

## **What Licensees Should Know About Act 113 of 2011**

On December 22, 2011, Governor Corbett signed House Bill No. 242 (PN 2815) into law. Now known as Act 113 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 are also noted. If you have any questions about what these changes mean, or about other provisions of the liquor laws, you may contact the Pennsylvania Liquor Control Board's Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA 17124, phone (717) 783-9454.

***Limited Distillery Licenses.*** Effective February 20, 2012, the Board is authorized to issue a new license, the "Limited Distillery" license, to distillers who produce not more than one hundred thousand (100,000) gallons of distilled liquor per year. The fee for this license will be set by the Board, but will not be more than one thousand five hundred dollars (\$1,500.00).

The holder of a limited distillery license has the following privileges:

- Manufacture and sell bottled liquor produced on the licensed premises to the Board, to licensees, and to the public between 9:00 a.m. and 11:00 p.m. If a particular product offered for sale is also sold by the Board through its wine and spirits stores, the product may not be sold at a price lower than that charged by the Board.
- Operate and maintain up to two (2) Board-approved additional ("satellite") locations, which may be operated in conjunction with other limited distilleries, with no bottling or production requirements at the location.
- Apply for and hold a restaurant, hotel, or eating place retail dispenser license to sell alcoholic beverages for on-premises consumption at the licensed distillery premises.
- Sell food and liquor for consumption on or off the licensed premises and at the limited distillery's additional Board-approved locations; sales of liquor may be by the glass or bottle and is limited to liquor produced by the limited distillery.

- Offer tastings of its products at its primary and additional Board-approved locations that, in total, do not to exceed one and one half (1½) fluid ounces per person. Such tastings may be provided free of charge or offered for sale between the hours of 9:00 a.m. and 11:00 p.m.

***Distillery Licenses.*** Until December 31, 2012, a current holder of a distillery (“A”) license may exchange its license for a limited distillery license without payment of a fee to the Board, so long as the distillery has not produced more than one hundred thousand (100,000) gallons of distilled spirits during the prior calendar year.

Further, effective February 20, 2012, holders of distillery licenses may sell their bottled products produced at their licensed premises to the Board, to licensees and to the public between the hours of 9:00 a.m. and 11:00 p.m. If a particular product offered for sale is also sold by the Board through its wine and spirits stores, the product may not be sold at a price lower than that charged by the Board. Finally, distillery licensees may offer tastings of its products at its licensed premises that, in total, do not to exceed one and one half (1½) fluid ounces. Such tastings may be provided free of charge or offered for sale between the hours of 9:00 a.m. and 11:00 p.m. [47 P.S. § 5-505.4(b)].

***Prohibition Regarding Noise.*** Effective immediately, a new “unlawful act” is created within section 493 entitled “Noise.” A licensee may not use, or permit to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee’s property line. This new provision supersedes current Board Regulation section 5.32(a). [47 P.S. § 4-493(34); 40 Pa. Code § 5.32(a)].

Additionally, the Board may not use such noise violations as the sole basis for objecting to the renewal of a license unless there have been six (6) noise citations adjudicated against the licensee within a twenty-four (24) month period. [47 P.S. § 4-470(a)].

An exemption from Board’s regulation related to noise is made for a limited winery licensee that is located in a second class township in a Class 2A county that has a state historic site owned and operated by the Commonwealth under the direction of the Pennsylvania Historic and Museum Commission, and is located on

a property that also contains a building that is listed on the registry of historic places of a Class 2A county.” [47 P.S. § 4-493.1].

***Issuance of Worthless Checks.*** Effective February 20, 2012, a licensee which receives a worthless check from another licensee for payment of malt or brewed beverages must notify the licensee which issued the check, and the Board’s Malt Beverage Compliance Officer (“MBCO”), of the dishonored check by certified mail within five (5) days of receipt of notice of such dishonor. The MBCO will provide the offending licensee written notice that the licensee has ten (10) days from the date the notice is mailed to honor the check it issued. Pursuant to section 445(b), unless the licensee honors the check within ten (10) days of the mailing date of the notice, the MBCO will turn the matter over to the Pennsylvania State Police, Bureau of Liquor Control Enforcement. [47 P.S. §§ 4-445(b), 4-493(26), 4-496].

***Licensee Record Keeping.*** Effective February 20, 2012, a licensee is only required to maintain, on its licensed premises, business records for the most recent six (6) months, and may only remove those records from the licensed premises for “a lawful business purpose,” and must return those records after such business has been concluded. A licensee may maintain records off the licensed premises that are between six (6) months and two (2) years old, provided that such records are returned to the licensed premises within twenty-four (24) hours of a request by the Board or the Pennsylvania State Police, Bureau of Liquor Control Enforcement. [47 P.S. § 4-493(12)].

***Licensee Vehicle Lettering.*** Effective immediately, the lettering on licensee vehicles which are used to transport liquor or malt or brewed beverages, identifying the licensee’s name, address and license number, may be no smaller than two (2) inches in height. Previously, such lettering was required to be no smaller than four (4) inches in height. [47 P.S. §§ 4-491(12), 4-492(9)].

***Interlocking Business Prohibition Exceptions.*** Effective immediately, certain exceptions are made to the Liquor Code’s strict prohibition regarding interlocking business interests:

- An employee of a hotel or restaurant licensee may have an interest in property used by a limited winery licensee, or he or she may guarantee loans, lend money, or provide credit to a limited winery (or its officers, directors or shareholders), provided that this individual is not an officer of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the limited winery licensee. [47 P.S. § 4-411(e)].
- A person who holds a five percent (5%) or less interest in a publicly or privately-held entity owning a restaurant or eating place retail dispenser license is not deemed to have a “financial interest” and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee. [47 P.S. §§ 4-411(e), 4-443(g)].

***Public Official Interests in Licenses.*** Effective February 20, 2012, provisions of the Liquor Code which prohibit certain public officials, who are responsible for enforcing “penal laws,” from holding an interest in a restaurant license, hotel license, manufacturer’s license, importing distributor’s license, distributor’s license, or eating place retail dispenser’s license, are further clarified. Specifically, public officials with arrest authority, including United States attorneys, state attorneys general, district attorneys, sheriffs and police officers, and anyone who can impose a criminal sentence, including magisterial district judges and judges, are prohibited from holding such licenses, unless the proposed licensed premises are located outside the official’s jurisdiction. It is further clarified that other public officials, who do not have any arrest authority or ability to impose a criminal sentence, including members of the General Assembly, township supervisors, city councilpersons and mayors without arrest authority, may hold such licenses. [47 P.S. §§ 4-401(a), 4-437(d)].

***Responsible Alcohol Management Program Training.*** Effective February 20, 2012, unless successfully completed prior to appointment, a manager appointed by a restaurant, eating place retail dispenser, hotel, club, limited distillery, or distributor licensee must complete the Board’s Responsible Alcohol Management Program’s (“RAMP”) manager/owner training within one hundred eighty (180) days of the Board’s approval of the appointment. [47 P.S. § 4-471.1(g)].

***Happy Hour Discounts.*** Effective immediately, the recently amended happy hour rules, which currently apply to retail liquor licensees, are extended to include the holders of eating place retail dispenser licenses. [47 P.S. § 4-442(g)].

Further, effective immediately, the happy hour rules are clarified for all retail licensees. Specifically, licensees may hold happy hours for up to four (4) *consecutive or nonconsecutive* hours per day, and up to fourteen (14) hours per week. Further, it is clarified that the discount pricing practices conducted pursuant to section 13.102 of the Board's Regulations, including offering a daily drink special and hosting a catered event (during which an unlimited or indefinite amount of alcohol is offered for a fixed price), shall not be counted against the happy hour limits. [47 P.S. §§ 4-406(g), 4-442(g)]; 40 Pa. Code § 13.102].

***Sunday Sales with a Meal.*** Effective immediately, the holder of a hotel, restaurant, municipal golf course restaurant, privately-owned public golf course restaurant, eating place retail dispenser, or municipal golf course retail dispenser license, which also holds a Sunday sales permit, may sell alcohol on Sundays between 9:00 a.m. and 11:00 a.m., provided that the licensee offers a "meal" beginning at 9:00 a.m. Otherwise, such licensees holding a Sunday sales permit may not begin selling alcohol until 11:00 a.m. on Sunday. A "meal" is defined as "food prepared on the premises, sufficient to constitute breakfast, lunch or dinner; it shall not mean a snack, such as pretzels, popcorn, chips, or similar food." [47 P.S. §§ 406(a)(3), 406(e), 432(f)].

***Limited Wineries.*** Effective immediately, a licensed limited winery may obtain a special alcoholic cider, wine and food exposition permit valid for up to thirty (30) consecutive days. The total number of days for all permits issued to a limited winery shall not exceed one hundred (100) days in any calendar year. Previously, such permits were valid for up to five (5) consecutive days, adding up to not more than forty (40) days per year. [47 P.S. § 5-505.2(a)(4)].

***Interior Connections to Other Businesses.*** Effective immediately, an interior connection between a licensed business and an unlicensed business cannot be approved by the Board if it is greater than ten (10) feet wide. However, licensees with previously-approved interior connections greater than ten feet wide are exempt from this requirement. [47 P.S. § 4-468(e)].

***Breweries and Brewery Pub Licensees.*** Effective immediately, a brewery holding a Sunday sales permit may sell malt or brewed beverages to non-licensees and holders of special occasion permits on Sundays between 9:00 a.m. and 9:00 p.m. Previously, such Sunday sales were limited to the hours between 12:00 p.m. and 5:00 p.m. [47 P.S. § 4-492.1(c)].

The Liquor Code is clarified to reflect that a licensed brewery may sell its malt or brewed beverages, in any container or package of any volume, to individuals for off-premises consumption. A brewery may sell its malt or brewed beverages for on-premises consumption only in compliance with section 446(a)(1), pertaining to a brewery which also holds a brewery pub license. Pursuant to section 446(a)(1), a licensed brewery pub may sell any malt or brewed beverages produced by the brewery, as well as wine produced by a licensed limited winery, to individuals for consumption on the licensed premises in any container or package of any volume. [47 P.S. §§ 4-440, 4-446(a)].

Also, effective February 20, 2012, a licensed brewery which also holds a brewery pub license may obtain an off-premises catering permit, which will allow it to hold a catered function off its licensed premises and on otherwise unlicensed premises. [47 P.S. § 4-446(b)]. As established by Act 11 of 2011, 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.” [47 P.S. § 1-102].

The licensed brewery pub may sell the malt or brewed beverages produced by the brewery, as well as wine produced by licensed limited wineries, at catered functions, and such sales may be made by the glass, open bottle or other container, for consumption on the catered premises. However, no sales for take-out are permitted. Licensed brewery pubs are allowed to transport the alcohol to and from their licensed premises to the site of the catered premises. [47 P.S. § 4-446(b)].

The following additional 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.
- 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 the 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. [47 P.S. § 4-446(b)].

To obtain an off-premises catering permit, qualified brewery pub 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. [47 P.S. § 4-493(33)].

***Distributors and Importing Distributors.*** Effective immediately, distributors and importing distributors holding a Sunday sales permit may sell malt or brewed beverages to non-licensees and holders of special occasion permits on Sundays between 9:00 a.m. and 9:00 p.m. Previously, such Sunday sales were limited to the hours between 12:00 p.m. and 5:00 p.m. [47 P.S. § 4-492.1(c)].

Effective immediately, distributors and importing distributors are no longer required to collect the name, address, or any other identifying information, from private individuals who purchase malt or brewed beverages. [47 P.S. § 4-441(i)]. Licensees may wish to continue to collect such identifying information for purposes of section 495 of the Liquor Code, including the establishment of a defense to a citation for selling alcohol to a minor. [47 P.S. § 4-495].

Further, effective February 20, 2012, distributors and importing distributors may, without Board approval, sell any book, magazine or other publication related to malt or brewed beverages, and may also sell “homebrewing” equipment, ingredients or other supplies. [47 P.S. § 4-492(12)].

***Special Occasion Permits.*** Effective February 20, 2012, three (3) additional types of organizations will 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 non-profit radio station that is a member of the national public radio network;
- a non-profit public television station that is a member of the Pennsylvania public television network; and
- a 501(c)(3) non-profit organization that promotes neutropenia awareness, education and research.

[47 P.S. § 1-102].

***Zoos Eligible for Public Venue License.*** Effective February 20, 2012, a “zoo,” defined in section 102 as an accredited member of the Association of Zoos and Aquariums, may apply for and obtain a public venue license, with no square footage or permanent seating requirements. Sale of alcohol at zoos during private banquets and other events may be at any site within zoo property and may consist of any type of alcohol in any type of container. [47 P.S. §§ 1-102, 4-412(f)(2)].

***Storage of Alcohol at Golf Courses.*** Effective immediately, a restaurant or club licensee located on a golf course may store liquor and malt or brewed beverages in a permanent facility on the unlicensed portion of the golf course, so long as the alcohol remains on the golf course premises. [47 P.S. § 4-406(e)(2)].