

Summary of Act 166 of 2016
(Including Information Relevant to Licensees)

On November 15, 2016, Governor Wolf signed House Bill No. 1196 into law. Now known as Act 166 of 2016 (Act 166 or Act), the Bill changes seventeen sections of the Liquor Code and adds a new section. The changes affecting licensees, which go into effect January 17, 2017, are identified herein by broad category. The information in brackets refers to the particular section(s) of the Liquor Code where the change(s) can be found. Some of these changes will not apply to every type of license, but many of the changes do impact more than one type of license, so be sure to check all the categories you think might apply to your license.

If you have any questions about what these changes mean, or about other provisions of the Liquor Code, you may contact the PLCB's Office of Chief Counsel at 717-783-9454 or ra-blegal@pa.gov.

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Airport Liquor Licenses

Act 166 allows the placement of local option ballot questions regarding the granting of liquor licenses to an airport authority in those municipalities that do not already allow the retail sale of liquor. [47 P.S. § 4-472].

Alcoholic Cider

The definition of “alcoholic cider” is amended by changing the maximum carbonation level of alcoholic cider from 0.392 of a gram per 100 milliliters to 6.4 grams per liter. [47 P.S. § 1-102]. The new definition is more consistent with the federal definition.

Beer Taps

Licensees no longer need to label their taps (faucet, spigot, or dispensing apparatus), as long as the brand label is located somewhere in full sight of the customer. [47 P.S. § 4-493(6)].

Brand Registration/Beer Sales Reporting

Any person selling malt or brewed beverages at wholesale, and any person selling at retail malt or brewed beverages that were not sold at wholesale, must report to the PLCB the volume of the malt or brewed beverages sold. The monthly report, in the form and manner determined by the PLCB, must be made no later than sixty days after the end of each calendar month and must show product volumes broken down by brewer. All volumes must be reported in thirty-one-gallon barrel equivalents, regardless of the package size. Within fourteen days of receiving the reports, the PLCB must post them on the internet for public view for a period of two years. The PLCB must retain the reports for ten years. [47 P.S. § 4-445(c)].

Breweries

Act 166 defines a “growler” as a refillable container for malt or brewed beverages that can be resealed. [47 P.S. § 1-102].

The Act authorizes a brewery to sell alcoholic cider and malt or brewed beverages produced by other PLCB-licensed manufacturers for consumption on its licensed premises (sales of wines and liquor were previously authorized by Act 39 of 2016 (Act 39)). The combined sales of wine, liquor, and malt or brewed beverages produced by another manufacturer may not exceed 50% of the on-premises sales of its own malt or brewed beverages for the preceding calendar year, or for the current year if the brewery had not previously operated for a full calendar year. [47 P.S. § 4-446(a)(2)].

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The Act clarifies that a brewery does not need a brewery pub license to sell the products of other licensed breweries, limited wineries, limited distilleries, and distilleries. [47 P.S. § 4-446(a)(2)].

Breweries may now produce and sell mead, which is defined as a malt or brewed beverage. [47 P.S. § 1-102].

Direct Malt or Brewed Beverage Shipper

Act 166 creates a direct malt or brewed beverage shipper (DBS) license to allow out-of-state shipment of malt and brewed beverages to Pennsylvania residents. [47 P.S. § 4-448(a)]. The Act limits who may obtain this new license to any person licensed by another state or another country as a wholesaler or retailer of malt or brewed beverages. [47 P.S. § 4-448(b)].

The license permits its holder to ship a maximum of 192 fluid ounces per month of any malt or brewed beverage upon the order of any Pennsylvania resident twenty-one years old or older for such resident's personal use (not for resale). No more than 96 fluid ounces of a specific brand of malt or brewed beverages may be shipped to any one Pennsylvania resident within one calendar year. [47 P.S. § 4-448(b)].

To obtain a DBS license, the applicant must file an application, pay a \$250 fee, provide a copy of the applicant's current alcohol beverage license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and provide other information as required by the PLCB. [47 P.S. § 4-448(c)].

A DBS license holder must do all of the following:

- Report to the PLCB the total malt or brewed beverages shipped in a calendar year.
- Permit auditing of the DBS license records by the PLCB, the Pennsylvania State Police Bureau of Liquor Control Enforcement, or the Department of Revenue.
- Submit to the jurisdiction of the PLCB, any other Commonwealth agency, and the courts of this Commonwealth for purposes of enforcement.
- Require proof of age of the recipient of malt or brewed beverages in a manner approved by the PLCB before malt or brewed beverages are shipped.
- Label boxes with the phrase "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."
- Pay all taxes due on sales to the Department of Revenue (the amount of taxes shall be calculated as if the sales were in this Commonwealth at the locations where delivery was made).

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- Pay an annual renewal fee of \$250. [47 P.S. § 4-448(d)].

Any person who resells malt or brewed beverages obtained from a DBS licensee commits a second degree misdemeanor and is subject to a fine of \$4 per fluid ounce for each container of malt or brewed beverages found on the premises where the sale was made, in addition to other criminal penalties. [47 P.S. § 4-448(e)].

All malt or brewed beverages ordered under this section must be transported by a licensed transporter-for-hire. [47 P.S. § 4-448(i)].

Malt or brewed beverages sold by a DBS license holder will not be subject to the three-tier system, territorial rights, and brand registration requirements found in sections 431 and 445 of the Liquor Code. [47 P.S. § 4-448(j), (k)].

Distilleries

The Act expands what products distilleries can sell for on-premises consumption to include alcoholic cider produced by a PLCB-licensed limited winery and liquor produced by another PLCB-licensed distillery or a limited distillery. Sales of wine and malt or brewed beverages were already authorized by Act 39. Said products must be consumed on the distilleries' licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by other manufacturers may not exceed 50% of the on-premises sales of the distillery's own sales of liquor for the preceding calendar year, or for the current year if the distillery was not operating for a full calendar year. [47 P.S. § 5-505.4(c)(1)].

Distributors

The Act allows a distributor to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption. These sales do not have to be in the manufacturer's original configuration and can be sold in refillable growlers that can be resealed. [47 P.S. §§ 1-102, 4-431(b)].

NOTE: The Act did not change the packaging rules for distributors' sales to licensees.

The Act also precludes a distributor from selling or delivering malt or brewed beverages to any licensee whose licensed premises is located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. If the licensee purchasing the beer from the distributor holds multiple licenses or operates at more than one location, then the beer may not be consumed or sold at licensed premises located within the designated geographical area granted to an importing distributor other than the importing

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distributor that sold the beer to the distributor. A licensee accepting delivery and/or transferring malt or brewed beverages in violation of this provision shall be subject to a suspension of at least thirty days. [47 P.S. § 4-431(b)].

Exterior Entrances

So long as a licensee’s hours of operation do not exceed the hours of operation for an unlicensed premises for which the PLCB has approved an interior connection, the PLCB cannot require an exterior entrance to the licensed premises as a condition for approving a license or approving a renewal. [47 P.S. § 4-468(e)].

Importing Distributors

The Act allows an importing distributor to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption. These sales do not have to be in the manufacturer’s original configuration and can be sold in refillable growlers that can be resealed. [47 P.S. §§ 1-102, 4-431(b)].

NOTE: While the Legislature used the term “distributor” in this section, in conferring with the legislative staffers, it is the intent of the Legislature to have the provision apply to both importing distributors and distributors. This would be consistent with how the term “distributor” is used in sections 471.1(g) and 472(d)(3) of the Liquor Code.

The Act did not change the packaging rules for importing distributors’ sales to licensees.

Interlocking Business Prohibitions

Act 166 allows any officer, director, or stockholder of any hotel, restaurant, or club license to own land or buildings which are leased to a holder of an eating place retail dispenser license, a distillery license, or a limited distillery license. [47 P.S. 4-411(e)].

The Act also expands upon the current exception for ownership of 5% or less of a restaurant or eating place retail dispenser license, by allowing a 10% or less ownership of a retail license (i.e. restaurant, eating place retail dispenser, and hotel). [47 P.S. 4-411(e)].

Limited Distilleries

The Act expands what products limited distilleries can sell for on-premises consumption to include alcoholic cider produced by a PLCB-licensed limited winery and liquor produced by another PLCB-licensed limited distillery or distillery. Sales of wine and malt or brewed

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beverages were already authorized by Act 39. Said products must be consumed on the limited distilleries' licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by other manufacturers may not exceed 50% of the on-premises sales of the limited distillery's own sales of liquor for the preceding calendar year, or for the current year if the limited distillery was not operating for a full calendar year. [47 P.S. § 5-505.4(b)(1)].

Limited Wineries

Act 166 allows limited wineries to produce and sell mead. The Act adds distributors and importing distributors to the list of entities to which a limited winery can sell its malt or brewed products. [47 P.S. § 5-505.2(a)]. Sales to distributors and importing distributors are limited to mead and alcoholic cider produced by the limited winery.

The Act authorizes limited wineries to sell wine and alcoholic cider produced by another limited winery for on-premises consumption. Sales of liquor and malt or brewed beverages were already authorized by Act 39. Said products are to be consumed on the limited winery's licensed premises. The combined sales of wine, liquor, and malt or brewed beverages produced by other manufacturers may not exceed 50% of the on-premises sales of the limited winery's own wine and alcoholic cider for the preceding calendar year, or for the current year if the limited winery was not operating for a full calendar year. [47 P.S. § 5-505.2(a)(6.1)].

Local Option

Act 166 allows the placement of local option ballot questions regarding the granting of liquor licenses to an airport authority in those municipalities that do not already allow the retail sale of liquor. [47 P.S. § 4-472].

Mead

Act 166 defines "mead" as an alcoholic beverage produced by fermenting a solution of at least 51% honey, water, and other agricultural products, containing no more than 8.5% alcohol by volume and marketed as malt or brewed beverages rather than wine. It can be sold in bottles, cases, kegs, cans, or other suitable containers, and it is considered to be a malt or brewed beverage. Mead may be produced by breweries or limited wineries. [47 P.S. §§ 1-102, 5-505.2(a)].

The PLCB may continue to sell the mead in its inventory until such mead inventory is depleted, but the PLCB may not purchase additional mead after January 17, 2017. This is because after January 17, 2107, mead will be categorized as a malt or beverage under the Liquor Code. [47 P.S. §§ 1-102, 3-305(j)].

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Mug Clubs

Act 39 allowed retail licensees and breweries to offer a mug club to their patrons. 47 P.S. § 4-493(24)(iii). Act 39 defined a “mug club” as a group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. Membership in the mug club shall be by written application, and the licensee must maintain a written list of active members as part of its records. [47 P.S. § 1-102].

Act 166 amends the definition of a mug club to remove the requirement that every member of a mug club be provided a mug or similar container to be used when purchasing alcohol, and it makes the mug club annual fee and renewal fee optional at the discretion of the licensee. [47 P.S. § 1-102].

Public Venues

Act 166 amends the definition of “zoo” to include accredited members of the Zoological Association of America. Further, zoos are now exempt from the permanent seating and square footage requirements that apply to most other public venue applicants. [47 P.S. § 1-102].

The Act also permits the sale of liquor at professional and amateur athletic events before, during, and after the event in the same manner as currently permitted for the sale of malt or brewed beverages. This means that sales of liquor, wine, and malt and brewed beverages may occur as long as they are served in shatterproof containers. [47 P.S. § 4-412(f)(2)].

Special Liquor Orders

Act 166 removes the requirement that an SLO order be for two or more bottles. A supplier of an SLO may not refuse an order from a customer placing an order for one bottle of an item, but the supplier can assess a surcharge if the supplier otherwise requires a minimum quantity purchase. [47 P.S. § 3-305(a)].

Special Occasion Permits

Act 166 adds the following eligible entities:

- a nonprofit organization located in a city of the second class and incorporated as a nonprofit in 1982 that offers adult education and family literacy;
- a nonprofit organization located in a city of the third class and county of the sixth class whose purpose is primary and secondary education and educational ministry of the diocese of Erie; and

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- a nonprofit organization located in a county of the fourth class that had a population between 142,000 and 144,000 based on the 2010 decennial census and provides rewards for information that leads to the arrest of individuals that may have committed a crime. [47 P.S. § 1-102].

Sunday Sales

Act 166 permits restaurant, hotel, municipal golf course restaurant liquor, and privately-owned public golf course licensees to begin selling alcohol on Sundays at 9:00 a.m. instead of 11:00 a.m. The requirement that a licensee must offer a meal beginning at 9:00 a.m. is removed. [47 P.S. § 4-406(a)(3)].

NOTE: Holders of eating place retail dispenser licensees are still subject to the meal requirement.

Trans-shipping of Malt or Brewed Beverages

Act 166 precludes a distributor from selling or delivering malt or brewed beverages to any licensee whose licensed premises is located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. If the licensee purchasing the beer from the distributor holds multiple licenses or operates at more than one location, then the beer may not be consumed or sold at licensed premises located within the designated geographical area granted to an importing distributor other than the importing distributor that sold the beer to the distributor. A licensee accepting delivery and/or transferring malt or brewed beverages in violation of this provision shall be subject to a suspension of at least thirty days. [47 P.S. § 4-431(b)].

Wine and Spirits Auction Permits

Act 166 replaces “wine auction” permits with “wine and spirits auction” permits. [47 P.S. § 4-408.12].

Act 166 expands the entities that qualify for a wine and spirits auction permit by adding two more: a nationally-recognized community-based health organization committed to funding Type 1 diabetes research and a nationally-recognized community-based health organization which has been in existence for at least twenty years and is committed to fighting cancer. [47 P.S. § 4-408.12(a)].

Wine Expanded Permits

Act 166 clarifies language from Act 39 regarding wine expanded permits. The Act now specifies that the holders of such permits must sell wine-to-go through a register at “which malt or brewed beverages and restaurant foods sales are made on the licensed premises.” Also, permit holders need to have a RAMP-trained cashier at the register when patrons are on the licensed premises. [47 P.S. § 4-415(a)(9)].

The Act also clarifies that the annual renewal fee for a wine expanded permit is equal to 2% of the total cost of wine purchased from the PLCB for off-premises consumption. [47 P.S. § 4-415(b)(2)].

Lastly, the Act replaces the provision that allowed a wine expanded permit holder to request a refund of sales tax paid to the Board from the Pennsylvania Department of Revenue, with a credit for sales tax paid to the Board. The Act eliminates the need to provide the original receipts to receive the credit. [47 P.S. § 4-415(e)(3), (4)].

Additional Changes Impacting Board Operations

Annual Reporting

Act 166 requires the PLCB to provide annual reports to the House Liquor Control and Appropriations Committees, as well as the Senate and Law and Justice and Appropriations Committees, summarizing the number of DBS licenses issued and the quantity of malt or brewed beverages sold under the [Direct Malt or Brewed Beverage Shipper](#) section of the Liquor Code. [47 P.S. § 4-448(h)].

Consumer Purchasing

Act 166 specifies that names and addresses of individual consumers who participate in the PLCB’s customer relations management program (CRM), or who purchase products from the PLCB, shall not be sold or otherwise made available to the public under any circumstances. This prohibition includes requests filed under Pennsylvania’s Right-to-Know Law. [47 P.S. § 2-207(m)(2)].

State Stores Fund

Act 166 mandates that all moneys collected for casino liquor licenses (section 416), conversions of an eating place retail dispenser to a restaurant liquor license (section 432(h)), and auctioning of expired restaurant liquor licenses (section 470.3) shall be transferred from the State Stores Fund to the General Fund on a quarterly basis. [47 P.S. § 8-802(h)].

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