support of the petition to substitute the municipal noise ordinance for section 493(34) of the Liquor Code.
 - (ii) Cites the municipal noise ordinance.
 - (iii) States the municipality’s intention to enforce the ordinance in place of section 493(34) of the Liquor Code.
- (3) A complete written description of the boundary lines for the proposed exempted noise area.
- (4) One copy of a geographical map, the minimum size of which is 36” x 36”, including the designated boundary lines of the proposed exempted noise area within the municipality.
- (5) Three copies of the geographical map required by paragraph (4), the size of which will be 8 1/2” x 11 1/2”.
- (6) Identification of a proposed location, within the proposed exempted noise area, to be used by the Board to hold the required public hearing within the proposed exempted area.
- (7) Identification of a local print publication of general circulation that would satisfy 65 Pa.C.S. Chapter 7 (relating to Sunshine Act) notice requirement for announcement of the required public hearing.

(b) A date for a public hearing shall be set and public notice given in advance of the hearing: The hearing must comply with all notice, recording and public participation requirements of 65 Pa.C.S. Chapter 7.

(c) Within 60 days after receipt of the petition, the Board will disapprove the petition for an exemption in its entirety or may approve an area more limited for which the petition will be granted if the Board finds that granting the petition will have an adverse effect on the welfare, health, peace and morals of the residents living in the vicinity of the identified area; otherwise the Board will approve the petition.

(d) The Board may place additional conditions on the petition's approval such as limiting the duration of the approval and any other condition the Board deems appropriate.

(e) There shall be a right to appeal to the court of common pleas in the same manner provided by this act for appeals from refusals to grant licenses.

(f) A municipality may rescind any existing exemption from section 493(34) of the Liquor Code by notifying the Board of its intention to do so in writing, 15 days prior to the rescission date. The notice must be accompanied by an ordinance or resolution authorizing the rescission.

(g) A rescission of an existing exemption which does not rescind the entire exempted area shall be treated as a new petition for exemption with the Board and shall follow the procedures in this section.

Authority

The provisions of this § 5.36 amended under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Source

The provisions of this § 5.36 adopted November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139; amended October 4, 2013, effective October 5, 2013, 43 Pa.B. 5817. Immediately preceding text appears at serial pages (337276) and (348105).

Subchapter D. SANITARY CONDITIONS AND LIGHTING AND CLEANING OF MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

SANITARY AND LIGHTING CONDITIONS

- Sec.
5.41. Compliance with sanitation requirements.
5.42. Lighting.

CLEANING OF MALT OR BREWED BEVERAGE SYSTEMS

- 5.50. Definition.
- 5.51. Cleaning of malt or brewed beverage dispensing systems.
- 5.52. Certificate or record required.
- 5.53. Pressure maintenance.
- 5.54. Responsibility for condition of equipment.

SANITARY AND LIGHTING CONDITIONS**§ 5.41. Compliance with sanitation requirements.**

(a) A restaurant, hotel or club catering liquor license or retail dispenser eating place or hotel malt beverage license authorized under the Liquor Code will not be issued, renewed or transferred by the Liquor Control Board for any premises unless the application for the license, renewal or transfer avers that the proper municipal or State authorities have found that the premises to be licensed, or for which an application is filed for a new license or the renewal or transfer of a license, meet all the sanitary requirements for a public eating place in the municipality where the place to be licensed is operated, as provided by statute, ordinance or regulation and that documentary evidence thereof is, and shall at all times be, displayed on the licensed premises.

(b) Subsection (a) applies to all applications for prior approval under section 403 of the Liquor Code (47 P. S. § 4-403) by filing an affidavit stating the averment after completion of construction or alteration of the premises.

Source

The provisions of this § 5.41 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441; amended May 27, 1977, effective May 28, 1977, 7 Pa.B. 1428. Immediately preceding text appears at serial pages (11808) to (11809).

§ 5.42. Lighting.

Hotel, restaurant and club liquor licensees, and retail malt beverage dispensers, shall at all times during the hours when the sale of liquor or malt or brewed beverages is permitted, maintain throughout the licensed premises illumination sufficient to insure clear visibility of the premises and to permit patrons to read a menu or newsprint with ease. Tables and booths available for the accommodation of the public shall be so situated as to permit clear visibility of occurrences at the tables or in the booths.

Source

The provisions of this § 5.42 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441.

CLEANING OF MALT OR BREWED BEVERAGE SYSTEMS**§ 5.50. Definition.**

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Malt or brewed beverage dispensing system—A keg or other container of malt or brewed beverages together with all components used to serve those beverages on draft.

Authority

The provisions of this § 5.50 adopted under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.50 adopted March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149.

§ 5.51. Cleaning of malt or brewed beverage dispensing systems.

(a) A licensee that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.

(b) The method of cleaning must leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition. The cleaning method used must include cleaning the entire system with a chemical cleaning solution or other cleaning method approved by the Board. The following alternative cleaning methods have Board approval:

- (1) Live steam.
- (2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

- (1) Once every 7 days for the faucets.
- (2) Once every 7 days for the dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors (known as “FOBS”) and draft foam control units, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines. If such a system is installed and operating, the licensee shall follow the cleaning frequency and cleaning method guidelines of the system’s manufacturer.
- (3) The Board may approve different cleaning frequencies.

Authority

The provisions of this § 5.51 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.51 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial page (307801).

Cross References

This section cited in 40 Pa. Code § 5.52 (relating to certificate or record required).

§ 5.52. Certificate or record required.

(a) The malt or brewed beverage dispensing system may be cleaned for the licensee by a person, other than another licensee, thoroughly equipped to do so by a method enumerated in § 5.51 (relating to cleaning of malt or brewed beverage dispensing systems). The licensee shall obtain from the cleaner a certificate showing the date cleaned, the name of the person by whom cleaned and the method utilized. The certificate shall be kept on file at the licensed premises at all times for inspection by the Board.

(b) The malt or brewed beverage dispensing system may be cleaned by the licensee. The licensee shall maintain and keep a record of the date of each cleaning and the method utilized. This record shall also be kept on file at all times for inspection by the Board.

Authority

The provisions of this § 5.52 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.52 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial page (307801).

§ 5.53. Pressure maintenance.

If a compressed gas or other pressurizing system is used in the malt or brewed beverage dispensing system, it shall be designed to preserve the normal flavor of the malt or brewed beverage and not introduce contaminants such as dust, water or oil, into the system.

Authority

The provisions of this § 5.53 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.53 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial pages (307801) to (307802).

§ 5.54. Responsibility for condition of equipment.

The licensee has the sole responsibility of maintaining equipment used in dispensing malt or brewed beverages on draft in a clean and sanitary condition. The mere fact that records of licensees indicate that the malt or brewed beverage dispensing system has been cleaned is no defense to enforcement action under the law and the provisions of this subchapter if the malt or brewed beverage dispensing system is at any time found to be in an unsanitary condition.

Authority

The provisions of this § 5.54 amended under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Source

The provisions of this § 5.54 adopted June 26, 1952; amended through July 28, 1972, effective July 29, 1972, 2 Pa.B. 1441; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial page (307802).

Subchapter E. [Reserved]**§ 5.61. [Reserved].****Source**

The provisions of this § 5.61 adopted June 26, 1952; amended through June 15, 1984, effective June 16, 1984, 14 Pa.B. 2061; reserved November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139. Immediately preceding text appears at serial page (261741).

Subchapter F. CLUBS**RECORDS REQUIRED**

- Sec.
5.71. Maintenance of records.
5.72. Membership record.
5.73. Financial records.
5.74. Minute book.
5.75. Other documents and instruments.

OTHER REQUIREMENTS

- 5.81. Constitution and bylaws.
5.82. Food concession.

- 5.83. Catering.
- 5.84. Entrance and inside doorways.
- 5.85. Inspection of clubhouse or club quarters.
- 5.86. Permitted exchange of club and catering club licenses.

Source

The provisions of this subchapter F adopted June 26, 1952, unless otherwise noted.

RECORDS REQUIRED

§ 5.71. Maintenance of records.

(a) Under section 102 of the Liquor Code (47 P. S. § 1-102), every club holding either a liquor or a retail dispenser license shall maintain records prescribed in this subchapter.

(b) Club records shall be maintained in the English language.

§ 5.72. Membership record.

A complete membership record shall be maintained, showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid and the amounts. The record shall also show the name of the sponsor and other remarks desirable. This record shall be either on a ruled form or, preferably, a card index, which shall carry at the top the name of the member, the address of the member and the serial number of the membership card issued. Dues shall be accumulated and posted to the proper column in the income records. A separate sheet or card shall be prepared for each member, and when members are dropped or resign, their cards shall be removed from the active file and placed in the inactive file for 2 years.

Source

The provisions of this § 5.72 adopted June 26, 1952; amended July 8, 1977, effective July 9, 1977, 7 Pa.B. 1890. Immediately preceding text appears at serial page (4150).

Notes of Decisions

Cleaning expense payments and recipients thereof constitute expenditures under this section which requires licensees to maintain a record showing all expenditures. *Slovak American Citizens Club of Oakview v. Liquor Control Board*, 549 A.2d 251 (Pa. Cmwlth. 1988).

§ 5.73. Financial records.

(a) *Income record.* A cashbook currently showing income in detail shall be maintained and posted. It shall be separated into dues, income from malt or brewed beverages and liquor, income from food and a miscellaneous column. This cashbook shall be totaled each month and used when the bank account is reconciled by the treasurer. The total entries under "dues" should balance with the dues recorded in the membership records. The record shall be maintained in columnar form.

(b) *Expenditures record.* An expense ledger or record showing expenditures, separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, heat, light, water, equipment and other expenditures, shall be maintained. The record shall be in columnar form with the proper headings at the top, and balanced each month with the bank account and the records of the treasurer. Every expenditure must be supported by delivery tickets, invoices, receipted bills, cancelled checks, petty cash vouchers or other sustaining data or memoranda.

(c) *Bank account.* A bank or cash account shall be maintained which shows income and expenditures as a control account on the income and expenditures records. The account shall be balanced each month by the treasurer with proper record made in the minutes of the recording secretary.

(d) *Electronic or automated recordkeeping.* Electronic or automated recordkeeping, or both, maintained and based upon generally accepted accounting principles, are permitted in lieu of hard copy financial records required by subsections (a)—(c). This type of recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents.

Source

The provisions of this § 5.73 adopted June 26, 1952; amended June 22, 1990, effective June 23, 1990, 20 Pa.B. 3491. Immediately preceding text appears at serial pages (136500) and (48218).

Notes of Decisions

Income Record

Entering all income as a lump sum rather than breaking it down as to source, together with other acts of inadequate bookkeeping, is sufficient to find a violation of this section. *In re Michael J. O'Connor 4th Ward Republican Club*, 389 A.2d 222 (Pa. Cmwlth. 1978).

§ 5.74. Minute book.

A minute book shall be maintained and posted currently by the recording secretary, and shall contain all of the following:

- (1) The minutes of all regular and special meetings.
- (2) The names and dates of applicants for membership and the dates the members were admitted and whether ballots were taken.
- (3) The financial reports of the treasurer.
- (4) Parties, banquets, socials and the like given to members free of charge, and the costs involved.
- (5) Elections and appointments of officers and committees, and the term for which they are elected, and customary entries in a record of this nature.

Source

The provisions of this § 5.74 adopted June 26, 1952.

Notes of Decisions*Production of Documents*

Failure to record elections in the minute book is a violation of this section. *In re Michael J. O'Connor 4th Ward Republican Club*, 389 A.2d 222 (Pa. Cmwlth. 1978).

§ 5.75. Other documents and instruments.

Club licensees shall maintain on the licensed premises at all times, subject to inspection by the Board, all of the following:

- (1) A photostatic or certified copy of the charter, if incorporated.
- (2) A copy of the constitution.
- (3) A copy of the bylaws.
- (4) Invoices and receipted bills covering purchases made by officers of the club for the benefit of the club.
- (5) All prescribed books of record and membership lists.

Source

The provisions of this § 5.75 adopted June 26, 1952.

Notes of Decisions*Production of Documents*

The inability to produce a copy of the charter on two separate occasions is a violation of this regulation. *In re Michael J. O'Connor 4th Ward Republican Club*, 389 A.2d 222 (Pa. Cmwlth. 1978).

OTHER REQUIREMENTS**§ 5.81. Constitution and bylaws.**

A club licensee shall adhere to the provisions of its constitution and bylaws.

Source

The provisions of this § 5.81 adopted June 26, 1952.

§ 5.82. Food concession.

(a) If a club does not sell food it may permit a food concession to be operated by a person who is not an officer or employe of the club, and the concessionaire may not hire a person who is an officer or employe of the club or who is a licensee or an employe of another licensee.

(b) The concessionaire shall buy, prepare, sell and collect for the food, and receive the profits, and pay his own employes. Neither the concessionaire nor his employes are permitted to handle or dispense liquor or malt or brewed beverages; and club employes are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages shall be presented to each member served.

(c) Records covering operations of the concession shall be maintained for a period of 2 years on the licensed premises. The records shall show the cost of food, supported by invoices; receipts from sale of food supported by cash register tape or guest checks; rental paid for the privilege and equipment used; the name and address, social security number and salary paid to each employe; and other expenditures.

Source

The provisions of this § 5.82 adopted June 26, 1952.

§ 5.83. Catering.

(a) Catering, for the purpose of this section, means the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises or brought onto the premises already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement, made at least 24 hours in advance of the time for private meetings or functions, such as dances, card parties, banquets and the like; and which is paid for by the nonmembers.

(b) A record shall be maintained showing the date and time catering arrangements were made, the name of the person or organization making the arrangements and the approximate number of persons to be accommodated.

Source

The provisions of this § 5.83 adopted June 26, 1952.

Notes of Decisions

Furnishing of Alcoholic Beverages

A club with a catering license may serve alcoholic beverages to nonmembers only by prior arrangement and if a record is maintained showing the date and time catering arrangements were made. *Liquor Control Board v. American Legion Home Association*, 474 A.2d 68 (Pa. Cmwlth. 1984).

§ 5.84. Entrance and inside doorways.

A licensed club may not maintain or permit barricades to be maintained in the entrance or inside doorways in a clubhouse or club quarters.

Source

The provisions of this § 5.84 adopted June 26, 1952.

§ 5.85. Inspection of clubhouse or club quarters.

Authorized representatives of the Board shall, upon presentation of their credentials, be admitted immediately to the clubhouse or club quarters and permitted without hindrance or delay to inspect completely the premises at any time during which the club is open for the transaction of business.

Source

The provisions of this § 5.85 adopted June 26, 1952.

§ 5.86. Permitted exchange of club and catering club licenses.

(a) Upon application under Chapter 3 (relating to license applications), and subject to the authority granted by section 472.3(a) of the Liquor Code (47 P. S. § 4-472.3(a), the Board may issue to a club, a club liquor license in exchange for a club malt beverage retail dispenser license in any municipality which has approved the granting of liquor licenses. The fee for issuance of a license under this subsection shall be equal to the application filing fee plus the license fee for a hotel or restaurant liquor license in the municipality in which the licensed premises is located, as set forth in section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14).

(b) Upon application under Chapter 3, and upon approval of the Board, a club holding a club liquor license may surrender its license, and receive a catering club liquor license in its place.

(c) Upon application under Chapter 3, and upon approval of the Board, a club holding a catering club liquor license may surrender its license and receive a club liquor license in its place.

(d) The fee for filing an application for exchange of club licenses shall be applied consistent with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14).

(1) an application for the exchange of a club license for a catering club license may only be filed for a full license year. It shall be accompanied by a renewal filing fee, and a license fee equal to that required for a restaurant license in the municipality of its location under section 614-A of The Administrative Code of 1929.

(2) An application for the exchange of a catering club license for a club license may only be filed for a full license year. It must be accompanied by a renewal filing fee and a license fee for a club as required under section 614-A of The Administrative Code of 1929.

(e) Exchange of licenses may only occur within a municipality that has approved the granting of such licenses.

Source

The provisions of this § 5.86 adopted November 12, 2004, effective November 13, 2004, 34 Pa.B. 6139.

**Subchapter G. CHANGE OF OFFICERS OF
CORPORATIONS AND CLUBS**

Sec.
5.91. Required report.

Cross References

This subchapter cited in 40 Pa. Code § 17.11 (relating to license application protests).

§ 5.91. Required report.

(a) A corporation, association or other Board licensed entity, except a club, having officers, or directors, or stockholders, shall report a change in officers, or directors or stockholders within 15 days. A change in stockholders involving less than 10% of outstanding voting stock need not be reported, except when the change involves a majority or controlling interest. Control is defined as the power or authority to manage, direct, govern, administer or oversee the operation of the licensed business.

(b) The changes shall be reported on forms which will be furnished upon request by the Board. For a change in stockholders, an affidavit describing, in detail, the source of funds used to purchase the stock shall accompany the form. If funds to purchase the stock are derived from a written financing agreement, the financing agreement shall also accompany the form.

(c) Club change of officers shall be reported with the renewal of club license on forms furnished by the Board upon request. Change of club manager or steward shall be reported with the renewal of club license and at license validation on forms furnished by the Board upon request.

(d) Change of officer forms for club licensees shall be accompanied by a fee of \$40. When a background investigation is conducted to obtain or verify information regarding a club change of officer, an additional fee of \$60, for a total fee of \$100, will be assessed. Change of officer forms for changes of corporate officers other than clubs shall be accompanied by a fee of \$200 when the change of officer does not constitute a change in majority/controlling interest. If the change of corporate officer does constitute a change in majority/controlling interest, fees will be assessed in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A).

Authority

The provisions of this § 5.91 issued under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.91 adopted June 26, 1952; amended June 18, 1982, effective July 1, 1982, 12 Pa.B. 1860; amended March 21, 1986, effective May 21, 1986, 16 Pa.B. 954; amended March 12, 1993, effective March 13, 1993, 23 Pa.B. 1145; amended March 20, 1998, effective March 21, 1998, 28 Pa.B. 1418. Immediately preceding text appears at serial pages (205155) to (205156).

Cross References

This section cited in 40 Pa. Code § 3.35 (relating to persons from whom criminal history record information checks are required); and 40 Pa. Code § 11.6 (relating to signature on cards).

**Subchapter H. RECORDS AND REPORTS—BREWERIES, BONDED
WAREHOUSES, LIMITED WINERIES AND LICENSED
DISTILLERIES OF HISTORICAL SIGNIFICANCE**

- Sec.
5.101. Breweries.
5.102. Bonded warehouses.
5.103. Limited wineries.
5.104. Licensed distilleries of historical significance.

§ 5.101. Breweries.

(a) *Records.* A licensed manufacturer of malt or brewed beverages shall maintain and keep on the licensed premises, in hard copy or electronic media consistent with generally accepted accounting procedures, for a period of at least 2 years, complete and accurate daily records of the transactions conducted under the authority of the license, subject to inspection, under sections 211, 493(12) and (21) of the Liquor Code (47 P. S. §§ 2-211, 4-493(12) and (21)), by authorized representatives of the Board and the State Police, Bureau of Liquor Control Enforcement. A recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting documentation—original documents. Records shall be clearly identifiable to the licensed operation and include the following:

- (1) The purchase and receipt of raw materials used in the manufacture of malt or brewed beverages, with the name and address of the persons from whom purchased.
- (2) The quantity of raw materials used in the manufacture of malt or brewed beverages, with the quantity of the beverages produced.
- (3) The amount of finished malt or brewed beverages withdrawn, showing the number and size of containers.
- (4) The amount of Federal tax paid on malt or brewed beverages withdrawn for bottling, including the quantity and size of the cases bottled.
- (5) The quantity of tax-paid or nontax-paid malt or brewed beverages used for consumption on the premises.
- (6) The quantity and size of containers removed from the licensed premises, either for personal consumption or other purposes, with the names and addresses of persons for whom removal is made.
- (7) Sales invoices showing the name, address, quantity and size of containers, cost of malt or brewed beverages, deposits collected on returnable containers, refunds paid or credited, and net amount of the invoice.
- (8) A sales register showing the total quantity by size of container, the cost of malt or brewed beverages, deposits collected on all returnable containers, refunds paid or credited, and net amount of cash for the business of each day.
- (9) A cash book, showing all cash received.
- (10) A disbursement record, showing amount of all cash disbursements, with the names of the persons to whom paid. Such disbursements shall be supported by invoices or memoranda.

(11) A record of all expenses incurred by salesmen, including cost of travel, lodging, subsistence and promotional expenses. All promotional expenses must be broken down to show the place and amount expended.

(b) *Federal and State Government reports and forms.* Copies of reports or forms required by Federal or State governmental agencies related to the licensed operations shall be maintained for a period of 2 years unless required to be maintained for a longer period by the Federal or State agencies. The reports or forms shall also be open to inspection by authorized representatives of the Board and the State Police, Bureau of Liquor Control Enforcement, and shall constitute a satisfactory record if they contain the information required in subsection (a).

Source

The provisions of this § 5.101 adopted April 1, 1962, amended through August 29, 1966; amended June 22, 1990, effective June 23, 1990, 20 Pa.B. 3492. Immediately preceding text appears at serial pages (110160), (72699) and (81455).

Cross References

This section cited in 40 Pa. Code § 3.91 (relating to alternating brewers' license).

§ 5.102. Bonded warehouses.

(a) *Records.* A holder of a Bonded Warehouse License shall maintain and keep on the licensed premises, in hard copy or electronic media consistent with generally accepted accounting procedures, for a period of 2 years, complete and accurate daily records of transactions conducted under the authority of the license, subject to inspection, under sections 211, 512 and 513 of the Liquor Code (47 P. S. §§ 2-211, 5-512 and 5-513), by authorized representatives of the Board and the State Police, Bureau of Liquor Control Enforcement. A recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting documentation—original documents. Records shall be clearly identifiable to the licensed operation and shall include the following:

(1) *Receipts.* The name of the producer and location of the distillery where produced, name and address of bonded warehouse from which transferred; name and address of the owner for whom stored, type (whether alcohol, whiskey and the like), type and number of containers, quantity in proof gallons (tax gallons), and warehouse certificates issued, shall be included.

(2) *Shipments.* The name and address of person to whom shipped, type (whether alcohol, whiskey and the like), type and number of containers, quantity in proof gallons (tax gallons), name and address of person from whose inventory the alcohol or liquors were withdrawn, and warehouse certificate numbers cancelled, must be included. Withdrawals In Bond shall show the original proof gallons (tax gallons), tax paid withdrawals shall show the regauged proof gallons (tax gallons) and losses in regauging.

(3) *Transfer of ownership of warehouse certificates.* Where alcohol or liquors are not removed from the bonded warehouse, a transfer of ownership of warehouse certificates shall be recorded, showing the name of person from

whom transferred, the name and address of the person to whom transferred, the type of alcohol or liquor, type and number of containers and proof gallons (tax gallons), the warehouse certificate cancelled and the warehouse certificate issued to the new owner.

(b) *Federal and State Government reports and forms.* Copies of reports or forms required by Federal or State governmental agencies related to the licensed operation shall be maintained for a period of 2 years unless required to be maintained for a longer period by the Federal or State agencies. The reports or forms shall also be open to inspection by authorized representatives of the Board and the State Police, Bureau of Liquor Control Enforcement, and shall constitute a satisfactory record if they contain the information required in subsection (a).

Source

The provisions of this § 5.102 adopted June 26, 1952; amended June 22, 1990, effective June 23, 1990, 20 Pa.B. 3492. Immediately preceding text appears at serial pages (81455) to (81456).

Cross References

This section cited in 40 Pa. Code § 9.123 (relating to records and reports).

§ 5.103. Limited wineries.

(a) *Records.* A holder of a Limited Winery License obtained under § 3.62 (relating to creation) shall maintain and keep on the licensed premises daily permanent records which shall conform to the requirements of section 512 of the Liquor Code (47 P. S. § 5-512). The records shall include complete details concerning the source of fruits used in the production of wines. Electronic media recordkeeping, maintained and based upon generally accepted accounting principles, shall be permitted in lieu of hard copy records. The recordkeeping system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting original documents. The records shall include complete details concerning the source of fruits used in the production of wines.

(b) *Sales invoice.* In addition to the records prescribed in subsection (a), except as otherwise provided in this part, a sales invoice shall be prepared at the licensed premises for each sale. The sales invoice shall be prepared in accordance with the following:

(1) The sales invoice shall be imprinted or affixed with the name and address of the limited winery.

(2) The sales invoice shall show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the wine and the net cost to the customer. The name and address of private individuals is not required on sales invoices covering quantities of 16 liters or less; in lieu of preparing sales invoices for the sales, the transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices, other than name and address of the purchaser. The counter sheet shall be totaled daily and the totals entered into the sales register noted in section 512 of the Liquor Code (47 P. S. § 5-512).

(3) The sales invoice shall show the Commonwealth sales tax, where applicable, as a separate entry.

(4) The sales invoice may include other items permitted for sale by limited wineries if the sale of wines is listed separately from other permitted items sold by the licensee.

(5) An invoice shall be prepared for any amount of wine shipped to customers via Transporter-for-Hire, Class C carriers. The invoice shall be prepared only for persons 21 years of age or older, and limited winery licensees shall request the signature of a recipient, 21 years of age or older, from the transporter making the deliveries and a return acknowledgement of delivery to the recipient. Copies of acknowledgments of delivery shall be maintained on the licensed premises for 2 years.

(6) When a sale requires the preparation of an invoice, one copy shall be given to the recipient of the merchandise and a copy retained on the licensed premises for 2 years.

(c) *Reports.* A licensed limited winery shall file reports in the manner set forth by the Board covering operations of their licensed business during the preceding calendar year. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board at the time of the renewal or validation of the license. A copy of each report shall be retained on the licensed premises for at least 2 years from the date of filing. Failure to file the reports will preclude the Board from renewing or validating the license in question. These reports are in addition to information or reports the licensed limited winery may be required to provide to the Department of Agriculture under 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing Act) and regulations promulgated thereunder, including 7 Pa. Code § 104.75 (relating to accounting and payment).

Authority

The provisions of this § 5.103 issued under sections 207(i) and 505.2(2) and (3) of the Liquor Code (47 P. S. §§ 2-207(i) and 505.2(2) and (3)); amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.103 adopted March 11, 1969; amended September 13, 1974, effective September 14, 1974, 4 Pa.B. 1948; amended September 29, 1978, effective September 30, 1978, 8 Pa.B. 2689; amended March 11, 1983, effective March 12, 1983, 13 Pa.B. 984; amended December 22, 1995, effective December 23, 1995, 25 Pa. B. 5957; amended November 18, 2011, effective November 19, 2011, 41 Pa.B. 6218. Immediately preceding text appears at serial pages (205159) to (205160).

Cross References

This section cited in 40 Pa. Code § 3.62 (relating to creation); and 40 Pa. Code § 11.111 (relating to sale by limited winery licensees).

§ 5.104. Licensed distilleries of historical significance.

(a) *Records.* A distillery of historical significance which holds a license obtained under section 505 of the Liquor Code (47 P. S. § 5-505) shall maintain and keep on the licensed premises daily permanent records which shall conform to the requirements of section 512 of the Liquor Code (47 P. S. § 5-512).

(b) *Sales invoice.* In addition to the records prescribed in subsection (a), except as otherwise provided in this part, a sales invoice shall be prepared at the licensed premises for each sale. The sales invoices shall be prepared in accordance with the following:

(1) The sales invoice shall be imprinted or affixed with the name and address of the distillery of historical significance.

(2) The sales invoice shall show the name and address of the recipient of the merchandise, date of sale, number of units, size and type of package, brand name, selling price of the liquor and the net cost to the customer. The name and address of private individuals will not be required on sales invoices covering quantities of 4 wine gallons or less; in lieu of preparing sales invoices for the sales, the transactions may be entered individually on a counter sheet maintained in columnar form showing the information required on sales invoices, other than name and address of the purchaser. The counter sheet shall be totaled

daily and the totals entered into the sales register noted in section 512 of the Liquor Code (47 P. S. § 5-512).

(3) The sales invoice shall show the Commonwealth sales tax, where applicable, as a separate entry.

(4) The sales invoice shall indicate liquor transported via transporter-for-hire, Class C carriers. The distillery shall request the signature of a recipient, 21 years of age or older, from the transporter making the deliveries and a return acknowledgement of delivery to the recipient. Copies of acknowledgements of delivery shall be maintained on the licensed premises for a period of 2 years.

(5) The sales invoice covering the sale of liquor may not include the sale of other commodities.

(6) When a sale requires the preparation of an invoice, one copy shall be given to the recipient of the merchandise and a copy retained on the licensed premises for a period of 2 years.

(c) *Monthly reports.* A licensed distillery of historical significance shall file monthly reports on forms provided by the Board covering all operations of their licensed business during the preceding month. The reports shall be signed and sworn to by the licensee or his authorized agent and shall be filed with the Board on or before the 15th day of the month immediately succeeding the month for which the reports are prepared. A copy of each report shall be retained on the licensed premises for a period of at least 2 years from the date of filing.

Source

The provisions of this § 5.104 adopted February 20, 1976, effective February 21, 1976, 6 Pa.B. 365; amended November 23, 1984, effective November 24, 1984, 14 Pa.B. 4284. Immediately preceding text appears at serial pages (81457) to (81458).

Cross References

This section cited in 40 Pa. Code § 3.72 (relating to creation); 40 Pa. Code § 11.211 (relating to sale by licensed distilleries of historical significance); 40 Pa. Code § 11.212 (relating to additional conditions); and 40 Pa. Code § 11.222 (relating to additional conditions).

Subchapter I. RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM

GENERAL

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Authority

The provisions of this Subchapter I issued under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), unless otherwise noted.

Source

The provisions of this Subchapter I adopted June 25, 2010, effective June 26, 2010, 40 Pa.B. 3494, unless otherwise noted.

GENERAL**§ 5.201. Purpose.**

(a) This subchapter implements the program authorized under section 471.1 of the Liquor Code (47 P. S. § 4-471.1), regarding responsible alcohol management. This provision authorizes the Board to establish a four-part program including:

- (1) New employee orientation.
- (2) Training for alcohol service personnel.

- (3) Manager/owner training.
- (4) Display of responsible alcohol service signage.
- (b) Under section 471.1(f) of the Liquor Code, licensees are to obtain certification upon the completion of a certified alcohol service personnel program or the Board's owner/manager training program. Certification will be valid for 2 years.
- (c) Licensees and their managers and employees may enter the Responsible Alcohol Management Program voluntarily, may commit to participation as part of a conditional licensing agreement entered into with the Board or may be required to participate by order of one of the Board's administrative law judges. This subchapter also establishes standards for the Board to certify compliance with this program.

§ 5.202. Definitions.

When used in this subchapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

BAE—Bureau of Alcohol Education—The office in the Board that is responsible for administering the Responsible Alcohol Management Program.

Certify—To approve and confirm the approval in writing.

Instructor—An individual who is certified by the Board to instruct students, including licensees, owners, managers, servers, sellers and members of the public, in responsible server practices.

Licensee—An individual, person or entity that holds a license issued by the Board.

Manager/owner training—Training conducted by the Board or its employees for individuals who manage or own licensed premises.

New employee—An individual who has not been employed at the licensed premises seeking certification in any capacity during the preceding year.

Responsible server practices—Procedures and practices used by alcohol service personnel to prevent the furnishing or selling of alcoholic beverages to minors and visibly intoxicated persons.

COURSE OF STUDY

§ 5.211. Course of study for alcohol service personnel.

- (a) A standard curriculum for the course of study will be provided by the BAE.
- (b) The BAE is authorized to review curriculum submitted by another training provider and to certify the curriculum if it is equivalent to or exceeds the BAE's standard curriculum. A request for review of curriculum must be accompanied by a nonrefundable \$250 application fee.
 - (1) In the event that the training provider's curriculum is not equivalent to or does not exceed the BAE's standard curriculum, the BAE will advise the

training provider in writing within 90 days of receiving the curriculum and fee as to subjects where the training provider's curriculum is deficient.

(2) The training provider has the opportunity to correct and resubmit its curriculum no more than two times. Curriculum resubmitted under this subsection does not require the payment of an additional fee.

(3) If the training provider's curriculum is still deficient after the second and final resubmission, the BAE will not accept submissions or resubmissions from the training provider for 1 year from the date that the BAE sent notification to the training provider that the second resubmission was deficient.

Authority

The provisions of this § 5.211 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.211 amended November 13, 2015, effective November 14, 2015, 45 Pa.B. 6593. Immediately preceding text appears at serial page (350839).

Cross References

This section cited in 40 Pa. Code § 5.251 (relating to prohibited conduct).

INSTRUCTORS

§ 5.231. Instructor certification.

The BAE will have a procedure, as set forth in this section, to confirm a person's competency to begin and continue working as an instructor. Part of this procedure will include observation of an instructor's training sessions by representatives of the BAE at least twice per year.

(1) A person desiring certification as an instructor shall submit an application on forms issued by the Board and pay a \$250 nonrefundable application fee.

(2) The minimum qualifications of an instructor include the following:

- (i) Possessing a high school diploma or GED.
- (ii) Possessing a minimum of 2 years of experience, full-time, in the field of education, law, law enforcement, substance abuse prevention, hospitality or alcohol service training.
- (iii) Being 21 years of age or older.
- (iv) Having no arrests that are related to alcohol, narcotics or other controlled substances in the previous 10 years.
- (v) Attending manager/owner training once in the year preceding the date the application for instructor certification is filed.

(3) If a person who has submitted a completed application meets the minimum requirements for certification, the Board will issue to the instructor a Notice of Certification. The period of certification shall be 1 year from the date of issuance of the Notice of Certification.

(4) Renewal of certification shall be submitted to the BAE at least 30 days prior to the expiration of the instructor's current certification. The same forms,

provided by the BAE, shall be used for renewals as for initial certification. A \$250 fee must accompany an application for renewal.

§ 5.232. Instructor responsibilities.

Instructors have the responsibility to do the following:

- (1) Using the standard curriculum provided by the BAE or a curriculum certified by the BAE, provide students with information regarding the current status of the law on issues regarding the sale or service of alcoholic beverages by licensees.
- (2) Schedule training sessions in locations throughout this Commonwealth.
- (3) Conduct at least two training sessions per quarter and train at least 225 students per year. Instructors may request a waiver of the minimum requirements in this paragraph by sending a letter or e-mail to the BAE. The BAE will waive the requirements for minimum training activity for instructors due to temporary, nonrecurrent exigencies, such as instructor illness or family emergency, bad weather or other circumstances beyond the instructor's control.
- (4) Provide accurate records of attendance and course completion, as required under § 5.233(c) (relating to minimum standards of training), to the BAE within 7 calendar days following each training session through the BAE's web site. Original attendance sheets shall be submitted to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.
- (5) Attend instructor meetings twice per year as scheduled by the BAE.
- (6) Attend manager/owner training at least once per year.

Authority

The provisions of this § 5.232 amended under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Source

The provisions of this § 5.232 amended November 13, 2015, effective November 14, 2015, 45 Pa.B. 6593. Immediately preceding text appears at serial pages (350840) to (350841).

Cross References

This section cited in 40 Pa. Code § 5.251 (relating to prohibited conduct).

§ 5.233. Minimum standards of training.

- (a) Instructors shall conduct training sessions conforming to either the BAE's standard curriculum or a curriculum certified by the BAE.
 - (1) Each training session must consist of at least 2 1/2 hours of instructional time.
 - (2) The ratio of students per instructor may not exceed 40 to 1.
- (b) Instructors shall notify the BAE of the following:
 - (1) At least 7 calendar days in advance of scheduling any training session. Instructors shall provide notification to the BAE through the BAE's web site.

- (2) Immediately of any training session cancellation. Instructors shall provide notification to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.
- (3) Immediately of any changes to the training schedule. Instructors shall provide notification to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.
- (c) Instructors shall obtain the student information indicated in paragraphs (1)—(3) at the beginning of the training session. An instructor shall send a completed attendance sheet to the BAE within 7 days of the end of the training session, including the following information from each student:
- (1) Name.
 - (2) Home address.
 - (3) Home telephone number.
 - (4) Student identification number issued by the BAE.
 - (5) Pass/fail score on the test.
 - (6) Licensed establishment name, address and licensee identification.
 - (7) Time and location of training.
- (d) At the conclusion of the training, the instructor shall administer a standardized test prepared by the BAE, insuring that students complete the examination as a closed book exam, without access to references to aid in the completion of the examination.
- (e) The instructor shall grade examinations and notify students of their grades. A test score of 80% or better is required to pass. A student who does not pass may, at the first opportunity, schedule training and take the test again.

Authority

The provisions of this § 5.233 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 5.233 amended November 13, 2015, effective November 14, 2015, 45 Pa.B. 6593. Immediately preceding text appears at serial pages (350841) to (350842).

Cross References

This section cited in 40 Pa. Code § 5.232 (relating to instructor responsibilities).

TRAINING/ORIENTATION

§ 5.241. Manager/owner training.

- (a) Manager/owner training will be conducted by the BAE.
- (b) Training must include instruction on proper service of alcohol, developing an alcohol service policy and establishing house rules and policies aimed at preventing sales of alcoholic beverages to minors or visibly intoxicated persons. Instruction shall also be provided on identification checks and signs of visible intoxication. Instruction shall be provided on techniques to assure that employees

are complying with house rules and policies, including the orientation of new and current employees and the documentation of incidents occurring in the workplace.

(c) For 2 years, the Board will maintain records establishing the names of individuals who have successfully undergone manager/owner training.

§ 5.242. New employee orientation.

(a) Licensees applying for certification of compliance under section 471.1 of the Liquor Code (47 P. S. § 4-471.1) shall conduct new employee orientation within 30 days of the employee's hire, in accordance with a checklist of responsible server practices provided by the BAE including:

(1) Penalties for furnishing or selling alcohol to minors.

(2) Acceptable forms of identification as defined in section 495(a) of the Liquor Code (47 P. S. § 4-495(a)).

(3) Practices for checking identification to prevent the service of alcohol to minors, which is prohibited under section 493(1) of the Liquor Code (47 P. S. § 4-493(1)).

(4) Penalties for furnishing or selling alcohol to visibly intoxicated persons.

(5) Practices for refusing service of alcohol to visibly intoxicated persons.

(6) Procedures for handling situations where criminal activity, such as drug activity, assaults or fights, loitering and prostitution, is occurring in or about the premises.

(b) The licensee is responsible for ensuring that the owner or manager conducts the new employee orientation.

§ 5.243. Records.

(a) The licensee shall keep the following records:

(1) Certification status of its employees, managers and owners, consisting of the name of the employee, manager or owner, date of hire, date of training and the name of the trainer.

- (2) Date of premises certification.
 - (3) Records of its new employee orientation program.
 - (4) Responsible alcohol service signs it posted, where and when the signs were posted, revised and reposted.
- (b) These records shall be maintained as part of the licensee's operating records required to be kept for 2 years in accordance with section 493(12) of the Liquor Code (47 P. S. § 4-493(12)).

PROHIBITED CONDUCT

§ 5.251. Prohibited conduct.

(a) The Board may decertify instructors for violating any of the provisions of this subchapter or engaging in the following conduct:

- (1) Discrimination or harassment based on age, race, sex, disability, national origin or religion.
- (2) An act that is in violation of the Liquor Code or this title.
- (3) An act resulting in a misdemeanor or felony conviction.
- (4) An act resulting in admittance into an Accelerated Rehabilitative Disposition (ARD) program if the underlying activity is related to alcoholic beverages, narcotics or controlled substances.
- (5) Being under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.
- (6) Knowingly permitting students to be under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.
- (7) Cheating or condoning cheating by students.
- (8) Knowingly providing false information on reports submitted to the Board.
- (9) Having an unacceptable evaluation regarding the presentation of the course of study from class observations conducted by the BAE. An unacceptable evaluation will result from conduct including, but not limited to, the following:
 - (i) Failing to satisfactorily carry out the instructor's responsibilities in § 5.232 (relating to instructor responsibilities).
 - (ii) Failing to meet the minimum standards of training in § 5.211 (relating to course of study for alcohol service personnel).
 - (iii) Failing to provide students with current and accurate information.
 - (iv) Failing to provide accurate records of attendance and course completion to the BAE.
 - (v) Failing to conduct at least 2 1/2 hours of instructional time in each training.
 - (vi) Exceeding the ratio of students per instructor.

- (vii) Failing to properly administer the standardized test prepared by the BAE.
- (b) The Board will send a Notice of Decertification to an instructor by certified United States mail. An appeal of the Board's decision to decertify an instructor shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).
- (c) The Board will not consider an instructor's application for recertification until 1 year after the date of decertification.

SIGNS

§ 5.261. Signs.

- (a) Signs for posting in the licensed premises will be provided by the Board. A licensee may use its own signs provided that they are equivalent in size and content to the Board's signs.
- (b) The following signs must be posted, notifying patrons about:
 - (1) Acceptable forms of identification as described in section 495(a) of the Liquor Code (47 P. S. § 4-495(a)).
 - (2) The licensee's duty to refuse service to minors and visibly intoxicated persons under section 493(1) of the Liquor Code (47 P. S. § 4-493(1)).
- (c) The design of the signs must be so that they are legible from a distance of 10 feet. Signs must be located where patrons will easily see them.
- (d) The licensee is responsible for the posting and maintenance of signs.

CERTIFICATION

§ 5.271. Premises certification.

- (a) A licensee may request that the Board certify that it complies with section 471.1 of the Liquor Code (47 P. S. § 4-471.1). The request may be made by personal contact, telephone or written communication to the BAE. Written communication includes first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.
- (b) Certification or recertification will be issued by the Board after investigation and approval of the licensed premises.
- (c) There is no fee for certification or recertification.
- (d) If the Board finds that a licensee has met the requirements under section 471.1 of the Liquor Code, the licensee will be issued a certificate of compliance valid for 2 years.
- (e) If the Board finds that a licensee has not met the requirements under section 471.1 of the Liquor Code or this subchapter, and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was not mandated by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse certification or decertify the licensee.

(f) If the Board finds that a licensee has not met the requirements under section 471.1 of the Liquor Code or this subchapter and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was required by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse the application for certification or decertify the licensee and refer the matter to the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

(g) The Board will send a Notice of Decertification to the licensee by certified United States mail. Appeal of the Board's decision to decertify a licensee shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).

(h) A licensee may apply for recertification at any time after the date of decertification.

(i) The Office of Administrative Law Judge will take official notice of the Board's records with regard to the licensee's certification.

Subchapter J. MINORS ON LICENSED PREMISES

Sec.

5.321. Service in establishments primarily serving food.

Authority

The provisions of this Subchapter J issued under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), unless otherwise noted.

Source

The provisions of this Subchapter J adopted January 5, 2007, effective January 6, 2007, 37 Pa.B. 16, unless otherwise noted. (Renumbered July 30, 2010, effective July 31, 2010 at 40 Pa.B. 4254. Immediately preceding text appears at serial pages (325005) to (325006).)

§ 5.321. Service in establishments primarily serving food.

(a) Section 493(14) of the Liquor Code (47 P. S. § 4-493(14)) creates several exceptions to the general prohibition of minors being present in licensed premises. One of these exceptions, known as the "Pizza Hut" exception, permits a minor to be present in a restaurant, hotel or retail dispenser (but not a club) licensed premises that has gross sales of food and nonalcoholic beverages equal to at least 50% of its combined gross sales of both food and alcoholic beverages.

(b) Licensees qualifying for this exception will not be cited for unlawfully allowing minors to frequent the licensed premises.

(c) To qualify for this exception, a licensee will assure that:

(1) Minors are not permitted to sit at the bar counter of the premises.

(2) Alcoholic beverages are not served to any adult at the table or booth where the minor is seated, unless the minor is also there with a parent, legal guardian or proper supervisor.

(3) Sales of food and nonalcoholic beverages at the licensed premises during the preceding 12-month licensing year are at least 50% of the combined gross sales of both food and alcoholic beverages.

[Next page is 7-1.]