What Licensees Should Know About Act 116 of 2012

On July 5, 2012, Governor Corbett signed House Bill No. 2267 (P.N. 3786) into law. Now known as Act 116 of 2012 (the "Act"), the bill made changes to numerous sections of the Liquor Code, which are summarized below. Please note that amendments involving the noise statute [47 P.S. §§ 4-493(34), 4-493.1] are effective immediately; all other sections will be effective sixty (60) days from enactment, on September 3, 2012. If you have any questions about what these changes mean, or about other portions of the liquor laws, you may contact the Board's Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, PA 17124, phone (717) 783-9454.

Off-premises catering permits: As a result of recent changes to the Liquor Code, holders of restaurant licenses, hotel licenses, eating place retail dispenser licenses, and breweries holding a brewery pub license could already apply for and obtain an "off-premises catering permit," which allows the permittee to hold a "catered function" off its licensed premises and on otherwise unlicensed premises, subject to various conditions. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; no sales for take-out are permitted. The Act made several key changes to those sections of the Liquor Code related to off-premises catering permits.

A "catered function," as modified by the Act, is defined as "the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance." [§ 102]. The amended definition clarifies that such functions must be for the benefit of an identifiable group of people, not the general public. Further, the prior requirement that such functions be scheduled at least forty-eight (48) hours in advance is replaced with a requirement that such functions be scheduled at least thirty (30) days in advance.

The Act modifies existing provisions related to the use of such permits and imposes new restrictions. For clarity, the below is a summary of all changes effectuated through the Act:

- Reiterates that a licensee holding a permit may sell alcohol together with food for consumption on the premises. [§§ 406(f), 442(f), 446(b)].

- Clarifies that no patron may remove alcohol from the permitted location (licensees may transport alcohol to and from the catered premises). [§§ 406(f)(8), 442(f)(8), 446(b)(8)].

- An applicant must notify not only local police, but also the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("BLCE"), of all catered functions at least seven (7) days in advance (previously, only forty-eight (48) hours' notice was required). [§§ 406(f)(9), 442(f)(8), 446(b)(9)].

- An applicant must give the Board at least thirty (30) days' notice prior to a proposed catered function. [§§ 406(f)(10), 442(f)(9), 446(b)(10), 493(33)]. The notice must include the location and time of the function, the identity of the host of the function, general information regarding expected guests, and any other Board-required information.

    - The Board may waive the thirty (30)-day notice requirement under the following circumstances:
        - the applicant has previously conducted catered functions that met requirements;
        - the applicant is a licensee in good standing with Board (while the Act does not define "good standing," the Board interprets this to mean an active license, which has been properly renewed and/or validated, has appropriate tax clearances, and is not subject to a pending objection by the Board's Director of Licensing);
        - notification was received at least fourteen (14) days prior to the catered function; and
        - the applicant has paid a one hundred dollars ($100.00) late filing fee. [§§ 406(f)(10), 442(f)(9), 446(b)(10), 493(33)].

- The Board may, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the

requirements of the Liquor Code, or has previously conducted a function that did not meet the Liquor Code's requirements. [§§ 406(f)(11), 442(f)(10), 446(b)(11)].

- The BLCE may conduct a warrantless search of private property on which a catered event is held. [§§ 406(f)(12), 442(f)(11), 446(b)(12)].

- Catered functions may not last longer than five (5) hours, and they must end by 12:00 midnight (the limit of fifty (50) catered functions per calendar year is retained). [§§ 406(f)(13), 442(f)(13), 446(b)(13)].

- The applicant and the owner of the property where the catered function is held are prohibited from selling tickets to the function unless the applicant has contracted with either an "eligible entity" (as defined in the Liquor Code), a 501(c)(3) non-profit organization, or an organization that holds tax exempt status under section 527 of the Internal Revenue Code which is seeking to raise funds for itself. [§§ 406(f)(14), 442(f)(14), 446(b)(14)].

- The location of the catered function is subject to section 493(34) of the Liquor Code, which prohibits the use of a loudspeaker or similar device where by the sound of music or other entertainment can be heard beyond the property line. [§§ 406(f)(15), 442(f)(15), 446(b)(15)].

- A catered function may not be held at a location that is subject to a pending, protested transfer application. [§§ 406(f)(16), 442(f)(16), 446(b)(16)].

- A permit <u>may not</u> be issued:

  - to a license holder whose license is subject to a pending objection by the Director of Licensing under section 470(a.1). [§§ 406(f)(17), 442(f)(17), 446(b)(17)].
  - to a licensee for use in a mobile location. [§§ 406(f)(18), 442(f)(18), 446(b)(18)].
  - for use on any location used for parking at a sports event or concert event. [§§ 406(f)(19), 442(f)(19), 446(b)(19)].

- All servers at the off-premises catered function for an eating place retail dispenser licensee must be in compliance with the responsible alcohol management provisions of section 471.1. [§ 442(f)(12)]. This requirement already existed for restaurants, hotels and brewery pub licensees.

- Licensees who want to obtain a permit must notify the Board and pay the permit fee by March 1st of each calendar year, regardless of whether the licensee intends to conduct any catered functions. If a licensee notifies the Board and pays the permitting fee by March 1st, but does not use the permit throughout the calendar year, the licensee shall not be entitled to a refund of the fee. Any licensee not granted a license until after March 1st of the calendar year shall have sixty (60) days from the date of the license transfer to notify the Board of the licensee's intent to use an off premises catering permit and pay the fee. [§ 493(33)].

Noise statute: By way of background, Act 113 of 2011 added new section 493(34), making it unlawful for a licensee to use, inside or outside of the licensed premises, a loudspeaker or similar device such that the sound of music, other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line. This statutory provision superseded section 5.32(a) of the Board's Regulations. However, section 493.1 of the Liquor Code, which affords municipalities a process by which to become exempt from the Board's regulation and exempts certain licensees from the regulation, was not amended by Act 113 of the 2011. Accordingly, those licensees located in municipalities that were granted an exemption from the Board's regulation were subject to the new noise statute.

Act 116 of 2012 addresses these situations by providing that, ***effective immediately,*** any licensee that is located in an area which is subject to an exemption from the Board's noise regulation shall be exempt from compliance with section 493(34) until the expiration of the Board's order granting the exemption. The Board's regulation regarding noise is otherwise specifically superseded. Accordingly, municipalities which were exempt from the Board's noise regulation will be exempt from the noise statute until the expiration of the Board's exemption order. [§ 493(34)].

Further, section 493.1 is amended to replace references to the Board's noise regulation with references to the noise statute. These changes will allow a municipality to seek from the Board an exemption from the noise statute, and

allows certain licensees previously exempted from the Board's noise regulation to again be exempt from section 493(34). [§ 493.1].

Special Occasion Permits: The Act amends the definition of "eligible entities," which may apply for and acquire a Special Occasion Permit ("SOP") from the Board. [§ 102]. The amendment deletes references to specific classifications of the municipality or county in which the eligible entity is located (such as "in a township *of the second class* in a county *of the fourth class*," etc.) for the following entities:

- A club which has been issued a club liquor license and which, as of December 31, 2002, has been in existence for at least one hundred (100) years
- A museum operated by a non-profit corporation
- A non-profit corporation engaged in the performing arts
- A non-profit corporation that operates an arts facility or museum
- A county tourist promotion agency as defined in the "Tourist Promotion Law"
- A junior league that is a 501(c)(3) nonprofit organization that is comprised of women whose purpose is exclusively educational and charitable in promoting the volunteerism of women and developing and participating in community projects and that has been in existence for over seventy (70) years
- A 501(c)(3) non-profit organization whose purpose is the education and promotion of American history
- A club recognized by Rotary International and whose purpose is to provide service to others, to promote high ethical standards and to advance world understanding, goodwill and peace through its fellowship of business, professional and community leaders
- A 501(c)(3) nonprofit organization whose purpose is to promote mushrooms while supporting local and regional charities

Accordingly, the above-referenced entities may apply for and acquire an SOP without regard to previous classifications.

Alcoholic Cider: The Act expands the definition of "alcoholic cider" in section 102 to include products produced from <u>any fruit</u>, not only from apples. [§ 102]. The definition of "malt or brewed beverages" includes

alcoholic cider. Licensed breweries and licensed limited wineries may continue to produce and sell alcoholic cider in accordance with the provisions of the Liquor Code.

Licenses in Wet-then-Dry Communities: The Act allows the Board, pursuant to new subsection 472(d)(3), to approve the renewal or transfer of a restaurant, hotel, eating place retail dispenser, or distributor license in a location where two (2) or more municipalities have merged and the resulting municipality prohibits the issuance of such licenses. [§ 472(d)(3].

Personal Importation of Liquor by Military Service Personnel: Pursuant to section 491(2), military service personnel may import up to one (1) gallon of liquor per month, without payment of additional state taxes, so long as the liquor was purchased in a "package store" established and maintained under the authority of the United States and is in containers identified in accordance with regulations issued by the Department of Defense. An amendment is made by adding a definition for "package store," which clarifies that such stores include those retail operations located on any of the United States military installations, including an installation of the Army, Navy, Air Force, Marine Corps or Coast Guard. [§ 493(2)].

Wine Kegs: Currently, the Board is prohibited from selling wine in containers of more than six (6) liters. The Act amends section 305(i) to allow the Board to sell in containers having a capacity of sixty (60) liters or less. [§ 305]. This provision would give the Board the authority to sell wine in keg-sized containers, should it choose to do so.

It should be noted that, effective July 7, 2012, licensed limited wineries are authorized to sell wine in any size containers, including wine kegs, pursuant to a change in section 11.111(a)(3) of the Board's Regulations.