

- 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.

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)).

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.

(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.

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).

(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.

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.

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 employee 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. *Lindsey 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).

(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).

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.

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

(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 Moerue 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).

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.

§ 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-

§ 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).

§ 5.12. 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).

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.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchap.	Sec.
A.	CASH DEPOSITS ON RETURNABLE ORIGINAL CONTAINERS OF MALT OR BREWED BEVERAGES 5.1
B.	EMPLOYEES OF LICENSEES 5.11
C.	AMUSEMENT AND ENTERTAINMENT 5.30
D.	SANITARY CONDITIONS AND LIGHTING AND CLEANING OF MALT OR BREWED BEVERAGE DISPENSING SYSTEMS 5.41
E.	[Reserved]. 5.61
F.	CLUBS 5.71
G.	CHANGE OF OFFICERS OF CORPORATIONS AND CLUBS 5.91
H.	RECORDS AND REPORTS—BREWERIES, BONDED WAREHOUSES, LIMITED WINERIES AND LICENSED DISTILLERIES OF HISTORICAL SIGNIFICANCE 5.101
I.	RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM 5.201
J.	MINORS ON LICENSED PREMISES 5.321

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,

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).

§ 5.3. 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.

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:

Size	Deposit
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:

Size	Deposit
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.