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Liquor Law Changes Continue to Add Flexibility and Consumer Choice

On December 22, 2011, Pennsylvania Governor Tom Corbett signed House Bill 242, which amends the Pennsylvania Liquor Code to expand Sunday sales hours for alcoholic beverages, address happy hour sales, create a new class of small craft distilleries, expand brewery service, and make other changes to modernize the Code.

These changes to the Code (now known as Act 113 of 2011) are welcome updates which allow for more flexibility in a licensee's business decision-making and create more choices for consumers. Licensees and consumers alike will benefit from and enjoy the changes to the Code under the Bill.

Sunday Sales

Currently, hotel and restaurant liquor licensees and golf restaurant licensees may sell alcoholic beverages on Sunday only after 11:00 am upon purchase of a special permit; 11:00 am is not always early enough for licensees servicing consumers who are sitting down to a meal on a holiday weekend, on vacation, or out on the golf course early on a Sunday. With the changes provided for under the Bill, licensees will now have the option of serving beverages like a Mimosa or Bloody Mary to their Sunday morning customers. Under the Bill, a holder of a special Sunday permit may now begin selling alcohol on Sunday at 9:00 am instead of 11:00 am if the licensee also offers meals beginning at 9:00 am.

Additionally, distributors will now have the option of operating on Sundays with expanded hours. Under the Bill, manufacturers, importing distributors, and distributors may purchase a permit which allows beer distributors to expand their Sunday hours from 9 a.m. to 9 p.m. (currently distributors are only allowed to operate on Sundays from noon to 5 p.m.).

Happy Hour

In June 2011, the daily limit on happy hours for retail licensees was extended from two consecutive hours per day to four hours per day (See our July 2011, Liquor Law Alert entitled *Common Sense Liquor Law Changes Which Support Local Businesses*). This change was an important update to the Code, and the Bill clarifies how the new extended happy hours may be scheduled.

The Bill clarifies that the four-hour-per-day happy hour limit can be scheduled with consecutive or nonconsecutive hours. For instance, an establishment may hold a happy hour from 1:00 pm to 3:00 pm and then again from 6:00 pm to 7:00 pm on the same day or an establishment could choose to have



all four hours consecutively. The fourteen-hour-per-week happy hour limit, however, is not extended, so some scheduling choices will need to be made.

Additionally, the Bill provides that events conducted under Section 13.102(b) of the Code shall not be counted against the four-hour-per-day or the fourteen-hour-per-week limits. Section 13.102(b) relates to the discount pricing practices regarding: 1) the sale or serving, or both, of an indefinite amount of liquor, wine or malt or brewed beverages for a fixed price for catered events that have been arranged at least 24 hours in advance; or 2) the offering for sale of one specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price. These pricing practices are not counted against the four-hour or fourteen-hour limits.

Happy hours still cannot be held between the hours of midnight and the closing time, and notice of all happy hours shall be visibly posted on the premises seven days prior to the happy hour.

Allowing consecutive or nonconsecutive scheduling of happy hours is another positive update to the Code, which gives establishments more flexibility in conducting their businesses and gives consumers more choice.

Beer Manufacturer Sales

A malt or brewed beverage manufacturer may now sell beverages produced and owned by the manufacturer to individuals on the licensed premises for consumption on the premises. A manufacturer may also sell any malt or brewed beverage produced and owned by the manufacturer to individuals on the licensed premises for consumption off of the licensed premises, in containers or packages of unlimited quantity and of any volume.

Prior to this change, a brew pub was required to hold a G-license, a GP-license, and an R-license and maintain separate cash registers for sales of cases or six-packs of its own beer. This fix eliminates this burdensome need and will allow brewpubs to operate more efficiently in selling its own products on its premises. It also will promote economic growth by promoting the growing brewery industry in the State. Now, new breweries need obtain only one license to begin to serve beer to consumers. Under the Bill brew pubs will also be able to obtain an off-premises catering permit to hold a catered function off the licensed premises.

It should also be noted that in November 2011 the Board made a regulatory change to § 3.92 *Brewery Pubs*. The change recognizes that certain breweries have reached the point where demand for their beer at their brew pubs has outstripped their capacity to produce beer at an adjacent brewery. The change to § 3.92 will now allow brew pubs to sell beer produced at its other locations.

Distilleries

Small distillers will also benefit from the changes in the Code. Around the country, the micro distiller industry has been growing in numbers and in prominence similarly to how the craft beer movement has grown in recent years. Under the Bill, small craft distilleries will now be able to sell their own



products on-site in the same fashion as wineries and breweries. This change will give consumers more choices and regulate the small distillers similarly to how neighboring states have chosen to regulate such establishments.

Under the Bill, the board may now issue a limited distillery license that will allow the holder thereof to operate a distillery that does not exceed the production of 100,000 gallons of distilled liquor per year. The holder of the license may manufacture and sell liquors to the board, to other licensees, and to the public.

Other Changes

Limited Wineries – A limited winery may now obtain a special permit to participate in alcoholic cider, wine and food expositions off of the licensed premises for a period of thirty days. Previously the limit for such a permit was five days. Additionally, the total number of days for all the special permits may not exceed one-hundred days in any calendar year; the previous maximum number of days was only forty.

Bad Checks – A licensee’s bad checks will no longer result in immediate citation. The newly-appointed Malt Beverage Compliance Officer will give the licensee ten days to make good on the checks before turning it over to the State Police for enforcement.

Records – Currently, licensees must keep a record of operations for a two-year period. Under the Bill the records for the most recent six-month period must be maintained on the licensed premises. Records for the remainder of the two-year period may be kept off site so long as the records are returned to the premises within twenty-four hours of a request by the enforcement bureau. A licensee may remove the records for the most recent six-month period for a lawful business purpose provided that the records are returned once that business purpose is completed.

Distributors – Distributors are now allowed to sell magazines and equipment used for “home brewing”.

Noise Violations – A noise violation shall not be the sole basis for objection by the board to the renewal of a license unless the licensee has received six prior adjudicated noise citations within a 24-month period. A noise violation can occur if a licensee uses a sound system whereby the noise is heard beyond the licensee’s property line, instead of outside the licensee’s door (prior Law).

Managers – Unless training was completed prior to appointment, a manger appointed by a licensee shall be required to complete the required manager/owner training within 180 days of approval of appointment by the board.

Police Officers no longer barred – Now, police officers can have interests in licenses that are not located in the jurisdiction where they have arrest powers.

Zoos – A zoo shall now be considered a public venue eligible for a public venue license if it is an



accredited member of the Association of Zoos and Aquariums. Sales at zoos during private banquets and other events may be at any site within zoo property and may consist of any type of alcohol in any type of container.

Transportation - A malt or brewed beverage licensee must identify a vehicle which is transporting malt or brewed beverages with the name and address and license number of such licensee by painting or affixing such information on each side of the vehicle in letters no smaller than two inches in height. Previously, the requirement was "in a size identifiable by liquor control enforcement."

This *Liquor Law Alert* was written by **Theodore J. Zeller, III**. A member attorney with Norris McLaughlin & Marcus, P.A., Ted has extensive experience in alcoholic beverage law, commercial transactions including related real estate transactions, and litigation. In addition to representing restaurants, hotels, stadiums, and distributors, Ted represents the Brewers of Pennsylvania, a non-profit entity made up of the largest and smallest breweries in the state. If you have any questions regarding the information in this alert or any other related matters, please feel free to contact Ted by email at tzeller@nmmlaw.com.

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