

July 18, 2019

Summary of Acts 45, 48, and 57 of 2019

On July 2, 2019, Governor Wolf signed House Bill Nos. 131, 423, and 1524 into law, now known as Act 45 of 2019 (Act 45), Act 48 of 2019 (Act 48), and Act 57 of 2019 (Act 57), respectively.

Act 45 made changes to nine sections of the Liquor Code and one PLCB Regulation. Two of the changes were effective immediately; the rest are effective in 60 days (August 31, 2019). The effective date and the particular section of the Liquor Code that was amended are denoted at the end of each summary section.

Act 48 made numerous changes to section 472 of the Liquor Code involving local options. The changes go into effect on August 31, 2019.

Finally, Act 57 made changes to three sections of the Liquor Code involving tourist development project licenses. The changes also go into effect on August 31, 2019.

Since some of the licensing changes will not apply to every type of license, licensees are encouraged to check all the categories that may apply to their licenses.

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.

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Alcoholic Cider

The definition of “alcoholic cider” has been amended to eliminate its source as “any fruit or fruit juice.” Act 45 now defines alcoholic cider as a beverage produced through alcoholic fermentation which is primarily derived from one of four things: apples, apple juice concentrate and water, pears, or pear juice concentrate and water. Products made from other fruits now fall under “fermented fruit beverages” (see below). [47 P.S. § 1-102]. *Effective on August 31, 2019*

Act 45 also removes the erroneous references to alcoholic cider that were found in section 505.4(b)(8) of the Liquor Code, which allowed limited distilleries to apply for a special permit to participate in alcoholic cider, liquor, and food expositions off their licensed premises. Such permits are now called “liquor and food exposition permits.” [47 P.S. § 505.4(b)(8)]. *Effective on August 31, 2019*

Amplified Sound

Section 493(34) of the Liquor Code prohibits a licensee from using, inside or outside of its 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. Act 45 adds an exception to this general prohibition for limited winery licensees located in Class 2A through Class 8 counties (all counties except Philadelphia and Allegheny). Limited winery licensees in such counties may have amplified music as long as the music/entertainment does not exceed 75 decibels beyond the limited winery’s property line. However, there are time restrictions to this authorization. It only applies from 10:00 a.m. to 8:00 p.m. on Sunday through Thursday, and from 10:00 a.m. to 10:00 p.m. on Fridays and Saturdays. Municipalities retain their authority under section 493.1(b) of the Liquor Code to petition the Board to allow their own noise ordinances to supersede the Liquor Code’s provision regarding amplified sound, including the exception set forth above. [47 P.S. § 4-493.1(e)]. *Effective immediately*

Fermented Fruit Beverage

Act 45 creates a new category of alcoholic beverage called “fermented fruit beverage.” Its definition is similar to that of alcoholic cider, but it is derived from “fruit, fruit juice, fruit juice concentrate and water with or without flavorings.” Its alcoholic content range is the same as

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alcoholic cider, at least 0.5% but not greater than 8.5%. It falls into the category of malt or brewed beverages and can be sold in bottles, cases, kegs, cans, or other containers of the type used for the sale of malt or brewed beverages. It cannot be sold or marketed as a wine. [47 P.S. §§ 1-102, 744-1001]. *Effective on August 31, 2019*

Corresponding changes were made in other sections of the Liquor Code to allow for the sale of fermented fruit beverages by those licenses who are already permitted to sell alcoholic cider, such as breweries, limited wineries, limited distilleries, and distilleries. For limited wineries, the total production amount of 200,000 gallons per year now includes fermented fruit beverages, as well as alcoholic ciders, mead, wine, and wine coolers. [47 P.S. §§ 4-446(a)(2), 5-505.2(a),(b), 505.4(b), (c)(1)]. *Effective on August 31, 2019*

Local Option

Previously, the Liquor Code did not contain any language prohibiting the sale of alcohol by certain manufacturing licensees in municipalities that were dry for such sales. Act 48 now gives municipalities the option to vote on whether or not to allow certain manufacturing licenses to be permitted to operate within their municipality. The new ballot questions are for the following types of licenses: brewery, brewery storage, limited distillery, limited distillery satellite locations, limited winery, and limited winery satellite locations. [47 P.S. § 4-472(a)]. Distillery licenses and certain permits, such as farmer's market permits and exposition permits, are not affected by this change. The new ballot questions do not apply to any of these licenses that were granted prior to August 31, 2019. [Section 2 of Act 48]. *Effective on August 31, 2019*

For municipalities or part of a split municipality in a Class 2A counties (Bucks, Delaware, and Montgomery), the number of signers to a petition required for a ballot question on any local option matter is the lesser of 25% of the highest votes cast in the last preceding general election or 500 voters. [47 P.S. § 4-472(a)]. *Effective on August 31, 2019*

Nonalcoholic Malt or Brewed Beverage

Prior to Act 45, the Liquor Code did not regulate the importation or sale of nonalcoholic beer. Act 45 changes that. Now, any nonalcoholic malt or brewed beverage that is produced by an out-of-state manufacturer of malt or brewed beverages, or is produced by a Pennsylvania

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manufacturer of malt or brewed beverages that has designated an importing distributor under section 431 of the Liquor Code, must also be distributed pursuant to section 431. A “nonalcoholic malt or brewed beverage” is defined as any beverage intended to be marketed or sold as non-alcoholic beer, having at least a trace amount of alcohol content, but not more than 0.5% or more alcohol by volume (which would make it fall under the definition of malt or brewed beverage). [47 P.S. § 4-431(g)]. *Effective on August 31, 2019*

Recordkeeping by Limited Wineries

Act 45 provides that limited wineries are no longer required to provide a sales invoice for purchases made by a private individual at the limited winery unless the purchase is for more than sixteen liters in a single transaction. [47 P.S. § 5-512]. *Effective immediately*

Tourist Development Project

Act 57 creates a “tourist development project,” which is defined as “a planned development situated on at least [90] acres of land, constructed since January 1, 2019, that is dedicated primarily to tourism with at least [500,000] square feet of actual or proposed development, with a mix of entertainment and retail uses.” [47 P.S. § 102]. *Effective on August 31, 2019*

The tourist development project area must be within a municipality that allows for issuance and transfer of restaurant liquor licenses. [47 P.S. § 461(b.5)(3)]. *Effective on August 31, 2019*

Act 57 permits the transfer of no more than 75 restaurant liquor licenses to be used in the tourist development project. [47 P.S. § 461(b.5)(4)]. *Effective on August 31, 2019*

- The restaurant liquor licenses that may be transferred to the tourist development project are those available for auction under section 470.3 of the Liquor Code. [47 P.S. §§ 461(b.5)(1), 468(a)(1)].
- The Board may choose which licenses will be available for transfer but must choose licenses from a “saturated county” up to the maximum that can be accepted from that saturated county. [47 P.S. § 461(b.5)(6)]. 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].

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- 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.5)(6)].

An application for a tourist development project restaurant liquor license may be filed by “any interested party” at any time. [47 P.S. § 4-461(b.5)(2)]. *Effective on August 31, 2019*

- 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 tourist development project by the PLCB, a map of the proposed project area, and any other information the PLCB needs. [Id.].
- The application fee is \$1,000,000. [Id.].
- The application must indicate the number of restaurant liquor licenses the applicant is seeking (maximum of 75). There is a surcharge of \$65,000 for each restaurant liquor license due upon Board approval of the request. [47 P.S. § 4-461(b.5)(4)].

Once the Board approves the application, 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.5)(7)]. *Effective on August 31, 2019*

- Licenses may remain in safekeeping for up to four years without having to pay additional safekeeping fees. 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. The revoked license will be reassigned to the county from which it came and once again be available for purchase at auction. [47 P.S. 4-461(b.5)(7)].
- A restaurant liquor license transferred as part of a tourist development project may not be transferred outside of the tourist development project area. [47 P.S. § 4-461(b.5)(8)].
- A restaurant liquor license transferred as part of a tourist development project may not obtain a wine expanded permit under section 415 of the Liquor Code. [47 P.S. § 4-461(b.5)(9)].

A restaurant liquor license that is part of a tourist development project may not sell beer for off-premises consumption, but patrons may take wine, spirits, and beer off the licensed premises, if the wine, spirits, and beer remain in the area designated as a tourist development project. [47 P.S. § 4-461(b.5)(9)]. *Effective on August 31, 2019*

A tourist development project is permitted to have exterior serving areas, and employees of licensees may enter unlicensed areas to deliver alcohol to patrons who are seated in licensed areas. [47 P.S. § 4-461(b.4)(4)]. *Effective on August 31, 2019*

The licenses issued to “mixed-use town development projects” and “tourist development projects” are not included in the county quota. [47 P.S. § 4-461(a)]. Furthermore, licenses transferred into a new county for a tourist development project are not counted toward the receiving county’s quota. [47 P.S. § 4-461(b.5)(10)]. The renewal and validation dates of a transferred license will be changed to correspond to that county’s renewal and validation dates. [47 P.S. § 4-461(b.5)(11)]. *Effective on August 31, 2019*

Wine and Spirits Auction Permit

Act 45 amends the statute governing wine and spirits auction permits to allow donations of wine or spirits by anyone who has legally acquired the product and who legally possesses it in Pennsylvania (before the amendment, licensees and permittees could not donate). If the donated wine or spirits is from a location outside of Pennsylvania, it may be imported as a gift and is subject to the same PLCB procedures and fees as other gifts of alcohol. If the wine or spirits is purchased from an entity other than the PLCB, the wine and spirits auction permittee is responsible for paying the appropriate taxes and a processing fee to the PLCB. [47 P.S. § 4-408.12(g), (i)]. *Effective on August 31, 2019*