



*November 15, 2021*

## **Summary of Act 81 of 2021**

On November 5, 2021, Governor Wolf signed House Bill No. 425 into law, now known as [Act 81 of 2021](#) (Act 81).

Act 81 made changes to multiple sections of the Liquor Code. The Act allows a licensee that is permanently closing to sell its remaining stock of wine and liquor to another licensee qualified to sell such products; allows for the temporary outdoor extension of retail and manufacturer's licenses; amends the rules for off-premises catering permits; and allows for an additional year of safekeeping for clubs, catering clubs, restaurant, eating place retail dispenser, hotel, importing distributor, and distributor license holders that were in safekeeping during Governor Wolf's COVID-19 Emergency Declaration.

Act 81 changes went into effect on November 5, 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](mailto:ra-lblegal@pa.gov).

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## **Sale of Liquor and Wine by a Licensee Permanently Closing to Another Licensee**

Act 81 amended the Liquor Code to allow a licensee that is permanently closing to sell its remaining stock of wine and liquor to another licensee qualified to sell such products. Notice of the sale must be given to the PLCB; approval of the sale by the PLCB is not required.

The licensee that is permanently closing is required to provide the following information regarding the sale in writing to the PLCB:

- Name of the licensee purchasing the alcohol;
- Information identifying the product sold to the licensee; and
- A description of the liquor and/or wine sold, including brand names, sizes, and numbers of containers sold to the licensee.

[47 P.S. § 4-06(j)].

### **Q & As**

#### **1. What constitutes permanent closure?**

Although Act 81 does not provide a definition with regard to what constitutes permanent closure, a licensee that wishes to sell its wine and/or liquor to another licensee must place its liquor license into safekeeping before or immediately after selling its wine and/or liquor to another licensee. Also, the seller's liquor license must remain in safekeeping until the liquor license is sold.

#### **2. What is considered liquor for purposes of Act 81?**

Act 81 uses the existing Liquor Code definition of liquor, which includes any alcohol that does not fall under the definition of malt or brewed beverages.

#### **3. Is there a deadline for notifying the PLCB of the sale of the wine and/or liquor?**

Yes. The licensee selling the wine and/or liquor must notify the PLCB within seven days of the sale at [ra-lbcovid19liqsales@pa.gov](mailto:ra-lbcovid19liqsales@pa.gov).

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#### **4. Can the selling licensee deliver the wine and liquor to the buying licensee?**

No. While Act 81 authorizes the sale of liquor and/or wine to another licensee, it does not authorize delivery of that liquor. Since retail licensees already have the authority to pick up liquor that they have purchased at Fine Wine & Good Spirits stores, they are likewise permitted to pick up liquor and wine they purchase from another licensee.

#### **5. Are there special pricing rules for the sale of liquor and wine?**

There are no special pricing rules in Act 81. Therefore, general pricing rules apply. While licensees have significant leeway in setting prices, there are rules<sup>1</sup> regarding the discounting of prices once they are established.

In addition, licensees are still prohibited from offering anything of value to induce the sale of an alcoholic beverage. For example, a licensee can offer to sell its entire inventory of alcohol for \$5,000; it cannot offer to sell half of its inventory for \$5,000 and throw in the other half for free.

#### **6. May a licensee that has an expired (i.e., licensee has not completed renewal or validation) or revoked license and is permanently closed, sell its remaining stock of wine and/or liquor to another licensee?**

Yes, as long as its license is not suspended. If a licensee's license is suspended it is not permitted to sell its wine and/or liquor to another licensee; however, such a sale would be permitted after the suspension ended.

#### **7. What if a licensee notifies the PLCB that it is permanently closing and provides information regarding the sale of its remaining wine and liquor to another licensee, but later decides that it is not going to close?**

Once a licensee decides it is permanently closing, its license must be placed into safekeeping and remain in safekeeping until its license is sold.

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<sup>1</sup> With regard to pricing, a licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed four consecutive hours or nonconsecutive hours per day and a maximum of fourteen hours per week. During this happy hour, the price of alcoholic beverages may not change. Section 406(g) of the Liquor Code requires notice of all happy hours to be posted on the licensed premises seven days prior to the happy hour. In addition to happy hours, a licensee is permitted to offer one specific type of alcoholic beverage at a discounted price all day, or for a portion of the day if it chooses, as a daily drink special. A specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink.

## **Temporary Extension of the Licensed Premises**

Act 81 amended the Liquor Code to allow a licensed club, catering club, restaurant, retail dispenser, hotel, limited distillery, distillery, brewery, or limited winery, to temporarily extend their licensed premises to include any outside serving area that is:

- Immediately adjacent to the existing licensed areas or
- Within 1,000 feet of the main licensed building, regardless of whether the temporary extension area is separated from the main licensed building by a public thoroughfare.

[47 P.S. § 4-417(a.1)(1)].

Upon receipt of a temporary extension application, the PLCB will grant immediate operating authority to the applicant to use the temporary extension outside area while the PLCB processes the licensee's request. However, this operating authority for the temporary extension is terminated if a valid protest is received or if the PLCB determines that the proposed temporary extension area does not meet the requirements for licensure. [47 P.S. § 4-417(a.1)(2) and (a.1)(3)].

Although a filing fee is not required for the temporary extension application, licensees are still required to file applications. [47 P.S. § 4-417(a.1)(4) and (a.1)(5)].

**Please note that the authorization for these temporary extensions expires on December 31, 2024.** [47 P.S. § 4-417(a.3)].

### **Q & As**

**1. If a licensee with an approved permanent extension files an application for a temporary extension for the same area, can the licensee request a refund?**

No. However, a request to cancel a permanent extension application that remains pending will be honored, as long as an inspection of the permanent extension application has not occurred. If the PLCB's inspection has been completed, no refund will be given.

**2. Does a licensee's temporary extension expire when its licensing term or validation period expires?**

No. However, the temporary extension will expire on December 31, 2024, unless the licensee

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notifies the PLCB earlier that it no longer wants the temporary extension.

**3. Does a licensee have to repost the temporary extension areas at the time of its renewal and/or validation?**

No. The licensee only has to post the temporary extension with the initial request.

**4. May alcohol servers transport alcohol across unlicensed areas?**

Yes. Servers can transport alcohol from one licensed area to another licensed area, even if this means that the server traverses an unlicensed area, so long as all alcohol service occurs on the licensed areas. This is true even if there is a public thoroughfare separating the permanently licensed area from the temporary licensed areas.

**Off-Premises Catering Permits**

Act 81 amended the Liquor Code with regard to off-premises catering permits (“OPCP”). The changes include:

- An entity eligible for an OPCP may have an unlimited number of OPCP events;
- An OPCP application fee is not required;
- An application for an OPCP does not need to be submitted prior to March 1 of that calendar year; and
- The five-hour limit on catered functions no longer applies.

[47 P.S. § 4-417(a.2)].

Act 81 also provides that requirements for OPCP catered function not addressed above still apply. [47 P.S. § 4-417(a.2)(5)]. (see 47 P.S. § 4-406(f), 47 P.S. § 4-442(f), and 47 P.S. § 4-446(b) of the [Liquor Code](#) for those requirements).

**Please note that the OPCP changes for catered functions in section 417 of the Liquor Code stated above expire on December 31, 2024.** [47 P.S. § 4-417(a.3)].

**Q & As**

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**1. Will a licensee that has already filed an OPCP application for 2022 receive a refund for its application fee?**

If a licensee has already filed an OPCP for 2022, the PLCB will refund the 2022 OPCP fee.

**2. Will the PLCB accept notice of less than fourteen days for a catered function?**

Maybe. The Liquor Code allows the PLCB to waive the fourteen-day notice period for a catered function, if:

- i. The applicant has previously conducted functions that meet the requirements of this act;
- ii. The applicant is a licensee in good standing with the board;
- iii. Notification was received at least seven days prior to the catered function; and
- iv. The applicant pays a late fee of \$100.

[47 P.S. §§ 4-406(f)(10), 4-442(f)(9), 4-446(b)(10)].

**3. Is a catered function still required to utilize an OPCP?**

Yes. Section 102 of the Liquor Code defines a catered function as:

... 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.

[47 P.S. § 1-102].

**Safekeeping**

Act 81 amended the Liquor Code to allow club, catering club, restaurant, eating place retail dispenser, hotel, importing distributor, and distributor licensees that were in safekeeping during Governor Wolf's COVID-19 Emergency Declaration to have an additional year of safekeeping. The year is added on at the time that the licensee's license is renewed or validated in 2022. Please note that since this additional year does not begin until 2022 and clubs cannot extend their safekeeping period beyond two years, some club licensees may not be able to avail themselves of this provision prior to the expiration of their licenses. [47 P.S. § 4-462.1(1),(2)].

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Please note that licensees that qualify for this additional year of safekeeping must still file validation and/or renewal applications, but the licensees would not be subject to renewal, validation, or late fees during this additional year of safekeeping. Id.

## Q & As

### 1. **Do licensees need to continue to pay their \$700 application surcharge when filing their renewal/validation applications during the additional year of safekeeping?**

Yes. Licensees who are required to pay the \$700 application surcharge must continue to pay this fee during their additional year of safekeeping.

### **Examples With Regard to Calculating Safekeeping End Dates**

The caveat for the following examples is that the licensee is eligible for the additional year of safekeeping (see above criteria). Also, please note that the PLCB implemented a policy during the Governor's Emergency Declaration, whereby it extended the safekeeping periods of licensees during the emergency declaration period.

Example #1 For a licensee whose renewal/validation effective begin date is April 1, 2022, and its safekeeping end date is on or after April 1, 2022, but prior to April 1, 2023, its new safekeeping period end date would be March 31, 2023.

Example #2 For a licensee whose renewal/validation effective begin date is April 1, 2022, and its safekeeping end date is on or after April 1, 2023, its safekeeping period end date does not change.

Example #3 For a licensee whose renewal/validation effective begin date is April 1, 2022, and its safekeeping end date is prior to April 1, 2022, this licensee would first have to file an application with the requisite fee to extend its safekeeping period one year. On April 1, 2022, the licensee would be eligible to receive its Act 81 additional year of safekeeping, and that additional time would be added to its new safekeeping end date. The following provides two scenarios for this example:

Scenario #1: For a licensee whose renewal/validation effective begin date is April 1, 2022, but has a safekeeping end date of November 12, 2021, it would first need to apply for and pay to extend its safekeeping period for one year to November 12, 2022.

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On April 1, 2022, it would be eligible for one additional year of safekeeping. Therefore, its new safekeeping end date would be November 12, 2023.

Scenario # 2: Licensee is a club licensee whose safekeeping period ends on November 12, 2021, and whose renewal/validation effective begin date is April 1, 2022. Since a club licensee cannot extend its safekeeping period, its license will expire on November 12, 2021.