

## **Summary of Act 39 of 2016** **(Including Information Relevant to Licensees)**

On June 8, 2016, Governor Wolf signed House Bill No. 1690 into law. Now known as Act 39 of 2016 (Act 39), the Bill changes more than thirty-five sections of the Liquor Code and adds a number of new sections. The changes are voluminous and affect not only licensees, but also how the PLCB conducts its business operations in general. The changes affecting licensees, which go into effect on August 8, 2016, 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.

In addition to the changes affecting licensees, Act 39 creates a Pennsylvania Wine Marketing and Research Board and a Pennsylvania Malt and Brewed Beverages Industry Promotion Board to promote Pennsylvania wine and malt and brewed beverages, respectively. It also creates a Wine and Spirits Wholesale and Retail Privatization Commission to research and make recommendations related to privatizing the wholesale and retail wine and spirits operations in Pennsylvania.

In addition to Act 39, the Legislature approved and Governor Wolf signed House Bill No. 1605 on July 13, 2016, what is now known as Act 85 of 2016 (Act 85). While Act 85 primarily amended the Fiscal Code, it also made modifications to Act 39. Those modifications are included in the summary and will go into effect on August 8, 2016, except for the National Event Permits, which go into effect immediately.

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 717-783-9454 or [ra-blegal@pa.gov](mailto:ra-blegal@pa.gov).

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## **Airport Restaurant Liquor Licenses**

Act 39 extends the permissible hours for selling alcoholic beverages. Previously airport licensees (AR) could sell alcoholic beverages from 7:00 a.m. through 2:00 a.m. the following day. Now, AR licensees may sell alcoholic beverages between 5:00 a.m. and 2:00 a.m. the following day, including Sundays with a Sunday sales permit. [47 P.S. §§ 4-406(a)(2.1), (3), 4-461(d)].

Act 39 now permits the sale of liquor, in addition to other alcohol – by the glass, open bottle, or other container – for consumption anywhere within the airport terminal building. Previously, AR licensees could only sell beer and wine by the glass, open bottle, or container for consumption anywhere within the airport terminal building. [47 P.S. § 4-461(d)].

## **Alcoholic Cider**

The definition of “alcoholic cider” is amended by increasing the maximum alcohol by volume from 5.5% to 8.5%. The PLCB may continue to sell the alcoholic cider in its inventory until such alcoholic cider inventory is depleted, but the PLCB may not purchase additional alcoholic cider after August 8, 2016. This is because alcoholic cider is considered to be beer under the Liquor Code, not wine. [47 P.S. §§ 1-102, 3-305(j)].

## **Auctioning of Expired Licenses**

Act 39 requires the PLCB to auction expired restaurant liquor licenses, in cases where the licenses were either non-renewed, revoked by an administrative law judge, or are no longer eligible for safekeeping. This applies to all restaurant licenses that expired from 2000 to the present, and then on-going. [47 P.S. § 4-470.3(a), (a.1)].

The Board may auction a maximum of fifty such licenses per county per year, any licenses not bid on at auction will be available for sale at future auctions. [47 P.S. § 4-470.3(a.1)].

Act 85 allows the PLCB to set the dates, times, and other conditions for the auctioning of licenses.

An expired restaurant liquor license is available for auction the day after the appeal period ends or after two years pass under section 470. [47 P.S. § 4-470.3(b)].

*NOTE: Act 85 removes the following requirements imposed by Act 39 regarding auctions:*

- *The auctions must be held by June 1<sup>st</sup> of the year after the expired license becomes available. [47 P.S. § 4-470.3(c)].*

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- *By March 1 of each year, the PLCB must post a list on the Internet of all licenses available for auction. [47 P.S. § 4-470.3(d)].*
- *Applications will be accepted from March 1<sup>st</sup> through May 15<sup>th</sup>, but the May 15<sup>th</sup> deadline may be waived by the PLCB. [47 P.S. § 4-470.3(e)].*

Anyone precluded from holding a license under section 411 or 443 (interlocking prohibitions), or anyone of bad repute, cannot purchase an auctioned license. [47 P.S. § 4-470.3(f)].

The manner of conducting the auction is within the PLCB's discretion. The minimum bid is \$25,000 and the highest bidder wins the right to file an application for the auctioned license with the PLCB. [47 P.S. § 4-470.3(g)].

- The bid amount must be paid within two weeks via cashier's check, certified check, or any other form of payment approved by the PLCB. If the winning bidder fails to pay within two weeks, the second highest bidder will have the opportunity to apply for the auctioned license, so long as his/her bid is at least \$25,000. The PLCB must hold the bid amount in escrow, pending approval of the bidder's license application. [47 P.S. § 4-470.3(h)].
- The bidder must file a transfer application within six months of the award. If applicable, approval by the receiving municipality is required. Also, the auctioned license is still subject to conditional licensing agreements, if applicable. [47 P.S. § 4-470.3(i)].
- Once awarded, an auctioned license is no longer subject to the payment of past fines, liens, suspensions, and judgments. [47 P.S. § 4-470.3(j)].

These licenses may be subsequently transferred after the applicant has become operational. [47 P.S. § 4-470.3(k)].

### **Bed and Breakfasts**

Act 39 amends the Liquor Code to allow an unlicensed bed and breakfast homestead or inn to provide one bottle of a licensed limited winery's wine to its paying guests at check-in, as long as the guest is staying overnight. Act 39 defines a "bed and breakfast homestead or inn" as a private residence that contains ten or fewer bedrooms used for providing overnight accommodations to the public, and where breakfast is the only meal served and is included in the charge for the room. [47 P.S. § 4-491(1)].

### **Breweries**

Act 39 allows a brewery (G license) to sell wines produced by a limited winery licensee or liquor produced by a limited distillery or distillery for on-premises consumption. [47 P.S. § 446(a)(2)].

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Act 39 makes changes to off premises catering permits, which are discussed in [Off Premises Catering Permit](#).

Act 39 also allows a G licensee to obtain a special permit to participate in malt and brewed beverages and food expositions off its licensed premises under certain conditions. "Malt or brewed beverages and food expositions" are defined as affairs held indoors or outdoors with the intent of educating those in attendance of the availability, nature and quality of malt or brewed beverages in conjunction with suitable food displays, demonstrations and sales. These expositions may also include activities other than malt or brewed beverages and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets. [47 P.S. § 4-446(c)(1)].

The following parameters apply to exposition permits:

- The fee is \$30 per day.
- The permits can be used up to 100 days a year but for no more than 30 consecutive days.
- A G licensee can sell by the glass, growler, bottle, or package up to 192 fluid ounces in a single sale.
- A G licensee can provide tasting samples up to four fluid ounces, which may be sold or offered free of charge. [47 P.S. § 4-446(c)(1)]

Act 39 also allows a G licensee to obtain a farmers market permit under certain conditions. A "farmers market" includes any building, structure or other place:

- owned, leased or otherwise in the possession of a person, municipal corporation or public or private organization;
- used or intended to be used by two or more farmers or an association of farmers, who are certified by the Department of Agriculture to participate in the farmers market nutrition program for the purpose of selling agricultural commodities produced in Pennsylvania directly to consumers;
- physically located in Pennsylvania; and
- not open for business more than twelve hours each day. [47 P.S. § 4-446(c)(2)].

The following parameters apply to farmers market permits:

- A G licensee may have an unlimited number of permits and may participate in more than one farmers market at a time.
- A G licensee can sell by the growler, bottle, or package up to 192 fluid ounces in a single sale.

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- A G licensee may provide samples containing a maximum of four fluid ounces per brand, free of charge.
- There is a \$250 annual fee for the permit.
- Sales hours are the same as the farmers market's hours.
- A G licensee needs to provide written notice to BLCE at least fourteen days prior to the event. [47 P.S. § 4-446(c)(2)].

Act 39 defines “growler” as any refillable container holding at least sixty-four fluid ounces of malt or brewed beverages. [47 P.S. § 4-446(c)(3)].

To qualify for either of these permits, the G licensee must be a manufacturer under section 431(a) of the Liquor Code. The permits may be used anywhere in Pennsylvania, regardless of whether the manufacturer has granted distribution rights to other licensees for a particular area. [47 P.S. § 4-446(c)(3)].

### **Casino Liquor License**

Act 39 creates a new type of license called a casino liquor license. Any slot machine licensee under the Gaming Act, or an affiliated designee holding a restaurant liquor or eating place retail dispenser license that sells liquor or malt or brewed beverages at or adjacent to a gaming facility, may apply for a casino liquor license. [47 P.S. § 4-416(a)].

The application fee for a casino liquor license is \$1,000,000 for a casino. The annual renewal fee for a casino is \$1,000,000 for each of the first four years and \$250,000 for each year thereafter. [47 P.S. § 4-416(b), (c)].

There is a one-time fee of \$10,000 for a restaurant licensee that does not have a slot license, but operates within or adjacent to the gaming facility. [47 P.S. § 4-416(b.1)].

Restaurant and eating place retail dispenser licensees may continue to use their licenses until the casino liquor license is issued. Once a casino liquor license is issued, the old license must be surrendered to the PLCB, unless it is subject to the quota, in which case it can be sold by its holder. [47 P.S. § 4-416(d)].

Rules for the sale of alcohol by a casino liquor licensee are different in that:

- It can sell/serve alcohol 24 hours a day, 365 days a year. [47 P.S. § 4-416(e)].
- Sales may be made anytime the facility is open to the public. [47 P.S. § 4-416(i)(1)].

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- Alcohol may be transported and consumed off the gaming floor, as long as it remains within the facility. [47 P.S. § 4-416(i)(2)].
- Sales of malt or brewed beverages-to-go are prohibited. [47 P.S. § 4-416(i)(3)].

In addition to a restaurant licensee with a slot machine license being permitted to provide alcohol free of charge to any person actively engaged in playing a slot machine, a casino liquor licensee may now provide free alcoholic beverages to any person attending an invitation-only event held on the premises. [47 P.S. §§ 4-416(i)(4), 493(24)(ii)]. (Under the Gaming Act, free alcohol can also be provided to patrons at gaming tables).

A casino liquor license expires under the following circumstances: if revoked by an administrative law judge, if non-renewed by the PLCB, if non-renewed by the holder, or upon request by the slot machine licensee. However, the PLCB can issue a new casino liquor license to a new applicant, even if the previous license had been revoked, non-renewed, or had expired. [47 P.S. § 4-416(g), (h)].

A casino liquor license can only be transferred on a person-to-person basis. [47 P.S. § 4-416(f)].

Casino liquor licenses are not subject to the following:

- Proximity provisions of sections 402 and 404 of the Liquor Code.
- Discount pricing practice restrictions in sections 406(g) and 442(g) of the Liquor Code.
- Quota restrictions in section 461 of the Liquor Code.
- Provisions of 493(10) of the Liquor Code (amusement permits).
- Prohibitions against minors frequenting in section 493(14) of the Liquor Code.
- Cost and total display area limitations of section 493(20)(i) of the Liquor Code.
- Restrictions on events, tournaments, and contests in section 5.32 of the PLCB's Regulations.
- Restrictions regarding the awarding of prizes in section 5.32 of the PLCB's Regulations. [47 P.S. § 4-416(i)].

More than one casino liquor license may be in effect at any one time, but only one license may be utilized for a specific location. [47 P.S. § 4-416(j)].



## **Catering Clubs**

Act 39 permits catering club licensees to hold a maximum of twelve self-sponsored catered events during its two-year licensing term, with no more than one event in any calendar month. [47 P.S. § 4-406(h)].

Act 39 permits catering club licensees to sell alcohol to non-members at events between participants of the club's membership and the participants from any other licensed entity, provided that the following conditions are met:

1. the club sanctions the event;
2. the event is scheduled more than twenty-four hours in advance; and
3. non-member participants are listed on a roster or registration list provided by a league, organization, or licensed entity prior to the beginning of the event. [47 P.S. § 4-406(i)(1), (2)].

Act 39 increases the number of incorporated units of national veterans' organizations that can acquire a catering club license outside of the quota by reducing the minimum number of paid members such units must have from 100 to 50. [47 P.S. § 4-461.1(b)].

## **Clean Indoor Air Act/Hotels**

Act 39 provides that the holder of a hotel liquor or hotel retail dispenser license shall be treated as a restaurant licensee with regards to the Clean Indoor Air Act, which is administered by the Department of Health. [47 P.S. § 4-461(c)(10)].

*This change was to address the fact that numerous restaurants lawfully operate under hotel licenses. Therefore, they could not avail themselves of some the exceptions afforded to restaurant licenses holders under the Clean Indoor Air Act.*

## **Clubs**

Act 39 permits club licensees to sell alcohol to non-members at events between participants of the club's membership and the participants from any other licensed entity, provided that the following conditions are met:

1. the club sanctions the event;
2. the event is scheduled more than twenty-four hours in advance; and

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3. non-member participants are listed on a roster or registration list provided by a league, organization, or licensed entity prior to the beginning of the event. [47 P.S. § 4-406(i)(1), (2)].

Act 39 increases the number of incorporated units of national veterans' organizations that can acquire a club license outside of the quota by reducing the minimum number of paid members such units must have from 100 to 50. [47 P.S. § 4-461.1(b)].

*NOTE: Act 39 did not amend section 432 of the Liquor Code to give the same privileges to a club malt beverage licensee.*

### **Conversion of an Eating Place Retail Dispenser to Restaurant Liquor License**

If a municipality is “wet” for liquor (allows for the issuance or transfer of restaurant liquor licenses), Act 39 allows an eating place retail dispenser (E license) to convert its license to a restaurant liquor license (R license), without regard to the quota. The fee for such a conversion is for \$30,000. However, the E license cannot be converted if there is currently a pending objection by Licensing or if the E license is located in Philadelphia. [47 P.S. § 4-432(h)].

Such a conversion is considered a transfer or an issuance of a new license for purposes of section 402 (proximity issues). [47 P.S. § 4-432(h)].

### **Drug and Alcohol Programs**

For Fiscal Years 2015-2016 and 2016-2017, Act 85 requires the PLCB to transfer \$2,500,000 from the sale of liquor and alcohol to the Department of Drug and Alcohol Programs for the purposes set forth in section 802(c) of the Liquor Code.

### **Direct Wine Shipper**

Act 39 eliminates the current direct shipper license and replaces it with a direct wine shipper license (DWS license). [47 P.S. §§ 1-102, 4-488(a), 4-491(11)].

Act 39 limits who may obtain this new license to any person licensed by the PLCB, another state, or another country as a *wine producer*. Limited wineries are specifically included in the definition of direct wine shipper. [47 P.S. §§ 1-102, 4-488(a)].

The license permits its holder to ship a maximum of thirty-six cases of wine, up to nine liters per case, in any calendar year, to a Pennsylvania resident for such resident's personal use. [47 P.S. §

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4-488(b)]. Act 39 removes the former constraint that the wine ordered cannot be listed for sale by the PLCB. [47 P.S. § 4-488(c)].

To obtain a DWS license, the applicant must file a written application, pay a \$250 fee, provide a copy of the applicant's current producer license, provide documentation that the applicant has obtained a sales tax number from the Department of Revenue, and other information as required by the PLCB. [47 P.S. § 4-488(c.1)].

A DWS license holder must do all of the following:

- Report to the PLCB the total wine shipped in a calendar year.
- Permit auditing of the DWS license records by the PLCB, the BLCE, or the Department of Revenue.
- Require proof of age of the recipient of wine before the wine is shipped.
- Label boxes with the phrase "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."
- Pay sales tax and pay a \$2.50 per gallon wine excise tax to the Department of Revenue.
- Pay an annual renewal fee of \$250. [47 P.S. § 4-488(d), (j)].

Any person who resells wine obtained from a DWS licensee commits a second degree misdemeanor and is subject to a fine of \$4 per fluid ounce for each container of wine found on the premises where the sale was made (in addition to other criminal penalties). This prohibition on reselling wine does not apply to licensees who acquire wine from licensed limited wineries. [47 P.S. § 4-488(f)].

The PLCB may not charge a processing fee for handing these orders. [47 P.S. § 4-488(g)].

The definition of wine formerly found in section 488(i) of the Liquor Code has been deleted. The definition of wine in section 102 of the Liquor Code remains.

All wine ordered under this section must be transported by a licensed transporter-for-hire. [488(l)]. Limited wineries must now obtain this license to directly ship wine to a Pennsylvania resident's home. [47 P.S. § 4-488(b), 505.2(a)(2.1)].

*Entities currently holding direct shippers licenses but ineligible to acquire new DWS licenses will be notified as to when they will lose their authority to operate.*

## **Distilleries**

Act 39 permits distilleries to sell wine and malt or brewed beverages for on-premises consumption provided that the wine and malt or brewed beverages are produced by licensed limited wineries and licensed breweries. [47 P.S. § 5-505.4(c)(1)].

*While neither Act 39 nor the existing language explicitly state that distilleries can sell their own products for on-premises consumption, this clearly appears to be the intent.*

Act 39 prohibits distilleries from selling products or substantially similar products listed for sale by the PLCB at a lower price than that charged by the PLCB. This includes sales to licensees. [47 P.S. § 5-505.4(c)(1)].

## **Distributors**

Act 39 allows, but does not require, distributors to accept payment by credit card from licensees for the purchase of malt or brewed beverages. [47 P.S. § 4-493(2)].

## **Economic Development Licenses**

Act 39 decreases the food and non-alcoholic beverage sales requirement from at least 70% to at least 50% of the combined gross sales of food and alcoholic beverages for economic development licenses. [47 P.S. § 4-461(b.1), (b.2)]. This makes it easier for nightclubs to qualify for these licenses.

## **Gift Baskets**

Act 39 allows a business that is principally engaged in the sale of gift baskets within the Pennsylvania to sell one bottle of wine with a gift basket containing non-liquor items. The bottle of wine must be purchased from a Fine Wine & Good Spirits store and it must be produced by a licensed limited winery. [47 P.S. § 4-491(1)].

The delivery of the gift baskets must be done by a PLCB licensed transporter-for-hire, who shall keep records as required under section 512 of the Liquor Code pertaining to the direct shipment of wine. The gift basket business must also comply with the provisions of section 488 of the Liquor Code relative to requiring proof of age and labeling advising that the package contains alcohol. [47 P.S. § 4-491(1)].

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## **Groundhog Day**

Act 39 allows a hotel or restaurant licensee to sell liquor and malt or brewed beverages on Groundhog Day from 7:00 a.m. to 2:00 a.m. the following day, even if it falls on a Sunday, regardless of whether the licensee has a Sunday sales permit. [47 P.S. § 4-406(a)(7)].

*NOTE: there was no equivalent change/exception made for eating place retail dispensers or other types of licensees.*

## **Identification Cards**

Act 39 adds Canadian driver's licenses or other bona fide Canadian identification, such as a Canadian-issued passport, to the list of identification cards that may be accepted by licensees. [47 P.S. § 4-495(a)].

## **Importers and Vendors**

Act 39 authorizes the holder of an importer's license or a vendor's permit to deliver liquor purchased from the PLCB to licensees. The liquor may be stored at an importer's or vendor's place of business or at its authorized place of storage. A licensee to whom the importer or vendor will be delivering the liquor must first place a purchase order with the PLCB. The order must be paid in full before the PLCB may release the liquor to the importer or vendor for delivery. The importer or vendor may charge a fee for delivery. [47 P.S. § 4-410].

For rules concerning SLOs, see [Special Liquor Orders](#).

## **Importing Distributors**

Act 39 allows, but does not require, importing distributors to accept payment by credit card from licensees for the purchase of malt or brewed beverages. [47 P.S. § 4-493(2)].

Act 39 also increases the number of importing distributor storage facilities from one to four. [47 P.S. § 4-441(d)(2)].

## **Interlocking Business Prohibitions**

Act 39 adds an exception allowing a manufacturer or licensee and its officers, directors, shareholders, servants, agents or employees to contribute, and a manufacturer or licensee and its officers, directors, shareholders, servants, agents or employees to accept money or other things

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of value - solely for the administration of RAMP training for alcohol service personnel. The money or other things of value may be provided by or to a manufacturer or licensee and its officers, directors, shareholders, servants, agents, or employees, directly by or to a trade organization consisting, in whole or part, of a group of licensees. [47 P.S. §§ 4-411(f)(1), 4-443(h)(1)].

The manufacturer, licensee and trade organization associated with the person providing the money or other things of value must keep a record of the value of the money or other things of value provided, the date provided, and the entity to whom it was provided, as part of the records required under section 493(12) of the Liquor Code. [47 P.S. §§ 4-411(f)(2), 4-443(h)(2)].

Lastly, the manufacturer, licensee and trade organization associated with the person receiving money or other things of value must keep a record of the value of the money or other things of value used, as part of the records required under section 493(12) of the Liquor Code. [47 P.S. §§ 4-411(f)(3), 4-443(h)(3)].

### **License Surcharge**

All licenses that are renewed or validated under the authority of section 470 are now subject to a \$700 surcharge. [47 P.S. § 4-470(a)]. This includes all Article IV licenses, such as restaurants, hotels, clubs, breweries, importing distributors, distributors, and eating place retail dispensers.

### **Limited Distilleries**

In addition to its own products, a limited distillery (AL license) licensee will be permitted to sell wine and malt or brewed beverages for on-premises consumption, provided the wine and malt or brewed beverages are produced by licensed limited wineries and licensed breweries. [47 P.S. § 5-505.4(b)(1)].

However, Act 39 prohibits selling products or substantially similar products listed for sale by the PLCB at a lower price than that charged by the PLCB; this includes sales to licensees. [47 P.S. § 5-505.4(b)(1)].

Act 39 increases the number of additional PLCB-approved locations from two to five. [47 P.S. § 5-505.4(b)(2)].

Act 39 permits the PLCB to issue permits to limited distilleries for the purpose of participating in “alcoholic cider, liquor and food expositions,” which are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders and liquors in

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conjunction with suitable food displays, demonstrations and sales. These expositions may also include activities other than alcoholic ciders, liquors and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets. [47 P.S. § 5-505.4(b)(8)]. (This definition mirrors the exposition permits already allowed for limited wineries).

*NOTE: limited distilleries cannot sell alcoholic cider, despite the name of the permit.*

The following parameters apply to exposition permits:

- The fee is \$30 per day.
- The permits can be used up to 100 days a year but no more than 30 consecutive days.
- A limited distillery can sell by the glass, bottle, or case.
- A limited distillery can provide tasting samples up to one and one-half fluid ounces, which may be sold or offered free of charge. [47 P.S. § 5-505.4(b)(8)].

Act 39 also allows a limited distillery to obtain a farmers market permit. [47 P.S. § 5-505.4(b)(9)]. Although not defined, it is assumed that a “farmers market” would be similar to the definitions found in the sections of the Liquor Code dealing with limited wineries [47 P.S. § 5-505.2(c)] and breweries [47 P.S. § 4-446(c)(2)].

The following parameters apply to farmers market permits:

- A limited distillery may have an unlimited number of permits and may participate in more than one farmers market at a time.
- A limited distillery can sell by the bottle or case.
- It may provide samples containing a maximum of one and one-half fluid ounces per brand free of charge.
- There is a \$250 annual fee.
- Sales hours are the same as the farmers market hours.
- Written notice must be provided to the BLCE at least two weeks prior to the event. [47 P.S. § 5-505.4(b)(9)].

### **Limited Wineries**

Act 39 permits a limited winery (LK license) licensee to hold and operate a restaurant liquor license at one of its PLCB-approved satellite locations, provided that the location does not serve as an additional PLCB-approved location for any other manufacturer, and further provided that it

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is not using a retail license (restaurant, hotel, retail dispenser) at its main facility. [47 P.S. §§ 4-411(e), 5-505.2(a)(5)(ii)]. Previously, an LK licensee could hold a retail license at its main facility only.

Act 39 allows LK licensees to sell malt or brewed beverages and liquor for on-premises consumption provided that the malt or brewed beverages and liquor are produced by licensed breweries, limited distilleries, or distilleries. [47 P.S. § 5-505.2(a)(6.1)].

Act 39 requires LK licensees to obtain a DWS license to ship wine to a Pennsylvania resident's home. [47 P.S. § 5-505.2(a)(2.1)].

### **Liquid Fuels**

Act 39 deletes language in the Liquor Code regarding sales of liquid fuels and oil in proximity to licensed premises, and replaces it with language that mirrors the PLCB's interpretation of the current language. Under Act 39, the PLCB cannot license an area where liquid fuels or oil are sold. While no liquid fuels or oil may be sold from a licensed premises, interior connections between licensed premises and locations that sell liquid fuels and oil are permissible with PLCB approval. [47 P.S. §§ 4-404(a), 4-431(b), 4-432(d), 4-468(a)(3)].

### **Local Option**

Act 39 allows the placement of ballot questions regarding alcohol during any election, and not just during the primary election immediately preceding the municipal election. [47 P.S. § 4-472]. The provisions regarding how often a particular question may be placed on a ballot remain.

### **Management Companies**

Act 39 allows a management company or management companies to have a pecuniary interest in a licensee's license. A licensee using a management company to operate, manage, or supervise all or part of its operation of its licensed premises must file an application, accompanied by a fee determined by the PLCB. The PLCB must refuse the management agreement application if the management company or any person involved in the management company would be precluded from holding an interest in the licensee's license. [47 P.S. §§ 4-404(a), (b), 4-436(f), (k), 4-473(a)].

Act 39 also amends the public record section of the Liquor Code to reflect that management companies may have a pecuniary interest in a licensee's license. [47 P.S. §§ 4-404(a), (b), 4-436(f), (k), 4-473(a)].

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## **Mug Clubs**

Act 39 allows retail licensees and breweries to offer a mug club to their patrons. Such an offer will not be construed as an unlawful inducement. [47 P.S. § 4-493(24)(iii)].

Act 39 defines 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. Members shall pay an annual fee, as well as a renewal fee as set by licensee. Membership shall, at a minimum, entitle the member to a mug, glass or similar container, and said container must be used when the member is served any discounted malt or brewed beverages. No discounted malt or brewed beverages may be provided between 12:00 a.m. and 7:00 a.m. [47 P.S. § 1-102].

Mug club discounts are not counted against a licensee’s maximum number of hours during which it may offer happy hour pricing. [47 P.S. §§ 4-406(g), 4-442(g)].

## **National Event Permits**

Act 85 allows for the PLCB to issue one or more national event permits for events directly connected to the convention, upon application by the chief executive of a national political party conducting its national convention in Pennsylvania, the chief executive's designee, or the official host committee of the national convention.

The application must include a \$5,000 application fee, which must be deposited into the State Stores Fund. No additional fee will be required for any subsequent application regarding this permit.

The PLCB must approve the application, unless doing so would clearly be against the public interest. If the PLCB approves the application, the PLCB will determine the location, date, and hours that the permit will be in effect. More than one location may be licensed at one time. The permit will have the same rights and restrictions as a special occasion permit issued under section 408.4 of the Liquor Code, except as follows:

- The permit will not be subject to the hours’ restriction under section 408.4(k) of the Liquor Code, the days’ restrictions under section 408(i) of the Liquor Code, or the notice requirements under section 408.4(j) of the Liquor Code.
- The permit may be issued to a location that is already licensed by the PLCB, so long as the PLCB clearly states which permit or license is in effect at that location.

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- The permit holder may accept, import, possess, or resell donated alcohol acquired from licensed and unlicensed entities, so long as the permit holder receives PLCB approval prior to doing so. The donated alcohol does not need to come to rest at a PLCB store prior to its use by the permit holder, unless the PLCB so directs. Malt or brewed beverages donated under this permit shall not need to come to rest at a licensed importing distributor prior to their use by the permit holder, so long as the donated brands are registered with the PLCB and the PLCB approves the arrangement.
- If the permit holder's proposed location is subject to a conditional licensing agreement that imposes additional conditions on the sale and service of alcohol at that location, the PLCB may in its discretion waive some or all of those conditions while the permit is in effect.
- No sales for off-premises consumption may occur unless the premises is already licensed by the PLCB. In those cases, sales for off-premises consumption shall be subject to the same rights and restrictions as are imposed on the underlying license.

A copy of each approved permit shall be made available to the public on the PLCB's internet website.

The National Events Permits will expire on July 29, 2016, and no permit will remain in effect after that date.

### **Off-Premises Catering Permits**

Act 39 expands the number of off-premises catering permits (OPCP) from fifty to fifty-two per year. [47 P.S. §§ 4-406(f)(3), 4-442(f)(2), 4-446(b)(3)].

It reduces the number of days for written notice to the PLCB from thirty days to fourteen days. [47 P.S. §§ 4-406(f)(10), 4-442(f)(9), 4-446(b)(10)].

The PLCB may waive the fourteen-day notice for a catered function, as long as seven days' notice is provided. [47 P.S. §§ 4-406(f)(10), 4-442(f)(9)(iii), 4-446(b)(10)(iii)].

The end time for catered functions held on December 31<sup>st</sup> is expanded from midnight to 2:00 a.m. [47 P.S. § 4-406(f)(13), 4-442(f)(13), 4-446(b)(13)].

The PLCB is given the discretion to approve OPCPs that are submitted after March 1<sup>st</sup> by a licensee in good standing, but the licensee must still apply at least sixty days prior to its first catered function. [47 P.S. § 4-493(33)].

## **Pennsylvania Manufacturers**

Act 39 permits breweries to sell wines produced by limited wineries and liquor produced by limited distilleries or distilleries for on premises consumption. In addition, limited wineries may sell malt or brewed beverages produced by licensed breweries or liquor produced by limited distilleries or distilleries for on premises consumption. Finally, limited distilleries or distilleries may sell malt or brewed beverages produced by licensed breweries or wine produced by limited wineries for on premises consumption. [47 P.S. §§ 4-446(a)(2), 5-505.2(a)(6.1), 5-505.4(b)(1), (c)(1)].

## **Performing Arts Facilities**

Act 39 decreases the required minimum seating capacity for a non-profit related performing arts facility from 250 to 150 people. [47 P.S. § 1-102].

## **Powdered Alcohol**

Act 39 makes it unlawful for any person to possess, purchase, sell, offer to sell, or use powdered alcohol in Pennsylvania. However, this prohibition does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company conducting bona fide research. [47 P.S. § 4-491(16)].

Act 39 defines “powdered alcohol” as alcohol sold in a powder form for either direct use or reconstitution, amends the definition of “alcohol” and “liquor” to include powdered alcohol, and amends the definition of “denatured alcohol” to not include powdered alcohol. [47 P.S. § 1-102].

## **RAMP Server/Seller Training**

All alcohol service personnel must complete RAMP server/seller training within six months of being hired by a licensee, unless the person had successfully completed said training prior to being hired. [47 P.S. § 4-471.1(h)]. “Alcohol service personnel” is defined as any employee of a licensee such as a bartender, waiter or, in the case of a distributor or importing distributor, a salesperson whose primary responsibility includes the resale, furnishing or serving of liquor or malt or brewed beverages. It also means any employee, such as a doorperson, whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises. [47 P.S. § 1-102].

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## **Safekeeping**

Act 39 reduces the safekeeping period from three to two consecutive years for the following licensees: restaurants, eating place retail dispensers, hotels, importing distributors, and distributors. [47 P.S. § 4-474.1(b), (c)].

Act 39 increases the safekeeping fees to \$10,000 in first through fourth class counties and \$5,000 in fifth through eighth class counties for the first additional year. For each additional year thereafter, the safekeeping fee is doubled (for example, in class 1-4 counties, the fee is \$10,000 for year three in safekeeping, then \$20,000 for year four, then \$40,000 for year five, etc.). [47 P.S. § 4-474.1(g)(1)].

There is no safekeeping fee if a licensee can show that it is unable to use the license through no fault of its own because of events such as fire, flood, or inability to obtain an occupancy permit. The presence of another business or the licensed business no longer being viable are not sufficient reasons to justify a waiver. [47 P.S. § 4-474.1(b), (g)(1)].

## **Ski Resorts**

Act 39 allows municipalities to vote on whether to allow the issuance of licenses to ski resorts no more than once every two years. Also, it provides the specific language for the ballot question for ski resorts. [47 P.S. § 4-472].

Act 39 also amends the Liquor Code to allow minors to frequent licensed ski resorts, without having to fall under one of the exceptions in section 493(14) of the Liquor Code. [47 P.S. § 4-493(14)].

## **Special Liquor Orders**

Act 39 allows the PLCB to accept Special Liquor Orders (SLOs) placed by licensed importers or licensed vendors on behalf of customers, in addition to accepting SLOs placed directly by customers.

Orders placed by licensed importers or licensed vendors on behalf of customers do not need to come to rest at one of the PLCB's stores, but rather may be delivered directly to the customer by the licensed importer or vendors. However, delivery may only occur after payment has been forwarded to the PLCB and the PLCB has authorized delivery of the order. Liability for SLOs placed by licensed importers or licensed vendors on behalf of customers remain with the importer or vendor until the time of delivery to the customer.

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The PLCB is permitted to refuse to process, or prohibit the processing of, SLOs for items that are substantially similar to items that appear on its monthly price lists, or if the PLCB believes demand for the items warrants them being made available generally. The PLCB has the discretion to determine the amount and manner for which any such item will be made available.

Act 85 provides that notwithstanding the provisions of section 305 of the Liquor Code, the PLCB may implement a procedure for processing special orders which do not come to rest at a PLCB store by June 1, 2017; Act 39 had made the deadline January 1, 2017.

### **Special Occasion Permits**

Act 39 adds the following eligible entities:

- Any architectural heritage non-profit group in any municipality of any class;
- A county tourist promotion agency under the Tourism Promotion Act;
- A non-profit organization located in a city of the second class (Pittsburgh) or adjoining borough or township that stimulates community development;
- A non-profit in Allegheny County that facilitates commercial development and neighborhood stabilization;
- A non-profit that provides young people with a program to build character;
- A non-profit designed to help children after a parent's death;
- A non-profit designed to cure achromatopsia;
- A non-profit in a city of the first class (Philadelphia) designed to promote safe neighborhoods and whose works include public promotions, and neighborhood and commercial improvements;
- A non-profit organization designed to provide services to military members and disaster victims;
- Any neighborhood improvement district management association; and
- A non-profit in a city of the first class (Philadelphia) existing for at least seventy-five years whose purpose is to enrich the lives of children and needy families. [47 P.S. § 1-102].

Act 39 increases the maximum number of days for which an SOP may be obtained, with regard to all eligible entities, from six consecutive days to ten consecutive days.

*NOTE: the six non-consecutive days' limitation is unchanged. [47 P.S. § 4-408.4(i)].*

## **Store Hours and Days**

Fine Wine & Good Spirits stores are no longer required to be closed on holidays. Further, the restrictions on Sunday operations (no more than 25% of stores open and open only from noon to 5:00 pm) have been removed. The PLCB will now have complete discretion on when it operates its stores. [47 P.S. §§ 1-102, 3-304].

## **Territorial Agreements (Relating to Malt or Brewed Beverages)**

Act 39 allows for franchise territories that are in counties that are contiguous to each other, even if territories are not contiguous themselves. The recordkeeping provision in this section is amended to reflect this change. [47 P.S. § 4-431(d)(2)].

## **Wine Auction Permits**

Act 39 adds the following entities as eligible to obtain a wine auction permit:

- a museum in a fourth class county (previously only first, second or third class); and
- an institution of higher education as defined in section 102 (community college under the School Code, a university within the State System of Higher Education, Penn State, Pittsburgh, Temple, Lincoln, any other “state related” institution, and any accredited private college or university). [47 P.S. §§ 1-102, 4-408.12(a)].

## **Wine Expanded Permits**

Act 39 creates a wine expanded permit for restaurant and hotel licensees. [47 P.S. § 4-415(a)(1)]. This permit allows its holder to sell wine-to-go until 11:00 p.m. on Monday through Saturday, and on Sundays if the holder holds a Sunday sales permit. [47 P.S. § 4-415(a)(2)].

- There is a \$2,000 application fee for this permit and an annual renewal fee of 2% of the cost of wine purchased from the PLCB for off-premises consumption. [47 P.S. § 4-415(b)].
- A permit cannot be issued to a licensee whose license is subject to a pending objection from Licensing. However, if the licensee already holds the permit, it can continue to use it while the licensing matter is pending. [47 P.S. § 4-415(a)(3)].
- Act 39 does not allow residents located within 500 feet to protest a wine expanded permit. [47 P.S. § 4-402(d)].

Act 39 imposes the following parameters for wine-to-go sales under an expanded wine permit:

- A permittee may sell up to 3,000ml (3 liters) of wine in a single transaction. [47 P.S. § 4-415(d)].

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- Sales of wine must occur at a specifically designated area of the licensed premises, but other (non-alcohol) items may be purchased at the same location. [47 P.S. § 4-415(a)(4)].
- Sales of wine must occur at a designated register which is staffed at all times by a cashier who is at least eighteen years old and is RAMP-trained. No sales may occur elsewhere (including self-checkout lanes). [47 P.S. § 4-415(a)(9)].
- A permittee must use a transaction scan device to verify the age of anyone who appears to be under thirty-five years old. [47 P.S. § 4-415(a)(8), (9)].
- A permittee cannot sell wine-to-go for a price that is lower than the price at which it purchased the product from the PLCB. [47 P.S. § 4-415(f)].
- A permittee may not sell a private label product, which is defined as a product made under contract by a manufacturer/its agent for the exclusive right of a retailer. [47 P.S. §§ 1-102, 4-415(g)].
- A permittee must comply with all components of RAMP. [47 P.S. §§ 4-415(a)(6), 4-471.1].

Wine may be stored in a non-contiguous area that is not accessible to the public, is locked at all times, and is not accessible to employees under eighteen years old. [47 P.S. § 4-415(a)(6)].

Wine expanded permit holders must pay sales tax on purchases of wine made from the PLCB at the time of purchase, just as they would for any other product purchased from the PLCB. Permittees are also required to collect the sales tax from the consumers to whom they sell wine-to-go. Permittees can then seek reimbursement from the Department of Revenue for the sales tax which they previously paid to the PLCB. [47 P.S. § 4-415(e)].

Act 39 specifies that the minors frequenting rules in section 493(14) of the Liquor Code do not apply for purposes of selling wine for off-premises consumption. [47 P.S. §§ 1-102, 4-415(a)(5)].

### **Additional Changes Impacting Board Operations**

#### **Pricing**

- The PLCB is no longer required to use proportional pricing when pricing best selling items, limited purchase items, and discontinued items. [47 P.S. § 2-207(b)(3), (4), (11)]. Act 85 defines “best selling items” in the Liquor Code to be the 150 most sold brands and product types of wine and the 150 most sold brands and product types of liquor as measured by the total number of units sold on a six-month basis calculated every January 1<sup>st</sup> and July 1<sup>st</sup>.

*NOTE: Act 85 changes Act 39’s definition of “best selling items,” which was the 150 most sold product identification numbers of wine and the 150 most sold product identification numbers*

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*of liquor as measured by the total number of units sold on a six-month basis calculated every January 1 and July 1. [47 P.S. § 2-207(b)(11)].*

- Special liquor order (SLO) items are exempted from the proportional pricing requirement. Instead, a mark-up equal to 10% of the cost of the product and taxes applies to all SLO items. The PLCB is required to impose a handling fee, in the same manner that it would for any other product, on SLOs that come to rest in a Fine Wine & Good Spirits store. Licensees are not entitled to receive their 10% licensee discount on SLO items. [47 P.S. §§ 2-207(b), 3-305(a), (b)].
- The PLCB is specifically authorized to include a handling fee in the price of all products. [47 P.S. § 2-207(b)(2)].
- The PLCB is authorized to offer coupons or discounts on certain products to unlicensed customers through a customer relations management (CRM) program, notwithstanding the general proportional and uniform pricing requirements. [47 P.S. §§ 2-207(m), 3-305(b)].
- Except for items offered through a CRM program, all prices of a particular item must be uniform across Pennsylvania. [47 P.S. § 2-207(b)(5), (m)].
- The PLCB is required to publish a listing of the wholesale and Pennsylvania Liquor Store retail prices on its publically accessible Internet website on a quarterly basis. [47 P.S. § 2-207(b)(6)].

## **Reports and Reporting**

The Board is required to submit an annual written report to the Senate Law and Justice Committee and the House Liquor Control Committee, no later than April 1<sup>st</sup> of each year, setting forth information on the method and rationale for pricing product. The Board is also required to appear before the Senate Law and Justice Committee and the House Liquor Control Committee, no later than June 1<sup>st</sup> of each year, to provide testimony regarding the annual written report. [47 P.S. § 2-207(b)(7), (8)].

## **Processing [Special Liquor Orders](#)**

### **Delivery to Licensees**

The PLCB may contract with a licensed transporter-for-hire, through the Commonwealth bidding process, for delivery to retail licensees and permit holders, at the expense of the licensees or permit holders receiving delivery. Payments for items being delivered to licensees and permittees must be by credit card or electronic fund transfer and must occur prior to the time of delivery. [47 P.S. § 3-305(b.1)].

## **Board's [Store Hours and Days](#)**

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## **Lottery Sales**

PLCB stores may be licensed as lottery sales agents under the State Lottery Law. Only self-service games, such as instant ticket vending machines and player-activated terminals, are authorized. The PLCB is not required to post bond (which is typically required of other sellers) before conducting self-service games. [47 P.S. §§ 2-207(l), 3-305(k)].

## **Board Advertising**

The PLCB is exempt from the requirements of the Taxpayer-Funded Advertising Transparency Act (Act 90), which requires a Commonwealth agency to include, in paid media advertising, the following specific statement: “Paid for with Pennsylvania taxpayer dollars.” [47 P.S. § 2-207(n)].

## **Sales of Private Label Products**

- The PLCB is now prohibited from selling private label products. “Private label products” are defined as a product made under contract by a manufacturer or the manufacturer’s agent for the exclusive right of a retailer.
- The PLCB is permitted to continue selling any private label products currently existing within its inventory until such inventory is depleted. [47 P.S. §§ 1-102, 2-207(b)(9)].