

WHAT LICENSEES SHOULD KNOW ABOUT ACT 11 OF 2011

On June 28, 2011, Governor Corbett signed House Bill No. 148 into law. Now known as Act 11 of 2011, the bill made changes to numerous sections of the Liquor Code. These changes are summarized below, and the dates the various changes go into effect is also noted. If you have any questions about what these changes mean, or about other portions of the liquor laws, you may contact the Board's Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA 17124, phone (717) 783-9454.

- ***Off-Premises Catering Permit.***

Effective immediately, a qualified malt beverage eating place licensee can now obtain an "off-premises catering permit," which will allow it to hold a catered function off its licensed premises and on otherwise unlicensed premises. Effective in thirty (30) days, a qualified hotel or restaurant licensee (or anyone else holding a license that is treated like a restaurant license, such as a performing arts or public venue license), will have the same privilege. Note that club/catering club licensees are not included in this legislative change. [§§ 4-406(f), 4-442(f)].

A "catered function" means "the furnishing of food prepared on the premises or brought onto the premises already prepared, in conjunction with alcohol beverages, for the accommodation of a person or an identifiable group of people who made arrangements for the function at least forty-eight hours in advance." [§ 1-102].

Sales of alcohol at the catered function are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises. However, no sales for take-out are permitted. Licensees that obtain an off-premises catering permit are allowed to transport the alcohol to and from their licensed premises to the site of the catered premises. [§§ 4-406(f), 4-442(f)].

The following restrictions apply:

- Alcoholic beverages may only be provided during the hours the licensee can normally sell such beverages.
- All servers at the catered site must be RAMP-certified.

- A catered function cannot last longer than one (1) day and no more than fifty (50) such events may be held by a particular licensee in a calendar year.
- A catered function cannot be held on already-licensed premises.
- Only licensees holding a current and valid restaurant, hotel, or malt beverage eating place license can apply for the permit.
- No permits can be issued to a location that is subject to a pending license renewal objection by Licensing/Board, or a pending license suspension or a one (1)-year prohibition on the issuance or transfer of a license due to a citation action.
- Written notice of the catered function must be provided to the local police or, if none, to the Bureau of Liquor Control Enforcement, at least forty-eight (48) hours in advance. [§§ 4-406(f), 4-431(f), 4-493(33)].

To obtain an off-premises catering permit, qualified licensees should contact the Bureau of Licensing. The fee for the initial permit is five hundred dollars (\$500.00); subsequent permits in the same calendar year are free of charge. Violations of the off-premises catering permit law will be prosecuted like other Liquor Code violations, and the Board can refuse to issue subsequent permits or honor subsequent dates on an existing permit. [§ 4-493(33)].

- ***Happy Hour Discounts.***

A definition of “happy hour” has been added to the Liquor Code, and the period of time that a licensee may hold a happy hour has been expanded.

“Happy hour” is now defined as “the period of time during which a licensee discounts alcoholic beverages.” Currently, a retail licensee is limited to one (1) two (2)-hour consecutive period per business day when it can discount one, some, or all of its alcohol. Effective in thirty (30) days, a retail licensee can hold happy hours up to four (4) hours per day and up to fourteen (14) hours per week. Thus, while the maximum period remains fourteen (14)

hours per week, licensees will be able to adjust the length of their daily happy hours to take advantage of slow/busy days, as long as the maximum limits are not exceeded. The new law does not make it clear whether the hours must still be consecutive, but the prohibition against giving discounts between midnight and closing remains intact, as well as the other discounting provisions in section 13.102 of the Board's Regulations, including the daily drink special. Note that a notice of all happy hours must now be posted on the licensed premises seven (7) days prior to each happy hour. [§§ 1-102, 4-406(g)].

- ***Amusement Permits.***

Effective immediately, a licensee can now use its amusement permit in conjunction with its extended hours food permit, and have entertainment at any time its establishment is open. Licensees without an extended hours food permit are still subject to the old rule, which limits the use of an amusement permit to the hours in which the sale of alcohol is permitted. [§ 4-493(10)].

- ***Beer Sales by Retail Licensees.***

Effective immediately, hotel, restaurant, or public service (railroad/pullman/steamship company) liquor licensees, and malt beverage eating place licensees, may now sell beer-to-go in either open or closed containers, as long as the municipality in which they are located does not have an ordinance restricting open containers in public places. The maximum limit of one hundred ninety-two (192) fluid ounces in a single sale to one person remains, as does the prohibition regarding clubs selling beer-to-go. [§§ 4-407(a), 4-431(c)].

- ***Special Occasion Permits.***

Effective immediately, six (6) additional types of organizations will now be authorized to apply for special occasion permits ("SOPs") in order to sell alcoholic beverages as a means of raising funds for themselves. These groups include:

- A museum operated by a not-for-profit corporation in Scranton;

- A nonprofit 501(c)(3) organization in Scranton whose purpose is economic and community development;
- A nonprofit 501(c)(3) or 501(c)(6) organization located in a city of the third class in a county of the fifth class;
- A nonprofit 501(c)(3) social service organization in a county of the third class, whose purpose is to serve individuals and families in that county;
- A nonprofit 501(c)(3) organization whose main purpose is to temporarily foster stray/unwanted animals and adopt them out;
- A nonprofit 501(c)(3) organization which operates either a Main Street Program or Elm Street Program recognized by Pennsylvania and/or the National Trust for Historical Preservation.

In addition, any nonprofit 501(c)(6) organization, regardless of its location, whose purpose is to support business and industry may now apply for an SOP. [§1-102].

- ***Airport Restaurants.***

Effective in thirty (30) days, airport restaurant liquor licensees may sell alcohol beverages on Sunday beginning at 7:00 a.m. instead of at 11:00 a.m., provided they have a Sunday sales permit. [§§ 4-406(a)(3), 4-461(d)].

- ***Dry Municipalities.***

Effective immediately, the Board may now approve the renewal or transfer of a liquor license in a dry municipality if the license is located in a township of the second class in a county of the third class, was originally issued before 1950, and was licensed for at least fifty (50) years. [§ 4-472(d)].

- ***Multi-County Licenses.***

Effective immediately, a license located in a municipality which is situated in more than one (1) county may be transferred anywhere within that municipality. [§ 4-468(a)(1)].

- ***Beer Distributor Residency Requirement.***

Effective immediately, the two (2)-year Pennsylvania residency requirement for beer distributors or importing distributors is eliminated. Now applicants for these licenses need only be a Pennsylvania resident at the time of application. This change also removes the two (2)-year residency requirement to the extent that it may have applied to beer manufacturers. [§ 4-431(c)].

- ***Storage for Importing Distributors.***

Effective in sixty (60) days, importing distributor licenses will be permitted, upon Board approval, to maintain one (1) additional storage facility anywhere within the franchise territory in which the importing distributor is located. “Franchise territory” is defined as “the geographically contiguous area in which an importing distributor has been giving rights for the sale or resale of malt or brewed beverages.” Sales to other licensees will be permitted from this storage facility; sales to the public will not be permitted. This location is in addition to any existing cold storage facility already maintained by the importing distributor. [§ 4-441(d), (h)].

- ***Brand Registration.***

Effective immediately, if a beer manufacturer fails to register a brand in Pennsylvania before importing it into Pennsylvania, the beer will no longer be confiscated but will be left on the licensed premises until the manufacturer registers the brand or the licensee holding the illegal beer can return it to the manufacturer and be fully reimbursed. [§ 4-444(c)].

Effective in sixty (60) days, additional changes will occur to brand registration. It will be made clear that the annual filing fee for registration of a brand is seventy-five dollars (\$75.00). However, up to twenty (20) different brands may be registered for a single annual fee of one hundred fifty dollars (\$150.00) if the manufacturer produces one hundred (100) barrels or less of each brand per year. Beer that is not ready for sale will be registered at the time it is offered for sale. [§ 4-445(a)].

A new law effective in sixty (60) days will require the Board to hire a malt beverage compliance officer whose duties include reviewing label registrations and investigating reports of unregistered brands. If the compliance officer determines that a licensee is selling unregistered beer, he/she is required to give the manufacturer notice that is has ten (10) days to register the beer with the Board. During that ten (10) day period, the unregistered beer will remain on the licensee's premises, unsold. If the manufacturer fails to register the beer during the "grace" period, it will be required to remove the unregistered beer from the licensee's premises and reimburse the licensee for those unsalable products. [§ 4-445(b)].

Another new law effective in sixty (60) days will require the Bureau of Liquor Control Enforcement, upon becoming aware of a potential violation of the beer registration laws, to give written notice to each licensee who might be in violation. If the beer is registered within ten (10) days of receipt of this notice, no further action will be taken against the licensee. If the beer is not registered within the ten (10) days, the Bureau of Liquor Control Enforcement will proceed with the citation process. [§ 4-471(f)].

- ***Limited Wineries.***

Three (3) large changes have occurred for limited wineries.

- Effective immediately, a limited winery can sell food for consumption on or off the main licensed premises and at its additional Board-approved locations. It can also now sell wine by the glass at both its main premises and at its satellite locations. [§ 5-505.2(a)(6.1)].
- Also effective immediately, a limited winery is now allowed to sell its alcoholic products from 9:00 a.m. to 11:00 p.m., an extension from the old 9:00 p.m. closing. The old law regarding expanded hours for the holiday period has been deleted since it is now superfluous. [§ 5-505.2(a)(6.3)].
- Effective in thirty (30) days, a limited winery will be able to apply for a "farmers market permit" for the sale of its product at more than one (1) farmers market at any given time. The permit fee is two hundred fifty dollars (\$250.00) annually, and there is no limit as to the number of days it can be used in that year. The limited winery can sell by the

bottle or in case lots. All sales must occur during the standard operating hours of the farmers market. Samples must be free and cannot exceed one (1) fluid ounce per brand. Written notice of the date, times, and location the permit will be used must be provided to the Bureau of Liquor Control Enforcement at least two (2) weeks prior to the event. [§ 5-505.2(a)(4.1)].