

## PENNSYLVANIA VICE

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### LIQUOR LAW

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## Act 11 Opens New Frontiers for Liquor Licensees

**A** weekly pop-up pub? A cash bar at a monthly meeting held in someone's office? Easily implemented beer sales at public festivals?

All were illegal until earlier this summer when Gov. Tom Corbett signed Act 11 of 2011, which opened the door for "catered function" events that could span all of these, as well as myriad other new uses for liquor licenses.

Under Act 11, bars and hotels now have the right to "off-premises catering" permits that will allow them to service a wide range of events. The permits are relatively cheap and cover 50 events a year. Because of a potentially very broad definition of a "catered event" and the lack of clarity regarding a few other terms in Act 11, the scope of the events that are covered could be tremendous.

The basic terms of a catered event under Act 11 are pretty straightforward. The event must involve both food and drink, cannot take place for more than

one day, must be for a location that is not otherwise licensed under the Liquor Code and must serve an "identifiable group" of people.

These permits are only available to holders of certain other liquor licenses, including brewpub, hotel and restaurant licenses. We'll refer to these licensees, once they get the permit, as "bar caterers" for the rest of this article.

### WHAT FOOD IS REQUIRED?

Act 11 does not specify what food is required. It permits food to be prepared on site or "brought onto the premises already prepared." Under the plain language of the act, pretzels served to patrons would probably be sufficient, and we might see some illogical outcomes, such as the sufficiency of shelled peanuts (which are "prepared") and the insufficiency of peanuts in the shell.

That said, we do not see any requirement in the act that the event be food-focused — and we see no reason to avoid liquor-centric events. Act 11 would allow events with pizza slices, burgers and hot dogs or other casual dining options.

It is also important, at least until we get a sense for how the statute will be interpreted, for bar caterers to make sure that they are involved in the provision of both the food and the drink. Act 11 requires that the food be furnished "in conjunction" with alcoholic beverages. While we interpret this to allow separate tents managed by the bar caterer that sells beer and burgers at the same event,

it is unclear if the food-service activities can be subcontracted out.

Since Act 11 is worded very broadly, a slew of enforcement actions may follow in its wake. We are advising clients to proceed conservatively until the contours of these provisions become more clearly defined.

### HOW ABOUT THE DRINK?

Act 11 is fairly broad in terms of what alcoholic beverages can be served. A bar caterer can serve any alcohol it may sell during the hours it is otherwise permitted to be open for business, and it can be served in the same manner — by the glass, bottle, etc. — as the bar caterer would ordinarily sell it.

So where the bar caterer is a regular bar, it can sell everything it legally has behind the counter. But the holder of a brewpub license is limited to its own beer and the limited Pennsylvania wine options it can otherwise serve on site.

Bar caterers should note that take-out liquor, including beer-to-go, is not permitted at off-site catered events. This provision should protect distributors in the vicinity of the catered event.

### WHO'S ON THE GUEST LIST?

In what appears to be an attempt to prevent "open-to-the-public" events, Act 11 limits service under catering permits to events booked at least 48 hours in advance and to an "identifiable group" of people. However, the act does not define an "identifiable group" of people. The plain language opens the door for classifications that would effectively

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render this “limitation” meaningless.

While the group must be identified 48 hours before the event, the statute is not clear on when a person must be included in the group. If the persons must be identified, there could be the ridiculous situation where a bar caterer serving at a wedding could not serve a guest who forgot to RSVP.

The only alternative solution is to allow immediate qualification. Although it might expand the scope of this legislation, we believe this is the likely outcome, given the prior interpretation of the rules pertaining to private drinking clubs, which can be joined immediately when a patron walks in off the street.

We anticipate significant litigation over the enforcement of this provision before long.

#### **HOW DOES MY CLIENT GET A PERMIT?**

Any holder of a restaurant (which is what most bars have), hotel, or brewpub license can apply for a caterer permit. A calendar year permit costs \$500, but can be used for up to 50 events in that year. Each licensee can only get one permit each year, but each of the 50 events can be at a different location.

Permits cannot be used for locations that already have a liquor license; for example, an eating place licensee cannot allow a bar caterer to use their licensed premises for a Scotch tasting event.

There are also some procedural requirements. All servers must be RAMP-certified and the bar caterer is required to give local law enforcement and the Liquor Control Board 48 hours notice of the event.

Finally, if the liquor license is in safe keeping or suspended or the licensee or location is subject to a pending licensing objection, the license cannot be the basis for permitting as a bar caterer.

#### **HOW ABOUT WINE?**

A different fix in Act 11 addressed state wineries who are holders of “limited winery” licenses. These licensees

were given the right to participate in farmers’ markets if they apply and obtain a \$250-per-year permit.

Limited winery licensees can sell their wine and alcoholic cider at an unlimited number of such markets, so long as they tell the LCB at least two weeks in advance. The wineries will be allowed to give out samples of up to one ounce per brand and to sell the wine and alcoholic cider by the glass or by the bottle. Limited winery licensees are now also allowed to extend sales to 11 p.m. from the old time of 9 p.m.

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While these rules are currently limited to Pennsylvania wineries, they likely suffer from the same Dormant Commerce Clause defects that doomed New Jersey’s recent in-state preference system and that we discussed in our article, “3rd Circuit’s Ruling on N.J. Wineries May Drive Pa.’s Liquor Laws” in the Feb. 15 issue of *Pennsylvania Law Weekly*.

We are not aware of a challenge being litigated about the limited winery rules, but with these expanded rights, it is possible that subsequent litigation will be forthcoming.

#### **WHAT ELSE IS IN ACT 11?**

The one part of Act 11 that was covered by the general press was the expansion of happy hours at Pennsylvania bars to up to four hours a day and 14 hours in a week. But Act 11 also addressed a number of other important “fixes” in the state liquor code, and also included

some giveaways for certain very narrow interests.

The recent debacle over the seizure of beers for label registration violations has been addressed. Going forward, bars that carry beers that violate these rules will have a 10-day period to get the manufacturer/distributor to register the beer and, in the interim, the offending beers will not be confiscated, they just have to be taken off the menu until the registration is fixed.

The beer registration fees involved have also been clarified. Going forward, it is \$75 for one brew, with up to 20 brands being covered by a single \$150 fee for beers where less than 100 barrels (200 kegs) per year are produced.

Other provisions expanded the use of amusement permits, allowed an off-site warehouse for importers and distributors, allowed open container beer sales where permitted by the municipality, and eliminated the two-year waiting period for people moving into Pennsylvania to become a beer distributor or brewer.

There are also a number of giveaways to ultra-narrow interests related to special occasions permits and transfers of grandfathered licenses in dry counties.

Finally, in case you are stuck at a Pennsylvania airport on a Sunday morning, “opening” time has been moved up from 11 a.m. to 7 a.m., but only if the airport restaurant licensee has a Sunday sales permit. •