

## **WHAT LICENSEES SHOULD KNOW ABOUT ACT 35 of 2010**

On June 25, 2010, Governor Rendell signed House Bill No. 48 into law. Now known as Act 35 of 2010, this bill makes changes to sections 102, 215, 409, 411, 438, 443, 461, 505 and 505.2 of the Liquor Code. These changes, effective on the date the Act was signed, are summarized below. If you have any questions concerning these changes or any other portions of the liquor laws, you may contact the Board's Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA 17124-0001, phone (717) 783-9454 or e-mail [ra-lblegal@state.pa.us](mailto:ra-lblegal@state.pa.us).

*Special Occasion Permits.* Under section 408.4 of the Liquor Code [47 P.S. § 4-408.4], eligible entities may apply for and be issued a special occasion permit ("SOP") that allows the sale of alcoholic beverages to raise funds for the eligible entity on six (6) consecutive or nonconsecutive days per year. Act 35 adds five (5) new organizations that may be authorized to hold SOPs:

The first is:

“a club recognized by Rotary International whose purpose is to provide service to others, to promote high ethical standards and to advance world understanding, good will and peace through its fellowship of business, professional and community leaders located in a county of the fourth class.”

The counties of the fourth class, according to the 2000 United States Decennial Census, are Beaver, Butler, Cambria, Cumberland, Lackawanna, Schuylkill and Washington.

The next new eligible entities are non-profit organizations located in boroughs within third class counties that “promote mushrooms while supporting local and regional charities.” Counties of the third class, according to the 2000 United States Decennial Census, are Berks, Chester, Dauphin, Erie, Lancaster, Lehigh, Luzerne, Northampton, Westmoreland and York.

Another eligible entity added by Act 35 is an addition to the definition of “a non-profit organization whose purpose is to protect the architectural heritage of boroughs and which has been recognized as such by a municipal resolution.” The amendment would allow a similar non-profit organization whose purpose is to protect the architectural heritage of a township of the second class to qualify as an eligible entity.

Next, another new eligible entity would be a non-profit which is located in counties of the second class A and of the third class and whose purpose is “the education and promotion of American history.” Counties of the second class A,

according to the 2000 United States Decennial Census, are Bucks, Delaware and Montgomery. As indicated above, counties of the third class are Berks, Chester, Dauphin, Erie, Lancaster, Lehigh, Luzerne, Northampton, Westmoreland and York.

The final new definition of “eligible entity” is: “A brewery which has been issued a license to manufacture malt or brewed beverages and has been in existence for at least 100 years.” These breweries are the only for-profit eligible entities permitted by the Liquor Code.

***Performing Arts Facilities.*** Performing Arts Facilities may be licensed by the Board to sell alcoholic beverages two (2) hours before, during and one (1) hour after any performance at the facility, but not between 2:00 a.m. and 7:00 a.m. of any day. The definition of “performing arts facilities” was changed by reducing the seating requirement from five hundred (500) to two hundred fifty (250) people, if the operator of the facility is a nonprofit entity; otherwise, the facility must have seating for at least two thousand five hundred (2,500) people in order for it to be eligible for licensing.

***Public Venues.*** Another change in definitions now allows a visitor center, regardless of floor area or seating capacity, which was established under the authority of the Gateway Visitor Center Authorization Act of 1999, to be issued a public venue restaurant liquor license. The Independence Visitors' Center on Independence Mall in Philadelphia was the intended beneficiary of this change. This visitors' center can now apply for and, if approved, be issued a license by the Board allowing it to sell alcoholic beverages two (2) hours before, during and one (1) hour after any athletic performance, performing arts event, trade show, convention banquet or any other performance at the public venue, but not between 2:00 a.m. and 7:00 a.m. of any day.

***“Grandfathered” Hotel Licensees.*** The Liquor Code has been amended so that a hotel license issued before September 1, 1949, which qualified for “grandfathered” status, and which applied to the Board previously for the exemption from having to maintain the otherwise-required number of sleeping rooms, may use its former sleeping rooms as licensed storage areas or licensed service areas, or both.

***Limited Wineries.*** A limited winery licensee now is allowed to utilize up to two (2) Board-approved storage locations, not including its primary winery location

and its Board-approved satellite locations, with no bottling or production requirement at the additional storage locations.

***Transfer of Article 5 Licenses.*** Limited wineries and wineries, distilleries, bonded warehouses, bailees-for-hire, and transporters-for-hire may be transferred to new owners, new locations or both, under amendments enacted by this law.

***Sacramental Wine Licensees.*** Section 409 of the Liquor Code was amended to allow the holder of a sacramental wine license to operate a restaurant or eating place at its licensed location, where it may sell food for consumption on or off the premises, and sell for on-premises consumption only the wine that it may acquire and sell pursuant to its license. Like hotel and restaurant licensees, sacramental wine licensees may allow persons who have purchased, but only partially consumed, a bottle of wine, to reseal and remove the bottle from the premises so long as the bottle was purchased with a meal that was consumed on the premises. As of the date the law became effective, there were twelve (12) active sacramental wine licensees in Pennsylvania. Sacramental wine licensees may purchase wine to be used for sacramental or religious purposes only and also allows the bottling and resale of the wine, to priests, clergymen or rabbis or to sustaining members of the congregation or members of the faith who attend religious services.

A new definition of “sacramental wine” has been added: “... the term ‘sacramental wine’ shall mean any wine that is clearly marked on the bottle by the manufacturer as being produced or manufactured in accordance with religious law, practice or custom.

***Prohibition of Interlocking Business Relationships.*** The Liquor Code comprehensively prohibits interlocking financial and business interests of the holders of manufacturer and retail licenses. Section 443 of the Liquor Code provided an exception to this rule under which a brewery or limited winery could acquire a retail license so long as the license was located at the same location as the brewery’s or limited winery’s premises. [47 P.S. § 4-443(a)]. Problems arose, however, when multiple such locations were proposed for licensing, if there was some common ownership or management among locations. Amendments in Act 35 now permit such premises to be licensed, and allow common ownership or management among locations.

Other amendments to the Liquor Code now permit a member of the governing board of a public authority created under subdivision (n) of Article XXIII of the County Code to have an interest in a distributor or importing distributor license,

notwithstanding the fact that the public authority holds a retail-class license or is landlord to a retail-class licensee.

The Liquor Code also has been amended to permit an officer or member of a licensed privately-owned private golf course catering club license (a “GCC” license) to have an interest in a limited winery license.

***Whiskey Festivals.*** The Liquor Code has been clarified to permit the Board to participate in “whiskey festivals,” in the same manner as it now participates in “wine festivals.”