



January 31, 2024

Summary of Acts 34, 45, 49, and 51 of 2023

On December 14, 2023, Governor Shapiro signed House Bill No. 38 into law, now known as Act 45 of 2023 (Act 45). Act 45 made changes to the Liquor Code to allow licenses for hotels, restaurants, clubs, distributors, importing distributors, and retail distributors that received prior approval for their applications, to be able to transfer their prior approval licenses without having operated at their proposed licensed premises by paying the appropriate surcharge. The changes are summarized below. References to the sections/subsections impacted can be found at the end of each paragraph. All changes are effective within 60 days of the Governor's signature, on February 12, 2024.

Additionally, on December 14, 2023, Governor Shapiro signed House Bill No. 1096 into law, now known as Act 49 of 2023 (Act 49). Act 49 changes pertain to hotel and public venue licenses, and the adoption of a Stop-and-Go Legislative Task Force. The changes are summarized below. References to the sections/subsections impacted can be found at the end of each paragraph. All changes are effective within 60 days of the Governor's signature, on February 12, 2024.

Also, on December 14, 2023, Governor Shapiro signed House Bill No. 1160 into law, now known as Act 51 of 2023 (Act 51). Act 51 changes pertain to off-premises catering permits and catering clubs holding self-sponsored events. The changes are summarized below. References to the sections/subsections impacted can be found at the end of each paragraph. The change dealing with catering club licensees is effective within 60 days of the Governor's signature, on February 12, 2024. The remaining changes are effective January 1, 2025.

Finally, on December 13, 2023, Governor Shapiro signed House Bill No. 1300 into law, now known as Act 34 of 2023 (Act 34). Act 34 made numerous changes to the Fiscal Code. However, only one of the changes impacts the PLCB and/or the Liquor Code pertaining to distilleries and limited distilleries. The change is summarized below. References to the sections/subsections impacted can be found at the end of the paragraph. The change pertaining to distilleries and limited distilleries went into effect immediately.

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.

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Prior Approval Applications (all changes effective on February 12, 2024)

By way of background, sections 403(a) and 436(b) of the Liquor Code provide that a license issued on a prior approval basis cannot be transferred “between the time of issuance or transfer of the license and the [Board’s] approval of the completed alterations or construction by the [B]oard and full compliance by the licensee with the requirements of this act....” There were previously two exceptions to this prohibition: (1) the death of the licensee and (2) when compliance is impossible due to reasons outside the applicant’s control. The latter exception was first acknowledged in Pennsylvania Liquor Control Bd. v. Rauwolf, 281 A.2d 205 (Pa. Cmwlth. 1971) (“Rauwolf”), where the Commonwealth Court permitted a license to be transferred from a premises that had prior approval because the licensee could not obtain the necessary permits at the prior approved premises. 47 P.S. §§ 4-403(a), 4-436(b).

Act 45 amended the Liquor Code to remove the above two exceptions and replace them with a new exception, which allows licenses for hotels, restaurants, clubs, distributors, importing distributors, and retail dispensers that received prior approval for their applications, to be able to transfer their licenses without having operated at their proposed licensed premises by paying a surcharge. 47 P.S. §§ 4-403(a), 4-436(b). The surcharge is \$15,000.00 for licenses located in a county of the first through third class and \$5,000.00 for licenses located in the county of the fourth through eighth class. Id.

Additionally, Act 45 amended the Liquor Code to provide that the period of time between the prior approval of the initial application and the issuance of operating authority to the licensee will be considered as time in safekeeping. Id.

Rauwolf Scenarios

The following scenarios provide guidance for applications in various stages (i.e., a Licensing hearing has not been held; a Licensing hearing has been held, but the Board has not made a decision; and a Licensing hearing has been held and the Board refused the application, but the Board’s decision has been appealed) that meet the Rauwolf criteria (i.e., the current license was approved on a prior approval basis, which never became operational):

Scenario # 1 (Applications filed on or after February 12, 2024)

Act 45 removed the impossibility exception, and replaced it with a new exception allowing for the transfer of prior approval licenses subject to applicants paying a surcharge. The surcharge is \$15,000 for licenses located in counties of the first through third class and \$5,000 for licenses located in counties of the fourth through eighth class.

Scenario # 2 (Application filed prior to February 12, 2024 and a Licensing hearing has not been held)

Applicant has the following two options:

1. Proceed with a Licensing hearing and the Board will make a decision based on the Rauwolf criteria.
2. Contact Licensing and request that a hearing not be held. Applicant will pay the surcharge of \$15,000 for licenses located in counties of the first through third class and \$5,000 for licenses located in counties of the fourth through eighth class. Please note that the application and payment will not be processed until on or after February 12, 2024.

Scenario # 3 (Application filed prior to February 12, 2024 and a Licensing hearing has been held, but the Board has not made a decision)

Applicant has the following two options:

1. Proceed with allowing the Board to make a decision based on the Rauwolf criteria.
2. Contact Licensing and pay the surcharge of \$15,000 for licenses located in counties of the first through third class and \$5,000 for licenses located in counties of the fourth through eighth class. Please note that the application and payment will not be processed until on or after February 12, 2024.

Scenario # 4 (Application filed prior to February 12, 2024, a Licensing hearing has been held, and the Board refused the application, but the Board's decision has been appealed)

Applicant has the following two options:

1. Proceed with the appeal based on the Rauwolf criteria.
2. Contact Licensing's attorney assigned to the case to discuss the possibility of a settlement agreement, whereby the Applicant would pay the surcharge of \$15,000 for licenses located in counties of the first through third class and \$5,000 for licenses located in counties of the fourth through eighth class.

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Off-Premises Catering Permits (all changes effective on January 1, 2025)

For background purposes, [Act 81 of 2021](#) (Act 81) amended the Liquor Code with regard to off-premises catering permits (OPCP). The changes included:

- 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 provided that requirements for OPCP catered functions not addressed above still apply. However, 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). (see, 47 P.S. §§ 4-406(f), 4-442(f), and 4-446(b) of the Liquor Code for those requirements).

Act 51 amended the Liquor Code to allow for the continuation of the following provisions of Act 81 found in section 417(a.2) of the Liquor Code, 47 P.S. § 417(a.2), regarding off-premises catering permits filed on or after January 1, 2025:

- An entity eligible for an OPCP may continue to have an unlimited number of OPCP events. 47 P.S. §§ 4-406(f)(3), 4-442(f)(2), 4-446(b)(3).
- An application for an OPCP still does not need to be submitted prior to March 1 of that calendar year. 47 P.S. § 4-493(33).

Additionally, Act 81 temporarily eliminated the five-hour per day limit on catered functions, which expires on December 31, 2024. However, Act 51 amended the Liquor Code to reinstate an hourly limit on the length of each catered function and set such limit at six hours per day, beginning January 1, 2025. 47 P.S. §§ 4-406(f)(13), 4-442(f)(13), 4-446(b)(13).

Please note that although Act 81 temporarily eliminated the OPCP application fee, Act 51 does not address the OPCP application fee. Therefore, OPCP applications filed for the period starting on January 1, 2025 will have to include the requisite application fee of \$500.00. 47 P.S. § 4-493(33).

Catering Club Self-Sponsored Events (all changes effective on February 12, 2024)

Act 51 amended the Liquor Code to increase the number of self-sponsored events a catering club licensee may have during its licensing term from twelve to twenty-four. It also increases the number of events in any calendar month from one event to two events. 47 P.S. § 4-406(h).

Hotel License Conversion (all changes effective on February 12, 2024)

For background purposes, [Act 125 of 2020](#) (Act 125) amended the Liquor Code to allow a hotel license (i.e., hotel liquor license or hotel malt beverage license) that met certain criteria to convert its license to a restaurant liquor license upon application and payment of a \$30,000.00 fee. This option to convert a hotel license to a restaurant liquor license expired January 24, 2023.

Act 49 amended the Liquor Code to allow a hotel license that qualifies under the conditions set forth in sections 461(c)(8)¹ or 461(c)(8.1)² of the Liquor Code to convert its license to a restaurant liquor license upon application and payment of a \$30,000.00 fee. 47 P.S. §§ 4-461(c)(8) and 4-461(c)(8.1) This option to convert a hotel license to a restaurant liquor license will expire February 27, 2026. 47 P.S. § 4-461(c)(9.2).

Please note that the following provisions provided in section 461(c)(9.2) of the Liquor Code, 47 P.S. § 4-461(c)(9.2), will be in effect when submitting an application to convert a hotel license to a restaurant liquor license:

- Hotel licenses cannot be located in a city of the first class.
- 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.
- 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.

¹ Section 461(c)(8) allows a hotel license that was issued or applied for prior to September 1, 1949, to be exempt from the room requirements of section 461(c) of the Liquor Code, 47 P.S. § 4- 461(c).

² Section 461(c)(8.1) allows hotel licenses issued before January 1, 1965 in municipalities having a population of less than 10,000 to be exempt from the room requirements of section 461(c) of the Liquor Code, 47 P.S. § 4- 461(c). Also, this section permits hotel licenses to be exempt from the room requirements of section 461(c) of the Liquor Code if they were issued before September 1, 1949, and lapsed not more than once, provided the Board issued a new hotel liquor license prior to January 1, 1971.

The additional fee shall be the greater of \$30,000.00 or an amount equal to 25% of what the buyer paid the seller for the license.

Public Venue License (all changes effective on February 12, 2024)

Act 49 amended the Liquor Code’s definition of a “public venue” to include:

- Amusement parks as defined in Act 81 of 1984 that are situated on at least 40 acres of land regardless of seating capacity.
- Entities that have at least 350 acres and are members of the American Public Garden Association.

47 P.S. § 1-102.

Also, Act 49 amended the Liquor Code for amusement parks that qualify for a public venue license regarding the following:

- May sell liquor and malt or brewed beverages from 11:00 a.m. to 11:00 p.m.
- Must utilize a transaction scan device (as defined in section 412(i) of the Liquor Code, 47 P.S. § 4-412(i)) to check patrons’ identifications who appear to be under thirty-five years of age when purchasing alcohol. An acceptable form of identification under section 495(a) of the Liquor Code, 47 P.S. § 4-495(a), that cannot be scanned, may be accepted by the licensee.
- May not sell or share data from the transaction scan device, except to show the PLCB and/or the Pennsylvania State Police, Bureau of Liquor Control Enforcement that the licensee is in compliance with the Liquor Code.

47 P.S. § 4-412.

Finally, an amusement park that holds a restaurant liquor license before January 1, 2022, and applies for a public venue license, must exchange an existing restaurant liquor license to the PLCB in return for the public venue license at no cost. The exchanged restaurant liquor license would be available for auction under section 470.3 of the Liquor Code, 47 P.S. § 4-470.3.

Stop-and-Go Legislative Task Force (all changes effective on February 12, 2024)

Act 49 amended the Liquor Code to add section 218, which establishes the “Stop-and-Go Legislative Task Force” (Task Force), which will have the following duties and responsibilities:

- Review and analyze the law, procedures, practices, processes, and rules relating to the issues involving stop-and-go establishments;
- Hold public hearings for the taking of testimony and the requesting of documents;
- Through the chair, administer oaths and affirmations to witnesses appearing before the Task Force;
- Accept and review written comments from individuals and organizations; and
- Issue a report no later than four months after the Task Force’s initial meeting to each member of the General Assembly who represents residents of a city of the first class (Philadelphia), the PLCB, the Chairs of the Senate Law and Justice Committee, and the Chairs of the House Liquor Control Committee. In addition to providing any information deemed appropriate, the report issued by the Task Force will:
 - Define and create a liquor license category for stop-and-go establishments operating within Philadelphia and
 - Provide recommendations for regulating stop-and-go establishments that are operating within Philadelphia.

47 P.S. §§ 2-218(b)(1-5), 2-218(f).

A “stop-and-go establishment” is defined as a convenience store or deli that holds a restaurant liquor license, and sells beer and liquor sometimes in quantities as low as a single shot, which may be consumed on the licensed premises or immediately outside of the establishment. 47 P.S. § 2-218(h)(1).

Additionally, the Task Force will consist of members who shall be appointed by the following individuals within 25 days after the effective date of the legislation (i.e., February 12 2024):

- One member appointed by the Governor;

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- One member appointed by the President Pro Tempore of the Senate;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House of Representatives;
- One member appointed by the Speaker of the House of Representatives; and
- An ex officio member from the PLCB, who shall not have voting rights.

47 P.S. § 2-218(c)(1-6).

Finally, the Task Force will conduct its business pursuant to the guidelines in section 218(e) of the Liquor Code and the Task Force will expire 30 days after the delivery of the report addressed above. 47 P.S. §§ 2-218(e), (g).

Distilleries and Limited Distilleries (all changes effective immediately)

Act 34 repealed section 1799.5-E of the Fiscal Code, which limited the aggregate liquor sales made by licensed distilleries and limited distilleries directly to other licensees or permit holders to 50,000 gallons during a calendar year. This now allows distilleries and limited distilleries to sell an unlimited volume of liquor to other licensees and permit holders. 72 P.S. § 1799.5-E.