

Summary of Acts 118 and 125 of 2020

On November 25, 2020, Governor Wolf signed House Bill No. 1617 into law, now known as Act 125 of 2020 (Act 125).

Act 125 made changes to multiple sections of the Liquor Code. The Act changes the manner in which certain malt or brewed beverages are registered and marketed, creates an option for converting some hotel licenses into restaurant liquor licenses, and creates another exception to the interlocking business prohibitions. The Act also makes some technical changes to the definitions for “alcoholic cider,” “fermented fruit beverages,” “malt or brewed beverages,” and “mead.” These changes all go into effect on January 24, 2021.

Questions about these changes or any other provisions of the Liquor Code may be directed to the Pennsylvania Liquor Control Board’s (“PLCB”) Office of Chief Counsel at 717-783-9454 or ra-lblegal@pa.gov.

Also, on November 25, 2020, Governor Wolf signed House Bill No. 777 into law, now known as Act 118 of 2020 (Act 118). Act 118’s changes pertain to the Local Option Small Games of Chance Act and clubs. While the PLCB does not regulate the Local Option Small Games of Chance Act, Act 118 is being brought to your attention since many of the PLCB’s club licensees hold small games of chance licenses. It is recommended that you contact your County Treasurer’s Office; the Pennsylvania Department of Revenue, Miscellaneous Tax Division; or the Pennsylvania State Police, Bureau of Liquor Control Enforcement with any questions regarding the Local Option Small Games of Chance Act. Act 118 changes went into effect immediately.

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Brand Registration (all changes effective on January 24, 2021)

Act 125 provides additional guidance regarding alcoholic cider, fermented fruit beverage, and mead products that are registered with the PLCB as a malt or brewed beverage. Specifically, the change allows said products to be labeled, packaged, and marketed as "wine-based," a "wine product," or in a similar manner or by a similar name, even though the product will be designated as a malt or brewed beverage in Pennsylvania.

Please note that alcoholic cider, fermented fruit beverage, and mead products sold at PLCB Fine Wine & Good Spirits stores after January 1, 2018, may not be designated as a malt or brewed beverage. [47 P.S. § 4-445(d)].

Also, the definitions of alcoholic cider, fermented fruit beverage, and mead in section 102 of the Liquor Code were amended to remove "wine product." This is technical rather than a substantive change. [47 P.S. § 1-102].

Hotel License (all changes effective on January 24, 2021)

Act 125 amended the Liquor Code to allow a hotel license (i.e., hotel liquor license or hotel malt beverage license) that meets all the following criteria to be converted to a restaurant liquor license upon application and payment of a \$30,000 fee to the PLCB:

- Hotel license meets the definition set forth in section 461(c)(8) of the Liquor Code, 47 P.S. § 4-461(c)(8),
- Hotel license applied for an exemption under section 461(c)(9) or 461(c)(9.1) of the Liquor Code, 47 P.S. §§ 4-461(c)(9) and 4-461(c)(9.1) prior to January 1, 2019, and
- Hotel licensee is not located in a city of the first class.

[47 P.S. § 4-461(c)(9.2)].

Please note that if the hotel license has any pending objections from the PLCB's Bureau of Licensing, the hotel licensee must address said objections, and its hotel license renewal application must be approved by the PLCB before the hotel licensee can apply to convert its hotel license to a restaurant liquor license. [Id.].

Additionally, the option to convert a hotel license to a restaurant liquor license will only be available until January 24, 2023. [Id.].

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Further, if the PLCB receives an application to transfer a converted restaurant liquor license within five years of the date the PLCB received the original application for the conversion of the hotel license to a restaurant liquor license, the seller must pay the PLCB an additional fee. The additional fee shall be the greater of \$30,000 or an amount equal to 25% of what the buyer paid the seller for the license. [Id.].

Interlocking Business Interest (all changes effective on January 24, 2021)

Act 125 amended the Liquor Code to allow someone to have an ownership interest in a PLCB-licensed brewery, regardless if he or she is employed by an entity that holds a PLCB retail license (i.e., hotel, restaurant, eating place or club license), as long as he or she has no job duties or responsibilities on, or connected with, the retail licensed establishment.¹ [47 P.S. §§ 4-411(e.1)(2), 4-493(11)].

Local Option Small Games of Chance Act (all changes effective immediately)

Act 118 amended the Local Option Small Games of Chance Act to allow club licensees who hold a small games of chance permit to utilize 60% of its proceeds, currently required to be utilized for public interest purposes, for operating expenses beginning with the 2020 calendar year through a period of one year after the termination of the proclamation of disaster emergency issued on March 6, 2020, or the termination of a declaration of disaster emergency related to COVID-19 that is issued after March 6, 2020, whichever is later. Any use of proceeds pursuant to this change must be included in the annual report, along with verification and itemization of the amounts utilized for the operating expenses. [10 P.S. §§ 328.501(a)(3), 328.502(c)].

Please note that the PLCB does not regulate the Local Option Small Games of Chance Act, and as such, the interpretation of this act falls outside of the PLCB's authority. Therefore, it is recommended that you contact your County Treasurer's Office; the Pennsylvania Department of Revenue, Miscellaneous Tax Division; or the Pennsylvania State Police, Bureau of Liquor Control Enforcement with any questions regarding the Local Option Small Games of Chance Act.

Malt or Brewed Beverage (all changes effective on January 24, 2021)

Act 125 amended the definition of Malt or Brewed Beverage to include Fermented Fruit Beverage. [47 P.S. § 1-102].

¹ Act 125 moved the interlocking business interest exception for limited wineries from section 411(e) to section 411(e.1)(1) of the Liquor Code. [47 P.S. §§ 4-411(e), 4-411(e.1)(1)].