

### **Summary of Act 86 of 2019**

On November 21, 2019, Governor Wolf signed House Bill No. 947 into law, now known as Act 86 of 2019 (Act 86).

Act 86 made changes to multiple sections of the Liquor Code. The changes impacting breweries, distilleries, limited distilleries, and performing arts facility restaurants were effective immediately. The changes involving commercial and mixed-use overlay project licenses are effective in 60 days (January 20, 2020). The effective date and the particular section of the Liquor Code that was amended are denoted at the end of each summary section.

Questions about these changes or any other provisions of the Liquor Code may be directed to the PLCB's Office of Chief Counsel at 717-783-9454 or [ra-lblegal@pa.gov](mailto:ra-lblegal@pa.gov).

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## **Brewery License**

Pursuant to Act 86, brewery license holders may sell malt and brewed beverages and alcohol (subject to section 446(a)(2) of the Liquor Code, 47 P.S. § 4-446(a)(2)) for **on-premises** consumption Monday through Saturday from 9:00 a.m. to midnight and Sundays from 9:00 a.m. to 11:00 p.m. Note that a Sundays sales permit is not required. [47 P.S. § 4-492.1(a)(2)]. *Effective on November 21, 2019*

Also, note that section 492.1(c) of the Liquor Code, 47 P.S. § 4-492.1(c), was not changed and still requires a brewery to obtain a Sunday sales permit to be able to sell malt or brewed beverages for **off-premises** consumption to persons not licensed by the Board and special occasion permit holders on Sundays from 9:00 a.m. and 9:00 p.m. Lastly, a brewery pub license holder still needs to obtain a Sunday sales permit to be able to sell malt or brewed beverages on Sundays from 11:00 a.m. to 2:00 a.m. (can sell at 9:00 a.m. if the licensee offers a meal). [47 P.S. 4-432(f), 40 Pa. Code § 3.92(b)].

## **Commercial and Mixed-Use Overlay Project (all changes effective on January 20, 2020)**

Act 86 creates a “commercial and mixed-use overlay project,” which is defined as planned development:

- (1) situated on at least 25 acres;
- (2) constructed since January 1, 2019;
- (3) with at least 275,000 square feet of actual or proposed development;
- (4) with a mix of commercial and residential uses; and
- (5) that is adjacent to an existing hotel property with at least 90 rooms.

[47 P.S. § 1-102].

The commercial and mixed-use overlay project area must be within a municipality that allows for issuance and transfer of restaurant liquor licenses. [47 P.S. § 4-461(b.6)(1)].

Act 86 permits the transfer of no more than 20 restaurant liquor licenses to be used in the commercial and mixed-use overlay project. [47 P.S. § 4-461(b.6)(3)].

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- The restaurant liquor licenses that may be transferred to the commercial and mixed-use overlay project are those available for auction under section 470.3 of the Liquor Code, 47 P.S. § 4-470.3. [47 P.S. §§ 4-461(b.6), 4-468(a)(1)].
- The Board may choose which licenses will be available for transfer but preference must be given to licenses from a “saturated county” up to the maximum that can be accepted from that saturated county. [47 P.S. § 4-461(b.6)(5)]. A “saturated county” is defined as “a county with more than one restaurant liquor license per 3,000 inhabitants in the top 25 highest ratios of restaurant liquor licenses to county population in the Commonwealth.” [47 P.S. § 1-102].
- The maximum number of licenses that can be accepted from a county is calculated as follows: Total number of restaurant liquor licenses in the county minus a number equal to 2.64 times the county population divided by 3,000. [47 P.S. § 4-461(b.6)(6)].

An application for a commercial and mixed-use overlay project restaurant liquor license may be filed by “any interested party.” [47 P.S. § 4-461(b.6)(2)].

- The application must be accompanied by a municipal resolution or ordinance indicating the municipality’s approval of the request to have the area designated a commercial and mixed-use overlay project by the PLCB, a map of the proposed project area, and any other information the PLCB needs. [Id.].
- The application must indicate the number of restaurant liquor licenses the applicant is seeking (maximum of 20). In addition to the normal application and license fees for a restaurant liquor license, the application must be accompanied by a surcharge of \$25,000 for each restaurant liquor license. [47 P.S. § 4-461(b.6)(3)].

Upon the receipt of a complete application that satisfies PLCB requirements, the Board must approve the request and deposit the \$25,000 surcharge for each restaurant liquor license into the state stores fund. The restaurant liquor license(s) that are part of the application will be held in safekeeping until the applicant files a formal transfer application. The applicant may assign the rights to file a formal transfer application to a third party. [47 P.S. § 4-461(b.6)(4)].

- The restaurant liquor licenses may remain in safekeeping for up to four years from the date the Board approved the application without having to pay safekeeping fees. During this period, the restaurant liquor licenses will be subject to all other fees, including renewal fees and application surcharges. [47 P.S. 4-461(b.6)(7)].

- If the applicant does not file an application for transfer prior to the four-year deadline, the restaurant liquor licenses will be revoked. If a restaurant liquor license is revoked, there is no refund. [Id.].

A restaurant liquor license transferred as part of a commercial and mixed-use overlay project:

- May not be transferred outside of the commercial and mixed-use overlay project area.
- May not obtain a wine expanded permit under section 415 of the Liquor Code, 47 P.S. § 4-415.
- May not sell malt or brewed beverages for off-premises consumption.

[47 P.S. § 4-461(b.6)(8)].

The restaurant liquor licenses issued to commercial and mixed-use overlay projects are not subject to the county quota. [47 P.S. § 4-461(a)]. Furthermore, licenses transferred into a new county for a commercial and mixed-use overlay project are not counted toward the receiving county's quota. [47 P.S. § 4-461(b.6)(9)]. The renewal and validation dates of a transferred license will be changed to correspond to that county's renewal and validation dates. [Id.].

### **Distillery License**

Act 86 changed the hours that a distillery may sell liquors produced on its licensed premises to the Board, Board-licensees, and to the public. Prior to Act 86, the hours were Monday through Sunday from 9:00 a.m. to 11:00 p.m. Pursuant to Act 86, the hours are Monday through Saturday from 9:00 a.m. to midnight and Sundays from 9:00 a.m. to 11:00 p.m. [47 P.S. § 505.4(c)(1)]. *Effective on November 21, 2019*

Act 86 changed the hours that a distillery may provide tasting samples of liquor on its licensed premises. Also, the hours changed for when a distillery may sell and provide free samples. Prior to Act 86, the hours were Monday through Sunday from 9:00 a.m. to 11:00 p.m. Pursuant to Act 86, the hours are Monday through Saturday from 9:00 a.m. to midnight and Sundays from 9:00 a.m. to 11:00 p.m. [47 P.S. § 505.4(c)(2)]. *Effective on November 21, 2019*

### **Limited Distillery License**

Act 86 changed the hours that a limited distillery may sell liquors produced on its licensed premises to the Board, Board-licensees, and to the public. Prior to Act 86, the hours were Monday through Sunday from 9:00 a.m. to 11:00 p.m. Pursuant to Act 86, the hours are Monday through Saturday from 9:00 a.m. to midnight and Sundays from 9:00 a.m. to 11:00 p.m. [47 P.S. § 505.4(b)(1)]. *Effective on November 21, 2019*

Act 86 changed the hours that a limited distillery may provide tasting samples of liquor on its licensed premises and approved Board-approved locations. Also, the hours changed for when a limited distillery may sell and provide free samples. Prior to Act 86, the hours were Monday through Sunday from 9:00 a.m. to 11:00 p.m. Pursuant to Act 86, the hours are Monday through Saturday from 9:00 a.m. to midnight and Sundays from 9:00 a.m. to 11:00 p.m. [47 P.S. § 505.4(b)(5)]. *Effective on November 21, 2019*

### **Performing Arts Facility Restaurant License**

Act 86 changed the hours that a performing arts facility restaurant license holder may sell liquor and malt or brewed beverages on Sundays. Prior to Act 86, the hours were Sundays from 1:00 p.m. to 10:00 p.m. Pursuant to Act 86, the hours are Sundays from 10:00 a.m. to 10:00 p.m. [47 P.S. §§ 4-406(d), 413(f)(1)]. *Effective on November 21, 2019*